

WISCONSIN TAX BULLETIN

4. INHERITANCE AND GIFT TAXES

Allow any gift tax paid to be used as a credit to offset any inheritance tax due on the same property. (SECTION 814)

5. MOTOR AND SPECIAL FUEL TAXES

A. Change the motor fuel tax reporting and payment requirement from the wholesaler to the terminal level. (SECTIONS 395, 856 to 887 and 1657 (38) (b) 1)

B. Change motor fuel tax collection procedures by: 1) imposing interest at 18% per year on delinquent taxes; and 2) giving the Department authority to collect delinquent motor fuel taxes, including the use of warrant procedures. (SECTIONS 879 to 881 and 1657 (38) (b) 2)

C. Allow purchasers of special fuel, at their option, to pay the tax to either the supplier or the state if such fuel will be used entirely on highways. (SECTIONS 874 and 1657 (38) (b) 1)

6. INTEREST

Make interest rates charged for delinquent taxes more uniform. Income, withholding and sales delinquent tax interest rates are currently 18%; the Budget Bill would set the excise tax delinquent rates at the same level. (SECTIONS 879, 1134, 1135, 1138 and 1657 (38) (b) 2 and (e)) Inheritance and gift tax interest rates would be changed from 8% to 9%. (SECTIONS 811, 813 and 1657 (38) (g))

7. HOMESTEAD CREDIT PROGRAM

Expand the Homestead Credit Program by an increase in the ceiling for property taxes from \$535 to \$800, an increase in the income ceiling from \$7,500 to \$8,000 and the introduction of a family size factor in calculation of benefits. A claimant may exceed the \$8,000 ceiling by \$750 for a spouse and up to 2 dependents (maximum of \$2,250), allowing a family of four to have an income up to \$10,250 and still be eligible for benefits. The maximum benefit would be increased from \$428 to \$640. (SECTIONS 794 to 799)

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

WKBH Television, Inc. v. Department of Revenue (75 Wis. 2d 557, Wisconsin Supreme Court, Case No. 75-170, February 1, 1977). In June 1969, WKBH adopted a plan of complete liquidation and in January 1970 it sold its properties pursuant to the plan. It then liquidated and distributed all of its assets within one year of the adoption of the plan on a prorata basis to its shareholders. At times pertinent to the case 53.5 percent of the shares of stock were owned by Wisconsin residents who must report a prorated portion of the gain on their tax returns, and 46.5 percent were owned by nonresidents.

WKBH reported as taxable Wisconsin income 46.5 percent of the gain it computed on the sale of its assets, to the extent the gain was distributed to nonresident shareholders. It subsequently filed a claim for refund of these taxes. The court found that WKBH was not entitled to a refund, as 46.5 percent of the gain on the sale of the assets which represents nonresident ownership is subject to Wisconsin income tax.

Department of Revenue v. Exxon Corp.

(Circuit Court of Dane County, Case No. 151-344, January 31, 1977). The issue in this case is how the income of this major oil company should be apportioned to Wisconsin. The years involved were 1965 through 1968 when Humble Oil and Refining Company, a wholly-owned subsidiary of Standard Oil Company of New Jersey, operated in Wisconsin. The latter company subsequently changed its name to Exxon.

The three principal operating and functional departments of the corporation in the years involved were exploration and production, refining, and marketing, each organized into regional geographic divisions. The taxpayer only carried on marketing operations in Wis-

consin. None of the taxpayer's refined gasoline or fuel oil was sold in Wisconsin, as they were obtained from Pure Oil Company through an exchange agreement. Motor oils, greases and other packaged products were produced outside Wisconsin and sold in Wisconsin. Other items such as tires, batteries and accessories were centrally purchased in Houston and sold in Wisconsin.

During the period under review, the company had a uniform credit card system throughout the United States. There was also centralized advertising, purchasing, accounting and management from the main office in Houston.

The Department treated the taxpayer as a unitary business and imposed a Wisconsin tax on the apportioned income of the three operating departments (exploration and production, refining and marketing). In computing the apportionment formula, the Department weighted one of the three apportionment factors (manufacturing costs). The manufacturing percentage was given less weight because many of the items sold by the company were not manufactured by it.

The court determined that the taxpayer is a unitary business subject to apportionment. However, the income of the exploration and production department is situs income which is not apportionable to Wisconsin. The Department has appealed this decision to the Wisconsin Supreme Court.

Joan Hargarten et al d/b/a Chattel Changers v. Department of Revenue (Wisconsin Tax Appeals Commission, February 9, 1977).

Chattel Changers is a three-member partnership. It is engaged in the business of selling household goods of others to the public. The sales take place on the premises of the owner of the goods. Usually the household goods are sold because of the discontinuance of the household.

Advertising of each two or three day sale is handled by Chattel Changers, which inventories and prices the goods. Chattel Changers sells the goods to the public. The owner must be off the premises at the time of the sale. The Commission held that Chattel Changers is a retailer required to report the sales tax on these sales of household goods.