

WISCONSIN TAX BULLETIN

An office auditor examines tax returns to verify the accuracy, correctness and completeness of the information being reported. For example, income, deductions, exemptions and credit items are reviewed to see that taxes have not been either underpaid or overpaid. When an office auditor requires additional information to complete the review of a return, the information is typically requested from the taxpayer by letter. In some instances the request may be made by telephone.

In the 1975-76 fiscal year nearly two million corporation and individual income tax returns were office audited. Such audits resulted in approximately 52,500 assessments of additional tax against individuals and 4,600 against corporations. These assessments amount to about \$15 million in additional tax. In addition, this auditing activity generated approximately 26,600 refunds amounting to more than \$5.2 million.

Some of the problem items most frequently involved in office audit adjustments include:

- Refunds of state income taxes previously claimed as an itemized deduction are not reported as income in the year received.
- Incorrect amounts of credit are claimed for estimated tax payments made.
- Incorrect amounts of itemized deductions are claimed for state income taxes and sales taxes paid.
- Insufficient amounts of estimated tax are paid, with the result that penalties are imposed.
- Treatment of capital gain income or loss is incorrectly reported.
- Personal exemption credits allowable are not claimed.

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.)

Greycote, Inc. v. Department of Revenue (Wisconsin Tax Appeals Commission, February 9, 1977.) The taxpayer, which

did not have a Seller's Permit, provided background music on the premises of the customer. The taxpayer also sold used equipment during the years 1969, 1970 and 1971.

During 1971 the taxpayer sold its entire Muzak franchise, related equipment and accounts receivable to a new owner. The sales price of the equipment sold in this transaction was \$26,100, and the Department imposed the 4% sales tax on this amount. The taxpayer also had sales of used equipment of \$6,210 during 1971. The Tax Appeals Commission held that the sale of the equipment with the entire business was an exempt occasional sale.

The Department has appealed this decision.

Romain A. Howick v. Department of Revenue (Wisconsin Tax Appeals Commission, March 14, 1977.) The taxpayer sold stocks he purchased prior to establishing his Wisconsin domicile. Stocks from 12 different companies were sold in 1970 and stocks from 3 additional companies were sold in 1973.

The Department assessed gain or loss for each stock sale by using either the stock's market value on the date taxpayer's Wisconsin domicile was established or the stock's federal basis.

There was no individual stock for which the Department assessed gain on any sale for Wisconsin purposes where federal loss actually occurred. The Commission, however, ordered modification of the assessment. The Commission found that the assessment had the ultimate effect of creating artificial gain from actual loss when the sales for the two years in issue were viewed on a net rather than an individual stock sale basis.

The Department has appealed this decision.

Bailey-Bohrman Steel Corporation v. Department of Revenue (Wisconsin Tax Appeals Commission, April 27, 1977.) The sole issue was whether the petitioner was engaged in manufacturing as that term is defined in s. 77.51 (27), Wis. Stats. and thus was entitled to the sales and use tax manufacturing exemption provided for by s. 77.54 (6) (a), Wis. Stats. The Commission held that the petitioner was engaged in manufacturing and was entitled to the exemption claimed.

The petitioner's operation consisted of taking raw coiled steel having a width of up to 48 inches and weighing about 15 tons per coil and, through the use of a rotary slitter,

slitting the steel into narrower widths. The petitioner did not press, stamp or change the thickness of the steel it slit. The Commission, however, concluded that the steel had a different dimension, flatness and configuration after being slit and held the process to be manufacturing.

The Department has appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

SALES TAX

I. Motor Vehicles and Recreational Vehicles Purchased by Nonresidents

The gross receipts from the sales of motor vehicles or truck bodies to persons who are not residents of this state, and who will immediately remove such motor vehicles or truck bodies from Wisconsin are exempt from the Wisconsin 4% tax. This exemption only applies to self-propelled vehicles designed for and capable of transporting persons or property on a highway. This includes motor homes.

The exemption does not apply to sales of non self-propelled vehicles, such as mobile homes, travel trailers, semi-trailers, recreational trailers, other trailers, nonmotorized vehicles, snowmobiles, slide-in campers, road machinery, construction machinery and forklift trucks. Therefore, if a nonresident accepts delivery of any of these items in Wisconsin, the Wisconsin 4% sales tax applies to the transaction.