

TIM I-5.2, entitled "Addition to the Tax Penalty" (January 3, 1978).

Department of Revenue vs. Bailey-Bohrman Steel Corporation (Circuit Court of Dane County, Case No. 157-072, December 16, 1977). The court held that the slitting of raw coiled steel does not constitute "manufacturing" as that term is defined in Wisconsin's sales and use tax law (s. 77.51(27)). The taxpayer's entire operation consisted of taking raw steel coiled stock with a width of up to 48 inches and weighing about 15 tons and decoiling the coiled steel, slitting it into narrower widths and recoiling it for shipment to customers.

The taxpayer claimed that the machinery and equipment used in its steel slitting operation was used in "manufacturing" and was, therefore, exempt for Wisconsin's sales and use tax. The court rejected the taxpayer's exemption claim on the grounds that the taxpayer was not engaged in manufacturing since its operation was simple and did not produce a new article with a different form from the old article.

The taxpayer has appealed this decision to the Wisconsin Supreme Court.

In the Matter of the Estate of Oscar R. Haase a/k/a Oscar Rudolph Haase, Deceased: State of Wisconsin vs. Marine National Exchange Bank of Milwaukee (Wis. 2d , Wisconsin Supreme Court, Case No. 75-815, January 3, 1978.) Certain brokerage commissions in the sale of real estate and stock were deducted as offsets on the fiduciary income tax returns of the Haase estate to reduce the amount of capital gains realized on the sale. The issue was whether these same commissions may be claimed for the second time as administrative expense deductions for inheritance tax purposes. The court held, pursuant to s. 72.015(3), 1969 Wis. Stats. (now s. 72.14(1)(c)), that expenses claimed for income tax purposes could not be deducted a second time for inheritance tax purposes.

Hall Chevrolet Co., Inc. vs. Department of Revenue (Wis. 2d , Wisconsin Supreme Court, January 3, 1978.) The taxpayer was in the business of selling and servicing new and used automobiles. Due to the economic deterioration of the neighborhood in which its facilities were located, the taxpayer sold the property and moved to a more advantageous location.

Taxpayer sustained a loss on the sale of its land and buildings at its old site because of its diminution in value as a result of the deterioration of the neighborhood. Although the taxpayer was permitted to offset a portion of the loss against other income in the year in which the sale took place (under s. 71.05, Wis. Stats.), its total losses for the year exceeded the gain. The taxpayer then attempted to carry forward to subsequent years the losses which could not be applied against income in the year of sale as a net business loss under s. 71.06, Wis. Stats.

The department disallowed the carry forward of the net business loss because it was not "attributable to the operation of a business *regularly* carried on by the taxpayer" (emphasis added) within the language of s. 71.06, Wis. Stats. The Tax Appeals Commission and the Circuit Court for Dane County upheld the department's action. However, the Wisconsin Supreme Court ruled in favor of the taxpayer.

The Wisconsin Supreme Court, in holding for the taxpayer, stated that the question is not whether the transaction was of a kind "regularly" carried on by the taxpayer, but whether the transaction was "attributable" to the operation of a business which was regularly carried on. The Court recognized that there was no total or partial liquidation of the business so that the business after the sale was neither terminated nor permanently reduced in scope. Under these facts, the Court concluded that this loss was attributable to a transaction in the regular course of the taxpayer's regular business which could be carried forward.

NOTE: Because s. 71.06 was amended by Chapter 224, Laws of 1975, beginning with the taxable year 1976, all Wisconsin net business losses incurred by corporations can be carried forward for up to 5 years and used to offset a subsequent year's net business income.

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.)

INCOME TAX

New Jobs Tax Credit

Beginning with the 1977 taxable year, a new *federal* credit is available to qualified employers who hire additional employees. This "new jobs tax credit" was created by the Tax Reduction and Simplification Act of 1977, which added Sec. 44B to the Internal Revenue Code.

Generally, the amount of the jobs credit is based on Federal Unemployment Tax Act (FUTA) wages paid by an employer during the calendar year. Employers who are not subject to FUTA tax, or do not employ agricultural or railroad employees cannot qualify for the jobs credit. If an employer claims this credit, the employer's deduction for wages paid or incurred for the tax year must be reduced by the dollar amount of the credit allowable.

It is not mandatory that an employer claim the jobs credit under the Internal Revenue Code. Therefore, an employer who claims the credit for federal purposes is not required to follow the Internal Revenue Code provisions for Wisconsin. In such situations, the employer's deduction for wages should

not be reduced by the jobs tax credit for the computation of Wisconsin taxable income.

If an employer who reports business income on Form 1040 Schedules C, E, or F, claims the jobs credit for federal purposes, the employer must reduce the deduction for wages by the amount of the credit. The employer must add the amount of the credit back to the deduction for wages in order to arrive at the federal adjusted gross income that is allowed for Wisconsin purposes. For the convenience of the employer, line 5 of Wisconsin Schedule I may be used for this adjustment.

A corporate employer who files Wisconsin Form 5 and who claims the jobs credit for federal purposes, must add the amount of the credit to the additional Wisconsin deductions in order to arrive at the total business deductions allowable for Wisconsin purposes. This adjustment should be made on line 6 of Schedule V. A corporate employer who files Wisconsin Form 4 does not need to make any adjustment, since the total wages paid should have already been deducted on the form.

SALES TAX

I. Purchases by Governmental Units

Rule Tax 11.05 entitled "Governmental Units" went into effect on January 1, 1978. Portions of the rule which may be of most interest to representatives of governmental units are reproduced below. If you want a copy of this rule, write the department's Technical Services Staff, 201 East Washington Avenue, Madison 53702.

Section 77.54 (9a), Wis. Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under section 66.47, Wis. Stats., sewerage commission organized under section 144.07 (4), Wis. Stats., metropolitan sewerage district organized under sections 66.20 to 66.26, Wis. Stats., or any other unit of government, or any agency or instrumentality of 2 or more

units of government within this state. However, the exemption does not apply to governmental units of other states.

A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;
2. The seller bills the governmental unit directly; and
3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

II. Sales by Governmental Units

Sales by the state of Wisconsin, any agency thereof and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States Government or any agency thereof are not taxable.

Taxable receipts of governmental units located in Wisconsin include gross receipts from the following:

- (a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).
- (b) Food and gift stand sales.
- (c) Sales or rental of recreational equipment and supplies.
- (d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.
- (e) Sales of electricity, gas and steam by municipal utilities. However, water sold through mains is exempt.

(f) Sales of maps, plat books, photocopies or other printed material.

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units should not collect tax on their sales of motor vehicles. Instead, the purchaser should pay the tax to the Wisconsin Department of Transportation when the motor vehicle is registered.

(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month.

(j) Receipts from vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies. Such sales by vocational, technical and adult education schools are taxable, except for the period from July 1, 1972 through October 3, 1973. Sales of books and supplies by elementary and secondary schools are exempt.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles (see par. (g) above).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

III. Trade-ins

Section 77.51 (11) (b) 3, Wis. Stats., provides that the gross receipts from a transaction which are subject to the sales tax is the difference between the full purchase price of the article of greater value and the amount allowed for the article traded in. This statutory

provision applies only to single transactions in which certain specific tangible personal property is traded toward the purchase of an article of greater value. For example, if a used car valued at \$1,000 is traded in on a new car having a retail selling price of \$5,000, the tax applies to the net purchase price of \$4,000.

If an auto dealer exchanges its entire business (e.g., real estate, goodwill, inventories and other personal property)—not just “one article”—for another entire business, the trade-in provision in s. 77.51(11)(b)3 is not applicable.

IV. Trade-ins Converted to Use

If a mobile home dealer removes a traded-in mobile home from inventory, and converts it to his or her own use by utilizing it as an office for the business, a use tax is due based on the trade-in allowance reflected on the dealer's books.