

During the years 1969 through 1973, the Wisconsin division sent interest checks to the Kansas City Star Company in Missouri. In reporting its income from its Wisconsin division on a separate accounting basis, petitioner claimed the interest payments as deductions from gross income under s. 71.04 (2), Wis. Stats.. The Department disallowed the interest payments as deductions.

The Commission concluded that the petitioner's intra-company payment of interest constitutes interest paid which is deductible under s. 71.04 (2), Wis. Stats.. The Commission stated that the interest expenses were properly allocable as expenses relating to Wisconsin operations under the separate accounting method used by petitioner in reporting for Wisconsin franchise tax purposes.

The Department has appealed this decision.

Fort Howard Paper Company vs. Department of Revenue (Wisconsin Tax Appeals Commission, April 20, 1978.) The taxpayer is a large manufacturer of paper and paper products. Four sales tax issues were involved as follows:

1. The taxpayer purchased an average of 270,000 tons of coal in each year involved in an audit and used it to produce all of its steam and virtually all of its own electrical power. Taxpayer claimed that its coal purchases were exempt from the sales tax under the language of s. 77.54 (6) (c) which exempts "Coal . . . converted to electric energy, gas or steam by utilities . . ." The Commission concluded that the purchases were not exempt because the taxpayer was not a "utility".

2. Taxpayer maintained railroad-type equipment and used it to switch and transport loads on its premises, maintaining crews to work the railroad-type equipment. Taxpayer contended that its purchases of a switch engine and trackmobile were exempt from sales tax under s. 77.54 (12) which exempts "locomotives or other rolling stock used in railroad operations . . ." The Commission concluded that the railroad-type segment of taxpayer's business constitutes "rail-

road operations" and that its purchases of a switch engine and trackmobile come within the definitions of "locomotives or other rolling stock" and are exempt from the sales and use tax.

3. Taxpayer maintained an art department consisting of 23 artists. The art department assisted in the manufacturing of specialty products such as napkins, placemats, tray covers, coasters, doilies, paper towels, and company reports, manuals and brochures. The art department had its own composing operation which prepared initial drawings or paintings to finished art work which was reduced to photographic plates for imprinting on the taxpayer's paper products. Taxpayer also maintained a staff of photo technicians and printers involved in manufacturing specialty paper products.

The Commission concluded that the following types of art supplies purchased are covered by the sales and use tax exemption language of s. 77.54 (2) as property which is "consumed or destroyed or loses its identity in the manufacture of tangible personal property [i.e., paper specialty products] in any form destined for sale": pencils, poster white, ink, cement, water color sets, colored pencils, erasers, klee kote, tracing paper, and masking tape.

The Commission concluded that the following types of art supplies purchased by the taxpayer are not covered by the exemption language of s. 77.54 (2) nor by s. 77.54 (6) (a) as "machines or specific processing equipment . . . exclusively and directly used by a manufacturer in manufacturing tangible personal property": razor blades, artist's triangles, artist's brushes, pen points, Bourges stylus, lettering points, head holders, push pins, pen holders, handi-spencer, and pens.

4. The taxpayer was ordered by the Wisconsin Department of Natural Resources to reduce its pollution discharge. To comply with the order, taxpayer installed on its equipment various items of effluent treatment equipment, principally aerators and clarifiers. The Commission found that this equipment improved taxpayer's operation and reduced the amount of waste discharged. The Commission concluded that the effluent treat-

ment equipment was covered by s. 77.54 (6) (a) and exempt from the sales and use tax.

This decision has been appealed.

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

Taxability of Interest from Loans Guaranteed by the U.S. Government

Under s. 71.05 (1) (b) 1, Wis. Stats., an individual or fiduciary may exclude from Wisconsin taxable income any interest or dividend income, less related expenses, which by federal law is exempt from taxation by this state. The Department has received inquiries regarding the Wisconsin income tax status of interest derived from Farmers Home Administration guaranteed loans, Small Business Administration guaranteed loans and Government National Mortgage Association "fully-modified pass-through" certificates.

It has been stated by the Attorney General of the United States that "a guarantee by a Government agency contracted pursuant to a congressional grant of authority for constitutional purposes is an obligation fully binding on the United States . . ." (42 Opinions of the Attorney General of the United States, No. 1, at pp. 3-4, April 14, 1961).

Federal law authorizes the Secretary of Agriculture to guarantee loans made by banks and other lending agencies through the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture. Therefore, loans guaranteed as to principal and interest by the FmHA constitute obligations of the United States, and any interest derived from such loans is exempt from Wisconsin income tax for individuals and fiduciaries.

Government National Mortgage Association "fully-modified pass-through" certificates also constitute obligations of the United States, and interest derived from these certificates is not taxable for Wisconsin individual and fiduciary income tax purposes.

The Small Business Administration (SBA) has no express authorization from the United States Congress to guarantee loans made by banks and lending institutions. Consequently, loans guaranteed by the SBA do not constitute obligations of the U. S. Government, and interest received from these loans is taxable for Wisconsin individual and fiduciary income tax purposes.

SALES TAX

I. Campground Receipts

The sale or furnishing of camping privileges is subject to the sales tax if the campground operator furnishes a place

with facilities, such as clubhouse, swimming pool or other swimming facilities, electrical service, fireplace, grill, laundry room, water system, toilets, playground, or other improvements designed to attract campers.

Some campground operators lease space on a seasonal or annual basis. The purchaser of this privilege parks a trailer, mobile home or similar unit in a particular place during the summer season. The purchaser may also leave the unit there during the entire year, but only use it on weekends or during the summer season. The fees received from these leases are subject to the sales tax, regardless of the period covered by the lease. However, the lease of space to a mobile home owner who uses the mobile home as a permanent residence is not subject to the tax.

ii. Antiques and Works of Art

The sales tax applies to the sales of an-

tiques and works of art, such as paintings and sculptures. Persons engaged in the sale of such items should be registered with the Department as retailers and report the sales tax on these receipts, even though a retailer makes these sales infrequently, such as on weekends.

III. Sales Tax Liability of Successors

Are you planning to acquire an existing business? As a successor, you can be held liable for the sales or use tax liability of the prior owner, unless a clearance certificate is obtained from the Department stating that no taxes are due from the predecessor. The request for the certificate must be in writing.

At the time of purchase, you should withhold from the purchase price a sufficient amount to cover any possible sales and use tax liability of the seller until you have received the clearance certificate from the Department.