

To receive a refund, a claim must be filed within 12 months after the date of purchasing the gasoline. For example, if gasoline is purchased for use in a motor boat on June 15, 1979, the refund claim must be filed with the Department of Revenue on or before June 15, 1980. No extensions of time to file are allowed.

A person may file more than one claim in a year. For example, a person may use gasoline in a motor boat, trail bike, and lawn mower during the spring and summer months and file in the autumn for a refund of the gasoline tax paid for gasoline used in these non-highway uses. The same person may use gasoline in a power saw and a snowmobile during the fall and winter months and file during the spring for a refund of the gasoline tax paid for gasoline used in these non-highway uses.

The refund claim must be filed on Form 3 entitled "Claim for Motor Fuel Tax Refund". The form may be obtained at any Department of Revenue office, in each county clerk's office, or by requesting a copy by writing: Wisconsin Department of Revenue, Excise Tax Bureau, P.O. Box 8900, Madison, WI 53708.

The claim form is easy to complete. It requires a statement of the total number of gallons of gasoline purchased and a description of how the gasoline was used. In addition, the claim must be accompanied by the original invoice showing the purchase of the gasoline and indicating that the gasoline tax was paid.

### DO YOU HAVE SUGGESTIONS FOR ARTICLES?

The Wisconsin Tax Bulletin is designed to provide current and accurate information on topics of general interest to taxpayers and tax practitioners. Articles pertain primarily to income, franchise, sales and use, inheritance, gift, motor fuel, cigarette, and beer and liquor taxes.

To make this bulletin more useful and informative to its readers, the Department is seeking suggestions for topics and areas of reader interest for articles in future issues. Send your suggestions to: Wisconsin Tax Bulletin, Technical Services Staff, P.O. Box 8910, Madison, WI 53708.

### 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 is noted whether or not the Department acquiesces or will appeal.)*

W. A. Krueger Co. vs. Department of Revenue (Wisconsin Tax Appeals Commission, February 27, 1978.) Taxpayer was a Wisconsin corporation in the business of printing. Taxpayer manufactured tangible personal property for sale, consisting of printed products such as magazines, books and commercial catalogues and brochures.

The Commission stated that taxpayer's printing process consists of 3 general stages: (a) the preparatory or "prep-work", in which a customer's copy is processed through various stages to produce plate-ready film; (b) the press work in which the image is transferred to the final printed page; and (c) the bindery work.

The issue before the Commission was the taxability of certain tangible personal property purchased by taxpayer for use in its printing business. This property included one piece of finished art work and plate-ready film, color separations, positives, negatives and similar items produced by "prep houses" for the taxpayer and purchased by the taxpayer.

The items of property involved in the proceeding all fell within the "prep-work" stage. "Prep-work" precedes the actual printing stage and includes initial typesetting or composition, paste-up including photographs from customers and combining these with words, making page mark-ups and taking pictures of them, making proofs and paper a customer can edit and change, producing negatives which go to the stripping department for assembly of an 8 or 16 page flat and taking a picture (either positive or negative) of the flat which after it is finally proofed is known as plate-ready film. Plate-ready film is used to transfer the final image to metal plates (called lithographic plates) which are attached to the printing press and used in transferring the printing image to a printed product.

The Commission found that none of the items in question, except the

one piece of finished art work, were finished or final in the sense that they had value in themselves as the final stage of a process. They were in the preparatory stages of taxpayer's printing process. All the items involved in this proceeding were cut, cropped, pasted, taped, partially deleted, marked up, written upon and had no further use or function once they had been processed by the taxpayer, wrote the Commission.

The Department assessed the sales and use tax against taxpayer on the tangible personal property involved because no sales or use tax had been paid at the time of their purchase. Taxpayer contended that these items were not subject to the tax.

The Commission concluded that the "prep-work" involved was part of taxpayer's manufacturing process. The Commission held that the items contested were, therefore, exempt from the sales and use tax under s. 77.54(2), Wis. Stats., for 2 reasons: first, they were consumed or destroyed in the manufacture of tangible personal property destined for sale; and secondly, they became an ingredient or component part of printed material destined for sale.

The Department did not appeal this decision.

Horne Directory, Inc. vs. Department of Revenue (Circuit Court of Dane County, March 5, 1979.) Taxpayer is a Wisconsin corporation doing business in Wisconsin with its principal place of business in Madison. During the period involved, taxpayer was engaged in the business of soliciting telephone directory advertising and the publication of telephone directories.

Taxpayer contracted with an Illinois corporation to print the directories it solicited. All the directories involved were printed outside of Wisconsin. The printer delivered most of the directories to the U.S. Post Office, U.P.S. or common carriers outside Wisconsin for delivery directly to telephone subscribers, without any charge to the telephone companies. The decision as to the mode of delivery was made by the printer, not the taxpayer. Except for a small number of directories sent directly to taxpayer, taxpayer never had physical possession of the directories in Wisconsin.

The Department contended that taxpayer owed Wisconsin use tax based on the charges by the printer to the taxpayer for labor, materials, postage and transportation of the directories. The Department's position was that the telephone directories were purchased for storage, use or other consumption in Wisconsin by the taxpayer in providing its service and are subject to the use tax under s. 77.53(1) and (2), Wis. Stats.

The Court held for the taxpayer. It stated that the directories were sold to the telephone companies for resale, and therefore, not subject to the sales or use tax.

The Department has appealed this decision.

Jones Dairy Farm, Inc. vs. Department of Revenue (Circuit Court of Dane County, Case No. 163-206, April 16, 1979.) The taxpayer manufactured sausage and other meat products. To prevent or minimize contamination of the meat products by bacteria from an employe or an employe's clothes, taxpayer purchased and required its employes, during the manufacturing process, to wear 10 categories of wearing apparel. These were cotton gloves, rubber gloves, plastic gloves, plastic pants, plastic shop coats, plastic aprons, cotton pants, cotton aprons, cotton shop coats and hair nets. After these items were used, they were either laundered for re-use or thrown away if no longer usable.

The Court held that these 10 categories of wearing apparel were directly used and consumed in the process of the manufacture of tangible personal property destined for sale. As such, they were exempt from the sales and use tax under s. 77.54(2), Wis. Stats.

The Court also found that about 5% of the cotton shop coats were used by executives and visitors who visited the manufacturing areas. There was no evidence that these coats were used directly in manufacturing nor that the executives and visitors had any direct contact with the meat or meat products. The Court concluded that these coats were used for the protection of their wearers, rather than the protection of the products. For this reason, these 5% of the coats were subject to the sales and use tax.

The Court distinguished between 2 types of apparel: (1) apparel which is

directly used and consumed in manufacturing and which is exempt; and (2) apparel supplied for the comfort or welfare of the employes and which is taxable. Examples of the latter (taxable) type cited by the Court are fur-lined or galosh type boots for employes that work in refrigerated areas, freezer coats and jackets, and safety equipment such as helmets and hard hats.

The Department has not appealed this decision.

Superior Industrial, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, April 26, 1979.) Section 71.043, Wis. Stats., provides that sales and use taxes paid by a corporation on fuel and electricity consumed in manufacturing may be used to reduce income/franchise taxes payable for the year. This section indicates that "manufacturing" has the meaning designated in s. 77.51(27) (i.e., the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing). The department disallowed a reduction of the income/franchise taxes payable by the taxpayer on the grounds that taxpayer was not engaged in manufacturing.

The taxpayer owned 2 plants in Racine and was engaged in the business of coating component parts for various manufacturers. Taxpayer used heavy machinery in a variety of mechanical operations. The most common operation involved rinsing and rerinsing the product in a chemical solution, blowing it dry, coating it, then baking and curing it in an oven. The Commission stated that after the coating processes are completed the products have different properties, uses and names than they did prior to going through the taxpayer's processes.

The Tax Appeals Commission found that the taxpayer was engaged in manufacturing as that term is defined in s. 77.51(27). As a result taxpayer could use sales taxes it paid during the year on fuel and electricity consumed in manufacturing to offset income/franchise taxes payable for the year.

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.)*

#### SALES TAX

##### I. Purchases by tourists

With the tourist season occurring, retailers are reminded that sales of taxable goods or services to out-of-state tourists are taxable, if delivery is made in Wisconsin. A mere statement that the item purchased is to be removed from this state is not an acceptable reason for making the sale exempt. Retailers are liable for the sales tax on transactions even if they do not charge tax to the customer.

However, if a retailer ships tangible personal property outside Wisconsin for a customer before the customer obtains possession, the Wisconsin sales or use tax does not apply to the sale.

##### II. Garage sales

The gross receipts of a person conducting one or more garage, lawn or rummage sales at the person's private residence are not subject to the sales tax if 3 conditions are met: (1) the gross receipts must be less than \$500 during the calendar year; (2) the person does not hold a seller's permit to conduct the sales; and (3) the person does not sell property at the garage, lawn or rummage sale which is used in another business activity. The gross receipts are taxable, however, if the person regularly holds such sales, or if the gross receipts from the sales are \$500 or more during the calendar year, or if the person holds a seller's permit to conduct the sales.

##### III. Flea markets, rummage sales and swap meets

Persons who regularly sell new or used items at flea markets, rummage sales or swap meets have gross receipts from a business or part-time business which are subject to the sales tax. Such persons are required to have a seller's permit and pay the sales tax on their gross receipts.