

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 re-rinsing 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.