ment compensation for Wisconsin on line 37 of Form 1. Since the taxable portion is less than the total benefits received, a proration is required to determine the amount to be reported by each spouse. The formula for this proration is as follows:

$$\frac{\text{amount of benefits received by one spouse}}{\text{amount of total benefits received}} \times \text{taxable portion of total benefits}$$

= amount of taxable benefits to be reported by such spouse

(NOTE: This proration is required only when both spouses receive taxable unemployment compensation and the one-half of excess over base amount is less than the total unemployment compensation received.)

Using this formula, the husband will report $700 in Column B, line 37 of Form 1

$$\frac{\$800}{\$2,400} \times \$2,100 = \$700.$$

The wife will report $1,400 in Column C, line 37 of Form 1

$$\frac{\$1,600}{\$2,400} \times \$2,100 = \$1,400.$$

3. Computing Taxable UC When Wisconsin Income Different Than Federal Income

Example: Facts are the same as in 2 above, except that the married couple received $1,000 of state and municipal bond interest taxable for Wisconsin but not for federal. For federal purposes the taxable portion of unemployment compensation is still $2,100 because the municipal bond interest (or any other source of income which affects Wisconsin income but not federal adjusted gross income) of $1,000 does not enter into the calculations.

The taxable portion of unemployment compensation is the same for both federal and Wisconsin. No adjustments are made to federal adjusted gross income for any differences between Wisconsin and federal law which are adjusted for on the Wisconsin return via a modification. (However, see "NOTE" below regarding instances when adjustments are required.)

Section 71.05 (1) (k) of the Wisconsin Statutes provides that married persons may elect (in order to avail themselves of the $25,000 base amount) "to combine their federal adjusted gross incomes and compute the includable amount as persons filing a joint federal return." The same method of prorating taxable unemployment compensation between a husband and wife would be used as is set forth in example 2 above.

(NOTE: Federal adjusted gross income as computed for Wisconsin purposes may not always be the same as that reported on a taxpayer's federal return filed with IRS. For example, this may occur because Wisconsin's reference date to the Internal Revenue Code (IRC) does not permit new federal tax laws to be used for Wisconsin purposes (thus requiring Wisconsin Schedule I adjustments). It may also result from the fact that a taxpayer elects (under provisions of the IRC) to report an item of income differently for Wisconsin and federal purposes (e.g., electing installment reporting for Wisconsin purposes but not federal).

In these types of situations, the federal adjusted gross income determined for Wisconsin purposes must be used to determine the amount of unemployment compensation taxable for Wisconsin purposes.)

COMPUTING 1979 RENT CREDIT FOR APARTMENT MANAGERS

During 1979 a person lived in an apartment and acted as resident manager for the owner of the building. For his services he received a reduction in rent. Assume the normal rent of $300 per month was reduced to $100 per month, and he made 12 payments of $100 each to the landlord in 1979. In this situation, what amount of rent may be used to compute the 1979 rent credit on Form 1 or 1A.

This person is considered to have paid rent of $3,600 in 1979. The total of both the rent paid in cash ($100 × 12 = $1,200) and the amount represented by services performed ($200 × 12 = $2,400) may be used to compute the 1979 rent credit.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.)

The following decisions are included:

Income and Franchise Taxes
Exxon Corporation vs. Wisconsin Department of Revenue
Theodore A. Gernaey vs. Wisconsin Department of Revenue
Wisconsin Department of Revenue vs. Romain A. Howick
Wisconsin Department of Revenue vs. William B. Riley
Eldon H. Roesler vs. Wisconsin Department of Revenue
Wisconsin Department of Revenue vs. Hide Service Corp.
Raymond W. Koch vs. Wisconsin Department of Revenue
Albert O. Peterson vs. Department of Revenue
North Central Airlines, Inc. vs. Wisconsin Department of Revenue

Homestead Credit
Marvin J. Schwirtz vs. Wisconsin Department of Revenue

Sales/Use Taxes
Jane H. Caryer, Inc., d/b/a Caryer Interiors vs. Wisconsin Department of Revenue
Gene E. Greiling vs. Wisconsin Department of Revenue
Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue
Sargento Cheese Company, Inc. vs. Wisconsin Department of Revenue
Alyce N. Leutermann vs. Wisconsin Department of Revenue
Wisconsin Department of Revenue vs. Bailey-Bohrman Steel Corporation

Gift Tax
Estate of John F. Stratton, et al vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Exxon Corporation vs. Wisconsin Department of Revenue (Docket # 79-509) The U. S. Supreme Court noted probable jurisdiction on November 26, 1979 over Exxon's appeal of a Wisconsin Supreme Court decision holding that the Wisconsin marketing operations of a company (Exxon) in the business of producing, refining, and marketing petroleum products constituted an integral part of a unitary business, and the income therefrom was thus subject to statutory apportionment.

Theodore A. Gernaey vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 14, 1979.) Taxpayer received an as-

sessment of additional income taxes for the period May 15, 1974 through December 31, 1976. The Department contended that the taxpayer was domiciled in Wisconsin during the period and so wages earned in Alaska during this time were subject to Wisconsin income tax under s. 71.01, Wis. Stats.

Taxpayer established residency in Wisconsin when he and his wife purchased an 80-acre farm south of Suring, Wisconsin and moved to Wisconsin in the summer of 1972. Taxpayer worked for the Suring Milling Company as a truck driver besides working on the farm until May of 1974 when he took employment with the Michael Baker Jr. Company as an assistant coordinator surveyor for the Alaskan Pipeline. He traveled at that time to Alaska intending that he and his family become residents of Alaska. Taxpayer's wife was unable to travel with him at the time due to medical complications during pregnancy.

While working in Alaska, taxpayer filed 1974, 1975, and 1976 resident Alaska income tax returns. Taxpayer received an Alaska driver's license and also maintained a Wisconsin driver's license. He received a member identification card from the International Brotherhood of Teamsters, giving his local number as 959 Fairbanks, Alaska. Taxpayer also voted in Alaska and received a duly registered voting card certifying that he was a registered voter in Alaska.

In February, 1976, taxpayer's family moved to Alaska for a two-month period, but they returned to Wisconsin as the winters were severe and the cost of finding other suitable accommodations was extremely expensive. In November of that year, taxpayer received a State of Alaska, Department of Labor card which stated he met the requirements as an Alaskan resident. Taxpayer also received a resident hunting license in 1976.

After taxpayer finished his construction work on the Alaskan Pipeline, he intended to remain in Alaska and bring his family there. However, in 1977 he returned to Wisconsin and took up farming. He contended that he was unable, after a long search, to find suitable permanent employment in Alaska and for that reason returned to Wisconsin.

The Wisconsin Tax Appeals Commission found the taxpayer to be a resident and domiciliary in the state of Alaska during the period May 15, 1974 through December 31, 1976 and, therefore, he was not subject to Wisconsin income tax for this period.

The Department has appealed this decision to Circuit Court.

Department of Revenue vs. Romain A. Howick (Wisconsin Court of Appeals, District II, January 10, 1980.) The taxpayer purchased securities prior to becoming a Wisconsin resident and then sold them after becoming a resident of this state. Securities from 12 corporations were sold in 1970 and stocks from 3 additional corporations were sold in 1973.Taxpayer used his original cost basis in computing the gain or loss. The Department computed gain or loss from each security using either the stock's market value on the date taxpayer's Wisconsin residence was established or the stock's federal basis (original cost). The Department did not compute a gain on any sale for Wisconsin purposes when federal loss actually occurred.

The issue involved in this case is how income or losses arising from capital gains or losses should be measured for Wisconsin individual income tax purposes when the taxpayer acquired the securities prior to moving to Wisconsin and sold the securities after becoming a Wisconsin resident.

The taxpayer contended that his original cost was his basis. The Department contended that the taxpayer's basis is the fair market value of the stock on the date the taxpayer became a Wisconsin resident. (The Department's position on this issue is contained in Administrative Rule Tax 2.97, "Sale of constant basis assets acquired prior to becoming a Wisconsin resident".)

The Tax Appeals Commission, the Circuit Court of Washington County, and the Wisconsin Court of Appeals held in favor of taxpayer. The Court of Appeals affirmed the conclusion that the Department's position had the ultimate effect of creating an artificial gain where a loss was actually incurred.

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

Wisconsin Department of Revenue vs. William B. Riley (Circuit Court of Dane County, November 27, 1979.) In 1972, William B. Riley was a partner in a Wisconsin partnership known as W.E. Riley & Son. On October 1, 1972, the capital assets of the partnership were sold to W.E. Riley & Son, Inc., a Wisconsin corporation comprised of Riley's two brothers and a third party, for $140,000. In addition, W.E. Riley & Son, Inc., purchaser, agreed to collect and pay to the partners of W.E. Riley & Son, partnership, its outstanding accounts receivable.

Pursuant to the terms of the purchase, William B. Riley was to receive 33⅓% of the $140,000 and 40% of the receivable collections over a period of 4 years. The intent of this arrangement was to qualify the sale for installment income tax treatment. The terms of the purchase were never reduced to a written and signed contract. At the time of the sale, William B. Riley was domiciled in West Vancouver, British Columbia, Canada.

By letter dated October 18, 1972, in response to an inquiry letter from the taxpayer dated October 14, 1972, William B. Riley was advised by the Department that his sale of a partnership interest was an intangible following residence and thus not subject to Wisconsin income taxation. However, under date of January 10, 1978, the Department issued an income tax assessment against Riley in the amount of $3,739.36 covering the years 1973, 1974 and 1975 taxing to Riley receivables collected and paid to him during those years. No assessment was made for Riley's share of the $140,000 capital asset payments.

The Department's assessment was predicated on its contention that the collection and subsequent payment to Riley of the receivables was a separate transaction, taxable to Riley as his distributive share of the Wisconsin partnership's net income. The receivables had not previously been included in Riley's taxable income since the partnership filed returns on the cash basis. Riley, however, contended that the sale on October 1, 1972 included both capital assets and receivables made when he was not a resident of or domiciled in Wisconsin and thus are not subject to Wisconsin income taxation.

The Wisconsin Tax Appeals Commission concluded that Mr. Riley's sale of his partnership interest in W.E. Riley & Son, both capital assets and accounts receivable, was consummated in one transaction on October 1, 1972. The Commission also ruled that Mr. Riley's gain on the sale of his

partnership interest in W.E. Riley & Son followed his residence per the intent and meaning of section 71.07 (1) of the Wisconsin Statutes and that, because Riley was not a resident of Wisconsin at the time of the sale, he was not subject to Wisconsin income tax on any part of the gain realized on the transaction.

The Circuit Court concluded that all material findings of fact made by the Tax Appeals Commission are supported by substantial evidence in the record, and that the Commission properly applied section 71.07 (1) in concluding that taxpayer's gain on the sale of his partnership interest including accounts receivable followed his residence outside Wisconsin.

The Department has not appealed this decision.

Eldon H. Roesler vs. Wisconsin Department of Revenue (Circuit Court of Waukesha County, November 1, 1979.) Taxpayer was a Wisconsin resident and had a 20% stockholder interest in a Subchapter S corporation. The corporation's main office was in Illinois but its production plant was located and its sales were handled from Iowa. Taxpayer had contacted his longtime business acquaintances which resulted in these contacts becoming distributors of the corporation's products. Later, taxpayer served as a consultant to the corporation's active management and personnel.

Taxpayer did not receive a salary from the corporation. Instead, he accepted the income from the corporation as a shareholder. On his Wisconsin income tax returns for the years 1969 to 1974, taxpayer subtracted, as a modification, his undistributed share of taxable income; these amounts were reported as income on his federal and Iowa income tax returns even though he did not receive the money. The Department conceded that these amounts were deducted as a Subchapter S modification because they were included solely by reason of Subchapter S under the Internal Revenue Code.

During the same taxable year, taxpayer received other amounts of distributed income from the Subchapter S corporation. Taxpayer did not report these amounts on his Wisconsin income tax returns. The Department subsequently taxed this income as an "add" modification under s. 71.05 (1) (f), Wis. Stats.

Taxpayer contended that his income from the Subchapter S corporation was not subject to Wisconsin taxation during the years under review because it is business income having a situs outside Wisconsin under the then current s. 71.07 (1), Wis. Stats.

The Tax Appeals Commission found that the income was subject to Wisconsin income taxation under s. 71.05 (1) (f); that such income was not derived from personal services and therefore, a credit for taxes paid to Iowa under s. 71.09 (8) is not allowable.

The Circuit Court found that taxpayer's income was from personal services and a credit for taxes paid to Iowa is allowed. His experience and knowledge gained were utilized not only to bring a dying corporation back to life, but to make it a very profitable venture, wrote the Court.

The Department has appealed this decision to the Court of Appeals.

Wisconsin Department of Revenue vs. Hide Service Corp. (Circuit Court, Branch 1, Milwaukee County, November 6, 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.

Taxpayer was in the business of curing hides. The purpose of hide curing is to prevent deterioration of the hide and, through preservation, to increase the hide's usefulness by giving it the capacity to be transported long distances and stored for long periods of time.

Taxpayer's procedure is the following: hides from slaughter houses are washed in water to remove dirt and debris; hides are soaked in a brine solution; hides are removed from the brine solution; flesh and fat are removed and the hides are trimmed, sorted, graded and stored until sold to tanners; and by-products of the taxpayer's products include waste for rendering and animal feed.

Taxpayer's hide curing process results in physical and biological changes in the hide which are irreversible. Prior to the application of taxpayer's process, the hides are called "green hides" and after the process they are called "cured hides" as those terms are used in the hide and tanning industries. After application of taxpayer's process, cured hides have a different use than green hides as a result of the ability to transport them long distances and store them for indefinite periods of time.

The Court 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 to the Court of Appeals.

Raymond W. Koch vs. Wisconsin Department of Revenue (Wisconsin Court of Appeals, January 15, 1980.) Raymond Koch appealed to the Court of Appeals from a Circuit Court judgement affirming a Tax Appeals Commission decision that periodic payments made by Koch to his former wife, Betty, were more in the nature of a divorce property settlement than support and were therefore not deductible by Raymond under I.R.C. s. 215.

The payments in question were occasioned by a 1972 divorce judgement that conveyed to Betty a farm owned by Raymond. The judgement gave Raymond the option of repurchasing the farm from Betty for $50,000 due in 12 annual installments of $4,166.66 each. Raymond chose to exercise this option and took an income tax deduction for the payments.

Since this was a contested divorce, the fact issue of what the $4,166.66 annual payment was had to be resolved on the basis of what it was intended to be by the judge who granted the divorce. Indicative of that intent, the court found that Betty had contributed substantially to the accumulation of the parties' assets. Both parties entered into the marriage with no assets and due to their joint efforts, they amassed considerable assets. The court did not indicate that Betty had any actual or inchoate interest in any of the property

awarded to her. Rather, it indicated that the division was meant to fairly compensate Betty for her contribution to the marriage, a contribution that assisted Raymond in his purchase of the property.

The divorce judgement also provided for interest on cash substitution payments. The court stated that this supports a finding that the payments were part of a property settlement and not support payments. Interest is unusual in maintenance or support payments, and payments which include interest have been found to be nondeductible payments.

The court indicated that the divorce judge came to what he considered to be an equitable division of the property; 45% to Betty, 55% to Raymond. The farm in question was part of Betty's share. The judge gave Raymond the option to repurchase the farm to suit Raymond's business needs. Simply because Raymond was allowed to substitute cash for property should not change the basic nature of the transaction. Raymond had the burden of proving these payments were for Betty's support, and he did not meet this burden.

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

Albert O. Peterson vs. Department of Revenue (Wisconsin Tax Appeals Commission, January 18, 1980.) Taxpayer was self-employed during the year 1976, operating a milk hauling business for farmers in the Spring Valley, Wisconsin area. Despite requests from the Department to do so, taxpayer did not file a Wisconsin income tax return for the year 1976. On October 30, 1978, the Department issued an estimated assessment against the taxpayer for income taxes for 1976.

Taxpayer contended that he had taken a vow of poverty and had transferred all his assets to the Basic Bible Church of America and its Auxiliary Church, the Life Science Church. He stated that his minister duties consisted entirely of missionary work which he defined as setting a good example in public, handing out pamphlets and being available when called upon.

On January 30, 1976 taxpayer received a "Certificate of Ordination", as a minister of the Life Science Church of Bloomington, Minnesota. Taxpayer alleges that after receiving this certificate he transferred all his assets, including his home, vehicles and milk truck, to the Life Science Church.

During all of 1976 the taxpayer worked full time in his milk hauling operation in the same manner he had in previous years. All income received by taxpayer in 1976 from his milk hauling operation was deposited by him in a local checking account in the name of the Life Science Church over which he and his wife had complete control. These funds were used by taxpayer during the year 1976 to pay the personal living expenses of himself, his wife and two children who continued to reside in their home in Spring Valley, Wisconsin. Taxpayer retained complete control over his income and assets after they were transferred to the Life Science Church.

The Wisconsin Tax Appeals Commission held in favor of the Department. It concluded that taxpayer's conveyance of his services and the income earned therefrom in 1976 was simply an artificial assignment of income and did not relieve him of his individual obligation to file a 1976 Wisconsin income tax return and to pay the tax due thereunder. The Commission further stated that the income the taxpayer received in 1976 was reportable by him irrespective of his affiliation with the Life Science Church.

The taxpayer has not appealed this decision.

North Central Airlines, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 25, 1980.) This case is the consolidation of two appeals commenced by the taxpayer, North Central Airlines, Inc., one protesting an assessment of Wisconsin franchise tax for the years 1972 through 1975 (Docket No. I-5968) and the other claiming a refund of taxes for the same period (Docket No. I-6114).

Taxpayer is a Wisconsin corporation engaged in regulated interstate air transportation with its principal corporate offices located in Minneapolis, Minnesota. Taxpayer operated in fourteen states, including Wisconsin, using DC-9 aircraft with a 100 passenger capacity and Convair 580 aircraft with a 48 passenger capacity. Taxpayer's passenger load factor ran 45-50% system wide. The DC-9 aircraft produced more income than the Convair 580 aircraft.

During 1972 through 1975 taxpayer timely filed Wisconsin franchise tax returns and paid the taxes reflected therein based on its interpretation of the requirements of the three factor formula contained in Administrative Rule Tax 2.46, Wisconsin Administrative Code.

In its audit and assessment, the department, in computing one of the three ratios for the computation of tax prescribed by Tax 2.46, utilized weighted figures in determining aircraft arrivals and departures, attributing more weight to the DC-9 aircraft with its 100 passenger capacity than to the Convair 580 aircraft with its 48 passenger capacity. Taxpayer, on the other hand, used the actual number of aircraft arrivals and departures without consideration for aircraft passenger capacity. Taxpayer had consistently used this method for all air carriers operating in Wisconsin since the early 1950's.

This difference in the application of one of the three factors of rule Tax 2.46 was the subject of this case. There was no dispute as to the actual number of arrivals and departures, Wisconsin apportionable net income or other adjustments made in the assessment.

The sole issue for the Commission was to determine whether the department erred in weighting the aircraft arrival/departure ratio contained in rule Tax 2.46 in the assessment and claim for refund being reviewed.

The Commission ruled that the method the department used, in weighting the taxpayer's aircraft arrivals and departures, based on aircraft passenger capacity, was not contrary to the intent, meaning and prior application of rule Tax 2.46.

The taxpayer has appealed this decision to Circuit Court.

HOMESTEAD CREDIT

Marvin J. Schwirtz vs. Wisconsin Department of Revenue (WTAC Docket #PTR-6780, December 12, 1979, Oral Decision.) Marvin J. Schwirtz was a maintenance employe of a 72-unit apartment complex. For his maintenance services he received a rent reduction equal to the value of his services. His federal W-2's showed total compensation for FICA purposes of $8,000-$9,000 annually for the period under consideration; however, his taxable compensation for the same years ranged from $3,000-$5,000. The difference constituted the value of his services as