amount that would have been due by recomputing its preceding year's tax using the current year's tax rates based on information shown on its return, and the law applicable to, the preceding taxable year. In this particular case, there would be no Wisconsin liability existing for the prior year since the corporation filed under Subchapter S.

The answer to the question is that s. 71.22 (10) (b) applies to a corporation for the first year after it has revoked its Subchapter S status. By completing line 11 of 1980 Form 4U (Underpayment of Estimated Tax by Corporations), a corporation can determine if it is liable for an addition to the tax for underpayment. For purposes of this computation, the preceding year's net income used in the computation is the net income without consideration of the Subchapter S deduction.

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

- R.P. Behling vs. Wisconsin Department of Revenue
- Business and Institutional Furniture vs. Wisconsin Department of Revenue
- Department of Revenue vs. Exxon Corporation
- Eugene T. Dowty vs. Wisconsin of Department of Revenue
- Raymond W. Koch vs. Wisconsin Department of Revenue
- Russell J. Neumann vs. Wisconsin Department of Revenue
- Carl L. Petsch vs. Wisconsin Department of Revenue
- Louis Webster, Sr., Alex Askenette, Sr., Sue Askenette vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Astra Plating, Inc. vs. Wisconsin Department of Revenue
- Business and Institutional Furniture, Inc. vs. Wisconsin Department of Revenue
- Fort Howard Paper Company vs. Wisconsin Department of Revenue
- Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue
- Martens Marts, Inc. vs. Wisconsin Department of Revenue
- Miss Wisconsin Pageant, Inc. vs. Wisconsin Department of Revenue
- North-West Services Corporation and North-West Telephone Co. vs. Wisconsin Department of Revenue
- Rice Insulation, Inc. vs. Wisconsin Department of Revenue
- Frank A. Teskie, D/B/A Teskie & Teskie vs. Wisconsin Department of Revenue
- Wisconsin Bridge and Iron Company vs. Wisconsin Department of Revenue
- The Wisconsin Electric Railway Historical Society vs. Wisconsin Department of Revenue

Gift Tax

- Dolores Haas and Robert W. Kessenich, Donees, and the Estate of Katherine H. Kessenich vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

R.P. Behling vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 22, 1980). During the years 1974-77, taxpayer, R.P. Behling, was a resident of Menomonie, Wisconsin. The taxpayer taught full-time during the school year and one-half time during the summer vacation months at the University at Stout during these years. In addition to his teaching profession the taxpayer was a licensed fishing guide and during the summer vacation months he sold his services as a fishing guide in the Hayward-Stone Lake area.

On his 1974-77 Wisconsin individual income tax returns, the taxpayer annually reported from $250 to $325 of income from his fishing guide efforts and deducted related expenses in amounts ranging from $2,357 to $4,017 annually, resulting in substantial losses each year. For each year involved taxpayer included as a deductible expense depreciation on his cottage at Stone Lake, Wisconsin, based on ¾ of its cost as well as ¾ of its utilities. Taxpayer used his cottage for personal as well as fishing guide activities.

The department issued an assessment for the years 1974 through 1977 disallowing one-half of the losses claimed by the taxpayer. This disallowance was based on two grounds: lack of substantiation and the allegation that the taxpayer's fishing guide operation was more of a hobby than a venture for profit.

At the hearing before the Commission taxpayer conceded he did not have receipts or cancelled checks to substantiate the expenses he had claimed as deductions for each of the years involved. In addition, the taxpayer did not offer any evidence as to the cost basis of his cottage on Stone Lake, Wisconsin.

The Commission held that the department can by law require a taxpayer to substantiate deductions claimed and that the taxpayer failed to substantiate, with credible evidence, any of the expenses he incurred in his fishing guide activities.

Because the taxpayer's case failed for lack of substantiation, the issue of whether the taxpayer carried on his fishing guide operation as a hobby or venture for profit became moot.

The taxpayer has appealed this decision to the Circuit Court.

Business and Institutional Furniture, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 11, 1980). Taxpayer is engaged in the business of making mail order sales of furniture and other items for industrial use. Principal customers are churches and schools.

During the taxable years 1973, 1974 and 1975, taxpayer did not own any factories and manufactured no goods. All goods sold were purchased from suppliers. Taxpayer had offices in Milwaukee, Atlanta and Los Angeles. Each of the three offices handled sales to purchasers located in designated states. Sales were made to purchasers in every

state in the nation. Except for small amounts of shipments from a Milwaukee warehouse and a California warehouse, all goods sold were shipped directly from suppliers to purchasers.

In filing Wisconsin income/franchise tax returns for the years 1973, 1974 and 1975, taxpayer did not include in the Wisconsin sales allocation factor those sales handled by its Milwaukee office which were shipped from third parties located outside Wisconsin to purchasers located outside Wisconsin. These orders came into taxpayer's Milwaukee office by mail or telephone. The orders were written up by taxpayer's employes and sent to the appropriate supplier. When the goods were shipped by the supplier to the purchaser, taxpayer received an invoice from the supplier. Taxpayer then billed its customers. If an order was received in Milwaukee from the purchaser located in a state which was handled by taxpayer's Atlanta or Los Angeles office, the order was referred to the office handling that state.

For the years 1973, 1974 and 1975, taxpayer filed state income or franchise tax returns only in Wisconsin, California and Georgia.

The sole issue for the Commission to decide was whether the sales handled through the taxpayer's Milwaukee office should be included in the Wisconsin sales allocation factor for Wisconsin franchise tax purposes. The Commission found that such sales were properly includable.

The taxpayer has appealed this decision to Circuit Court.

Department of Revenue vs. Exxon Corp. (U.S. Supreme Court, June 10, 1980). The issue in this case is how the income of this major oil company should be apportioned to Wisconsin. The years involved were 1965 through 1968 when Humble Oil and Refining Company, a wholly-owned subsidiary of Standard Oil Company of New Jersey, operated in Wisconsin. The latter company subsequently changed its name to Exxon.

The three principal operating and functional departments of the corporation in the years involved were exploration and production, refining, and marketing, each organized into regional geographic divisions. The taxpayer only carried on marketing operations in Wisconsin. None of the taxpayer's refined gasoline or fuel oil was sold in Wisconsin, as they were obtained from Pure Oil Company through an exchange agreement. Motor oils, greases and other packaged products were produced outside Wisconsin and sold in Wisconsin. Other items such as tires, batteries and accessories were centrally purchased in Houston and sold in Wisconsin.

During the period under review, the company had a uniform credit card system throughout the United States. There was also centralized advertising, purchasing, accounting and management from the main office in Houston.

The department treated the taxpayer as a unitary business and imposed a Wisconsin tax on the apportioned income of the three operating departments (exploration and production, refining and marketing).

The Wisconsin Supreme Court determined that the taxpayer is a unitary business subject to apportionment. The decision of the Wisconsin Supreme Court was affirmed by the United States Supreme Court on June 10, 1980.

Eugene T. Dowty vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 20, 1980). Taxpayer claimed the standard deduction for federal income tax purposes on 1975 and 1976 returns but itemized deductions for Wisconsin income tax purposes in those years. Taxpayer received state tax refunds in 1976 and 1977 but did not report the refunds as income on his Wisconsin income tax returns.

In 1979, the department issued an assessment for the years 1976 and 1977 taxing the state income tax refunds the taxpayer received. The department contended that for Wisconsin purposes a taxpayer must compute income and deductions under the Internal Revenue Code as defined in Section 71.02 (2) of the Wisconsin Statutes. The Statutes do not provide that a taxpayer's income must be computed as determined on the federal return filed with the Internal Revenue Service (IRS). In other words, an individual is not bound by elections made on tax returns filed with the IRS, and therefore income and deduction items may differ on Wisconsin and federal returns.

The taxpayer contended that Wisconsin income must be computed by using federal adjusted gross income as determined on the federal return filed with IRS and the modifications prescribed in s. 71.05 (1), Wis. Stats. There is no add back modification under s. 71.05 (1) (a), Wis. Stats., for state income tax refunds.

The Tax Appeals Commission held in favor of the taxpayer. The Commission stated that the taxpayer's state tax refunds are not includable in his federal income for 1976 and 1977 and that there is no add back modification under s. 71.05 (1) (a), Wis. Stats., which can be used to include the refunds in Wisconsin income.

The department has appealed this decision to Circuit Court.

Raymond W. Koch vs. Wisconsin Department of Revenue (Wisconsin Supreme Court, Docket 79-989, May 30, 1980). Raymond Koch appealed to the Wisconsin Supreme Court from a Court of Appeals decision which affirmed a Circuit Court judgment that periodic payments may be 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 IRC Section 215. (A summary of the Court of Appeals decision is in WTB #18.)

The Supreme Court denied Mr. Koch's petition requesting a review of the Court of Appeals decision. Therefore, the Court of Appeals decision is final.

Russell J. Neumann vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 30, 1980). During the years 1974 through 1976, taxpayer, Russell J. Neumann, was a resident of Wisconsin, subject to the income tax provisions of Chapter 71 of the Wisconsin Statutes.

For the taxable years 1974-76, incomplete or no returns were filed based upon federal constitutional and statutory provisions. Despite

requests from the department to do so, taxpayer did not file completed Wisconsin income tax returns. On June 26, 1978, the department issued an estimated assessment against the taxpayer for income taxes for 1974-76.

Taxpayer contended that the assessment was not correct and that Wisconsin income tax statutes are unconstitutional and requested a trial by jury.

The Wisconsin Tax Appeals Commission held in favor of the department. It concluded that income tax assessments made by the department are presumptively correct and the burden of proof to establish that assessments are incorrect is on an assessed person. Taxpayer failed to meet his burden of proof. The Commission further stated that Wisconsin's income tax statutes are deemed to be constitutional unless declared unconstitutional by a court of record. The Commission does not have the jurisdiction to determine constitutionality of Wisconsin income tax statutes and, therefore, issued no finding on taxpayer's contention of unconstitutionality. The Commission also stated it had no statutory authority to impanel a jury and conduct a jury trial.

The taxpayer has appealed this decision to Circuit Court.

Carl L. Petsch vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 30, 1980). During the year 1976, taxpayer, Carl L. Petsch, was a Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats.

For the taxable year 1976, taxpayer filed an incomplete Wisconsin income tax return based upon the 4th and 5th Amendments to the U.S. Constitution. Taxpayer indicated that he did not understand the return nor the laws applicable to the return. On the return filed, no dollar amounts were entered except on the line indicating Wisconsin income tax withheld of $424.82, personal exemptions claimed of $80, and a refund claimed for $424.82. Attached to the return was a W-2 wage and tax statement issued by Cooleys, Inc., in West Bend, Wisconsin, reflecting, among other information, $24,560 of income and $424.86 of Wisconsin income tax withheld.

On June 6, 1977, the department issued the taxpayer a "Notice of Amount Due" for $1,522.79 ($1,491.89 tax and $30.90 interest) on the basis of the amount stated as wages on the W-2 form, amounts stated as interest and dividends on Federal Form 1040 attached to the Wisconsin return, the Wisconsin standard deduction and $80 of personal exemption credits.

Taxpayer contended that he "really had no personal income" for 1976; that he had entered a religious organization, the Life Science Church, and endorsed the checks he received from Cooleys, Inc., over to the church because he had taken a vow of poverty; and that he had no further testimony regarding income or deductions.

The Wisconsin Tax Appeals Commission held that income tax assessments made by the department are presumptively correct and the burden of proof to establish that assessments are incorrect is on an assessed person.

Taxpayer failed to meet his burden of proof.

The Commission also held that Wisconsin's income tax statutes are deemed to be constitutional unless declared unconstitutional by a court of record. The Commission does not have the jurisdiction to determine constitutionality of Wisconsin income tax statutes and, therefore, issued no finding on taxpayer's contention of unconstitutionality. Commission further stated that taxpayer received income for services rendered by him during 1976 and giving the income away upon receiving it does not absolve him from being required to report it as income.

The taxpayer has appealed this decision to Circuit Court.

Louis Webster, Sr., Alex Askenette, Sr., Sue Askenette vs. Wisconsin Department of Revenue (Circuit Court of Dane County, April 3, 1980). Taxpayers are Menominee Indians who resided and worked in Menominee County in 1972 and 1973. Sue Askenette, although not a Menominee, is married to a tribal member, and the department has not challenged her status in the action. Louis Webster was employed by Menominee County as a deputy sheriff, and by the sawmill operated by Menominee Enterprises, Inc., during 1972 and 1973.

Alex Askenette was head sawyer at the sawmill, and his wife Sue was employed by Menominee County Head Start as a teacher's aide. The central issue was whether income earned by these taxpayers while employed within Menominee County was subject to Wisconsin income tax.

Prior to 1961, the Menominee Tribe held its reservation lands and other assets (including the sawmill at Neopit) in tribal ownership under supervision of the federal government. Neither the assets nor the income of the individual Menominees were subject to state or federal taxation. With passage of the Menominee Termination Act in 1961, the Menominees' tribal status ended, and federal supervision over the tribe, its lands and its assets were terminated. What had been the Menominee Indian Reservation became Menominee County, and all assets of the tribe were transferred to Menominee Enterprises, Inc. (MEI), a corporation created to manage all tribal property and enterprises. MEI issued stock and debentures to tribal members and a voting trust was organized to hold the individual shares.

The Termination Act was repealed by the Menominee Restoration Act, which became effective on December 22, 1973, and the parties agree that the Indians' income has not been subject to state taxation since that date. The question to be decided was whether the Termination Act gave the state authority to tax the petitioners' income earned in 1972 and 1973.

The Circuit Court stated that the Restoration Act became law on December 22, 1973, and that the taxpayers were liable for state taxes owing on income earned prior to that date.

The taxpayers have appealed this decision.

SALES/USE TAX

Astra Plating, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June

30, 1980). The question in this case was whether the taxpayer was engaged in manufacturing as defined in s. 77.51 (27), Wis. Statutes, and therefore was exempt from the sales and use tax under s. 77.54 (2) and eligible for the franchise tax credit under s. 71.043 (2). Section 71.043 (2) provides a franchise tax credit for sales and use taxes paid on fuel and electricity consumed in manufacturing, while s. 77.54 (2) exempts property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of property destined for sale.

The taxpayer's principal business activity was acquiring physically damaged automobile bumpers from body shops and applying its processes to these bumpers to produce a bumper capable of being put on an automobile. A damaged bumper is referred to as a "core" in the trade, and the customers of the taxpayer have no use for the cores in the condition in which they are received from the taxpayer. Some of the bumpers received are so damaged that they are sold or given to scrap dealers rather than being repaired.

The procedure used by taxpayer begins by straightening and repairing a "core" by putting it into a press and dies to restore its shape and contour; the core is recontoured to the specifications of the original manufacturer. The core is then moved to a grinding department where all exterior, visible damages are removed. Next the core goes through an inspection station and then to a polishing department where a finer finish is put onto it by 3 different machines that smooth the steel to a very high luster. Next the core is prepared for a plating cycle, where it goes through a series of plating tanks which add a coat each of nickel and chrome equal to the original manufacturer's specifications. The core is then inspected again and placed in inventory.

After putting a damaged bumper through its procedures, the bumper emerges looking "like new" with exact size and measurement specifications of new bumpers. The taxpayer then sells the final product (a new bumper) to automobile body shops in competition with original equipment manufacturers and a small number to a fire engine manufacturer.

The Commission found the taxpayer produced a new article with a different form, use and name from existing materials. However, it also held that there was no direct and explicit evidence that the taxpayer's process is popularly regarded as manufacturing and that the taxpayer did not meet its burden of proof. Therefore, the Commission found that Astra Plating, Inc. was not engaged in manufacturing as that term is defined in s. 77.51 (27), Wis. Statutes.

The taxpayer has appealed this decision to the Circuit Court.

Business and Institutional Furniture, Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, May 19, 1980). Additional sales and use taxes were assessed against taxpayer for the years 1972 through 1975 on July 18, 1977. On September 27, 1977 taxpayer's attorney filed a petition for redetermination with the department. The department declined to accept the petition on the basis that it was not filed within the 30 day time period prescribed by statute. Taxpayer requested that the Tax Appeals Commission review the department's action, claiming that the reason the petition was late filed was because the department had failed to mail a copy of the assessment notice to taxpayer's attorney. The Tax Appeals Commission upheld the department's decision. Taxpayer then requested the Circuit Court of Dane County to review the matter.

The Circuit Court determined that the department's refusal to accept the late filed petition for redetermination was proper.

The taxpayer has not appealed this decision.

Fort Howard Paper Company vs. Wisconsin Department of Revenue (Dane County Circuit Court, Branch 4, June 5, 1980). This is an appeal from the April 20, 1978 decision of the Wisconsin Tax Appeals Commission. The taxpayer is a large manufacturer of paper and paper products. Four sales tax issues were involved, as follows:

1. The taxpayer purchased large quantities of coal in each year involved in the 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), Wis. Stats., which exempts "Coal . . . converted to electric energy, gas or steam by utilities and that portion of the amount of coal . . . converted to steam for purposes of resale by persons other than utilities". The Joint Survey Committee on Tax Exemptions discussed the public policy implications when amending this statute in 1975, and the Court found that it understood the statute to refer to public utilities or those involved in the sale of steam to others, not to one using the steam and electricity for its own purpose. The Court sustained the Tax Appeals Commission's decision that the purchases were not exempt because the taxpayer was not a "utility".

2. 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, dollies, paper towels, and company reports, manuals and brochures. The art department had its own composing operation which prepared initial drawings or paintings through 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 Court affirmed the Commission's finding that the following types of art supplies, listed in the Commission's Conclusion of Law No. 3, were exempt from the sales and use tax under s. 77.54 (2), Wis. Stats., as property which is "consumed or destroyed or loses its identity in the manufacture of tangible personal property (i.e., paper specialty products) destined for sale": pencils, poster white, ink, cement, water color sets, colored pencils, erasers, kleer kote, tracing paper, and masking tape.

3. The taxpayer was ordered by the Wisconsin Department of Natural Resources to reduce its pollution discharge. To comply with the order, taxpayer installed various items of effluent treatment equipment, principally aerators and clarifiers, which added an additional recycling oper-

ation to the papermaking operation, improved their efficiency and reduced the amount of waste discharge and which the Commission concluded was an integral part of taxpayer's operation. The Court agreed with the Tax Appeals Commission that this equipment was exempt under s. 77.54 (6) (a), Wis. Stats.

4. 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), Wis. Stats., which exempts "locomotives or other rolling stock used in railroad operations . . . ." The Court affirmed the Tax Appeals Commission's decision that the railroad-type segment of taxpayer's business constitutes "railroad operations" and that its purchases of a switch engine and trackmobile are exempt from the sales and use tax under s. 77.54 (12).

Both parties have appealed this decision to Court of Appeals.

Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, May 19, 1980). This was a proceeding by Leicht Transfer & Storage Co., Inc., (hereafter the taxpayer) to review a decision and order of the Wisconsin Tax Appeals Commission (hereafter the Commission) dated November 23, 1979. The Commission determined that for the years January 1, 1970, through March 31, 1975, the corrugated boxes and packing materials purchased by the taxpayer were not utilized to transport the taxpayer's merchandise to its customers and thus were not exempt from Wisconsin sales and use tax within the intent and meaning of sec. 77.54 (6) (b), Stats.; and that miscellaneous items such as furniture pads, covers, packing supplies, tape, piano boards, stepladders, walk boards, straps, lining paper, and corrugated boxes did not qualify for the exemption from sales and use tax contained in sec. 77.54 (5) (b), Stats. The Commission also made further determinations with respect to whether other items were subject to sales and use taxes which the taxpayer did not contest.

The taxpayer raised the following two issues before the Circuit Court: (1) Whether the purchase of corrugated containers by movers of household goods such as taxpayer is exempt from Wisconsin sales and use tax under sec. 77.54 (6) (b), Stats., "the container exemption" and (2) Whether the purchase and use of miscellaneous van equipment and supplies are exempt from Wisconsin sales and use tax under the exemption contained in sec. 77.54 (5) (b), Stats., "the common carrier" exemption which includes an exemption for accessories, attachments, parts, supplies and materials related to a carrier's vehicles.

With respect to the first issue, section 77.54 (6) (b), Wis. Stats., exempts the gross receipts from the sale of and the storage, use or other consumption of "Containers, labels, racks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging, or shipping tangible personal property, provided such items are used by the purchaser to transfer merchandise to his customers." In its holding, the Commission stated in its conclusion of law No. 1: "The corrugated boxes and packing materials purchased by the petitioner are not utilized to transport the petitioner's merchandise to its customers and thus are not exempt from Wisconsin sales and use tax within the intent and meaning of Section 77.54 (6) (b) of the Wisconsin Statutes."

The Court concluded that "considering whether there is an ambiguity it cannot be held that taxpayer's interpretation of the statutory language is more reasonable than that of the department. Therefore, if two reasonable interpretations exist, the statute must be ambiguous." The court went on to say that "In a close case of statutory interpretation the Court is inclined to defer to the interpretation made by the administrative agency charged with the administration of the statute if it is a reasonable one. Here the interpretation contained in TIM S-33.2, par. 3.j., issued June 14, 1974, is a reasonable one. The Court after giving due weight to the instant agency interpretation has determined to follow it and uphold the Commission's determination of the taxability of the corrugated containers."

Concerning the second issue, the Court cited the Tax Appeals Commission's finding of fact No. 5, which reads: "During the period involved, the petitioner purchased for use in its moving operation, furniture pads, covers, packing supplies, tape, piano boards, ladders, walk boards, straps, lining paper and corrugated boxes, all without paying a sales tax." By its conclusion of law No. 5 the Commission determined that the miscellaneous items described in finding of fact No. 5 did not qualify for the exemption contained in sec. 77.54 (5) (b), Stats., citing Department of Revenue v. Milwaukee Refining Corp., 80 Wis. 2d 44, 257 N.W. 2d 855 (1977).

The taxpayer contended that, instead of the Milwaukee Refining Corp. case supporting the taxability of the disputed miscellaneous items, the case supports the taxpayer's position that where the language of a tax statute is clear and unambiguous "no judicial rule of construction is permitted, and the court must arrive at the intention of the legislature by giving the language its ordinary and accepted meaning . . . (80 Wis. 2d, at p. 48).

Taxpayer asserted that the legislature has used very broad encompassing and overlapping terms so as to exempt from tax all possible items which could be used on or with the motor vehicles described in the exemption, and that all of the disputed miscellaneous items fall within these categories.

The court held that the taxpayer's interpretation of the statute was a reasonable one. Therefore, judgment was entered reversing that part of the Commission's decision and order which determined that the items of property described in finding of fact No. 5 do not qualify for the exemption from tax contained in sec. 77.54 (5) (b), Stats., and affirmed all other portions of said decision and order.

Both parties have appealed this decision to Court of Appeals.

Martens Marts, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 8, 1980). The taxpayer operated a food products store in Spencer, Wisconsin and on July 29, 1978 ceased operating this business; two