

(BACK SIDE OF REVISED FORM ST-12)

1. GROSS RECEIPTS		4A. SALES TAX (FROM LINE 4)	
2. DEDUCTIONS: Sales For Resale		5. 1% DISCOUNT	
Exempt Certificate Sales	A	6. NET SALES TAX	
Sales Tax Included in Line #1	B	7. USE TAX ON PURCHASES:	
Sales in Interstate Commerce	C	Asset Addition(s)	A
Exempt Property & Services Sold	D	Repair & Supply Expense	B
Groceries & Hwy. Fuel Sold	E	Promotional Material	C
Returns, Allowances & Bad Debts	F	Construction Material	D
Other:	G	Research Material	E
Other:	H	Other:	F
Other:	I	Total of Purchase Price	G
TOTAL DEDUCTIONS (ADD LINES 2A THRU 2I)		8. USE TAX (LINE 7G x 4%)	
3. TAXABLE RECEIPTS		9. INTEREST AND PENALTY	
4. SALES TAX (LINE 3 x 4%)		10. TOTAL DUE / PAID (LINE 6, 8 & 9)	

IF THIS RETURN IS FILED LATE OR WITHOUT FULL PAYMENT THE 1% DISCOUNT ON LINE 5 IS NOT ALLOWABLE. INTEREST AND PENALTIES ON SUCH RETURNS SHOULD BE ADDED ON LINE 9 (SEE INSTRUCTIONS). THIS RETURN MUST BE FILED WHEN DUE EVEN THOUGH YOU HAVE NO TAX TO REPORT.

DO NOT WRITE IN THIS SPACE

MAKE CHECK, DRAFT OR MONEY ORDER PAYABLE TO WISCONSIN DEPARTMENT OF REVENUE AND MAIL WITH THIS RETURN

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

- Kenneth F. DeBoer and Sandra L. DeBoer vs. Wisconsin Department of Revenue
- Mark H. Eslinger and Lorraine R. Eslinger vs. Wisconsin Department of Revenue
- Sheri A. Glewen and Vance A. Glewen vs. Wisconsin Department of Revenue
- J. John Gudenschwager, and J. John Gudenschwager Family Estate (A Trust) vs. Wisconsin Department of Revenue
- Midland Financial Corporation vs. Wisconsin Department of Revenue
- Wisconsin Department of Revenue vs. Milwaukee Mutual Insurance Company
- Anna K. Rees vs. Wisconsin Department of Revenue
- Superior Industrial, Inc. vs. Department of Revenue

Sales/Use Tax

- Sister Mary Joanne Kollasch, et. al. and Sisters of St. Benedict, of Madison Wisconsin vs. David W. Adamany, Secretary of Revenue
- Wisconsin Department of Revenue vs. Trudell Trailer Sales, Inc.

Gift Tax

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

INCOME AND FRANCHISE TAXES

- Kenneth F. DeBoer and Sandra L. DeBoer vs. Wisconsin Department of Revenue (Fond du Lac County Circuit Court, November 12, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the DeBoers had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by the Circuit Court on procedural grounds.
- Mark H. Eslinger and Lorraine R. Eslinger vs. Wisconsin Department of Revenue (Chippewa County Circuit Court, November 21, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the Eslingers had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by

the Circuit Court on procedural grounds.

Sheri A. Glewen and Vance A. Glewen vs. Wisconsin Department of Revenue (Fond du Lac County Circuit Court, November 12, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the Glewens had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by the Circuit Court on procedural grounds.

J. John Gudenschwager, and J. John Gudenschwager Family Estate (A Trust) vs. Wisconsin Department of Revenue (Milwaukee County Circuit Court, November 24, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the Gudenschwagers had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by the Circuit Court on procedural grounds.

Midland Financial Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 20, 1980). In 1971, the taxpayer, a Wisconsin corporation, received \$112,633.00 of dividend income, \$423,102.00 of rental income and \$69,000.00 from financial consulting services. After deducting the \$112,633.00 of dividend income from its taxable income, the taxpayer reported a loss of \$156,534.00 on its 1971 Wisconsin

corporation franchise or income tax return.

The department offset the \$112,633.00 of dividend income against the taxpayer's 1971 loss of \$156,534.00, thus reducing the loss carry forward to \$43,901.00. Subtracting the loss carry forward of \$43,901.00 from the taxpayer's 1972 net business income of \$94,744.00 resulted in taxable income of \$50,843.00 for the year 1972.

The issue in this case is whether the taxpayer in carrying forward its net business loss from the year 1971 must under section 71.06, Wis. Stats., first offset against such loss "other items of income of the same year", 1971, which had been deducted from taxable income. The statute involved was s. 71.06 of the 1971 Wis. Stats., which reads in part:

"71.06 Corporation business loss carry forward. If a corporation in any year sustains a net business loss, such loss, to the extent not offset by other items of income of the same year, may be offset against the net business income of the subsequent year and, if not completely offset by the net business income of such year, the remainder of such net business loss may be offset against the net business income of the following year. For the purposes of this section, net business income shall consist of all the income attributable to the operation of a trade or business regularly carried on by the taxpayer, less the deduction of business expenses allowed in s. 71.04. . . ."

The Commission concluded that the dividend income received by the taxpayer in 1971 constitutes "other items of income" as that term is used in section 71.06 of the 1971 Wis. Stats., and thus reduces the loss carry forward claimed by the taxpayer for the year 1972.

The taxpayer has appealed this decision to Circuit Court.

Wisconsin Department of Revenue vs. Milwaukee Mutual Insurance Company (Circuit Court of Milwaukee County, January 8, 1981). The Department of Revenue appealed to the Circuit Court a Wisconsin Tax Appeals Commission decision. The Circuit Court affirmed the Tax Ap-

peals Commission judgment that the taxpayer was entitled to exclude from its 1974 underwriting income amounts which were added to its PAL account prior to 1972. The Circuit Court held that the statute lacked clear intention of retroactivity of s. 71.01 (4) (a) and that the Tax Appeals Commission properly construed the statute to operate only prospectively. (A summary of the Tax Appeals Commission decision is in Wisconsin Tax Bulletin #19.)

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

Anna K. Rees vs. Wisconsin Department of Revenue (Circuit Court of Washington County, December 18, 1980). The Circuit Court affirmed the Tax Appeals Commission judgment that the entire amount of the lump sum distribution made to the taxpayer under Western Electric Co., Inc.'s profit sharing and savings plan should have been included in her 1977 Wisconsin taxable income. (A summary of the Wisconsin Tax Appeals Commission decision is in Wisconsin Tax Bulletin #19.)

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

Superior Industrial, Inc. vs Department of Revenue (Circuit Court of Racine County, Branch 1, January 23, 1980). 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 has an investment of \$300,000 in heavy machinery which is used 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

Court 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 testimony indicated that the coating causes changes in the physical, chemical, electrical, heat conductivity, rust proofing, insulation, light reflectivity and texture of the product. The testimony also indicated that the activities were "popularly regarded as manufacturing".

The Court found that the taxpayer was engaged in manufacturing as that term is defined in s. 77.51 (27), Wis. Stats. As a result the 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 not appealed this decision.

SALES/USE TAX

Sister Mary Joanne Kollasch, et al. and Sisters of St. Benedict, of Madison Wisconsin vs. David W. Adamany, Secretary of Revenue (Court of Appeals, District IV, November 24, 1980). The Sisters of St. Benedict ("taxpayer") is a religious corporation organized exclusively for religious and charitable purposes. Taxpayer commenced this judicial proceeding seeking a declaratory judgment declaring that it is not required to obtain a seller's permit and report sales tax based on its gross receipts for the activities it engages in. Primarily, this permit would be required to account for the sales tax on meals served to members of organizations which are not exempt from paying sales tax.

Taxpayer owns a building at which it rents out its facilities. These facilities include board and room, meeting rooms, and the availability of projectors, screens and tape recorders; space is provided for business and professional conferences, training sessions, weekend seminars, and other meetings which are both religious and non-religious in nature. The conferences and meetings are held under agreements made in advance by which the sponsor of the meeting promises that agreed rates will be paid for the services and facilities used.

The taxpayer contended that it is not a retailer and that the tax does not apply to its sales. However, the Court found the taxpayer is a seller under s. 77.51 (9), Wis. Stats., making sales of tangible personal property (meals). Thus, it is a retailer under s. 77.51 (7) (a), Wis. Stats., subject to taxation under s. 77.52 (1), Wis. Stats. Taxpayer also contends that it is exempt from the sales tax because it makes only occasional sales. The Court indicated s. 77.51 (10) (c), Wis. Stats., established a 3-event standard for organizations which are not engaged in a business, and that the taxpayer's sales exceeded this standard. Therefore, the sales were not exempt occasional sales under s. 77.54 (7), Wis. Stats.

Taxpayer also contends that serving meals at the center is both religious and secular, and that the purpose of the center is for study and religious meetings, without commercial taint. Taxpayer also contends that requiring it to comply with the sales tax statutes infringes on its constitutional rights to free exercise of religion.

The Court accepted the taxpayer's contention that it is engaged in a religious activity in serving meals to guests when the Sisters join the guests in dining. The Court concluded that the Sisters were at no time engaged in a commercial enterprise in furnishing meals to business groups. The Court then had to determine whether the sales tax is a tax on their religious activities, or, if not, whether it is a burden on the free exercise of their religion.

The Court indicated that a taxing statute is not contrary to the provisions of the first amendment to the U.S. Constitution unless it directly restricts the free exercise by an individual of his or her religion. Unless the tax is imposed as a condition on the right to exercise one's religion, or unless its imposition is a burden to free exercise, the tax does not violate the first amendment. The Court concluded that, while the Sisters are engaged in a religious activity in furnishing meals to their guests for consideration, the requirement that they collect a sales tax on the sale of those meals is neither a tax on religion nor a burden to their ex-

ercise of religion. Accordingly, the Court sustained the constitutionality of the statute as applied to the Sisters, and their gross receipts from sales of meals were subject to the sales tax.

Taxpayer has appealed this decision to the Wisconsin Supreme Court.

Wisconsin Department of Revenue vs. Trudell Trailer Sales, Inc. (Court of Appeals, District IV, November 23, 1980). Taxpayer was engaged in the business of selling semitrailers both inside and outside Wisconsin. Some semitrailers were sold to customers located outside Wisconsin and these semitrailers were to be used outside the state. The issue before the Court was whether semitrailers come within the language of s. 77.54 (5) (a), Wis. Stats., exempting from the sales and use tax "motor vehicle or truck bodies sold to persons who are not residents of this state and who will not use such . . . motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such . . . motor vehicles or trucks from this state".

The sales and use tax statutes do not define "motor vehicle", "truck body" or "semitrailer", so the Court used the dictionary definitions of those words. Webster's Third New International Dictionary indicates a motor vehicle is self-propelled. The Court found that a semitrailer is not considered a self-propelled vehicle, except when it is used with a tractor. There was no evidence indicating the taxpayer sold semitrailers in combination with tractors. Accordingly, the Court of Appeals ruled that the taxpayer's sales of semitrailers were not exempt from the sales tax under s. 77.54 (5) (a), Wis. Stats. (Note: A summary of the Circuit Court's decision of January 29, 1980, which ruled that the semitrailers were exempt under s. 77.54 (5) (a), is found in Wisconsin Tax Bulletin #19.)

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

GIFT TAX

Estate of John F. Stratton, et. al. vs. Wisconsin Department of Revenue (Circuit Court of Milwaukee County, November 19, 1980). This case involved the distribution of the assets of two trusts. The first was a testamentary trust under the will of Harold M. Stratton for the benefit of John F. Stratton and his family. The second was the Bessie A. Stratton Living Trust, also for the benefit of John F. Stratton and his family. Harold M. and Bessie A. Stratton were the parents of John F. Stratton. John had a general power of appointment over both trusts. A codicil to his father's will provided that John was to be the primary beneficiary whose interests were to outweigh those of other beneficiaries.

The issue was whether a trustee's discretionary distributions in 1968, on termination of the trusts, to John's daughters constituted taxable gifts.

The Wisconsin Tax Appeals Commission held that John had the power to control disposition of the trust assets and that by releasing his power of appointment under sec. 232.09, Stats. 1967, he made taxable gifts to his daughters.

The Circuit Court reversed the Commission. In the opinion of the Court, John had only a contingent power of appointment which did not ripen until 1971, well after the 1968 distribution.

The Court also ruled that a signed writing was necessary to legally release a power. John's failure to object did not constitute a release. As to the testamentary trust, John signed a petition for allowance of accounts, but the Court decided that the petition did not constitute a release. As to the Bessie Stratton Living Trust, there was no written instrument which could have been a release.

Also regarding the testamentary trust, the trustee completely distributed the assets prior to John's signature on the petition, and the Court felt no assets were subject to such release.

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