

B. Rules At Legislative Standing Committees

- 11.56 Printing industry
- new rule

C. Rules Approved By Legislature But Not Yet Effective

- 11.12 Farming, agriculture, horticulture and floriculture
- amendment

- 11.16 Common or contract carriers
- amendment

- 11.40 Exemption of machines and processing equipment
- amendment

D. Rules Adopted In 1981

- 1.11 Requirements for examination of returns (8/1/81)
- amendment

- 2.081 Indexed income tax rate schedule (5/1/81)
- new rule

- 2.31 Taxation of personal services income of nonresident professional athletes (1/1/81)
- new rule

- 2.505 Apportionment of net business income of interstate professional sports clubs (1/1/81)
- new rule

- 2.955 Credit for income taxes paid to other states (2/1/81)
- amendment

- 4.53 Certificate of authorization (1/1/81)
- new rule

- 8.87 Intoxicating liquor tied-house prohibitions (6/1/81)
- new rule

- 9.08 Cigarette sales to and by Indians (8/1/81)
- new rule

- 11.83 Motor vehicles (7/1/81)
- amendment

- 11.88 Mobile homes (1/1/81)
- new rule

- 11.925 Sales and use tax security deposits (8/1/81)
- new rule

BULKS ORDERS OF TAX FORMS

In early October, the department will mail out the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1981 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a handling charge on orders which they submit. No charge is made for forms which will be used for distribution to the general public (for example, in a bank, library or post office).

In view of increasing paper and printing costs, every person ordering forms is urged to determine their needs as accurately as possible. Orders should be placed as early as possible after you receive the order blank. By receiving the orders early, the department can better identify possible shortages of specific forms.

This year's mailing list for bulk order blanks contains the names of all persons and organizations who placed orders for 1980 forms. If you are not on this mailing list and do not receive a Form P-744, you may request the bulk order blank by contacting any department office or by writing to the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, WI 53708.

REMINDER! EMPLOYERS MUST SUBMIT COPIES OF CERTAIN EMPLOYEE WITHHOLDING EXEMPTION CERTIFICATES TO THE DEPARTMENT

Wisconsin law requires employers to submit copies of employee withholding exemption certificates to the department whenever they are required to provide such information to the Internal Revenue Service (IRS). The copies must be submitted to the department within 15 days after they are filed with IRS.

For both federal and Wisconsin purposes employers are required to submit copies of any employee's withholding exemption certificate if: 1) the number of exemptions claimed is 10 or more, or 2) the employee is claiming complete exemption from withholding and he or she earns more than \$200 per week.

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

Hydro-Flo Products, Inc. vs. Wisconsin Department of Revenue

Sales/Use Taxes

Wisconsin Department of Revenue vs. H. Derksen & Sons Co., Inc.

Jay Advertising, Inc. vs. Wisconsin Department of Revenue

Leicht Transfer and Storage Company, Inc. vs. Wisconsin Department of Revenue

North-West Services Corporation and North-West Telephone Company vs. Wisconsin Department of Revenue

Wisconsin Department of Revenue vs. J.C. Penney Company, Inc.

Delmore and Lawrence Peterson (d/b/a Peterson Brothers) vs. Wisconsin Department of Revenue

Carl Schroeder, Jr. vs. Wisconsin Department of Revenue

Shopper Advertiser, Inc., d/b/a Shopper Advertiser - Walworth County, and Shopping News, Inc., d/b/a Greater Beloit Shopping News vs. Wisconsin Department of Revenue

Excise Taxes

State of Wisconsin vs. Black Steer Steak House, Inc.

Withholding

William A. Mitchell vs. Secretary of Revenue, Mark E. Musolf, and Chief, Central Compliance Section, W. H. Wescott; and Automation Engineering Company, Inc., AA Electric Division, 1220 Highway 143, Cedarburg, WI 53012, General Manager, Neil Stein

INCOME AND FRANCHISE TAXES

Hydro-Flo Products, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 8, 1981). Hydro-Flo Prod-

ucts, Inc. was a Wisconsin corporation subject to the income and franchise tax provisions of Chapter 71 of the Wisconsin Statutes. For the year 1978, the department disallowed certain travel expenses of wives of employees of the corporation and issued an assessment of additional franchise taxes in the amount of \$322.49.

Taxpayer deducted as business expenses corporation expenses paid for the attendance of employees' wives at business conventions such as Mechanical Contractors Association of America and European expenses as legitimate business expenses of the corporation. Frank A. Meier, president of Hydro-Flo Products, Inc., testified that the type of business activity the corporation engages in requires the presence of the wives of the corporate employees and that it enhances customer sales by having the wives attend these conventions, even though the wives are not employed, stockholders or corporate officers of the corporation.

The taxpayer engages in the business of selling and distributing building materials to the mechanical contracting industry and has developed a policy that the presence of the employees' wives at the meetings are necessary to the corporation business in order to retain its image with the contractors. The department contended that the travel expenses taken by the taxpayer for the expenses of the wives of employees are not ordinary and necessary business expenses. The activities that the employees' wives engaged in regarding the out-of-town expenses were of a social nature.

The Commission held that the burden of proof is on the taxpayer to show in what respects the travel expenses incurred by the employees' wives are deductible as ordinary and necessary business expenses and in what respects department's assessment was in error. The corporation failed to meet its burden of proof.

The taxpayer has not appealed this decision.

SALES/USE TAX

Wisconsin Department of Revenue vs. H. Derksen & Sons Co., Inc. (Circuit Court of Dane County, May 29, 1981). In September 1976, H. Derksen & Sons Co., Inc., (tax-

payer) purchased from Winchester Vending Corp. several cigarette machines, candy machines and a dollar-changing machine. Prior to and at the time of the sale, Winchester held a seller's permit, pursuant to s. 77.52, Wis. Stats. Taxpayer purchased the Winchester name, and Winchester did not continue to operate after the sale of its assets to taxpayer.

The department assessed sales tax against the taxpayer as a successor to Winchester and the assessment consisted of two elements: (1) sales tax of \$734.66 for sales by Winchester prior to the sale of assets by Winchester to the taxpayer; and (2) sales tax of \$1,453.66 assessed on the sale by Winchester of its assets to the taxpayer. The taxpayer filed an appeal with the Tax Appeals Commission based on the two assessments.

Based on the foregoing facts, the successor Commission made three conclusions. First, the Commission ruled that the taxpayer "is a successor or assign of Winchester within the meaning of s. 77.52 (18), Wis. Stats." Second, the Commission recognized the taxpayer's responsibility to withhold from the purchase price an amount sufficient to cover Winchester's liability for the \$734.66 tax on sales by Winchester prior to September, 1976. Taxpayer was held liable for the payment of that amount because it failed to withhold that amount from the purchase price. Third, the Commission concluded that the taxpayer was not liable as a successor for the \$1,453.66 due from Winchester's sale of its assets to the taxpayer because Winchester could have surrendered its seller's permit at any time on the day of sale. This third conclusion of the Commission was appealed by the department to Circuit Court.

The Circuit Court held in favor of the department. The Court held that the plain, unambiguous language of the statutes compels the conclusion that the taxpayer is liable for the sales tax imposed upon the sale of Winchester's assets, as well as for the sales tax which was owed before the sale was made. Winchester held a valid seller's permit at the time it sold its assets to taxpayer. Section Tax 11.13, Wis. Adm. Code, provides that the sale of business assets consisting of personal property by a person who holds a seller's per-

mit at the time of the sale is subject to the sales tax. Winchester could have avoided this tax liability by surrendering its permit prior to the sale (pursuant to section Tax 11.13 (2), Wis. Adm. Code); however, it did not. Wisconsin case law holds that the failure to so surrender a seller's permit bars completely the "occasional sale" sales tax exemption (*Ramrod, Inc. v. Dept. of Revenue*, 64 Wis. 2d 499, 219 N.W. 2d 604 (1974); *Midcontinent Broadcasting Co. v. Dept. of Revenue*, 98 Wis. 2d 379, 284 N.W. 2d 112 (1980)). Accordingly, at the time the sale of assets was made to the taxpayer, Winchester became liable for the sales tax on that sale. Section 77.52 (18), Wis. Stats., provides that when any retailer who is liable for any amount of sales tax sells out its business, as Winchester did, the successor or assign shall withhold a sufficient amount of the purchase price to cover such amount. Subsection (a) provides that if the purchaser fails to withhold the amount of the sales tax due from the purchase price, the purchaser becomes personally liable for the payment of that amount should the seller default in its payment. The taxpayer was not completely powerless to avoid liability for this tax since the remedy of withholding this amount from the purchase price was available to him.

The taxpayer has not appealed this decision.

Jay Advertising, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 17, 1981). Jay Advertising, Inc. is in the creative advertising business, involved in creating, producing and selling items that advertise and promote the sale of a specific product, such as Schlitz beer. During the period of June 1, 1975 to December 31, 1978, the taxpayer created, produced and sold the following items of tangible personal property: stackers, international road signs, ethnic plaques, nature box stackers, perpetual calendars, wall clocks and beer tab knobs.

All of the items above are three-dimensional, displayed the name and product of the customer (Schlitz beer), and were made mainly from plastic material. The methods used by the taxpayer in producing the above products included silk screening, vacuum forming, mold-

ing, vapor plating, injection molding, hot stamping, zinc die casting, some printing and similar type processes. Some of the items listed above included the use of electric motors, batteries, feet, poles, instruction sheets and letter fronts. Custom tooling was billed to Schlitz Brewery as a part of the costs associated with the production of 30,000 beer tab knobs delivered under invoice #1050.

The items listed above were sold by Jay Advertising, Inc., after it received from the customer an exemption certificate claiming the printed material exemption contained in s. 77.54 (25), Wis. Stats. After the taxpayer sold these products they were stored in various warehouses in Wisconsin for subsequent shipment and delivery outside the State of Wisconsin. In May of 1977, a tax representative of the Wisconsin Department of Revenue, spent approximately six hours at the offices of the taxpayer's accountant examining all of the taxpayer's sales invoices covering the years 1975-1977. His stated purpose was to attempt to reconcile receipts reported on the taxpayer's filed sales tax returns to those reflected in its sales journals. No written determination of any kind was made by the department as the result of said effort; instead, said matter was referred to the field audit section of the department, which ultimately resulted in the field audit under review.

The issues involved are as follows:

- (1) Whether the advertising items in question are exempt from sales and use tax as "printed material" as defined in s. 77.54 (25), Wis. Stats.
- (2) Whether the taxpayer's acceptance of the printed material exemption certificate on the sale of the items in dispute meets the "good faith" requirements of s. 77.52 (14), Wis. Stats.
- (3) Whether the department made a field audit determination in May of 1977 so as to preclude a further audit and assessment of the period involved per the provisions of s. 77.59 (2), Wis. Stats.
- (4) Whether the department properly included in its measure of tax shipping or trans-

portation charges incurred by the taxpayer.

The Commission held that the items in dispute do not constitute "printed material" within the intent and meaning s. 77.54 (25), Wis. Stats., and thus are not exempt from sales and use tax under that exemption section. Jay Advertising, Inc., could not accept the exemption certificates given in good faith as required in s. 77.52 (14), Wis. Stats., as the items purchased were not "printed material".

The Commission also held that the department did not make a "determination" pertaining to the taxpayer in May of 1977, and thus no period of the audit under review is closed per the provisions of s. 77.59 (2), Wis. Stats. (*Department of Revenue v. Moebius Printing Co.*, 89 Wis. 2d 610 (1979)). Assessments made by the department are presumed to be correct with the person challenging them having the burden to show in what respect they are in error. The taxpayer did not submit sufficient credible evidence to show that the department's imposition of a sales and use tax on its shipping/transportation charges was in error.

The taxpayer has appealed this decision.

Leicht Transfer and Storage Company, Inc. vs. Wisconsin Department of Revenue (Court of Appeals, District IV, May 26, 1981). The department assessed Leicht Transfer and Storage Company, Inc. for sales and use taxes for the period January 1, 1970 through March 31, 1975, arising out of the taxpayer's purchase and use of corrugated boxes and van equipment and supplies. The van equipment and supplies consisted of furniture pads, covers, packing supplies, tape, straps, pianoboards, ladders and walkboards. The Tax Appeals Commission concluded that the purchases and uses were not tax exempt. The Circuit Court affirmed the Commission as to the boxes but reversed as to the van equipment and supplies. The taxpayer and the department appealed and cross-appealed, respectively, the Circuit Court's decision.

The first issue involved the department's assessment of sales and use tax arising from the purchase and use of corrugated boxes. Section

77.54 (6) (b), Wis. Stats., exempts the following from the sales and use taxes:

Containers, labels, sacks, 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.

The boxes are containers used by the purchaser to pack or ship tangible personal property consisting of household goods. The issue is whether the taxpayer as the purchaser uses the boxes "to transfer merchandise to his customers", within the meaning of s. 77.54 (6) (b), Wis. Stats.

The Commission concluded that s. 77.54 (6) (b), Wis. Stats., 1975, is inapplicable because the boxes are not used to transport the taxpayer's merchandise to its customers. *Webster's Third New International Dictionary* (unabr. ed. 1976) defines "merchandise" as "commodities or goods that are bought and sold in business," and defines "customer" as "one that purchases some commodity or service". Accordingly, the department contended that "customer" in s. 77.54 (6) (b), Wis. Stats., means the purchaser of merchandise and "transfer" as used in the statute refers to a transaction in the nature of a sale.

The Court of Appeals held that a strict but reasonable construction of the phrase "to transfer merchandise to his customers" requires that doubts as to the meaning of "merchandise" be resolved by defining merchandise as something bought and sold. "Customer" is therefore used in the sense of a purchaser and "transfer" refers to facilitation of a sale to the customer-purchaser.

The taxpayer used the boxes to transport household goods to its customers consisting of persons changing their residences, but did not transport merchandise sold to customers. Accordingly, the Court of Appeals affirmed the decision of the Circuit Court, that the purchase and use by the taxpayer of the boxes involved is not exempt under s. 77.54 (6) (b), Wis. Stats.

The second issue was whether the purchase and use of miscellaneous van equipment and supplies are exempt from Wisconsin sales and use

tax under s. 77.54 (5) (b), Wis. Stats., which exempts the following from sales and use taxes:

Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, exclusively as common or contract carriers....

The undisputed evidence disclosed that pads, covers and straps protect or secure household items during transit and packing supplies secure smaller items packed in taped boxes in transit. Planoboards were used to transport pianos. Ladders were used to pack and unpack the van, permitting the taxpayer to use its full interior and walkboards were used for easy access to the van during loading and unloading. The Court of Appeals indicated that the pads, covers, straps, planoboards, ladders and walkboards come within the dictionary definition of accessories. The packing supplies and tape fit the dictionary definition of supplies. The Court of Appeals held that the taxpayer's equipment and supplies accompany the vans in transit and are sufficiently identified with trucks used exclusively as common or contract carriers to be exempt under s. 77.54 (5) (b), Wis. Stats. The Court did not decide whether accessories which do not accompany a truck in transit can be exempt under s. 77.54 (5) (b), Wis. Stats., 1975. It concluded only that the department's attempted limitation of the s. 77.54 (5) (b), Wis. Stats., exemption is unreasonable as to the taxpayer's van equipment and supplies.

Neither the department nor the taxpayer have appealed this decision.

North-West Services Corporation and North-West Telephone Company vs. Wisconsin Department of Revenue (Wisconsin Circuit Court of Dane County, May 22, 1981)

The issue before the Court was whether the telephone company was leasing tangible personal property or providing a telephone service when it entered into lease agreements with customers using its private branch exchange (PBX) equipment. Its purchases of equip-

ment may be made without tax for resale if it is leasing the PBX's, while such purchases of equipment are taxable if the equipment is used in providing a telephone service. The Tax Appeals Commission's decision of May 22, 1980, which was summarized in Wisconsin Tax Bulletin #20, held that such purchases are exempt purchases for resale, and the Circuit Court affirmed that decision.

North-West Telephone Company offers the lease of PBX's to a customer in competition with others, not public utilities, who lease or sell such equipment. Such competitors are not in the business of furnishing utility service. North-West Telephone Company is a regulated public utility and does furnish what is described as telephone service. Customers are not required to obtain their telephone instruments or PBX's from the telephone company, but may connect instruments or PBX's to the telephone lines without the permission of the telephone company.

Because the telephone company is furnishing a telephone connection which permits use of the company's lines, it does furnish a service. It may, and often does, also furnish the customer instruments which the customer may reject for its own. The telephone company collected and reported sales taxes on these leases to its customers.

The Tax Appeals Commission took the position that the factual situation involved in the leases of PBX's was not clearly covered by s. 77.52 (2) (a) 4, Wis. Stats., and that the section was ambiguous. The ambiguity was decided in favor of the telephone company. The Court indicated that this is a situation where the utility's competitors who stand as purveyors of PBX's cannot be said to be furnishing any telephone service.

The Court also indicated that the statutes contemplate that within its territory a telephone company has a monopoly on furnishing telephone service in return for which the utility subjects itself to a multitude of regulations. Where an area of activity is opened to competition, as in the case of sales and leases of PBX equipment, the sale or leasing can be said to be no longer a service, but a sale or lease of tangible property. Because these purchases of PBX equipment are for sale or lease as

tangible personal property, the Court ruled such purchases are not subject to the 4% tax.

The department has not appealed this decision.

Wisconsin Department of Revenue vs. J.C. Penney Company, Inc. (Circuit Court of Dane County, July 30, 1981). This case included issues involving (1) catalogs, (2) advertising supplements and (3) merchandising sales.

1. Catalogs The Department of Revenue assessed a use tax (s. 77.53, Wis. Stats.) upon the transaction involved in the distribution of the taxpayer's catalogs. The taxpayer operates retail stores in Wisconsin and elsewhere and issues catalogs of its merchandise in the conduct of a mail order business. The catalogs are printed and assembled in Indiana by a printer under contract with the taxpayer. The addresses and names of recipients are furnished by the taxpayer. The catalog is delivered directly to the addressee in Wisconsin by mail or contract carrier. The addressee pays nothing for the catalog. The catalogs were sent to anyone requesting one as well as being furnished without request to customers.

It was the position of the department "that the catalogs were stored, used, or otherwise consumed in Wisconsin by the taxpayer and were subject to the use tax under s. 77.53 (1), Wis. Stats." The Circuit Court concluded that the Tax Appeals Commission was correct in determining that the distribution of the catalogs from Indiana to persons in Wisconsin was not subject to sales or use tax in Wisconsin and the Commission's conclusion should be affirmed.

2. Advertising Supplements The Tax Appeals Commission determined that newspaper supplements purchased by taxpayer and distributed with newspapers are exempt from sales and use taxes in accordance with s. 77.54 (15), Wis. Stats. The Circuit Court stated there was no real difference between the advertising supplement and a full page advertisement which may have news printed on the reverse and that advertising supplements are part of the newspaper in which they are distributed and are exempt from tax.

3. Merchandise Sales The department assessed a sales tax on sale of merchandise ordered by someone out of state from the catalog. In most cases the order was sent to the Milwaukee catalog center and from there sent to the addressee in Wisconsin. In some instances the order was filled by an out-of-state manufacturer and sent to the addressee from out of state. In most cases, however, the merchandise was sent from Milwaukee. In both cases the orders were received in Milwaukee.

The taxpayer collects a tax from an out-of-state orderer when the Wisconsin addressee has the same last name as the orderer. But taxpayer considers that, if the addressee's name is different from that of the orderer, the merchandise is considered as an untaxable gift. Just what compels the inference that there was a gift as the result of dissimilarity of names is not clear.

When an order is received in Milwaukee with payment and is accepted there and is delivered to the person or address directed by the orderer, a sale has occurred. Up to the time the order is received in Milwaukee there is nothing but an offer to purchase. The acceptance of the offer and the purchase price and the delivery of the goods to the order of the purchaser all takes place in Wisconsin and must therefore be considered a Wisconsin transaction and a sale within the definition of s. 77.51 (4), Wis. Stats.

The Tax Appeals Commission concluded that s. 77.52 (1), Wis. Stats., did not contemplate imposition of a sales tax on such merchandise. The Circuit Court stated this conclusion is wrong. The tax imposed by s. 77.52 (1), Wis. Stats., is on "the privilege of selling." The taxpayer has done just that. It has made a sale in Wisconsin for delivery in Wisconsin. Taxpayer exercised its privilege of selling in Wisconsin and completed the sale there. The sale is one clearly covered by the sales tax. The Court did not believe that the fact that the order originated in a foreign state is enough to exclude the sale from taxation. Assuming that the ultimate recipient was the object of the orderer's gift, the sale was between the orderer who paid for the merchandise and the taxpayer. The donee was not a party to the sale. The contracting parties

were the person who made the order and the taxpayer which filled it.

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

Delmore and Lawrence Peterson (d/b/a Peterson Brothers) vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 12, 1981). Taxpayer was a partnership doing business in Wisconsin as Peterson Brothers. Delmore and Lawrence Peterson each owned a 50% interest in the partnership.

The department issued to Peterson Brothers an assessment of sales and use taxes and interest in the total amount of \$1,676.10 dated July 7, 1978, with the explanation, in part, that "The common or contract carrier exemption from sales tax is nullified when the vehicle is used in a private haul operation. A motor vehicle inspection report shows that a private haul was made with this vehicle during the period or date shown above" (November 1977).

The principal business of the partnership was providing hauling or transportation services to business entities requiring these services. Besides the truck at issue, the partnership had 3 other trucks. The partnership had no employees of its own so its customers had to provide drivers for the trucking services. When a truck was used, the customer was commonly billed for both the use of the truck and the driver's salary and the portion of the amount paid to the taxpayer attributable to the driver's salary was returned to the customer. In April 1975, the Peterson Brothers partnership purchased a 1975 Mack truck in Wisconsin for \$40,390 and did not pay sales tax on the truck, asserting that the transaction was exempt because the purchaser was a common or contract carrier and would use the vehicle exclusively as a carrier under authority number LC 38020.

Delmore and Lawrence Peterson were the sole and equal owners of Peterson Bros., Inc., a Wisconsin corporation whose business activities included excavating and selling sand and gravel. The Peterson Brothers partnership provided its hauling services to Peterson Bros., Inc., which constituted between 25% to 75% of the partnership's business in different years. When

the corporation used the partnership's services, it provided a truck driver and paid the partnership for the use of the truck. There was no written lease agreement between the partnership and the corporation.

On November 9, 1977, the truck involved in this appeal received a citation for carrying an overweight load from an inspector employed by the Wisconsin Department of Transportation's Division of Motor Vehicles. The citation indicated that the haul consisted of rock salt, that the consigner was Domtar, Inc. of La-Crosse, Wisconsin, that the consignee was the taxpayer. At the hearing before the Commission, taxpayer provided written documents proving that on November 9, 1977, its truck was hauling rock salt sold by Domtar, Inc. to Peterson Bros., Inc., and not rock salt owned by the taxpayer.

Was taxpayer's purchase of the 1975 Mack truck exempt from the sales and use taxes under s. 77.54 (5) (b), Wis. Stats., on the basis that it was purchased by a common or contract carrier for exclusive use as a common or contract carrier? The Commission concluded that the hauling arrangements constituted a "lease" of tangible personal property under s. 77.52 (1), Wis. Stats. Taxpayer's purchase of the truck was not exempt under s. 77.54 (5) (b), Wis. Stats., exempting purchases of motor trucks by common or contract carriers for exclusive use in common or contract carriage. Taxpayer had no employees and did not fall under this sales and use tax exemption.

If taxpayer's purchase of the 1975 Mack truck involved herein was exempt from sales and use taxation under s. 77.54 (5) (b), Wis. Stats., as a purchase for exclusive use in common or contract carriage, did taxpayer's November 9, 1977 haul constitute a private haul violating the exclusive use standard of that statute and subject the taxpayer to use tax on the truck? Because of conclusion of law 1, the second issue was moot.

The taxpayer has not appealed this decision.

Carl Schroeder, Jr., vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 29, 1981). Taxpayer, Carl Schroeder, Jr., operates a proprietorship