

of the Wisconsin Form WT-4 to the department.

DO YOU HAVE SUGGESTIONS FOR 1982 TAX FORMS?

Each year the department receives helpful suggestions from the public regarding improvements to the Wisconsin income tax forms.

You may wish to communicate your suggestions for improving Forms 1 (individual long form) and 1A (individual short form), Forms 4 and 5 (corporation franchise/income tax returns) and Schedule H (Homestead). Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. 8910, Madison, WI 53708. Please submit your suggestions by July 1, 1982.

NO SALES AND USE TAX NEWSLETTER FOR MARCH

The department's sales and use tax newsletter entitled "Tax Report" is generally published three times each year in March, June and September. Beginning with the October, 1980 WTB, the "Tax Report" has been included as a part of the WTB.

A "Tax Report" will not be published for March. Future issues of the "Tax Report" will be published "as needed" rather than on a March, June and September basis.

NEW ISI & E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A, B and C, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of March 30, 1982. Part D lists new rules and amendments which have been adopted in 1982.

A. Rules At Legislative Council Rules Clearinghouse

- 2.39 Apportionment method (amendment)
- 2.40 Nonapportionable income (repealed and recreated)
- 11.01 Sales and use tax return forms (amendment)
- 11.05 Governmental units (amendment)

- 11.08 Medical appliances, prosthetic devices and aids (amendment)
- 11.10 Occasional sales (amendment)
- 11.11 Waste treatment facilities (amendment)
- 11.16 Common or contract carriers (amendment)
- 11.17 Hospitals, clinics and medical professions (amendment)
- 11.26 Other taxes in taxable gross receipts and sales price (amendment)
- 11.38 Fabricating and processing (amendment)
- 11.49 Service station and fuel oil dealers (amendment)
- 11.57 Public utilities (amendment)
- 11.66 Communication and CATV services (amendment)
- 11.69 Financial institutions (amendment)
- 11.71 Automatic data processing (new rule)
- 11.84 Aircraft (amendment)
- 11.85 Boats, vessels and barges (amendment)
- 11.87 Meals, food, food products and beverages (amendment)
- 11.93 Annual filing of sales tax returns (amendment)
- 11.97 "Engaged in business" in Wisconsin (amendment)

B. Rules At Legislative Standing Committees

- 2.30 Property located outside Wisconsin—depreciation and sale (amendment)
- 2.97 Sale of constant basis assets acquired prior to becoming a Wisconsin resident (amendment)
- 10.14 Valuation of United States treasury bonds (new rule)
- 11.56 Printing industry (new rule)

C. Rules Approved By Legislature But Not Effective

- 5.01 Filing reports (amendment)
- 10.10 Taxation of savings, mortgage and credit life insurance (amendment)
- 10.11 Federal estate tax deduction (amendment)
- 10.12 Deductibility of income taxes (amendment)
- 10.13 Apportionment of property qualifying for exception (new rule)

D. Rules Adopted in 1982 (In parentheses is the date the rule was adopted.)

- 2.081 (3) Indexed income tax rate schedule for taxable year 1981 (1/1/82, new rule)
- 11.12 Farming, agriculture, horticulture and floriculture (1/1/82, amendment)
- 11.16 Common or contract carriers (1/1/82, amendment)
- 11.40 Exemption of machines and processing equipment (1/1/82, amendment)
- 11.53 Temporary events (2/1/82, new rule)

NOTE: In Wisconsin Tax Bulletin #26 it was indicated that Wis. Adm. rule Tax 2.081 (3) and the amendments to Wis. Adm. rules Tax 11.12, 11.16 and 11.40 were adopted on December 1, 1981. However, these rules were not adopted until January 1, 1982.

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 last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: 1) "the department appealed", 2) "the department has not appealed but has filed a notice of nonacquiescence" or 3) "the department has not appealed" (in this case the de-

partment has acquiesced to the Commission's decision).

The following decisions are included:

Income and Franchise Taxes

Glenn A. Bacon vs. Wisconsin Department of Revenue
 Ronald C. Johnson vs. Wisconsin Department of Revenue
 Robert J. Kay vs. Wisconsin Department of Revenue
 Midland Financial Corporation vs. Wisconsin Department of Revenue
 Wisconsin Department of Revenue vs. Milwaukee Mutual Insurance Company
 Eugene F. Rock and Eugene F. Rock d/b/a Rock's Round Barn vs. Wisconsin Department of Revenue
 James R. Yanta vs. Wisconsin Department of Revenue

Sales/Use Taxes

Stanley A. Anderson, Inc. vs. Wisconsin Department of Revenue
 Astra Plating, Inc. vs. Wisconsin Department of Revenue
 Brantwood Publications, Inc. and R. W. Morey Company, Inc. vs. Wisconsin Department of Revenue
 Wisconsin Department of Revenue vs. Donna Brewer
 Wisconsin Department of Revenue vs. Family Hospital, Inc.
 Wisconsin Department of Revenue vs. Gene E. Greiling
 Wisconsin Department of Revenue vs. Horne Directory, Inc.
 Sister Mary Joanne Kollasch, et. al. and Sisters of St. Benedict, of Madison, Wisconsin vs. David W. Adamany, Secretary of the Department of Revenue
 Milwaukee County vs. Wisconsin Department of Revenue
 William A. Mitchell vs. Wisconsin Department of Revenue

Homestead

Louis N. Schara vs. Wisconsin Department of Revenue

Withholding

Harry Federwitz vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Glenn A. Bacon vs. Wisconsin Department of Revenue (Wisconsin

Tax Appeals Commission, December 10, 1981). Glenn A. Bacon is a physician and sole shareholder of Bacon Clinic, Ltd., a professional service corporation organized under the laws of the State of Wisconsin. During the year 1971, the taxpayer was a Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats. In April 1972, taxpayer filed a 1971 Wisconsin individual income tax return with the department. Taxpayer appealed Internal Revenue Service adjustments for the year 1971, assessing additional dividend income of \$16,042.61 from Bacon Clinic, Ltd., to the United States Tax Court, which court, on June 8, 1977, made a final deficiency determination increasing taxpayer's 1971 taxable income by \$13,962.40. Taxpayer did not report said audit adjustments or final determination to the department pursuant to ss. 71.11(21)(g) 2 and 71.11(21m), Wis. Stats.

On October 9, 1978 the department sent to the taxpayer a Notice of Amount Due, assessing additional taxable income for the year 1971. Taxpayer contends the department's assessment of October 9, 1978 is barred by the limitation provisions of s. 71.11(21), Wis. Stats.

The Commission held that the department's assessment involving tax year 1971 was proper and not barred by the limitation provisions of s. 71.11(21), Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Ronald C. Johnson vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 30, 1981). During the years 1978 and 1979 Ronald C. Johnson was a Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats. On January 19, 1981, the department issued taxpayer an assessment for \$15.44 (\$14.24 income tax and \$1.20 interest).

Taxpayer, together with his wife, filed with the department a 1978 Wisconsin combined individual income tax return in 1979, on which the taxpayers itemized their deductions. After calculating their tax, taxpayer's Wisconsin tax return reflected an overpayment by him of \$331.69 and an underpayment by his wife of \$165.02. The overpay-

ment was credited to taxpayer's wife's underpayment and taxpayer received a net state tax refund of \$166.67 in 1979. In 1979, Johnson filed a federal joint tax return with his wife.

The department contended that the proper amount of state tax refund for taxpayer to include in his 1979 income is \$331.69, the full amount of overpayment. Taxpayer included \$166.67 in his 1979 income, the net refund he received. Department assessed taxpayer on a \$165.02 measure of tax.

Taxpayer contended that federal tax law requires the reporting of only his net state tax refund, rather than the gross refund, on his 1979 federal joint return; that the 1979 Wisconsin income tax return, long form, merely requires the transfer from the federal return to the state return of the state tax refund amount; and that Wisconsin statutes do not provide for a specific modification (ex., in s. 71.05, Wis. Stats.) to the amount on the federal return.

Two similar cases decided by the Tax Appeals Commission are Alfred A. Anderson v. Wisconsin Department of Revenue 7 WTAC 205 (1969) and William J. Bauman v. Wisconsin Department of Revenue 9 WTAC 384 (1973). In both cases, the taxpayers itemized their deductions for one year and paid declarations of estimated Wisconsin income tax for that year, deducting as an itemized deduction for the year the full amount of estimated tax payments. After the taxpayers actually calculated their Wisconsin income tax liabilities for their tax years, they computed an overpayment of tax and were entitled to a refund in the following years. Each taxpayer chose to apply this overpayment to his subsequent year's Wisconsin declaration of estimated income tax, rather than receiving a refund of the overpayment.

In both of these cases, the Commission concluded that the amount of overpayment calculated by each taxpayer constituted income to that taxpayer in the year the overpayment was applied as a credit. In the Bauman case, 9 WTAC at 386, the Commission stated "The . . . (amount) in question was *constructively received* by the petitioner in 1968 when he filed his 1967 Wisconsin income tax return and elected to apply said sum towards his esti-

mated income tax liability for 1968." (Emphasis added).

The Commission held in favor of the department. Johnson must include in his 1979 total income the full amount of his 1978 state tax refund (\$331.69) and may not reduce this amount by the \$165.02 to which he was entitled but which he chose to apply against his wife's state tax liability for 1978. Taxpayer constructively received the \$165.02 under contention in 1979.

The taxpayer has not appealed this decision.

Robert J. Kay vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 10, 1981). On May 11, 1979, Robert Kay was assessed additional income taxes for the calendar years 1973 and 1974 by the Internal Revenue Service. The federal audit was settled by stipulation and taxpayer paid corrected federal income taxes for the 1974 year of \$16,654.00. Taxpayer did not notify the department of the adjustments made by the Internal Revenue Service. On August 15, 1979, the department notified Kay that it had received notice from the Internal Revenue Service, under authorization of sec. 6103 (d), IRC, of the audit and requested copies of the audit reports.

On August 30, 1979, taxpayer provided a copy of the Internal Revenue Service assessment notice. Taxpayer stated in said letter "The statute of limitations under sec. 71.11 (21) (bm), Wis. Stats. ran on April 15, 1979. Consequently, the additional assessment by the Internal Revenue Service did not result in any change in tax payable under Chapter 71 of the Wisconsin Statutes, and the tax year is closed by the statute." On September 24, 1979, taxpayer was assessed additional Wisconsin income taxes for the calendar year 1974 by the department based upon the Internal Revenue Service audit of May 11, 1979.

The sole issue in this case is whether the additional assessment in issue is barred by the four year statute of limitations provided for in s. 71.11 (21), Wis. Stats. Taxpayer conceded the correctness of the federal audit adjustments.

The Commission held that the department's assessment based on a mid-1979 final determination of a

dispute between the taxpayer and the Internal Revenue Service involving tax year 1974 was proper and not barred by the limitation provisions of s. 71.11 (21), Wis. Stats.

The taxpayer has not appealed this decision.

Midland Financial Corporation vs. Wisconsin Department of Revenue (Circuit Court of Milwaukee County, January 19, 1982). This is an appeal of a Tax Appeals Commission decision (see WTB #22) in which the Commission upheld the department's assessment of additional franchise taxes for the year 1972. The Tax Appeals Commission held that despite the fact that the taxpayer was not required to pay income taxes on certain dividend income on its 1971 tax return, such dividend income nevertheless had to be considered for the purpose of calculating the amount of the taxpayer's loss carry forward to 1972.

In 1964 Midland Financial Corporation was organized as a Wisconsin corporation for the purpose of operating a bank holding company business, Midland thereby acquiring major stock ownership in the Midland National Bank and the Home State Bank as well as owning the building located in Milwaukee, Wisconsin which housed the Midland Bank and was known as the Midland Building. The Midland Financial Corporation also had an interest in the Park State Bank and the Midtown State Bank of Milwaukee, and in the Wausau Financial Corporation of Wausau. The Wausau Financial Corporation was the holding company for the Citizens State Bank and Trust Company in Wausau. In addition, the taxpayer had an interest in the Florida bank and owned rental real estate, principally the office building mentioned above in Milwaukee, as well as an equipment leasing company, a company providing financial and consulting services, and an electronic data processing company.

The basic question in this case is whether dividend income received by Midland from its subsidiary banks is properly characterized as "business income" or as "other items of income". In *Hall Chevrolet Co., Inc. v. Dept. of Revenue*, 81 Wis. 2d 477, Hall Chevrolet in 1970 recognized a loss on the sale of its principal place of business. Hall Chevrolet sold its land and buildings and moved to a new location because of the deterior-

ation of the neighborhood and because Hall had been operating at a loss at the original place of business. The Supreme Court held that the sale of the property was impelled by business reasons and Hall Chevrolet was permitted to offset its loss on the 1970 sale of this land and buildings against business income in 1970 and thereby recognized a large business loss on its 1970 Wisconsin Corporation Franchise or Income Tax Return.

In applying the converse of the Hall Chevrolet rule to the present case, the Circuit Court held that Midland did not have to demonstrate that the dividend income received from its subsidiary banks constituted income received in its regular daily business in order to demonstrate that such dividend income is "business income". Midland need only demonstrate that the income which it received was attributable to its regular business as a bank holding company.

The Circuit Court held that the dividends in this case constituted business income as the operation of these banks was the only business of the bank.

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

Wisconsin Department of Revenue vs. Milwaukee Mutual Insurance Company (Court of Appeals, District I, December 23, 1981). The department appealed to the Court of Appeals a Circuit Court decision (see WTB #22) which held that Milwaukee Mutual Insurance Company was entitled to exclude from its 1974 underwriting income amounts which were added to its PAL account prior to 1972.

Milwaukee Mutual Insurance Company is an insurance company subject to taxation under ch. 71, Wis. Stats. In 1974 it reported on its federal income tax return income which it had earned in prior years but had deferred in an I.R.C. sec. 824 reserve account. It is undisputed that \$359,708.34 of the amount reported in 1974 as deferred income was earned before 1972, the first year insurance companies became subject to Wisconsin's corporation franchise tax.

The department contended that because federal taxable income can and does include income earned in other years, s. 71.01 (4) (a), Wis.

Stats., by reference to "federal taxable income", authorizes the department to tax income earned before 1972.

The statute does not expressly state the intention of the legislature to apply the tax retroactively. Section 71.01 (4), Wis. Stats., provides that the tax on insurance companies is based upon net income and defines net income as "federal taxable income" as determined by the pertinent internal revenue code. The department claimed that "federal taxable income" is an unambiguous term that should be given its ordinary and accepted meaning. Statutory ambiguity exists when it is capable of being understood by reasonably well-informed persons in two or more senses (*City of Milwaukee v. Lindner*, 98 Wis. 2d 624, 632, 297 N.W. 2d 828, 832 (1980)). When ambiguity exists, it cannot be said that the statute "necessarily implies" retroactive application.

Section 71.01 (4) (a), Wis. Stats., adjusts the term "federal taxable income" in ten provisions. Provision 10 states that federal taxable income is to be adjusted " (b) y subtracting any net business loss carry-forward permissible under s. 71.06, but no loss incurred by any insurer in 1971 or any prior year may be carried forward" The Court of Appeals held that denial of exclusion of pre-1972 net business losses raises the question of whether the legislature intended to correspondingly deny inclusion of pre-1972 net business income. This lack of decisive legislative intent lead the Court of Appeals to the conclusion that the statute is ambiguous as to its application to income earned before 1972. When the legislature imposes a tax, it must do so in clear and express language, and ambiguity and doubt must be resolved in favor of the taxpayer.

The department has not appealed this decision.

Eugene F. Rock and Eugene F. Rock d/b/a Rock's Round Barn vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 30, 1981). During the years 1966 to 1973 Eugene F. Rock and Eugene F. Rock, d/b/a Rock's Round Barn, was a resident of Spring Green, Wisconsin, subject to the income, franchise and sales and use tax provisions of the Wisconsin statutes. For these years,

the department assessed additional income tax and sales and use tax. The sales tax assessment is based upon \$248,715.00 additional business receipts subject to sales tax and \$3,100.00 subject to use tax as determined during the audit period.

The issues for the Commission to determine were as follows:

1. Did the taxpayer meet his burden of proof to show the department's assessments in error?
2. Did the department meet its burden of proof to show the elements of fraud as set forth in s. 71.11 (21), Wis. Stats.?
3. Did the constitutional objection of double jeopardy apply?

The taxpayer reported as taxable income \$13,572.00 during the seven-year audit period. The department, through the use of income reconstruction, determined that the taxpayer had an actual taxable income during the audit period of \$253,744.00. The most significant adjustment in the audit constituted additional business income of \$241,921.00.

The department assessed additional income tax against the taxpayer for the years 1966 through 1971 under s. 71.11 (21) (c), Wis. Stats. The years 1971 and 1970 were assessed under s. 71.11 (21) (g), Wis. Stats., taxpayer reporting less than 75% of his income properly assessable and owing additional income tax in such years in excess of \$100. The department assessed the civil fraud penalty for all the years under the provisions contained in ss. 71.11 (6) (a) and 71.11 (6) (b), Wis. Stats.

The department utilized the cash transaction or T Account method of income reconstruction for years 1966, 1967, 1968 and the bank deposits method for years 1969, 1970, 1971 and 1972.

During the period involved, the taxpayer and his wife were in control of the books and records involved and were primarily responsible for depositing moneys and paying bills. Taxpayer did not put his books and records in evidence at the hearing before the Tax Appeals Commission. For the years adjusted, the department contended that the taxpayer, in addition to offering no

logical explanation as to why he so underreported, had failed to maintain proper books and records. Taxpayer consistently spent moneys for personal use in amounts in excess of his reported income and offered no credible or logical explanation for his consistent underreporting. During the seven-year audit period, taxpayer reported for taxation approximately 6% of his taxable income and underreported his gross receipts subject to sales tax by approximately 20%.

Taxpayer pled guilty to a criminal charge which was related to this assessment under s. 71.11 (42), Wis. Stats. The civil penalty under s. 71.11 (6) (a) and (b), Wis. Stats., involved herein involves additions to tax which are assessed administratively and are remedial in nature. Taxpayer did not present any credible evidence refuting the department's assessments of deficiencies on the additional income, sales and use tax imposed by the department. The burden of proof is on the taxpayer to show in what respect the department's assessment (other than the imposition of the fraud penalty) was in error. The burden of proof is on the department to prove through clear and convincing evidence as to any civil fraud penalty imposed.

The Commission held in favor of the department. Taxpayer failed to meet his burden of proof to show the department's assessment to be incorrect. Also, the Commission held that the department through clear and convincing evidence proved that the taxpayer did, with intent, fraudulently file incorrect tax reports with the department during the years under review. The fraud penalty imposed by the department in the assessment does not preclude the imposition of both a criminal and a civil sanction in respect of the same act or omission.

The taxpayer has appealed this decision to the Circuit Court.

James R. Yanta vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 30, 1981). This is an appeal of an assessment issued against James R. Yanta covering tax years 1972, 1973 and 1975 in the amount of \$1,583.35 (\$1,442.92 income tax and \$140.43 interest). During these years taxpayer was a Wisconsin resident.

On May 13, 1975, James Yanta set up a trust called the James R. Yanta Equity Pure Trust. The trust instrument, titled "Declaration of Trust of This Pure Trust", was signed by taxpayer as grantor-creator and by Sharon M. Yanta, his wife at that time and Daniel R. Cassiani, a friend, as trustees of the trust. Taxpayer was also a trustee of the trust. The trust instrument gives the trustees virtually unlimited power over the trust. The trustees in their discretion may do anything they want to with the trust income and property.

On May 15, 1975 taxpayer conveyed to the trustees of the trust his and his family's residence. On May 15, 1975, taxpayer was retained as executive trustee of the trust and Sharon Yanta as executive secretary. The trust records reflect that it is the trust's responsibility to provide for these 2 people's housing; transportation; selling and office expenses; dues, fees and subscriptions; entertainment and convention expenses; and life and medical care insurance, all incident to trust business.

On Yanta's 1972 and 1973 Wisconsin individual income tax returns, 3 items were in contention: (1) taxpayer's 1972 itemized deduction of \$53 for an educational expense in taking an accounting course; (2) an additional \$150 itemized deduction as an educational expense for 1973 for additional payments for the same accounting course; and (3) a 1973 itemized deduction of \$463 for sales tax taxpayer asserted he paid on the purchase of several cars during the year.

Beginning in 1972, James Yanta began studying a mail correspondence course in accounting given by the LaSalle Extension and studied at his home. When he began the course, he was employed doing accounting work for a CPA who encouraged him to take the course. After changing employment in 1972, he did accounting work for a motor vehicle dealership and was encouraged to continue with the course which he did through 1973. Taxpayer testified that the course dealt in all facets of accounting, auditing and statement preparation, including income tax preparation; that he took the course to improve his position as an accountant and to keep up on accounting and law changes to better function in his employment; and that

he paid \$53 in 1972 and \$150 in 1973 to the LaSalle Extension for the course for which he was not reimbursed. Taxpayer produced cancelled checks evidencing the payment of these amounts. The department conceded in this issue.

Yanta also testified that he paid a total of about \$436 in sales tax, in smaller amounts, both in cash and by check, relating to the purchase of several autos in 1973. However, he did not substantiate this amount.

On taxpayer's 1975 and 1976 Wisconsin individual income tax returns, he stated "0" as Wisconsin net taxable income, and claimed the Wisconsin homestead credit for each year. On the department's assessment for tax year 1975, \$16,143 of income was attributed to the taxpayer which he had reported as trust income; for tax year 1976, \$29,671 of income was attributed to the taxpayer which has been reported as trust income. For both years, the homestead credit was disallowed because taxpayer exceeded the maximum income limitations for that credit.

Wisconsin fiduciary income tax returns were filed by the trust for fiscal years ending May 31, 1976 and May 31, 1977, signed by Sharon M. Yanta, trustee, and James R. Yanta, trustee. On the trust return for the fiscal year ending May 31, 1976, \$16,143 was reported as net profit from a trade or business, and a Schedule C was attached reflecting the calculation of this amount from what was testified by taxpayer to be from Jim's Business Services, Inc. On the trust return for the fiscal year ending May 31, 1977, on a Schedule C for what appeared to be from Jim's Business Services, Inc., \$29,670.60 was reported as total income, \$12,903.81 was reported as total deductions, and \$16,766.79 was reported as net profit. On the department's assessment of James Yanta for tax year 1976, the department assessed \$29,671 as income, indicating that no expenses were allowed because taxpayer refused to submit verification of the expenses. The returns claimed deductions for personal expenditures on behalf of the taxpayer and his wife.

The Commission held that for tax years 1972 and 1973, taxpayer met his burden of proof regarding his claimed educational expenses of \$53 and \$150, respectively, in over-

coming the presumptive correctness of the department's assessments regarding them. Taxpayer did not meet his burden of proof in overcoming the presumptive correctness of the department's assessment arising from disallowed business expenses for tax year 1976. For tax year 1973, Yanta did not meet his burden of proof in overcoming the presumptive correctness of the department's assessment regarding taxpayer's claimed itemized deduction of \$436 as sales tax for autos purchased.

Also, the Commission held that income is taxed to the person who earns it and the income relating to real and personal property conveyed to the family trust by the grantor (Yanta) was income of a grantor trust which is properly taxable to the grantor of the trust.

The department was correct in assessing the income of the family trust to the taxpayer and in disallowing taxpayer's 1975 and 1976 homestead credit claims on the grounds that the maximum income levels allowable for the credit for those years were exceeded.

The taxpayer has appealed this decision to the Circuit Court.

SALES/USE TAXES

Stanley A. Anderson, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 23, 1981). During the years 1969 through 1974, Stanley A. Anderson, Inc., a corporation whose place of business was Janesville, Wisconsin, was subject to the sales and use tax provisions of Chapter 77 of the Wisconsin Statutes. For the years 1969 through 1974 the department assessed use tax, interest and late filing fees against the taxpayer.

At the hearing before the Commission, the department agreed to modify its assessment by computing delinquent interest up to November 1, 1975 at twelve percent and after that date at eighteen percent, rather than as the assessment notice had been prepared, involving a straight eighteen percent computation going back to 1969.

Taxpayer was assessed a use tax on building materials it purchased from the U.S. Gypsum Company where neither a sales or use tax was col-