

- 2.30 Property located outside Wisconsin - depreciation and sale (8/1/82)
- repealed and recreated
- 2.97 Sale of constant basis assets acquired prior to becoming a Wisconsin resident (8/1/82)
- repeal
- 5.01 Filing reports (8/1/82)
- amendment
- 10.10 Taxation of savings, mortgage and credit life insurance (8/1/82)
- amendment
- 10.11 Federal estate tax deduction (8/1/82)
- new rule
- 10.12 Deductibility of income taxes (8/1/82)
- amendment
- 10.13 Apportionment of property qualifying for exception (8/1/82)
- 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 #28 it was indicated that rule Tax 10.14, Valuation of United States treasury bonds (new rule), was at the legislative standing committees. This rule has since been withdrawn.

Also, the proposed rules in Chapter Tax 16 relate to the Senior Citizen's Property Tax Deferral Loan Program.

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 department has acquiesced to Commission's decision).

The following decisions are included:

Income and Franchise Taxes

- Irv Berlin vs. Wisconsin Department of Revenue
Paul F. Hausman vs. Wisconsin Department of Revenue
Tadeusz Jaworski and Halina Jaworski vs. Wisconsin Department of Revenue
Kenneth M. Kenney vs. Wisconsin Department of Revenue
Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue
Kurz & Root Company vs. Wisconsin Department of Revenue
Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Richard or Alvin Hamland vs. Wisconsin Department of Revenue
Hunter Heating and Air Conditioning, Inc. vs. Wisconsin Department of Revenue
Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue
Rause Enterprises, et. al. vs. Wisconsin Department of Revenue
Eric F. Tamm vs. Wisconsin Department of Revenue

Homestead

- Helen M. Raschick vs. Wisconsin Department of Revenue

Gift Tax

- Carolyn Hribar vs. Wisconsin Department of Revenue
Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Irv Berlin vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 26, 1982). The issue in this case is whether advances made by Irv Berlin in 1974 and 1975 to Compact Distributors of Wisconsin, Inc. represented contributions to capital or loans and if said advances represent

loans to the above corporation, whether they may be treated as deductible bad debts in 1976. Berlin incorporated Compact Distributors of Wisconsin, Inc. in 1974. Taxpayer was the sole shareholder. Berlin's initial capitalization was \$2,500.00. Taxpayer was president of Compact and his duties were to oversee its operations. He did not draw salary in 1974 and 1975. His employment with Compact was his sole employment, and he had no income from other sources except from investments.

Compact's operations were the door to door sales of vacuum cleaners. Compact employed four to six salespersons who were paid on a commission basis. Compact also employed an office staff of about seven persons. Compact's operations were based upon providing financing for purchasers. In 1974 and 1975 the sources of financing tightened up. The finance company with which Berlin was dealing could no longer provide money. Taxpayer sought other sources of financing but was not able to establish another long term source.

Berlin believed the lack of available financing would be temporary. However, Compact stopped doing business in April or May, 1975. Compact was not dissolved for insurance reasons. Taxpayer made a series of advances to Compact in 1974 and 1975 in order to keep the company going. He made these advances several times per month in 1974 and 1975. He received one-month to six-month notes from Compact at a 0% rate of interest. The first advance was made August 19, 1974, ten days after the company incorporated. No security was given for the notes.

Two of the notes were repaid. The remainder of the notes were never repaid. No account was established to pay back the advances. Taxpayer never attempted to collect on the notes. The advances were used for paying commissions, salaries and operating expenses. Berlin believed that Compact would be a profitable company and that once the company was profitable, he would begin to draw a salary and receive repayments of the advances at issue. Taxpayer deducted the unpaid loans in 1976 as bad debts.

The Commission held that the taxpayer's advances to Compact Dis-

tributors of Wisconsin, Inc. during the years 1974 and 1975 were contributions of capital of said corporations and, thus, the losses sustained by the taxpayer must be taken as capital losses rather than business bad debts.

The taxpayer has not appealed this decision.

Paul F. Hausman vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 10, 1982). Taxpayer, Paul F. Hausman, is a physician who practices surgery and is licensed to practice medicine in Wisconsin.

In about 1954, with retirement planning in mind, taxpayer and his wife purchased 152 acres of timberland in Waukesha County. Hausman testified that he chose to purchase the wooded land and plant trees on it over the years so that the land would generate little, if any, income during his years of active practice of medicine. On his retirement, he felt, the trees he had planted would have matured and he could harvest them and sell them at a gain at a time when he needed retirement income. During subsequent years taxpayer acquired additional adjacent and nearby land.

During 1954 through 1978 the Hausmans planted or were responsible for planting about 100,000 trees. Paul Hausman also purchased much heavy farm equipment and machinery with his funds, such as chain saws, rotary mowers, plows, a water wagon, spray rigs, a front end loader, trucks and tractor. Taxpayer's wife kept some of the tree operation's books, supervised employees who worked on the land, and met with foresters and rangers in getting ideas to improve the operation at times during the day when taxpayer could not because of his medical practice.

During the years 1975 through 1978 the time Hausman devoted to the wooded land was primarily on weekends, holidays, vacations, and on evenings on work days when it was light out. He testified that between 1954 and 1975, he did not believe that the land produced a profit. During these years about 75% of the total acreage contained trees. Taxpayer and his wife planted or caused to be planted about 40% of the 75% acreage containing trees. The checking account from which many

wooded land related expenses were paid was in the name "Folly Farms, Bernice Hausman". (Paul Hausman could also sign checks on this account.) Taxpayer's wife made out most checks with funds Paul Hausman gave her; he gave her \$1,000 per month for this account.

The department disallowed the taxpayer's claimed losses as follows:

1975	\$15,116
1976	\$12,823
1977	\$12,515
1978	\$12,043

These losses resulted from offsetting the small amounts of income from the land (\$515 in 1975, \$569 in 1976, \$708 in 1977 and \$570 in 1978) by larger amounts of expenses and depreciation for those years.

The issues in this case are 1) Were the losses incurred related to the wooded land activity properly deductible as losses from a business or an activity engaged in for profit? and 2) If so, was the taxpayer the sole proprietor of the wooded land activity and entitled to deduct the losses in full?

The Commission held that the losses incurred by the taxpayer in his activities concerning the wooded land owned by his wife are not properly deductible as losses from a business activity engaged in for profit and the department's disallowance of taxpayer's claimed losses for tax years 1975 to 1978 was correct. The issue of whether the taxpayer is the sole proprietor of the activity and entitled to deduct the losses in full was not decided because of the prior two conclusions of law.

The taxpayer has appealed this decision to the Circuit Court.

Tadeusz Jaworski and Halina Jaworski vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 12, 1982). In 1965 Tadeusz and Halina Jaworski acquired a farm with a farmhouse and farm buildings on it in Bevent, Wisconsin. The taxpayers paid \$25,000 for the farm. Just prior to taxpayers sale of a portion of the farm in 1978, the farm was encumbered by a mortgage to the FMHA in the amount of \$202,190. In 1978 taxpayers were delinquent in their mortgage payments and were forced to sell the farmland portions

of their farm. The complete farm was divided into three parts; parcel "A" was 180 acres of farmland which was sold for \$112,869; parcel "B" was 200 acres of farmland which was sold for \$86,493 on a land contract; and parcel "J" was five acres which contained the farmhouse and farm buildings, which were retained by the taxpayers. The taxpayers' original cost for parcel A was \$8,679 and the original cost for parcel B was \$3,160.

The taxpayers contended that their basis for parcel A consists of the original cost and in addition an allocation of a portion of the amount owing FMHA of \$73,193, as pro-rated by the taxpayers in their 1978 income tax return. Further, they contended that their basis for parcel B is their original cost plus \$25,071, as allocated by the taxpayers in their 1978 income tax return.

The department contended that the taxpayers' basis for parcels A and B should not include the allocation for the indebtedness.

The Commission held that the taxpayers cannot include the FMHA mortgage indebtedness as they have allocated it in their 1978 Wisconsin combined income tax return regarding the deduction taken for the sale of parcel A and B above.

The taxpayers have not appealed this decision.

Kenneth M. Kenney vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 12, 1982). The issue in this case is whether for the years 1976, 1977 and 1978, Kenneth Kenney properly took as a business expense, expenses incurred for parking near his office. Kenneth Kenney is a lawyer and is required to take trips throughout the state to court houses and to visit clients at their businesses, their homes or hospitals. During the years involved his office was located in downtown Milwaukee. In order to have his automobile available for travel during a work day, Kenney paid for a parking space in a parking lot close to his office.

The taxpayer's automobile used in his business was used 82% for business use in 1977 and 80% for business use in 1978. Taxpayer contended that the same percentages should be applied to his total parking expenses. More than one-half of

the taxpayer's law practice involved representing insurance companies concerning catastrophes, requiring Kenney to go to the scene of the catastrophe.

Taxpayer customarily came from his home to the office and parked in the lot. He spent some days entirely in his office without using his car. Many days he would leave his office and use his automobile for a business trip. Kenney only used his downtown parking space when he was at his office. He could not park in his downtown parking lot after 6:00 p.m. or before 7:00 a.m., on Sundays or for special events. His parking privileges were not transferrable. Kenney testified that had he not needed his car during his work day he would have taken the bus to work. Taxpayer never took the bus to work during the years involved.

The Commission held that the expenses incurred by Kenneth M. Kenney for leasing a parking space near his downtown Milwaukee office were personal expenses and must be considered as nondeductible commuting expenses.

The taxpayer has not appealed this decision.

Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 22, 1982). Edward Kraemer & Sons, Inc. has as its principal business rock crushing and road and bridge construction in Wisconsin and other states. On May 24, 1976 the department issued a notice of assessment of additional income taxes against the taxpayer with adjustments indicated thereon being made to reported income for the fiscal years ending March 31, 1971 and March 31, 1972. The issues in this case are whether and in what manner the Wisconsin net business losses incurred by the taxpayer in its fiscal years ended March 31, 1969 and 1970 should be taken into account in determining net business income in its fiscal years ended March 31, 1971 and March 31, 1972.

For its fiscal year ended March 31, 1969, Edward Kraemer & Sons, Inc. properly computed its Wisconsin income on the separate accounting method as authorized by s. 71.07 (2), Wis. Stats. During its fiscal year ended March 31, 1969, tax-

payer had total company income from operations of \$196,567.97 but incurred a Wisconsin net business loss of \$194,611.32 on the separate accounting method. For its fiscal year ended March 31, 1970 taxpayer again properly computed its Wisconsin income on the separate accounting method; taxpayer had total company income from operations of \$261,797.97 but incurred a Wisconsin net business loss of \$322,801.58 on the separate accounting method, in addition to such loss as incurred in the preceding fiscal year.

For its fiscal year ended March 31, 1971 taxpayer computed its Wisconsin income on the apportionment method as defined in s. 71.07 (2), Wis. Stats.

The Commission held that s. 71.06, Wis. Stats., does not provide for a corporate taxpayer on the apportionment method of reporting income to carry forward Wisconsin losses and offset them against Wisconsin income. Losses, if any, must be applied forward on a company-wide basis subtracted from company-wide income before the apportionment ratio is applied in determining Wisconsin taxable income.

The taxpayer has appealed this decision to the Circuit Court.

Kurz & Root Company vs. Wisconsin Department of Revenue (Circuit Court of Outagamie County, January 25, 1982. See WTB#19 for decision of Wisconsin Tax Appeals Commission.) Taxpayer is a manufacturer of electrical generators and related equipment who maintained from the mid-1950's until 1966 two plants in Wisconsin and one plant in California. The assessment being challenged in this case arises from a contract entered into between the taxpayer's California plant and the United States Air Force for the construction of certain equipment to be used by the Air Force. During the performance of the contract considerable difficulty and differences of opinion arose between taxpayer and the Air Force, ultimately concluding with a stipulated settlement under the terms of which \$404,745.00 was paid by the Air Force to the taxpayer to settle all claims arising as a result of this contract. Payment was made

in 1967 one year following the closing of the California operation (although apparently an additional \$88,255.00 had been paid the previous year which sum was attributable to the final settlement of this claim).

The Department of Revenue assessed a franchise tax in the amount of \$16,891.89 on additional income of \$309,479.23 which was achieved from subtracting from the settlement amount the taxpayer's adjustment of its gross income.

The Court indicated that there was simply no way in which the monies received as a result of the settlement of the contract with the Air Force could be categorized as anything other than income.

The taxpayer next argued that this income was not subject to Wisconsin tax since it was derived from a business transacted in California. The Court found that there was no California operation in the year in which the funds were received. In calculating taxable income, the year of receipt determines tax consequences and not the year in which the work was performed, the place in which the work was performed, or even the corporate structure as it existed during the performance of such work. In the year in which the money was received the taxpayer maintained only Wisconsin offices and the money was received in Wisconsin as a result of negotiations conducted by the corporate president who had his principal office in Wisconsin.

Finally, the taxpayer argued that the imposition of the tax by the department exceeded Wisconsin's constitutional power and must be declared invalid. The taxpayer's position on Wisconsin's power to assess taxes on income derived from another state was dependent upon the department's findings of fact. The department found that the income was derived in Wisconsin and not California. The Court stated that there was no question that the department has the power to assess taxes based upon income which is derived in Wisconsin. The department's conclusion that the income was derived as a result of business conducted in Wisconsin was supported by the evidence which the Court would not overturn.

The taxpayer has not appealed this decision.