judgment, Mr. Flanders was ordered to pay to Mary $400.00 per month "toward the support of the minor child of the parties" until the child is 18 years old or is sooner emancipated. These payments were to be made to the Portage County Clerk of Courts who would pay the amounts to the taxpayer. During 1979 Mary Flanders received $4,800.00 in child support payments from her former husband, through the Portage County Clerk of Courts. The checks were payable to Mary Flanders individually.

The issue in this case is whether or not child support payments received by Mary Flanders from her former husband under a divorce judgment, to be used to support the couple's minor child in taxpayer's custody, should be included in "household income" for purposes of calculating taxpayer's 1979 Wisconsin Homestead Credit. The Commission held that the $4,800.00 Mary Flanders received in 1979 from her former husband under the terms of a divorce judgment as child support is properly includable in "household income" for purposes of calculating taxpayer's 1979 Wisconsin Homestead Credit Claim.

The taxpayer has not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

INDIVIDUAL INCOME TAXES

1. Subchapter S Corporation's Capital Gain Income

For federal purposes, a Subchapter S corporation's net capital gain is an exception to the federal no-conduit rule which provides that the characteristics of individual items of income and expense do not pass through to shareholders. Since net capital gain retains its character as capital gain when passed through to shareholders, such income is given long-term capital gain treatment on the shareholder's individual federal returns.

For Wisconsin purposes, *all* income from a Subchapter S corporation is treated as ordinary income on an individual's Wisconsin income tax return. Wisconsin corporation franchise/income tax law does not distinguish income or loss from the sale of business capital assets from ordinary business income.

Because of this difference in the manner in which Wisconsin and federal law treat capital gains received from a Subchapter S corporation, a shareholder who has reported a long-term capital gain on line 15 of federal Schedule D (the line for reporting Subchapter S gains) must make an adjustment (an add modification on line 30, Form 1) on his or her Wisconsin income tax return to account for the difference in the Wisconsin and federal treatment of gains received from a Subchapter S corporation. To figure the amount of the add modification, a shareholder must determine (on a separate worksheet) the amount which would be reportable on line 28 of Wisconsin Form 1 if the Subchapter S gain is treated as ordinary income rather than capital gain income. This amount should then be compared to the amount which has been reported on line 28 and the difference between these amounts, if any, is the amount of the addition modification which must be made on line 30, Form 1.

Example: A person receives a $10,000 long-term capital gain from a Subchapter S corporation. Assume no other income is received.

	Gain Treated as Capital Gain	Gain Treated as Ordinary Income	Difference
Federal AGI	$4,000	$10,000	$6,000
Line 27, Wis. Form 1	4,000	-0-	(4,000)
Line 28, Wis. Form 1	$8,000	$10,000	$2,000

The addition to federal income which would be required to be made on line 30, Form 1 is $2,000.

2. Taxing Unemployment Compensation - Wisconsin Different Than Federal

Beginning with 1982, the base amounts for determining taxable unemployment compensation (UC) for federal purposes has been lowered to $12,000 for single persons and $18,000 for married persons filing a joint federal income tax return. However, for Wisconsin taxable UC must be determined under the base amounts in the Internal Revenue Code in effect as of December 31, 1981, which are $20,000 for single taxpayers and $25,000 for married persons. This difference between the federal and Wisconsin base amounts means that some taxpayers may have taxable UC for federal but not for Wisconsin. The instructions for the 1982 Form 1 and Form 1A explain how to compute taxable UC for Wisconsin.

Full Year Residents of Wisconsin: Full year residents must determine taxable UC using the $20,000 and $25,000 base amounts mentioned above. A schedule for computing taxable UC for Wisconsin is found on page 3 of the 1982 Form 1 and Form 1A instructions.

Part-Year Residents: UC received while a person is a resident of Wisconsin may be taxable for Wisconsin purposes, regardless of whether the payments relate to personal services performed in Wisconsin or another state. Part-year residents must determine taxable UC as follows:

1. All UC Received While a Resident of Another State

   If all UC is received while a person is a resident of another state, none of the UC is taxable for Wisconsin purposes, regardless of whether the payments relate to services performed in Wisconsin or another state.

Example: A person is a resident of Wisconsin through July 20, 1982. During 1982 the individual received $5,200 of unemployment compensation. This entire amount is received after July 20, 1982. None of the UC received during 1982 is taxable for Wisconsin purposes.

2. All UC Received While a Resident of Wisconsin

If all UC is received while a person is a resident of Wisconsin, the entire amount computed on line 6 of the Wisconsin Unemployment Compensation Schedule (see page 3 of the Form 1 (or Form 1A) instructions) is taxable for Wisconsin purposes.

Example: An individual terminated Wisconsin residency and became a resident of Minnesota on October 5, 1982. Prior to October 5, 1982, the individual received $7,600 of UC. No UC is received after this date. $650 is entered on line 6 of the Wisconsin Unemployment Compensation Schedule. This entire amount is taxable for Wisconsin purposes.

3. Part of UC Received While a Resident of Wisconsin and Part Received While a Resident of Another State

If only part of 1982 UC is received while a resident of Wisconsin, two computations must be made to determine the net taxable UC for Wisconsin. First, the Wisconsin Unemployment Compensation Schedule (see page 3 of the Form 1 (or Form 1A) instructions) must be completed. Taxpayers filing on Form 1 must enter the amount from line 6 of this schedule on line 14 of Form 1.

Next, compute the net taxable UC as follows:

$$\text{UC Entered on Line 6 of Wis. UC Schedule} \times \frac{\text{UC Received While a Resident of Wis.}}{\text{Total UC Received}} = \text{Net Taxable UC}$$

If a person is filing on Form 1A, net taxable UC is entered on line 6 of Form 1A.

If a person is filing on Form 1, the following amount must be entered as a subtraction from federal income on line 36, Form 1:

UC entered on line 14, Form 1	X
Less: Net taxable UC	X
Subtraction for UC not taxable by Wis.	X

Example: An individual became a resident of Wisconsin on May 4, 1982. This person received $1,300 of UC prior to becoming a Wisconsin resident and $1,560 after becoming a Wisconsin resident. Taxpayer entered $920 on line 6 of the Wisconsin Unemployment Compensation Schedule. Net taxable UC is computed as follows:

$$\$920 \times \frac{\$1,560}{\$2,860 \text{ (Total UC)}} = \$502 \text{ net taxable UC}$$

If the taxpayer is filing on Form 1A for 1982, $502 must be entered on line 6 of Form 1A.

If the taxpayer is filing on Form 1 for 1982, $920 must be entered on line 14 of Form 1. $418 is included as a subtraction from federal income on line 36. This amount is computed as follows:

$920 UC entered on line 14, Form 1
502 Less: Net taxable UC
$418 Subtraction for UC not taxable by Wis.

Nonresidents of Wisconsin: Unemployment compensation received by a nonresident is not taxable for Wisconsin purposes, regardless of whether the payments relate to personal services performed in Wisconsin or another state.

CORPORATION FRANCHISE/INCOME TAXES

1. Postponing the Gain on Property Involuntarily Converted

Facts and Question: Corporation X had a warehouse located in Wisconsin which, during the 1982 taxable year, was completely destroyed by fire. Insurance proceeds totaling $1,000,000 were received and a gain on the involuntary conversion of $350,000 was realized. Approximately six months after the fire, Corporation X purchased a similar warehouse for $750,000. Is Corporation X entitled to postpone any of the gain realized pursuant to section 71.03 (1) (g) 3 of the Wisconsin Statutes?

Answer: Yes. Corporation X has a recognized gain of $250,000. $350,000 is realized gain but $250,000 is recognized (taxable) gain because $250,000 is the amount of proceeds that were not reinvested. Corporation X may therefore postpone $100,000 of the realized gain.

(Note: The Form 4 1982 Wisconsin Corporation Tax Forms and Instructions (9th paragraph of the instructions for line 5 of Form 4) state that gain must be recognized to the extent that any gain realized exceeds the amount of proceeds not reinvested. This instruction for line 5 should state that any gain realized is recognized to the extent that any proceeds are not reinvested in property which is similar or related in service or use to the property involuntarily converted.)

2. Inventories - How Thor Power Tool Co. Case Applies for Wisconsin

Facts and Questions: The Thor Power Tool Co. case was decided by the U.S. Supreme Court in 1979. The taxpayer took a writedown of the parts and accessories inventory for tools out of production on the basis that this inventory was in excess of anticipated demand. Thor valued its inventories at lower of cost or market and failed to show that the market value had decreased below the price for which they were still selling the parts. Thor also failed to demonstrate that the spare parts were excessive since Thor had not scrapped any of these parts.

The Supreme Court stated that Section 471 of the Internal Revenue Code gave the Commissioner wide discretion in the area of inventory accounting and accounting methods. In making its ruling the Supreme Court further stated that the Internal Revenue Service had the authority to restore writedowns of "excess" inventories (both prior and current) to book income.

To implement this decision the Internal Revenue Service released Rev. Proc. 80-5 which was mandatory for the first taxable year ending on or after December 25, 1979. It provided a procedure for taxpayers to change their method of accounting for "excess" inventory. The automatic election provided for the taxpayer to correct closing inventory and to include the adjustment for the restoration of the "excess writedown" in opening inventory over a period of years.

How does the Thor Power Tool Co. case and the subsequent issuance of Rev. Rul. 80-60 and Rev. Proc. 80-5 apply for Wisconsin corporate franchise/income tax purposes?

Answer: Sections 71.11 (8) (a) and (9), Wis. Stats., are comparable to Sections 446 and 471 of the Internal Revenue Code. Therefore, the department has authority to require adjustments to inventory similar to that required by the Thor Power Tool Co. case and Rev. Rul. 80-60 and Rev. Proc. 80-5. However, Wisconsin law provides that the entire amount of a change in method of accounting must be included in income in the year of change. Therefore, the only adjustments necessary to make the change for Wisconsin are to correct the computation of the ending inventory in the year of change, and to reverse the federal return adjustments relative to opening inventory and any Section 481 (a) adjustment made for federal purposes.

SALES/USE TAXES

1. Dental Laboratory's Purchases

Facts and Questions: A dental laboratory is primarily engaged in making dentures ad artificial teeth to order for members of the dental profession. Paragraph (4) (d) of rule Tax 11.39, titled "Manufacturing", provides that dental labs are non-manufacturers. Are the materials the laboratory purchases (teeth, bonding agents, etc.) to make plates, dentures and bridges which are sold to dentists subject to the sales tax?

Answer: A dental laboratory may purchase without tax for resale any tangible personal property, including teeth and bonding agents, which are resold and physically transferred in the form of dentures and artificial teeth to persons in the dental profession. This is based on the Wisconsin Supreme Court's decision of October 7, 1977 in Milwaukee Refining Corp., 80 Wis. 2d 44.

2. Gift Wrapping

Facts and Question: A person purchases wrapping paper, decorative ribbon and tape and uses these items to wrap packages for customers who are charged for the wrapping materials and wrapping service. Retailers who previously have sold the gift to a customer provide gift wrapping. Other persons who have not sold the item also provide gift wrapping. Are the gross receipts from providing gift wrapping whether done by the gift seller or others subject to sales tax, and is a person providing gift wrapping able to purchase the wrapping materials used without tax?

Answer: The gross receipts from providing gift wrapping are subject to the sales tax, whether provided by the seller of the gift or by other persons who have not sold the gift to the customer. Persons engaged in this business may purchase the wrapping materials used in the business without tax for resale to customers.

3. Landscape Planning and Development Services

Facts and Question: A planning and development consultant provides on site and land use planning services to clients. This consultant provides a variety of services to clients including the following:

1. He is requested by a client to inspect a landscape planting project to affirm that the contractor has installed the trees, lawns, shrubs, walls, walks and grading in accord with the contract specifications.
2. He is requested by a client or the client's architect/engineer/attorney to inspect plants installed a year or two earlier to see if they should be replaced, under the terms of a contract between the client and the contractor, because of death or poor condition of the plants.
3. He is requested to inspect a tree damaged by storm or construction to determine if it needs trimming or removal and replacement and to place a cost estimate on such needed work. The inspection could also be of a lawn area damaged by construction equipment or errant/vandalistic driving.
4. As part of site analysis services, he makes recommendations to trim trees or to plant or remove hedges for purposes of enhancing customer exposure, or the opposite, of screening objectionable views.
5. He is requested to be an "expert" witness in civil litigation on any of the above matters if there is a dispute.

Are any of the five services described above considered landscape planning and counseling services which are subject to the sales tax under s. 77.52 (2) (a) 20, Wis. Stats.?

Answer: The first 4 services are taxable landscape planning and counseling services which are subject to sales tax under s. 77.52 (2) (a) 20, Wis. Stats. However, item no. 5 is not considered a taxable landscape planning and counseling service.

4. Renting Seating Affixed to Realty

Facts and Question: A coliseum is rented to promoters who sell tickets to recreational events which take place in the coliseum. The total rental charge provides the promoter with the use of the entire facility, including permanent seating which is securely attached to the realty. Is a portion of the total rental subject to the sales tax because it represents coliseum seating, which is generally considered to be personal property for sales tax purposes?

Answer: The definition of personal property in s. 77.51 (5), Wis. Stats., excludes personal property which is affixed to real property, if the same person (lessor) rents both the affixed personal property and the realty to which it is affixed. Therefore, the sales tax does not apply to any of this rental charge.

HOMESTEAD CREDIT

1. Surviving Spouse's Property Taxes Accrued

Facts and Question: The homestead was owned solely by the husband who resided in it with his spouse, who filed a 1980 Homestead Credit claim. The husband died in December, 1980 and his estate was closed in June, 1981. The surviving spouse paid all of the 1980 property taxes in 1981, and continued to occupy the homestead after his death.

Since the husband was the sole owner of the property, do the taxes paid by the wife come within the meaning of "property taxes accrued" or in the alternative, "rent constituting property taxes accrued" for purposes of her 1980 Homestead Credit claim?

Answer: In order to use property taxes as "property taxes accrued" for homestead credit purposes, the claimant must have been an owner of the homestead during the year for which the claim is made. Payment of taxes by a non-owner on his or her homestead may be considered as "rent consituting property taxes accrued" if such payments are made within the calendar year for which the claim is filed.

The 1980 property taxes were not paid until 1981, therefore the surviving spouse may not use the taxes paid as "rent constituting property taxes accrued" on her 1980 homestead claim. Since she did not own the property in 1980, she may not claim the taxes paid in 1981 as property taxes accrued on her 1980 claim.

2. Inclusion of a Portion of Business Mileage Expense as Depreciation for Homestead Purposes

Facts and Question: Business related automobile expenses may be deducted on an individual's income tax return. If the actual expense method is used, any depreciation deducted must be added back to household income for homestead credit purposes, per section 71.09 (7) (a) 1, Wis. Stats.

If the standard mileage rate is used, the rate is 20¢ per mile for the first 15,000 miles per year and 11¢ per mile thereafter. The mileage rate is also 11¢ per mile for each mile after the car is fully depreciated. A car used by a taxpayer who claims the standard mileage rate is considered fully depreciated after 60,000 miles at the maximum standard mileage rate.

Does any part of the car expenses have to be added back to household income as depreciation if the standard mileage rate is used?

Answer: Yes. The expenses covered by the standard mileage rate include depreciation on the car. Federal Revenue Procedure 82-61 provides that if the standard mileage rate is claimed for 1982, 7.5¢ per mile for the 1st 15,000 miles of business use during 1982 will be considered to be depreciation. Therefore, 7.5¢ per mile (up to 15,000 miles) must be added to household income per s. 71.09 (7) (a) 1, Wis. Stats. However, the total amount of depreciation added back cannot exceed the cost of the car.