rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of March 1, 1983. Part D lists new rules and amendments which have been adopted in 1983.

("A" means amendment, "NR" means new rule, "R" means repealed and "R & R" means repealed and recreated.)

A. Rules at Legislative Council Rules Clearinghouse

2.82 Nexus-A
4.50 Assignment, use and reporting of Wisconsin state tax number-A
7.21 Labeling-A
7.22 Tied house law; volume and quantity discounts-R
7.23 Activities of brewers, bottlers and wholesalers-A
8.02 Revenue stamps-occupational tax-A
8.11 Reports-A
8.21 Purchases by the retailer-A
8.22 Purchases made outside of state-A
8.35 Interstate shipments-A
8.42 Wine containers-R
8.43 Empty containers-A
8.66 Merchandise on collateral-A
8.76 Salesperson-A
8.81 Transfer of retail liquor stocks-A
8.85 Procedure for apportionment of cost of administration of s. 176.05 (23), Stats.-A
8.86 Tied house law; volume and quantity discounts-R
9.12 Refunds-military-A
11.71 Automatic data processing-NR

B. Rules at Legislative Standing Committees

11.03 Elementary and secondary schools and related organizations-A
11.05(3) Governmental units-A
11.10 Occasional sales-A
11.12 Farming, agriculture, horticulture and floriculture-A
11.14 Exemption certificates (including resale certificates)-A
11.15 Containers and other packaging and shipping materials-A
11.16 Common or contract carriers-A
11.19 Printed material exemptions-A
11.26 Other taxes in taxable gross receipts and sales price-A
11.32(3) "Gross receipts" and "sales price"-A
11.39 Manufacturing-A
11.48 Landlords, hotels and motels-A
11.49 Service station and fuel oil dealers-A
11.50 Auctions-A
11.51 Grocers' guidelist-A
11.52 Coin-operated vending machines and amusement devices-A
11.57 Public utilities-A
11.65 Admissions-A
11.67 Service enterprises-A
11.68 Construction contractors-A
11.84 Aircraft-A
11.87 Meals, food, food products and beverages-A
11.96 Interest rates-A
11.98 Reduction of delinquent interest rate under s. 77.62(1), Stats.-A

C. Rule Approved by Legislature But Not Effective

11.56 Printing industry-NR

D. Rules Adopted in 1983 (in parentheses is the date the rule was adopted)

2.081(5) Indexed income tax rate schedule for 1982-NR, (1/1/83)
2.945 Spousal individual retirement contributions-NR, (1/1/83)
11.001 Definitions and use of terms-A, (2/1/83)
11.01 Sales and use tax return forms-A, (2/1/83)
11.05(2) and(3) Governmental units-A, (2/1/83)
11.08 Medical appliances, prosthetic devices and aids-A, (2/1/83)
11.10 Occasional sales-A, (2/1/83)
11.16 Common or contract carriers-A, (2/1/83)
11.17 Hospitals, clinics and medical professions-A, (2/1/83)
11.26 Other taxes in taxable gross receipts and sales price-A, (2/1/83)
11.32(4) and(5) "Gross receipts" and "sales price"-A, (2/1/83)
11.38 Fabricating and processing-A, (2/1/83)
11.49 Service station and fuel oil dealers-A, (2/1/83)
11.57 Public utilities-A, (2/1/83)
11.66 Communications and CATV services-A, (2/1/83)
11.69 Financial institutions-A, (2/1/83)
11.84 Aircraft-A, (2/1/83)
11.85 Boats, vessels and barges-A, (2/1/83)
11.87 Meals, food, food products and beverages-A, (2/1/83)
11.93 Annual filing of sales tax returns-A, (2/1/83)
11.97 "Engaged in business" in Wisconsin-A, (2/1/83)

NOTE: The proposed new rules tax 16.01, 16.02, 16.03 and 16.04 relating to the property tax deferral program and the proposed revisions to rules tax 2.39 and 2.40 have been withdrawn and will not be adopted.

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

Edwin F. Gordon vs. Wisconsin Department of Revenue

John Kavalunas vs. Wisconsin Department of Revenue

Ronald D. Stelson, et.al. vs. Wisconsin Department of Revenue

Alfred L. Wenger and Laura E. Wenger vs. Wisconsin Department of Revenue

SALES/USE TAXES

A.F. Gelhar Co., Inc. vs. Wisconsin Department of Revenue

Security Savings and Loan Association vs. Wisconsin Department of Revenue

Senior Golf Association of Wisconsin, Inc. vs. Wisconsin Department of Revenue

Jan R. Toubl d/b/a Toubl Game Bird Farms vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Edwin F. Gordon vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 3, 1982). Edwin Gordon is a nonresident of Wisconsin and for the year 1979 filed a timely Wisconsin nonresident income tax return reporting income from Geuder, Paeschke & Frey Co., a federal "tax-option corporation" as defined in s. 71.042, Wis. Stats. Gordon was, during the entire fiscal year of Geuder, Paeschke & Frey Co., ended July 31, 1979, the owner of 100% of all classes of the outstanding stock of such corporation.

The issue in this case is whether the taxpayer's claimed credit against Wisconsin individual income taxes in the amount of $26,945.83 representing the sales or use tax credit allowable for such year to Geuder, Paeschke & Frey Co. on fuel and electricity consumed in manufacturing tangible personal property in Wisconsin under s. 71.043(2), Wis. Stats., is allowable. Such amount represents the sales or use tax credit under Chapter 77, Wis. Stats., which would have been allowable to Geuder, Paeschke & Frey Co. for the year 1979 on the franchise or income tax liability of that corporation. However, the income of Geuder, Paeschke & Frey Co. for 1979 was included in the taxpayer's individual income for 1979, because of the tax-option corporation status of that corporation. The department's August 25, 1980 assessment disallowed the taxpayer's sales and use tax credit and imposed the underpayment of estimated tax penalty. On September 16, 1980, Gordon filed a timely petition for redetermination with the department objecting to the disallowance of the sales or use tax credit plus the interest thereon and the underpayment of estimated tax penalty attributable thereto.

The Commission held that the credit provided by s. 71.043(2), Wis. Stats., is available to the taxpayer as an individual because he is the sole shareholder in a corporation, the income of which is reportable by the taxpayer pursuant to s. 71.01(1), Wis. Stats., by virtue of s. 71.042(1), Wis. Stats.

The department has appealed this decision to the Circuit Court.

John Kavalunas vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 30, 1982). John Kavalunas was a legal resident of Illinois until September 1, 1978, when he moved and changed his domicile to Wisconsin. Kavalunas was employed by the Quaker Oats Company, at an Illinois location, in the accounting department until August 12, 1978 when he terminated that employment. As an employee of Quaker, taxpayer was a participant in an employer-sponsored qualified profit sharing plan. Quaker made periodic contributions to Kavalunas' profit sharing account. The plan had a fiscal year running from July 1 to June 30 of successive calendar years.

The plan provided for a cash distribution to Kavalunas upon termination of his employment, to commence as soon as practicable thereafter, but no later than 60 days after the end of the fiscal year in which the distribution first became payable. The employer construed this 60 day period to commence with the date of termination. Generally, it takes the employer three to four weeks to process such a termination payment. As a matter of the employer's administrative practice, however, taxpayer upon termination of his employment could have made a written request to receive his payment immediately, and received a prepayment of the balance requested within a few days of termination. However, Kavalunas did not make such written request.

Taxpayer received a distribution of $3,422 from the Quaker profit sharing plan in October 1978. Kavalunas filed a 1978 Wisconsin individual income tax return claiming part-year Wisconsin residency from September 1 to December 31, 1978, but subtracted as a modification to federal adjusted gross income the $3,422 profit sharing distribution. Taxpayer also filed an Illinois income tax return for the period January 1, 1978 to September 1, 1978, reporting the profit sharing distribution as Illinois income not subject to taxation. The department audited Kavalunas' 1978 Wisconsin income tax return and disallowed the subtract modification claimed for the profit sharing distribution. Kavalunas was a cash basis taxpayer for the calendar year 1978.

Taxpayer contended he constructively received the profit sharing distribution while still a legal resident of Illinois and that such income is not subject to Wisconsin income taxation.

The Commission held that Kavalunas was a legal resident of Wisconsin in October 1978 when he received a $3,422 distribution and such income is subject to Wisconsin income taxation. The distribution was not constructively received prior to September 1, 1978.

The taxpayer has not appealed this decision.

Ronald D. Stelson, et.al. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 12, 1982). This is an appeal of the department's disallowance of meal expenses claimed by the taxpayers as employee business expenses for the calendar years 1977, 1978 and 1979. The taxpayers were, during the period involved, employees of Prince Corporation of Marshfield, Wisconsin, working as truck drivers.

Taxpayers worked four days per week, in 12 - 12½ hour days, depending on their trip destination, averaging between 48 - 53 hours per week. They would receive their daily truck driving assignment from their employer's dispatcher, starting as early as 5:00 a.m., and returned home as late as 8:30 p.m., the same day. During the years involved, they *were not* away from home overnight.

The taxpayers received cash meal reimbursements from their employer, Prince Corporation, for the meals they consumed away from their employer's place of business on their daily travels. They accounted to their employer for their claimed meal reimbursements by submitting a weekly expense account. Both their employer and the United States Interstate Commerce Commission required the taxpayers to maintain a daily log of their travels. The taxpayers' employer, Prince Corporation, included the meal reimbursement it paid the taxpayers on its Form 1099. The taxpayers deducted same as an employee business expense on their 1977, 1978 and 1979 Wisconsin individual income tax returns.

The taxpayers maintain that because of their irregular work schedule and their accountability to their employer, the meals in question should be construed to be for the "convenience of their employer", and thus, deductible under Section 119 of the Internal Revenue Code.

The Commission held that the cash meal reimbursements received by the taxpayers during the years 1977, 1978 and 1979 were not meals furnished on the employer's business premises, or meals furnished "while away from home", and also were not furnished for the "convenience of the employer", as those phrases are utilized in the Internal Revenue Code, and defined in the cases interpreting the Code; and thus, are not deductible employee business expenses, under I.R.C., Sec. 119.

The taxpayers have not appealed this decision.

Alfred L. Wenger and Laura E. Wenger vs. Wisconsin Department of Revenue (Court of Appeals, District II, November 23, 1982). Alfred and Laura Wenger appealed from a judgment upholding a determination by the Wisconsin Tax Appeals Commission that the department correctly denied the Wengers' petition for redetermination of income tax assessments made against them for the years 1974-77 and correctly assessed a twenty-five percent negligence penalty against the Wengers for the year 1977. The issues on appeal are whether the income from property and lifetime services assigned by the Wengers to a family trust is taxable to the Wengers as individuals and whether the department properly assessed a negligence penalty for the year 1977.

In January 1973, Alfred Wenger owned a fifty percent partnership interest in the Millard Machine Shop. The other fifty percent interest was held by R. Logan Wenger, Alfred's son. On June 25, 1973, the elder Wenger set up a trust called the Alfred L. Wenger Family Estate. A Trust. The trust instrument was signed by Alfred Wenger as grantor-creator and by his wife, Laura, and his son as trustees. The trust instrument gives the trustees virtually unlimited power over the trust and does not identify any beneficiaries.

On July 2, 1973, Alfred Wenger conveyed both real and personal property and leased two automobiles to the trust. The following month, Wenger conveyed "the exclusive use" of his "lifetime services and all the currently earned remuneration therefrom" to the trust. Laura Wenger, an employee of Walworth County, also transferred her property to the trust. After creation of the trust, the Wengers retained complete control over all of their income and assets.

In 1974, the trust paid the elder Wenger's personal deductible expenses, such as medications and medical care; it also paid the Wengers' nondeductible living expenses, such as housing, transportation and clothing.

The trust filed 1974 through 1976 returns reporting Alfred Wenger's partnership income and the wages that Laura Wenger received from Walworth County. The Wengers filed returns reporting only the income received as trust manager and secretary and some interest income.

On January 12, 1976, the department made adjustments to the Wengers' individual returns for 1974, transferring the income reported by the trust to the Wengers individually. When the trust and the Wengers submitted returns for 1977 that followed the pattern of the three previous years, the department assessed a twenty-five percent negligence penalty against the Wengers for filing incorrect 1977 returns.

The Court of Appeals held that income is taxed to the persons who earn it and the income of a grantor trust is taxable to the grantors, 26 U.S.C. secs. 672(a) and (b), 674(a) and 677(a). Where an assignment of lifetime services has been made to an entity, identification of the proper taxpayer depends on whether it is the person or the entity that in fact controls the earning of the income. Alfred Wenger has complete control over his work as a machinist. Wenger's partnership income was, therefore, taxable to him rather than to the trust. Laura Wenger did not even formally convey her lifetime services to the trust. Her wages were properly taxable to her.

The Court of Appeals also held that the department properly assessed the twenty-five percent negligence penalty against the Wengers for the year 1977. The Wengers did not show good cause for the filing of an incorrect 1977 return. The Wengers were aware that both the department and the Tax Appeals Commission regarded their trust arrangement as ineffective to shift their burden of taxation onto the trust.

The taxpayers have not appealed this decision.

SALES/USE TAXES

A. F. Gelhar Co., Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, Branch 10, December 15, 1982). The issue in this case is whether mining and processing foundry sand is "manufacturing" as defined in s. 77.51(27), Wis. Stats., so that a company engaged in this business is exempt from the sales and use tax under s. 77.54(6)(a), Wis. Stats., on its purchases. The Court concluded that under these statutes, and based on the facts presented, purchases made by the taxpayer are exempt from the sales and use tax.

The taxpayer, A.F. Gelhar Co., Inc., a Wisconsin corporation, and its predecessor sole proprietorship, have been in the business of mining and processing foundry sand since 1919. The taxpayer's operation is a three-step process. The first step is the blasting of the sand pit to loosen material so that it may be removed by the use of a front-end loader. The sand is then transported to a hopper, where by agitation it is then broken up according to size by a process using belts and screens. The material in excess of one-half to one-quarter inch is rejected.

Since 1977 the material from the hopper screens has been run through washing equipment which removes extraneous materials and impurities, such as wood chips, dirt, stones and trace elements of calcium oxide, titanium oxide, magnesium oxide, iron oxide and clays. After screening and washing, the sand is dried and further screened into bins, according to grain fineness. The taxpayer's finished product is graded and blended according to specifications published by the American Foundryman's Society, a national trade organization.

All of the equipment used by the taxpayer in its operation is located and operated within the confines of its pits. The Standard Industrial Classification of the U.S. Office of Management and Budget classifies the taxpayer's business as "mining".

The Circuit Court supported the findings of the Wisconsin Tax Appeals Commission in its April 23, 1982 decision.

The Court concluded that the taxpayer's finished product is a new article with a different form, use and name, produced by a process regarded as manufacturing. It also ruled the taxpayer's sand operation is considered "manufacturing" as defined in s. 77.51(27), Wis. Stats., so it is entitled to an exemption from tax under s. 77.54(6)(a), Wis. Stats., for its purchases of machines, supplies and repairs.

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

Security Savings and Loan Association vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 22, 1982). The issues in this case are (1) whether the taxpayer is liable for use tax on items purchased from both out-of-state suppliers and in-state suppliers for give away as premiums on savings deposits; (2) whether the taxpayer is liable for use tax on items (both premium items and non-premium items) purchased from in-state vendors, i.e., whether the vendor or the vendee is responsible for the sales and use tax due on these purchases and (3) whether the negligence penalties assessed by the department are proper.

The premium items are items which the taxpayer gave away to its customers for savings deposits as part of its promotional campaigns. During this period the taxpayer never provided vendors with resale certificates on its purchases from in-state vendors. This association was subject to federal guidelines establishing ceilings on the cost of items that could be given away. If the cost of an item was above the federal ceiling, it would charge for the portion above the ceiling at cost, the invoice price. The taxpayer had no seller's permit because it was not selling items above cost.

The in-state vendors from whom the taxpayer purchased items upon which the use tax herein is imposed never informed the taxpayer that they were not collecting or paying sales tax on these purchases.

Due to the commencement of this audit, along with information being disseminated to savings & loans generally concerning the department's policies on use tax liability for give away premiums purchased, in 1976, the taxpayer began filing use tax returns, although it began purchasing items for give away prior to 1972.

The Commission held that the association was the user of premium items purchased to give away to customers making deposits as part of its promotional campaigns and such purchases are subject to the use tax under s. 77.53(1), Wis. Stats., whether purchased from out-of-state or in-state vendors. The Commission also found that pursuant to s. 77.53(2), Wis. Stats., the association is subject to use tax on purchases (of both premium and non-premium items) from in-state vendors for which it is unable to provide receipts with the sales tax separately stated.

The Commission also found that the negligence penalties in both assessments did not apply, because the taxpayer has shown by satisfactory evidence that its failure to file required use tax returns was due to reasonable cause and not due to neglect.

The taxpayer has appealed this decision to the Circuit Court. The department will not appeal this decision.

Senior Golf Association of Wisconsin, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 16, 1982). The issue in this case is whether the golf association's membership fees and annual dues are subject to the sales tax under s. 77.52(2)(a)2, Wis. Stats.

The association is a non-stock nonprofit Wisconsin corporation organized under Chapter 181 of the Wisconsin Statutes. The purpose of the organization is to conduct golf outings of its members. It has approximately 500 members, and the requisite for membership is that the applicant must be a resident of the State of Wisconsin, must be an amateur golfer, and must be at least 55 years of age.

The association conducts seven golf outings a year and 170 to 190 members attend each event. Six of these are one-day golf outings and one of the events is a two-day outing that extends over a two-day period. The taxpayer owns no golf facilities of any kind, such as a clubhouse or a golf course. They hold these outings at private country clubs.

The members of the association during the years 1977 through 1980, paid an initiation fee of $25 when they were elected to membership. They also must pay annual dues to belong to the association. In 1977, the annual dues were $12.50, and in 1978, 1979, and 1980, the annual dues were $15.00. Members are notified of planned outings by mail and asked to register if they plan to attend. The Senior Golf Association states the per person price for each outing and collects the money from its members. The price ordinarily covers the cost of the outing and includes lunch, dinner, trophies, golf cart rentals, etc. The outing fees collected by the association are paid to the private country club hosting that event.

The Commission ruled that the association's membership fees and dues are subject to the sales tax under s. 77.52(2)(a)2, Wis. Stats., and Rule Sec. Tax 11.65(1)(b) of the Wisconsin Administrative Code.

The taxpayer has appealed this decision to the Circuit Court.

Jan R. Toubl d/b/a Toubl Game Bird Farms vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 12, 1982). Toubl Game Bird Farms was a partnership between Jan R. Toubl and his father, Raymond F. Toubl, during the period under review. Jan Toubl was the operator of the business. The taxpayer's main business activity was to raise and sell live game birds, including ring-necked pheasants, chukar partridge, wild turkeys and Hungarian partridge. The taxpayer keeps the breeders; gathers and incubates eggs; raises the newly hatched chicks; and sells both chicks and older birds as needed.

Jan Toubl testified that about 78% of his gross sales were live pheasants to hunting clubs for the hunting clubs' customers to shoot (some customers would retain and eat the shot pheasant); no more than 5% were killed and dressed birds sold to individuals, and none were sold to restaurants; about 2% were sold to dog kennels for training dogs; and the remaining 15% of gross sales were "chicks and eggs" to purchasers who had licenses from their states, including Wisconsin, en-

titling them to obtain birds and eggs. In addition, a very small number of birds was sold to taxidermists.

During this period the taxpayer did not have a seller's permit and did not collect sales tax on any of its sales nor file sales and use tax returns with the department. In addition the taxpayer did not request nor receive sales and use tax exemption certificates from its customers. The taxpayer did not contact any representative of the department to inquire into the sales tax status of its sales, nor review the Wisconsin Statutes. In April, 1981 the department sent Jan Toubl a 2-page memorandum, captioned "To: Operators of Shooting Preserves and Game Farms", which summarized the application of the sales tax law to the gross receipts of these types of businesses.

The Tax Appeals Commission indicated that the first issue for determination was whether the taxpayer's sales of pheasants and other game birds were exempt under s. 77.54(20), Wis. Stats., from the Wisconsin sales tax as sales of food, food products, and beverages for human consumption. The Commission found that the taxpayer's sales of pheasants and other game birds to hunting clubs, dog kennels, taxidermists, and its sales of eggs and chicks were not exempt from the Wisconsin sales tax as sales of food, food products, and beverages for human consumption. The taxpayer had not met its burden of proof in providing exemption certificates covering these sales as required by ss. 77.52(13) and (14), Wis. Stats., or by showing in some other way, by clear and convincing evidence, what measure of tax is exempt.

The Tax Appeals Commission also held the taxpayer was not relieved of its tax liability on the basis of equitable estoppel, and the taxpayer has not shown that it has been denied equal protection of the laws under Amendment XIV, sec. 1 of the U.S. Constitution by the imposition of sales and use tax on its sales of game birds.

The fourth issue was whether references in the assessment notice to Wisconsin Statutes not applicable to the assessment invalidate the assessment. The Commission found that such references do not invalidate the assessment for the years 1974 and 1975.

The last issue was whether the department's imposition of delinquent interest rates was in accordance with the law and the Commission held that it was.

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 adjusiment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

INDIVIDUAL INCOME TAXES

1. Is Interest Income Received From Bonds Issued by the Wisconsin Housing Finance Authority Taxable?
2. Stock Dividend From a Dividend Reinvestment Plan of a Qualified Public Utility

CORPORATION FRANCHISE/INCOME TAXES

1. Deductibility of Motor Carriers' Operating Authorities

SALES/USE TAXES

1. Construction and Leasing Grain Storage Bins and Silos to Farmers
2. Governmental Unit's Receipts From Shrub and Tree Services and Charges for Trees
3. Landscaping and Lawn Maintenance on a Utility's Right-of-Way

HOMESTEAD CREDIT

1. $5,000 Write-off for Section 179 Property Not Considered Depreciation for Homestead Credit and Farmland Credit

INDIVIDUAL INCOME TAXES

1. Is Interest Income Received From Bonds Issued by the Wisconsin Housing Finance Authority Taxable?

Facts and Question: Is interest income which an individual receives from bonds issued by the Wisconsin Housing Finance Authority excludable from his or her Wisconsin taxable income under the provisions of s. 234.28, Wis. Stats.?

Answer: No. Interest received from a bond issued by the Wisconsin Housing Finance Authority is subject to Wisconsin income tax. Section 234.28 of the Wisconsin Statutes provides that the Wisconsin Housing Finance Authority (which is a corporate public body created by the Legislature) *itself* is exempt from taxation on income it receives. The tax exemption provided by s. 234.28, Wis. Stats., does not extend to interest which is received by individuals who invest in Wisconsin Housing Finance Authority bonds.

(The bonds which are the subject of this Tax Release should be distinguished from bonds which may be issued by a *municipal* public housing authority. Interest on public housing authority bonds of Wisconsin municipalities is exempt from Wisconsin income tax under s. 66.40(14), Wis. Stats. See Administrative rule Tax 3.095(4).)

2. Stock Dividend From a Dividend Reinvestment Plan of a Qualified Public Utility

Question: An individual received a stock dividend from a dividend reinvestment plan of a qualified public utility. This dividend has been excluded from federal taxable income but must be added back (per s. 71.05(1)(a)12, Wis. Stats.) in determining his or her Wisconsin taxable income. If this individual did not use any (or used only a portion) of the $100 dividend exclusion provided by the Internal Revenue Code when determining the amount of dividend income reported on line 8 of his or her Wisconsin Form 1, can the