merated in Sections 57(a)(2), (3), (6), (8) and (11) of the Internal Revenue Code plus adjusted itemized deductions and capital gains deductions under the 1980 Code. During the period under review Section 57(a)(2) of the 1980 Internal Revenue Code addressed accelerated depreciation on Section 1250 real property. This accelerated depreciation on real property is subject to the minimum tax pursuant to s. 71.60(2), Wis. Stats., 1981.

The taxpayer has not appealed this decision.

Wisconsin Department of Revenue vs. Overly, Inc. (Circuit Court of Winnebago County, March 26, 1984). The department petitioned for review of a decision of the Wisconsin Tax Appeals Commission, which determined that receipt of the proceeds of life insurance did not constitute "other items of Wisconsin income" within the meaning of s. 71.06(1), Wis. Stats., and therefore was not an appropriate offset against the net business loss claimed by the taxpayer in computing its loss carryforward. (See WTB #34 for a summary of the Tax Appeals Commission's decision.)

The taxpayer received the proceeds of life insurance upon the death of a corporate officer. The corporation sustained a net business loss for the year in which the proceeds were received and attempted to carry that loss forward as provided in s. 71.06, Wis. Stats., to which the department objected. Such life insurance proceeds, by s. 71.03(2), Wis. Stats., are exempt from taxation.

In Midland Financial Corp. v. Department of Revenue, 116 Wis. 40 (1983), the Supreme Court held that the term "other items of Wisconsin income" in s. 71.06(1), Wis. Stats., was ambiguous. The Supreme Court, in Midland, found that the legislature intended a mere deduction should not be used to reduce the loss carryforward. An exemption appears to present an even stronger indication of intent.

The Circuit Court accordingly concluded that the legislature, in using the language "not offset by other items of Wisconsin income in the loss year", did not intend to include, as other items of income, insurance proceeds received.

The department has not appealed this decision.

333 Enterprises, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 29, 1983). On December 27, 1982, the department issued a Notice of Amount Due in the total amount of $496.89 as an addition to tax due relating to an underpayment of estimated tax for the fiscal year ending August 31, 1982. The taxpayer filed a petition for redetermination of this assessment which the department denied.

For the fiscal year ending August 31, 1981, the taxpayer's net tax liability was $2,997. For the fiscal year ending August 31, 1982, the taxpayer made four equal installment payments of $750 on a timely basis, for a total of $3,000. For the fiscal year ending August 31, 1982, the taxpayer reported on its return a net tax liability of $11,489 which failed to include the 10% surtax for fiscal years ending after July 1, 1982. The taxpayer's total net tax liability for the fiscal year ending August 31, 1982 was $12,673. The taxpayer's total estimated payment for the fiscal year ending August 31, 1982 was less than 60% of the tax shown on the return for that year.

The Commission held that pursuant to ss. 71.22(10)(a) and (b), Wis. Stats., the taxpayer did not qualify for the exceptions provided therein to the imposition of the addition to tax with respect to the taxpayer's underpayment of estimated taxes for the fiscal year ending August 31, 1982 in that his total estimated payment in said year was less than 60% of the tax shown on the return filed. The taxpayer does not come within the provisions for any other exception to the imposition of the addition to taxes under s. 71.22, Wis. Stats.

The taxpayer has not appealed this decision.

SALES/USE TAXES

Kohler Company vs. Wisconsin Department of Revenue (Circuit Court of Dane County, February 15, 1984). The taxpayer manufactures plumbing products which it sells to its authorized distributors. These distributors, in turn, sell the products to building and plumbing contractors. To boost sales, Kohler has designed a number of promotional displays featuring its products in modern kitchen or bathroom environments. Typical displays include a Kohler bathtub, sink, toilet or combination thereof along with decorative materials such as flooring, false walls or potted plants.

A review of the 1976 Kohler display catalogue shows that these promotional displays are easily divisible into three categories. The first category contains displays which may be purchased by the distributor for the net price of the Kohler products in that display. According to the catalogue, any decorative materials in that display are included at "No Charge". Thirty-three displays listed in the 1976 catalogue fall into this first category. The second category contains displays which may be purchased by a distributor for a charge in addition to the net price of the Kohler products in the display. This additional charge ranges from $24.95 to $175.00. The 1976 catalogue lists ten displays in this category. The final category contains displays that do not have Kohler plumbing products in them. These displays range in price from $8.40 to $65.00. There are three displays in this third category.

For the period in question, 1973 through 1976, Kohler purchased the decorative materials (the potted plants, etc.) from suppliers inside and outside of Wisconsin. On purchases from Wisconsin suppliers, Kohler did not pay a sales tax. Instead, Kohler gave the supplier a resale certificate as allowed by s. 77.52(13), Wis. Stats. In 1980, the department decided that Kohler was giving the decorative materials to its distributors, not reselling them. This gift by Kohler to its distributors made the sale of decorative materials by the Wisconsin suppliers to Kohler a taxable sale under s. 77.51(4)(k), Wis. Stats. Thus, the department assessed $15,091.70 tax on Kohler for those purchases. The Wisconsin Tax Appeals Commission unanimously affirmed the assessment and found that in most cases, the display materials were supplied at no additional charge when the distributor bought the Kohler fixtures at net. As a conclusion of law, the Commission found that the display materials were given, not resold, to the distributors. The issue, then, is whether the decorative materials purchased by Kohler from Wisconsin suppliers were given or resold to its distributors.

In dealing with the first category of displays, "net price" as used in Kohler's catalogue equals the normal distributor wholesale price. Thus, a distributor buying a display from this first category receives the decorative materials and the Kohler products for the normal price of the products alone. Under Department of Revenue v. Milwaukee Brewers, 111 Wis. 2d 571 (1983), and common sense, the decorative materials were given to the distributor; there truly was no charge for them.

In dealing with the second category of displays, those purchased for a charge in addition to the net price of the included Kohler products, it is necessary to analyze s. 77.51(4), Wis. Stats. The key phrases in that section are "without valuable consideration" and "distributed gratis". A distributor wanting to purchase display #76-88 from the 1976 Kohler catalogue would pay $175.00 in addition to the net price of the included plumbing products. For #75-12, he would pay $149.00 additional. Other displays require additional payments of $125.00 or $115.00. Thus, for these displays, the transfer of decorative materials is not "without valuable consideration" and certainly not "gratis". It may be true that Kohler lost money or, at best, broke even on the sale of decorative materials to its distributors. But lack of a subsequent profit does not serve to make the sale from the supplier to Kohler taxable. The decorative materials in these displays were resold by Kohler to its distributors and Kohler properly used resale certificates to exempt its purchases of the materials from tax.

The third category of displays, those not containing Kohler plumbing products, is easily dealt with. Kohler's tax liability in this case is based on a projection of a two-month sample of display sales. The sample, and thus the projection, does not contain any sales of displays in this category. Therefore, none of Kohler's tax liability stems from the sale of these displays to distributors; they are irrelevant to this case.

The Circuit Court affirmed the Tax Appeals Commission in as much as it held Kohler liable for tax on purchases subsequently given to its distributors, but reversed the decision regarding the purchases resold by Kohler.

The taxpayer has appealed this decision to the Court of Appeals. The department has not appealed the portion of this decision which is adverse to the department.

The Mylrea Company, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 16, 1982). In WTB #29 it was indicated that the department appealed the Tax Appeals Commission's March 16, 1982 decision on The Mylrea Company, Inc. vs. Wisconsin Department of Revenue to the Circuit Court. The department did not appeal the Tax Appeals Commission's decision.

Schuster Construction Company vs. Wisconsin Department of Revenue (Circuit Court of Dane County, April 18, 1984). This is an action to review a decision of the Wisconsin Tax Appeals Commission in which the Commission affirmed an earlier assessment of additional taxes, interest and penalties against the taxpayer. The taxpayer contends that the Commission erred in holding: (1) that it had jurisdiction to review only the penalty portion of the assessment, and (2) that the penalty was properly assessed.

With respect to jurisdiction, the Commission held that it was without authority to review any matter not previously raised in the taxpayer's petition for redetermination under s. 71.12, Wis. Stats. Since the taxpayer's request for redetermination specifically requested review only of the penalty assessment, the Commission held that its jurisdiction was correspondingly limited. The taxpayer contends that this ruling was improper in two respects. First, it argues that the Commission was in error as to the scope of its authority. While ss. 71.12(6) and 73.01(5), Wis. Stats., specifically require that all disputed issues be disclosed in a petition to the Commission, there is no corresponding statutory requirement for petitions for redetermination. Second, the taxpayer asserts that consideration should have been given to the fact that the person who prepared the petition for redetermination was not a lawyer who should be expected to possess well-developed pleading skills.

The Circuit Court disagrees on both counts. As to the scope of the Commission's authority, the taxpayer's argument ignores the fact that submission of a petition for redetermination by the Department of Revenue is prerequisite to an appeal to the Commission. In addition, s. 71.12(1)(c), Wis. Stats., authorizes appeals to the Commission for taxpayers who are "aggrieved by the department's redetermination." Section 73.01(5), Wis. Stats., authorizes such appeals for those who "filed a petition for redetermination" and are "aggrieved by the redetermination of the department." It is difficult to see how a taxpayer may be considered "aggrieved" by a redetermination which the department did not, and was not requested to make. As a result, the court concurs in the Commission's view of its authority.

In support of its contention that consideration shall have been given to the fact that it was not represented by counsel when it submitted its petition for redetermination, the taxpayer has cited Rowe v. WDR, Docket No. I-8801, in which the Commission did consider an issue of domicile which had not been explicitly raised in either the petition for redetermination or the petition for review by the Commission. In this case, however, there can be no question of liberal versus strict construction because the petition for redetermination is explicit. The petition not only fails to request redetermination of matters other than the penalty, it expressly disavows any interest in redetermination of the tax itself. It simply cannot be construed as a request to review the entire assessment. As a matter of law, however, the fact that a party to a proceeding chooses to appear pro se cannot automatically excuse every action the party might later come to regret. For these reasons, the court is unable to find that the Commission committed error in confining its review to the matter of the penalty.

As regards the merits of the penalty assessment, the taxpayer contends that it should not be penalized for underreporting its use tax because in computing that tax initially it used a method which the department itself had used in an earlier audit and which the taxpayer felt was acceptable to the department. The taxpayer also argues that some of the tax would not have been due at all but for an accounting error which caused it to pay for certain purchases which should have been charged to a sister corporation, in which case the purchases would have been tax exempt. Third, the tax-

payer asserts that it should not be subject to a penalty for its underreporting of taxable sales because of its reliance on what turned out to be invalid resale certificates as well as representations by its purchasers that the sales were exempt.

The method of calculating use tax to which the taxpayer refers involves averaging the cost of cement used in its projects. The department used this method in an earlier audit of the taxpayer in which unpaid use tax was also in issue only because of a dearth of information in the taxpayer's records as to the actual cost of cement used by the taxpayer. In the opinion of this court, the Commission acted well within its authority in rejecting the taxpayer's profferred explanation.

With respect to the bookkeeping error, the court considers it quite irrelevant that a different method of accounting would have rendered some of the taxpayer's purchases tax exempt. Neither the error itself nor the taxpayer's failure to recognize its consequences even approaches "good cause" within the meaning of s. 77.60(3), Wis. Stats. The taxpayer's error was clearly negligent.

Finally, the court must also reject the taxpayer's claimed reliance on invalid resale certificates and representations by its purchasers as a justification for its underreporting of taxable sales. There is simply no basis in the record for a conclusion that this reliance was reasonable. Without such evidence, the court cannot find error in the Commission's rejection of this argument.

For all the foregoing reasons, it is the view of the Circuit Court that the decision of the Commission is affirmed.

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

Senior Golf Association of Wisconsin, Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, March 9, 1984). The issue presented by this appeal is if the membership dues and initiation fees collected by the taxpayer are taxable under s. 77.52(2)(a)2, Wis. Stats., if the dues and fees are used exclusively for administrative costs, and membership provides members with the opportunity to use private golf courses free of charge. The Wisconsin Tax Appeals Commission determined that the association's initiation fees and annual dues are taxable under s. 77.52(2)(a)2, Wis. Stats., because membership to the taxpayer's social organization provides access to or use of private golf facilities. (See WTB #32 for a summary of the Tax Appeals Commission's decision.)

The taxpayer contends that members are not given present, enforceable rights to the use of or access to the golf facilities used in tournaments for consideration given. Therefore, it should not be required to pay sales tax on the dues and fees, and taxes paid during 1977 through 1980 should be refunded.

The sales tax statute's meaning and purpose is well understood. Further explanation of its operation is found in Wis. Adm. Code section Tax 11.65(1)(b). The department correctly states that the Wisconsin sales tax intends to tax gross receipts of a sale of tangible goods and services rather than tax just the sale's net receipts or profits. Recently, the Wisconsin Court of Appeals reviewed the Dane County Circuit Court case cited by both parties, City of Racine v. Wisconsin Dept. of Revenue, 115 Wis. 2d 510 (1983). In that case, the court reiterated the legislature's intent to tax gross receipts and concluded that administrative costs are included in gross receipts. The issue in this sort of sales tax, stated the court, is not how the seller uses the collected fees but rather whether a participant is required to pay to gain access to or use of the facility. Moreover, the fact that the sports facilities are not owned by the seller is immaterial. Therefore, the Circuit Court's only concern is if the department incorrectly determined that membership to the taxpayer association was necessary to gain access to or use of the private clubs hosting the taxpayer's golf tournaments.

The department, through the five-member Tax Appeals Commission, found that the association's membership dues and fees entitled members to access to various private country club golf courses through the golf tournaments arranged by the taxpayer. Phrased negatively, one could not participate in the tournaments and have free use of the host golf courses unless he was a member of the taxpayer organization. The department found, as did the court in City of Racine, that the "no pay - no play" membership effect essentially means members pay for access to private golf courses up to seven times a year. As a result, the membership dues and fees are subject to state sales tax under s. 77.52(2)(a)2, Wis. Stats., and Wis. Adm. Code section Tax 11.65(1)(b). The fact that the private country clubs are not owned by the taxpayer is of no consequence and neither is the fact that membership dues did not directly pay for green fees. Finally, the fact that the association used the dues to defray administrative costs is also inconsequential in this sales tax inquiry.

Therefore, the Circuit Court affirmed the Wisconsin Tax Appeals Commission's decision that the taxpayer's membership dues and fees are subject to state sales tax under s. 77.52(2)(a)2, Wis. Stats.

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

Shopper Advertiser, Inc., d/b/a Shopper Advertiser - Walworth County, and Shopping News, Inc., d/b/a Greater Beloit Shopping News, vs. Wisconsin Department of Revenue (Wisconsin Supreme Court, February 28, 1984). The issues presented on appeal are whether (1) the proper venue for judicial review of a decision of the Tax Appeals Commission is in the county where the petitioner-taxpayer resides, as specified in s. 227.16(1)(a), Wis. Stats., or in Dane County, as specified in s. 77.59(6)(b), Wis. Stats., and (2) if venue was in Dane County, the action was properly transferred, pursuant to s. 807.07(2), Wis. Stats., from the Rock County Circuit Court, where the action was originally filed, to the Dane County Circuit Court. (See WTB #25 for a summary of the Circuit Court's decision.)

The Supreme Court ruled that the running of the thirty-day time limit for appeal in this case was tolled when the action was filed in the Rock County Circuit Court, which had subject matter jurisdiction over the matter. Once the matter was before a court with subject matter jurisdiction, the action for review was timely filed. The subsequent transfer to Dane County—the court of proper venue—was not affected by the statutory time limits for appeal under s. 227.16(1)(a), Wis. Stats., which were satisfied in this case. The Supreme Court reversed the Court of Appeals' holding that the Dane County Circuit Court had no jurisdiction to decide the action for review and its holding

that the Rock County Circuit Court erred in transferring the action to the Dane County Circuit Court. Because the Court of Appeals decided the action was barred on jurisdictional grounds, it did not reach the merits of the appeal from the judgment of the Dane County Circuit Court. Accordingly, the Supreme Court remanded the case to the Court of Appeals for consideration of all previously undecided issues.

FARMLAND PRESERVATION CREDIT

Dorothy McManus vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 20, 1984). The issue for review by the Wisconsin Tax Appeals Commision is whether the taxpayer must include her spouse's income as "household income" for purposes of claiming the Farmland Preservation Credit.

In 1978 the taxpayer owned a farm in Wisconsin in joint tenancy with her spouse. During the period under review she resided with her spouse in a "household" within the meaning of s. 71.09(11)(a)4, Wis. Stats. The taxpayer filed a 1978 Farmland Preservation Credit claim on which she reported only her income as "household income". This claim was denied by the department because the inclusion of her spouse's income in the calculation of "household income" resulted in an excess of $38,429 and therefore in no available Farmland Preservation Credit. The applicable portion of s. 71.09(11)(a), Wis. Stats., reads as follows: "5. 'Household income' means all of the income of the claimant, the claimant's spouse and all minor dependents attributable to the income year while members of the household."

The Commission concluded that the taxpayer's "household income" includes her spouse's income and exceeds the limits prescribed under Wisconsin statutes for the Farmland Preservation Credit. The department acted properly in denying the taxpayer's 1978 Farmland Preservation claim.

The taxpayer has appealed this decision to the Circuit Court.

WITHHOLDING TAXES

William D. Kleiman vs. Wisconsin Department of Revenue (Circuit Court of Dane County, April 3, 1984). The issue in this case is whether the taxpayer's wages are subject to withholding for Wisconsin income tax purposes. The taxpayer contends that the state has no authority to tax personal income received in the form of wages in violation of his "Common Law Right of Contract".

On May 13, 1981, the Wisconsin Department of Revenue notified the taxpayer and his employer that it was voiding his Wisconsin Withholding Exemption Certificate (W-4). The employer was required to withhold state income taxes from the taxpayer's wages pursuant to s. 71.20(1), Wis. Stats. The taxpayer filed a petition for redetermination with the department, asserting that he was entitled to the exemption because withholding from wages amounted to a violation of his constitutional and common law contract rights. The department denied the petition for redetermination. The Wisconsin Tax Appeals Commission granted the department's motion for summary judgment and dismissed the taxpayer's petition for review.

The Circuit Court held that taxation of the taxpayer's wages is clearly permissible under the federal and state constitutions, and withholding is a constitutionally legitimate means for collecting taxes. Therefore, the decision of the Tax Appeals Commission is affirmed.

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