

ductible under s. 71.04(4), 1983 Wis. Stats., provided the requirements for deductibility are met (e.g., the corporation receiving the dividends must have owned directly or indirectly during the entire year at least 80% of the total combined voting stock of the payor corporation). For the taxable year 1984, 75% of the non-excludable dividends are deductible under s. 71.04(4)(b), 1983 Wis. Stats., while 100% of such dividends are deductible for 1985.

Question 4: Although most DISC shareholders are corporations, there are a few which have individual shareholders. Wisconsin law currently provides that 1984 taxable income of individuals is determined under the Internal Revenue Code as of December 31, 1983 and does not therefore include the 1984 federal law changes. Based on the fact that the normal year end of a DISC is beyond December 31, 1984 (e.g., January 31, 1985) but its year is deemed to end on December 31, 1984 under the provisions of the Tax Reform Act of 1984:

- A. Will the deemed distribution that occurs on December 31, 1984 for federal tax purposes be included in net income in computing an individual shareholder's Wisconsin net income for 1984?
- B. Will the answer to question 4A be different if the DISC ceases to exist as of December 31, 1984?
- C. If the DISC changes its fiscal year to a calendar year for 1984 will this deemed distribution be taxable?
- D. An individual shareholder having a fiscal year ending after December 31, 1984 and before July 1, 1985 will file a 1984 Wisconsin return. If the shareholder receives a distribution of accumulated DISC earnings between December 31, 1984 and June 30, 1985 will this distribution be taxed as a dividend? (For federal tax purposes this would be deemed to be a distribution of previously taxed income based on the amendments to the Internal Revenue Code in the Tax Reform Act of 1984.)

Answer 4A: No. The deemed distribution that occurs on December 31, 1984 for federal tax purposes will not be included in the 1984 net income of the shareholder for Wisconsin tax purposes unless the DISC has a normal year end of December 31, 1984.

Answer 4B: Yes. The deemed distribution that occurs on December 31, 1984 would be includable in the shareholder's 1984 Wisconsin net income if the DISC ceased to exist as of December 31, 1984 due to its liquidation.

Answer 4C: Yes. If a DISC changes its fiscal year to a December 31, 1984 calendar year, deemed distributions would be taxable because such distributions are considered by the Internal Revenue Code as being made on the last day of the tax year. The provisions of the 1983 Internal Revenue Code would have to be applied, however, in arriving at Wisconsin taxable income of individual shareholders.

Answer 4D: An individual shareholder having a fiscal year that ends after December 31, 1984 but no later than June 30, 1985 will file a 1984 Wisconsin return. If the shareholder receives a distribution of accumulated DISC earnings during the period January 1, 1985 through June 30, 1985, it would be taxable to the shareholder, to the extent this distribution has not previously been taxed, in accordance with the provisions of the 1983 Internal Revenue Code even though the 1984 Code would consider all of the ac-

cumulated earnings distributed as having previously been taxed.

SALES/USE TAXES

1. Blank Videotape Purchased by TV Station

Statutes: section 77.54(23m), 1983 Wis. Stats.

Facts and Question: A commercial television station uses blank or raw videotape in many ways in its day to day operations. Common uses of videotape are as follows:

- A. Each time an employe goes out on a job to a news event the camera uses videotape to record what happened. Formerly film was used.
- B. Commercials are made and recorded on tape.
- C. A program on the network at one hour is videotaped and rebroadcast at another time.
- D. Service announcements are prepared by the station on videotape.
- E. Anything produced locally for TV broadcasting is recorded on videotape.

Section 77.54(23m), 1983 Wis. Stats., exempts "The gross receipts from the sale, lease or rental of or the storage, use or other consumption of motion picture film or tape,...." Does this exemption apply to raw and blank videotape purchased by a commercial television station as well as copyright video tape purchased by the station?

Answer: The sales/use tax exemption in s. 77.54(23m), 1983 Wis. Stats., applies to copyright videotape and raw or blank videotape purchased by a commercial television station.

2. Farmers' Irrigation Equipment

Statutes: section 77.54(3), 1983 Wis. Stats.

Facts and Question: Section 77.54(3), 1983 Wis. Stats., provides a sales/use tax exemption for tractors and machines, including accessories, attachments, fuel, and parts therefor, used directly in farming. A farmer may purchase all the component parts of an irrigation system, which would include pumps, power units to drive the pumps, above or below ground sectional piping, fittings and sprinkler devices; or a contractor may purchase the component parts of the irrigation system, install and sell the entire irrigation system to the farmer. The question is whether the entire irrigation system is real estate or personal property for sales tax purposes.

Answer: Section 70.04(2), 1983 Wis. Stats., provides that "the term 'personal property', as used in Chs. 70 to 79, shall include irrigation implements used by a farmer, including pumps, power units to drive the pumps, transmission units, sprinkler devices and sectional piping". Thus, the entire irrigation system, including the well and pumps, is considered personal property for sales tax purposes. Therefore, a farmer may purchase the component parts or the entire system without tax as an exempt farm machine under s. 77.54(3), 1983 Wis. Stats. A contractor may also purchase the component parts without tax "for resale" as personal property to the farmer.

3. Septic Tanks Owned by Municipality

Statutes: section 77.54(26), 1983 Wis. Stats.

Facts and Question: Section 77.54(26), 1983 Wis. Stats., provides a sales/use tax exemption for tangible personal property which becomes a component part of a waste treatment facility of any political subdivision of this state.

A village is constructing a new sewage treatment facility and collection system. This unique system consists of a septic tank and a submersible pump being located at each household in the village. When the liquid reaches a certain level in the septic tank the sewage is pumped to a final community septic tank where chlorine is added. As the sewage leaves the community septic tank it goes through a sand filter prior to its discharge into a nearby stream. Treatment of the sewage by bacterial action takes place in the septic tank at each household and also in the community facility.

Are a contractor's purchases of septic tanks, pumps and associated electrical equipment located at each household exempt under s. 77.54(26), 1983 Wis. Stats.?

Answer: The purchase of the septic tank is exempt because the village is treating its sewage at each household. However, purchases of the pumps and associated electrical equipment at each household are not exempt as they are part of the collection system used to move the sewage to the community septic tank.

4. Telephone Call Detail Charges

Statutes: section 77.52(2)(a)4, 1983 Wis. Stats.

Facts and Question: A person who is not in the business of providing long distance voice transmission service provides a customer with computer produced monthly reports showing how the customer's telephones are being used. The report can define the customer's telephone facility usage, call detail charges and provide various other accounting details. The customer has the option to choose from a variety of types of reports depending on the type of call detail it desires.

Are these call detail charges by a company which also sells and leases telephone equipment, but does not transmit messages for its customers, subject to the sales tax?

Answer: Yes. This computer provided service is a taxable telephone service under s. 77.52(2)(a)4, 1983 Wis. Stats., which imposes the tax on "the sale of telephone services of whatever nature. . . ."

5. Waste Reduction and Recycling Exemptions

Statutes: section 77.54(5)(c) and (26m), 1983 Wis. Stats.

Facts and Question: Section 77.54(5)(c) and (26m), 1983 Wis. Stats., provides sales/use tax exemptions for waste reduction or recycling machinery and equipment, effective July 1, 1984. The exemptions are for waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used in waste reduction or recycling activities, which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste.

What is the scope of the exemptions provided by s. 77.54(5)(c) and (26m), 1983 Wis. Stats.?

Answer: In each factual situation described below presume that the purchaser is using the item exclusively and directly in the activity described.

A. Exempt Equipment

1. Equipment used in a foundry to clean sand so that the sand can be reused. Also, equipment used to remove impurities from lubricating oil used in manufacturing machines so that the oil can continue to be used by the manufacturer. These cleaning processes reduce the amount of solid waste produced.

2. Vending machines, located in parking lots, which collect aluminum cans and sort and crush the cans. The machines pay persons depositing the cans based on the weight of the cans deposited. The sorting for recycling constitutes a process beyond mere compacting.

3. Equipment used to produce fuel cubes. This equipment shreds waste paper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary and then compresses the materials into fuel cubes, which are burned by homeowners or others to replace wood. This equipment recycles solid waste.

4. A roto-mill is a large piece of construction machinery which mines old pavement, whether it is asphalt or concrete, grinds up these mined materials, and then the materials recovered are reused in construction activities so that these recovered materials do not end up in a landfill.

B. Taxable Equipment

1. A can crusher used in a household.

2. Large steel waste collection containers (dumpsters) that are often found in back of business establishments. These large trash containers may be picked up and dumped into waste collection trucks, or hauled away on flat-bed trucks. They may also mechanically compact the waste in the container. They are used for the collection, storage and transportation of solid wastes, not in recycling or waste reduction.

3. A paper shredder in an office used to destroy confidential records.

4. A chain saw used to cut down diseased trees for firewood.

5. Shelving in a used-book store or any retail store that sells used goods.

6. Waste Reduction and Recycling Exemption for Road Machinery

Statutes: section 77.54(5)(c) and (26m), 1983 Wis. Stats.

Facts and Question: Section 77.54(5)(c) and (26m), 1983 Wis. Stats., provide sales/use tax exemptions for waste reduction or recycling machinery and equipment, effective July 1, 1984. The exemption is for waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used in waste reduction or re-

cycling activities, which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste.

Certain road machinery mines highway asphalt or concrete in place and grinds it up. All the highway materials mined are reused in one way or another in future construction projects.

In the cold asphalt process, the mined asphalt is ground up, an emulsion is added, and the asphalt is relaid on the road surface. In the hot mix asphalt process, the mined asphalt must be trucked to a hot mix plant, which may be set up near the job site. At the mixing plant 40% recycled materials are mixed with 60% virgin materials to produce new hot mix. The percentages may vary but 100% of the mined materials are reused in constructing another highway, parking lot or other new construction.

Concrete also is mined and ground up for use in construction, but the mined concrete does not end up in the road surface; it is used as a base course to replace gravel and stone under a new concrete surface.

All of the mined materials recovered from highways by these road machines are used in future construction and thus do not end up in landfills. Are these machines exempt waste reduction and recycling machinery and equipment under s. 77.54(26m), 1983 Wis. Stats.?

Answer: The exemption in s. 77.54(26m), 1983 Wis. Stats., applies to these road machines if they are used exclusively and directly in reclaiming asphalt and concrete and reusing these recovered materials in constructing new highways, parking lots and other construction jobs. If a similar machine is used to repair a highway by profiling the highway, it would not be exempt under s. 77.54(26m), 1983 Wis. Stats., if the materials recovered are not reused.

HOMESTEAD CREDIT AND FARMLAND PRESERVATION CREDIT

1. Add Back for Gain on Sale of Principal Residence

Statutes: section 71.09(7)(a)1 and (11)(a)6, 1983 Wis. Stats.

Note: This Tax Release applies to calendar year 1983 and thereafter.

Facts and Question: For homestead credit and farmland preservation credit claims filed for 1983 and thereafter, the definition of household income in s. 71.09(7)(a)1 and s. 71.09(11)(a)6, 1983 Wis. Stats., includes the gain on the sale of a principal residence which was excluded from adjusted gross income under section 121 of the Internal Revenue Code. This section of the Code provides a one-time exclusion for the gain on the sale of a principal residence by an individual who is age 55 or older.

Gain on the sale of property which is disposed of in an installment sale must generally be reported under the installment method provided in section 453 of the Internal Revenue Code. However, a taxpayer may elect to report the entire gain in the year of sale. An installment sale is defined as a disposition of property where at least one payment is to be received after the end of the taxable year in which the sale occurs. Under the installment method, a portion of the gain is includable in income as payments are received.

If a homestead credit or farmland preservation credit claimant sold his or her principal residence on a land contract in 1983 or thereafter and elected to exclude all or part of the gain from taxable income under Internal Revenue Code section 121, what amount must be added back in computing household income?

Answer:

A. Entire Gain Excludable Under IRC Section 121

If the entire gain is excludable under Internal Revenue Code section 121, and the claimant qualifies to report the gain under the installment provisions of Internal Revenue Code section 453, the claimant may elect to add back the entire gain excluded in the year of sale, or the claimant may elect to add back a portion of the gain excluded each year as payments are received.

Example: On June 1, 1984, Claimant A sold his principal residence on a land contract for \$75,000. The contract provided for a \$15,000 down payment and principal payments of \$15,000 on June 1, 1985, 1986, 1987 and 1988. Claimant A realized a \$30,000 gain on the sale. The entire gain is excludable from adjusted gross income under Internal Revenue Code section 121 because Claimant A was age 55 at the time of sale. The sale meets the installment reporting requirements of Internal Revenue Code section 453.

Claimant A may elect to include the entire \$30,000 gain in his 1984 household income for homestead credit or farmland preservation credit.

As an alternative, Claimant A may elect to include a portion of the gain in household income each year, computed under the rules for installment reporting. In 1984, the gain to be added back is \$6,000 ($\$15,000 \text{ payment} \div \$75,000 \text{ contract price} \times \$30,000 \text{ gain excluded}$). In addition, \$6,000 gain must be added back to household income for each of the years 1985, 1986, 1987 and 1988 on a homestead credit or farmland preservation credit claim filed for one of these years. Once the installment method of reporting is chosen, the claimant must continue to use this method on homestead credit or farmland preservation claims filed for 1985 and thereafter.

B. Part of Gain Includable in Federal Income

If part of the gain is includable in federal adjusted gross income as reported on the Wisconsin return, the claimant must use the same method for computing the add back for the homestead credit or farmland preservation credit claim as was used to compute Wisconsin adjusted gross income.

Example: On September 1, 1984, Claimant B sold her principal residence on a land contract for \$250,000. The contract provided for a \$50,000 down payment, with the \$200,000 balance due September 1, 1987. Claimant B realized a \$150,000 gain on the sale, of which \$125,000 may be excluded under Internal Revenue Code section 121. The sale meets the installment reporting requirements of Internal Revenue Code section 453. For Wisconsin income tax purposes, Claimant B elected to report the \$25,000 taxable gain (\$150,000 - \$125,000) on the installment basis.

On her homestead credit or farmland preservation credit claim, Claimant B must add back a portion of the excluded gain each year, computed under the rules for installment reporting. In 1984, the gain to be added back is \$25,000

$((\$50,000 \text{ payment} \div \$250,000 \text{ contract price}) \times \$125,000 \text{ gain excluded})$. Since no principal payments are to be received in 1985 or 1986, no add back is required for those years. In 1987, the gain to be added back is $\$100,000 ((\$200,000 \text{ payment} \div \$250,000 \text{ contract price}) \times \$125,000 \text{ gain excluded})$.

C. Installment Reporting Requirements Not Met

If the claimant does not meet the requirements for installment reporting under Internal Revenue Code section 453, the claimant must add back the entire gain excluded on the homestead credit or farmland preservation credit claim filed for the year of the sale.

Example: On January 15, 1984, Claimant C sold his principal residence to his son on a land contract for \$100,000. The contract provided for a \$5,000 down payment, with the balance due over 30 years. Claimant C realized a \$50,000 gain on the sale, which is excludable from adjusted gross income under Internal Revenue Code section 121. The sale does not meet the installment reporting requirements of Internal Revenue Code section 453 because Claimant C's son sold the residence to a third party on December 1, 1984.

Claimant C must include the entire \$50,000 gain in his 1984 household income for homestead credit or farmland preservation credit.

2. Farmland Credit for Not-for-Profit Corporation

Statutes: section 71.09(11)(a) and (o), 1983 Wis. Stats.

Question: A not-for-profit corporation exempt from Wisconsin franchise and income taxes under s. 71.01(3), 1983 Wis. Stats., leases out farmland to a farmer and pays property tax on the land used for agricultural purposes. Is the not-for-profit corporation eligible for the farmland preservation credit?

Answer: Yes, if the not-for-profit corporation meets the eligibility requirements specified under s. 71.09(11)(a) and (o), 1983 Wis. Stats. For example, the following eligibility requirements must be met:

A. The corporation must have been the owner of the Wisconsin farmland for which the credit is being claimed during the income year for which the credit is claimed.

- B. The corporation must have been organized under the laws of Wisconsin.
- C. The farmland on which the claim is based must be at least 35 acres.
- D. The farmland on which the claim is based must have produced at least \$6,000 of gross farm profits, or at least a total of \$18,000 in gross farm profits for the year of the credit and the two prior years combined. In the case of the above not-for-profit corporation, the lessee farmer's income from the farmland must meet the gross profits requirement.
- E. The farmland must be subject to a certified zoning ordinance, or the corporation must have applied for a farmland preservation agreement by June 30 of the year for which the credit is claimed, and such agreement has been subsequently executed.
- F. The household income of the corporation must be less than \$36,622 for the income year for which the credit is claimed, as calculated on line 8 of Schedule FC. However, if the farmland is subject to an exclusive agricultural zoning ordinance, no limitation applies with respect to household income.

Note that, as required for corporations subject to Wisconsin franchise or income taxes, the household income of a not-for-profit corporation must include the household income of each shareholder of the corporation (including the shareholder's spouse and minor dependents while members of the household) of record at the end of the corporation's year.

- G. The corporation must not have been notified that it is in violation of a soil and water conservation plan.

Of the above eligibility requirements, the household income requirement may be the most difficult to determine. A not-for-profit corporation should compute its household income in the same manner as a corporation subject to Wisconsin franchise or income taxes. It should fill out Schedule FC by computing household income as if it had filed an income tax return and reported its gross income and deductions on the income tax return, and then carried the net amount over to Schedule FC.