

real ancestors (parents, grandparents), the wife or widow of a son, the husband or widower of a daughter, an adopted or mutually acknowledged child, and a mutually acknowledged parent. There is no lifetime exemption allowed to other donees.

Beginning in 1986 the lifetime exemption for property transferred to lineal issue and lineal ancestors (children, grandchildren, parents, grandparents) etc., will increase to \$50,000. Also, for gifts occurring on or after January 1, 1986 the top marginal gift tax rate is reduced from 30% to 20%.

### REMINDER! DEPENDENTS WITH UNEARNED INCOME

There is a special filing requirement for dependents with unearned income. Persons who are claimed as a dependent by another taxpayer, and who have unearned income (for example, interest or dividends) of \$1,000 or more are required to file a Wisconsin income tax return.

A dependent with unearned income may elect to itemize deductions for 1985 or claim the standard deduction. If the standard deduction is claimed, the amount of deduction is limited to the lesser of the total earned income or the standard deduction. For example, if the dependent had total income of \$1,700 consisting of wages of \$500 and interest of \$1,200, his or her standard deduction is limited to \$500.

### DO YOU HAVE SUGGESTIONS FOR 1986 TAX FORMS?

For 1986 the individual income tax forms (Forms 1 and 1A) will be redesigned and simplified. Do you have suggestions for helping to simplify these forms and instructions? Do you have suggestions for improving any other Wisconsin tax forms and instructions?

Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8933, Madison, WI 53708. Please be specific and send your suggestions in early. The Department appreciates hearing from you.

### NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under Parts A and B, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of March 1, 1986. Part C lists new rules and amendments which were adopted in 1986.

("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

#### A. Rules at Legislative Council Rules Clearinghouse

- 11.03 Elementary and secondary schools-A
- 11.05 Governmental units-A
- 11.65 Admissions-A
- 17.01 Administrative provisions-NR\*
- 17.02 Eligibility-NR\*
- 17.03 Application and review-NR\*
- 17.04 Repayment of loan-NR\*

\*These rules will be part of a new chapter, Chapter 17, which will contain rules relating to the Wisconsin Property Tax Deferral Loan Program.

#### B. Rules at Legislative Standing Committees

None

#### C. Rules Adopted in 1986 (in parentheses is the date the rule became effective)

- 2.045 Information returns: form 9c for employers of nonresident entertainers, entertainment corporations or athletes-R (1/1/86)
- 3.22 Real estate and personal property taxes of corporations-R (1/1/86)
- 3.30 Depreciation and amortization, leasehold improvements: corporations-R (1/1/86)
- 3.31 Depreciation of personal property of corporations-R (1/1/86)
- 3.61 Mobile home monthly parking permit fees-R (1/1/86)
- 11.71 Computer industry-NR (3/1/86)
- 11.83 Motor vehicles-A (3/1/86)

### D. Emergency Rules

Chapter 17, relating to the property tax deferral loan program (2/18/86).

The following sales tax rules to incorporate county sales/use tax provisions will be published and effective in mid-March, 1986:

- 11.001 Definitions and use of terms-A
- 11.32 "Gross receipts" and "sales price"-A
- 11.68 Construction contractors-A
- 11.83 Motor vehicles-A
- 11.92 Records and record keeping-A
- 11.95 Retailer's discount-A
- 11.97 "Engaged in business" in Wisconsin-A

### 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:

#### Individual Income Taxes

- John Clifford  
Federal income taxes—no effect on state tax
- Chris Culver  
Splitting of income—husband/wife
- Wendy L. LaBadie  
Basis of assets
- Andre Leveque  
Tax sheltered annuity
- Robert E. Nash  
Contributions, charitable
- James O. Werner  
Splitting of income—husband/wife
- Roy A. Zamecnik  
Penalty—fraud

**Corporation Franchise/Income Taxes****Allis-Chalmers Corporation**

Manufacturer's sales tax credit  
Net business loss carryforward  
Interest on assessments

**All-Power, Inc.**

Allocation of income—separate accounting

**American Telephone & Telegraph Company**

Allocation of income—separate accounting  
Unitary business

**Cedarburg Mutual Insurance Company**

Insurance companies—add-back for taxes

**Central Wisconsin Wholesale, Inc.**

Bad debts—change in accounting method

**Consolidated Freightways Corporation of Delaware**

Apportionment—interstate motor carriers

**Kohler Co., Kohler Co.- Successor to Kohler International Ltd., KOHLERCO DISC, INC. and KIL DISC, INC.**

Domestic International Sales Corporation  
Equitable offset  
Interest on assessments

**NCR Corporation**

Deductions—federal income taxes

**News/Sports Radio Network, Inc. and Wisconsin Independent Radio Network**

Consolidated returns

**Star Line Trucking Corporation**

Deductions—motor carriers' operating authorities

**Sales/Use Taxes****Advance Pipe & Supply Co., Inc. and Milwaukee Sewer Pipe & Supply Co., Inc.**

Construction contractors

**Frisch, Dudek and Slattery, Ltd.**

Retailer—who must register

**Montgomery Ward & Co., Inc.**

Transportation charges

**James M. Salmon d/b/a General Lighting and Maintenance**

Services subject to the tax

**Senior Golf Association of Wisconsin, Inc.****Admissions****Troyanek's Tap & Line Service, Inc.**

Services subject to the tax

**Wisconsin State Telephone Association, et al.**

Telecommunication services

**Wisconsin Telephone Company, et al.**

Telecommunication services

**INDIVIDUAL INCOME TAXES**

**John Clifford vs. Wisconsin Department of Revenue** (Court of Appeals, District I, October 22, 1985). John Clifford appealed a judgment of the Circuit Court dismissing his petition for judicial review of an adverse decision of the Wisconsin Tax Appeals Commission.

The facts of this case are undisputed. Clifford had made a claim against the Wisconsin Department of Revenue before the Commission, asserting that the amount of federal withholding tax withheld from his income was exempt from Wisconsin state taxes. The Commission issued a decision and order dated January 20, 1984, denying Clifford's claim. Clifford sent a petition for rehearing by certified mail on February 9, 1984. The petition was actually filed on February 10, 1984, the day it was received by the Commission. On March 10, 1984, the Commission issued an order denying Clifford's request for rehearing as untimely filed. Clifford then filed a petition for review with the Clerk of Circuit Court in Milwaukee County on March 30, 1984. The Circuit Court dismissed Clifford's appeal based on lack of subject matter jurisdiction.

The first issue is whether Clifford timely filed his petition for rehearing with the Commission as required by s. 227.12(1), Wis. Stats. The statute expressly required filing with the Commission within twenty days, not mailing within twenty days. The twenty day period in which Clifford could have filed his petition for rehearing expired on February 9, 1984. Because Clifford's petition for rehearing was not received by the Commission until the twenty-first day, it was not timely filed.

The second issue is whether Clifford timely filed his petition for review with the Circuit Court. Section 227.16, Wis. Stats., requires that the petition for rehearing be "requested under s. 227.12." Section 227.12 clearly spec-

ifies that the petition for rehearing must be filed within twenty days. Since Clifford's petition for rehearing was not timely filed, rehearing was not properly "requested under s. 227.12." Clifford was therefore required to file his petition for Circuit Court review within thirty days of the service of the Commission's original adverse decision. That decision was issued January 20, 1984. Thus, to be timely, Clifford would have had to file his petition for review with the Clerk of the Circuit Court by February 19, 1984. He did not and, therefore, lost his right to do so.

Because Clifford did not timely file his petition for rehearing with the Commission, his petition for review with the Circuit Court was also untimely filed. The Circuit Court, therefore, had no subject matter jurisdiction over his petition for review. Thus, the Court of Appeals affirmed the Circuit Court's judgment dismissing the petition.

The taxpayer has appealed this decision to the Supreme Court. On February 18, 1986, the Supreme Court denied his petition for review.

**Chris Culver vs. Wisconsin Tax Appeals Commission, Department of Revenue** (Circuit Court of Chippewa County, November 11, 1985). This is an appeal of a decision and order of the Wisconsin Tax Appeals Commission affirming the Wisconsin Department of Revenue's denial of the taxpayer's petition for redetermination of an assessment of additional income taxes for the year 1979. The sole issue presented by this appeal is whether or not the taxpayer may properly deduct certain sums of money paid his wife and claimed as expenses on his 1979 income tax return. (See WTB #44 for a summary of the Wisconsin Tax Appeals Commission's decision.)

Under a written agreement entered into on December 31, 1978 and effective throughout the entire year of 1979, the taxpayer contracted to pay his wife, Linda, \$6,000 yearly for bookkeeping services plus \$6 per hour for farm work not related to bookkeeping, as well as an incentive payment of 25% of the net farm profit.

No payroll checks were issued to Linda; she was compensated for work in the following manner. The taxpayer received checks from the brothers' joint checking account

representing his net share of the farm receipts. The taxpayer's wife endorsed these checks in his name and deposited them, less cash withdrawals in many instances, into the joint checking account maintained by her and the taxpayer. The taxpayer signed statements throughout the year which signified that the deposits to this joint checking account were considered to be compensation to Linda as compensation under the agreement of December 31, 1978. Although the taxpayer's wife claimed to be free to use the checking account as she saw fit, she was responsible for most of the family's personal living expenses, and funds in the account were expended for the benefit of the taxpayer and his family.

Though the Commission did find that an employment contract had been entered into on December 31, 1978, that the wife did bookkeeping work and performed farm chores, and that payments were made to the wife pursuant to that contract, it did not find such payments to be a reasonable amount for services actually rendered. The Commission concluded that no bona fide employer-employee relationship existed and that the sums paid to the wife were not deductible wages.

The Circuit Court felt there is substantial evidence in the record to support the conclusions reached by the Commission. Therefore, the Circuit Court affirmed the decision and order of the Commission.

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

**Wendy L. LaBadie vs. Wisconsin Department of Revenue** (Circuit Court of Milwaukee County, November 19, 1985). The taxpayer sought reversal of a decision and order by the Wisconsin Tax Appeals Commission which affirmed the department's denial of her claim for refund for 1981.

The department originally disallowed the taxpayer's claim for a refund in part because it concluded that gain incurred from the appreciation of a constant basis asset during a period of nonresidence may not be excluded from Wisconsin taxable income if the assets were acquired while the taxpayer was a resident of Wisconsin. The Wisconsin Tax Appeals Commission also concluded that a Wisconsin taxpayer who purchased and sold corporate stock

while a resident of Wisconsin cannot exclude from the computation of taxable gain realized from the sale, appreciation on the stock which occurred during a period of nonresidence. (See WTB #42 for a summary of the Wisconsin Tax Appeals Commission's decision.)

The taxpayer was a resident of Wisconsin until December 31, 1977. From January 1, 1978 until September 1, 1980, she was not a resident of Wisconsin. On September 1, 1980, she reestablished her Wisconsin residence. There are three particular periods of time involved in this case in which stock was transferred to the taxpayer by gift.

A. Prior to January 1, 1965, the taxpayer acquired 58,936 shares of stock. The aggregate fair market values of these shares on the various dates she received them totaled \$62,894.32. The aggregate fair market value of these shares on December 31, 1977 was \$360,983; and on September 1, 1980, it was \$1,312,246.85.

B. From January 1, 1965 through December 31, 1977, the taxpayer acquired 7,408 shares of stock. The aggregate fair market value of these shares on December 31, 1977 was \$45,374; and on September 1, 1980, it was \$164,943.75.

C. From January 1, 1978 through August 31, 1980, the taxpayer acquired 1,054 shares of stock. The aggregate fair market value of these shares on September 1, 1980 was \$23,467.97.

The total number of shares of stock owned by the taxpayer on and after September 1, 1980 was 67,398. They were all sold on September 18, 1981 on an installment basis with 5% of the purchase price paid in 1981 and the balance thereafter. The taxpayer based her Wisconsin basis for the shares on her federal adjusted basis in order to determine the amount of 1981 Wisconsin taxable capital gain.

The taxpayer filed an amended Wisconsin income tax return on January 14, 1983, claiming a refund of \$5,762.15 in Wisconsin income tax due to Wisconsin basis adjustments. The adjustments which were disallowed were obtained by deducting the appreciation values of the stock for the period of nonresidence. Thus, the Wisconsin basis adjustments were modified to reflect no appreciation in value of the stock for the per-

iod January 1, 1978 to September 1, 1980. The taxpayer argued that because she was a nonresident during that period of time, the appreciation of the value of the stock during those years cannot be used in computing the gain realized upon the sale of such stock. She based her argument on former Wis. Adm. Code section Tax 2.97, which applied to all sales prior to August 1, 1982.

The department allowed a portion of the taxpayer's claim for refund as it pertained to the 1,054 shares of stock acquired by her during her period of nonresidence. The reason for this allowance was because the taxpayer did acquire those shares prior to becoming a resident again on September 1, 1980. The department denied the remainder of the taxpayer's claim because those shares were acquired at a time when she was a Wisconsin resident. The taxpayer asserted that since she acquired the bulk of stock prior to becoming a resident on September 1, 1980, section Tax 2.97 should apply to exclude the value of appreciation of the 66,344 shares for the nonresidence period in determining taxable income.

The Circuit Court concluded that the department correctly disallowed the taxpayer's claim. A proper interpretation of the rule requires one to have acquired the stock during a period of nonresidence as opposed to a period of residence in order for it to be applicable.

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

**Wisconsin Department of Revenue vs. Andre Leveque** (Circuit Court of Dane County, January 7, 1986). This matter is before the Circuit Court for review of a decision of the Wisconsin Tax Appeals Commission which found that certain annuity payments received by Andre Leveque from the State Teachers Retirement System were exempt from Wisconsin income tax under s. 71.03(2)(d), Wis. Stats.

The facts in this case are not disputed. Andre Leveque was a member of the faculty at the University of Wisconsin from 1930 until he retired in 1970. When he retired he began receiving payments from the Department of Employee Trust Funds, part of which were identified by the Fund as "regular annuity" payments and part of which were identified as "tax deferred additional annuity" payments.

The issue before the Circuit Court is whether the latter payments are excluded from gross income under s. 71.03(2)(d), Wis. Stats.

There is no dispute over the fact that Andre Leveque was a member of the state teachers retirement system as of December 31, 1963 and that the payments he received came from the system. However, part of the payments came as a result of his mandatory participation in a retirement fund while the payments labeled "tax deferred additional annuity" payments came as a result of voluntary payments which Mr. Leveque began making in March of 1964. The department claimed that the Legislature did not intend to exclude the payments resulting from voluntary contributions from gross income. The department relied on the comments of the legislative advisory committee which accompanied s. 71.03(2)(d) when it was drafted in 1963.

The intent of the Legislature in adopting s. 71.03(2)(d), Wis. Stats., was to remove a tax inequity while not penalizing those who already held the exemption. There is no doubt that at the time s. 71.03(2)(d) was adopted, Mr. Leveque had not begun making voluntary payments. It would be absurd to interpret a statute that was clearly intended to limit tax exemptions as allowing Leveque to expand his exemption. This fact combined with the obvious inequity of allowing the taxpayer to completely escape taxation on this income leaves room for no choice but to conclude that the voluntary annuity payments received by Mr. Leveque were not exempted from Wisconsin income tax.

In other words, it makes good sense to permit a professor, civil servant or judge to defer the payment of income tax on a portion of his or her income until after retirement when presumably his or her tax rate will be lower and income less; however, completely exempting such income is another matter. The reasoning of the Commission was both illogical, unfair to other taxpayers and clearly not intended by the Legislature.

Therefore, pursuant to s. 227.20(5), Wis. Stats., the decision of the Wisconsin Tax Appeals Commission is hereby set aside. The original deter-

mination of tax liability by the department shall be reinstated.

The taxpayer has not appealed this decision.

**Robert E. Nash vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, November 29, 1985). The issue before the Commission was whether or not the taxpayer can deduct the amount of \$13,108.20 or a part thereof as a Section 170 deduction as a charitable contribution, or in the alternative, as a Section 162 ordinary and necessary business expense.

Robert E. Nash is a full time physician employed at St. Francis Hospital in Milwaukee, Wisconsin and is not intending to become a minister (auditor) in his religion. He is a member of the Church of Scientology and has been a member for about fifteen years. This church is an organization contributions to which are deductible pursuant to Section 170 of the Internal Revenue Code.

During 1982, the taxpayer wrote four checks to the Church of Scientology in the amounts of \$1,210, \$565, \$4,725 and \$6,608.20, for a total of \$13,108.20. All of the amounts given to the church were for a church process called "auditing" except the check for \$565 which was for training routines which were described as part auditory and part general courses.

Auditing is a process by which the church member and "auditor" (minister) participate in pastoral counseling and development of the member's spirituality. Counseling is received on stress, organization of daily routine and communications in addition to spirituality. The auditing is offered as a package and has a set fee for participation. A discount is offered for early payment by the member.

All payments made by the member are kept in account and after participation in the auditing courses, the member's account is debited. If, after paying the set fee for auditing, the member chooses not to take the course, the member may apply for a refund.

The taxpayer took auditing attributed to the check written for \$1,210. He did not take any other auditing in the year 1982 although he can apply his account to future auditing.

The Commission held that payments made by the taxpayer to the Church of Scientology were made to purchase services primarily from the incentive of an anticipated benefit and not as a gift and as such do not qualify as a Section 170 Internal Revenue Code deduction. The payments made by the taxpayer to the Church of Scientology do not qualify as educational expenses undertaken for the purpose of maintaining or improving skills required of a practicing physician nor are they a condition to the retention of salary or status in employment.

The taxpayer has not appealed this decision.

**James O. Werner vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, November 1, 1985). The sole issue for determination was whether loss realized by the taxpayer on rental of two residential properties owned by the taxpayer and his wife in equal proportions is limited to one-half the total loss.

The department adjusted the taxpayer's total taxable income for the years under review (1981 through 1983) and only allowed the taxpayer to claim one-half of the total rental losses. The department allocated the remaining one-half of the losses to the taxpayer's wife and joint tenant.

The rental properties which consist of two 6 unit and 4 unit apartment buildings are owned in joint tenancy by the taxpayer and his wife. The taxpayer did most of the repairs and management of the buildings. His wife did some record keeping and bill paying. The taxpayer argued that the income was a result of his management skills and not solely derived from the collection of rent.

The Commission concluded that income or loss arising from the rental of real estate follows the legal title of real estate. Therefore, the department's action on the taxpayer's petition for redetermination is affirmed.

The taxpayer has not appealed this decision.

**Roy A. Zamecnik vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, November 1, 1985). The sole issue for the Commission to determine was whether the Wisconsin Department of Revenue properly applied the 50% pen-

alty (sometimes referred to as the fraud penalty) provided for in s. 71.11(6)(b), Wis. Stats., to the taxpayer's 1980, 1981 and 1982 income tax liability.

During all of the period involved, the taxpayer was employed on a full time basis by United Parcel Service, Inc. of St. Charles, Illinois. He derived \$27,712.35 of income in 1980, \$32,083.83 in 1981, and \$32,663.91 in 1982. Up until 1979, the taxpayer filed his annual Wisconsin income tax return and paid the tax due on a timely basis. The taxpayer did not file a timely Wisconsin income tax return for the 1979 calendar year.

On February 2, 1981, the department issued a notice of estimated 1979 income taxes due against the taxpayer. The taxpayer appealed this action to the Commission alleging that the department's action was contrary to provisions of both the United States Constitution and the Wisconsin Constitution and that he did "not have any sort of income but in fact received only QUID PRO QUO or remuneration in the form of 'wages.'"

On December 16, 1982, the Commission dismissed this appeal on the grounds that the taxpayer's arguments were frivolous and devoid of merit. This decision was affirmed by the Rock County Circuit Court on October 28, 1983.

During the period beginning May 4, 1979 and ending April 27, 1983, the taxpayer executed and filed with his employer a series of Employee's Withholding Allowance Certificates, Forms W-4, claiming he was exempt from Wisconsin income taxes. The taxpayer was not entitled to the exemption allowance he claimed and the certificates were voided by the department on May 19, 1982.

Despite repeated requests from the department, the taxpayer failed to file timely Wisconsin income tax returns and pay the taxes due for the years 1980, 1981 and 1982.

Under date of April 29, 1983, the department requested that the Wisconsin Department of Justice institute a mandamus action against the taxpayer pursuant to the provisions of s. 71.11(30), Wis. Stats. This action was instituted by the Wisconsin Department of Justice in the Circuit Court for Rock County, Wisconsin. On October 19, 1983, the Circuit Court for Rock County issued a judgment or-

dering the taxpayer to file complete and proper 1980 and 1981 Wisconsin income tax returns within 30 days.

The taxpayer filed his 1980 and 1981 Wisconsin income tax returns with the department on November 28, 1983. He filed his 1982 Wisconsin income tax return with the department on January 18, 1984.

Under date of March 5, 1984, the department issued an assessment against the taxpayer in which it imposed the 50% fraud penalty provided for in s. 71.11(6)(b), Wis. Stats., for each of the years 1980, 1981 and 1982.

The Commission concluded that the department met its burden of proof to establish by clear and convincing evidence that the taxpayer's failure to file timely Wisconsin income tax returns for 1980, 1981 and 1982 was with the intent to defeat or evade the income tax assessment required of him by law. Under the provisions of s. 71.11(6)(b), Wis. Stats., the department's action was proper in assessing the 50% penalty provided.

The taxpayer has not appealed this decision.

## **CORPORATION FRANCHISE/INCOME TAXES**

**Allis-Chalmers Corporation vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, November 14, 1985). The issues in this case are as follows:

A. Manufacturer's sales tax credit—West Allis, Wisconsin plant. The department disallowed claimed manufacturing sales and use tax credits for sales taxes paid on purchases of #4 fuel oil and SG-6 gas (steam generation) during the years 1973 through 1976.

The disallowance of the sales and use tax credit was explained as follows: "To adjust the sales tax credit for . . . oil . . . and natural gas at division 036 for all years for nonmanufacturing usage based on data submitted by the taxpayer's divisional personnel." During the years 1973 through 1976, all of the #4 fuel oil and SG-6 gas was consumed by the taxpayer in its production of steam which was used by the taxpayer in its manufacturing process. The exhaust steam created by the manufacturing process was either vented in the at-

mosphere or recycled for use in its hot water heating system.

B. Net business loss. The department disallowed the deduction for the net business loss offsets from 1970 in the amount of \$8,717,065. According to the taxpayer's interpretation of the laws of the State of Wisconsin as applied to the net business loss incurred by the taxpayer for the years 1970 through 1972, the taxpayer is entitled to a deduction for a net business loss offset of \$761,497 for the tax year 1976. According to the department's interpretation of the laws of the State of Wisconsin as applied to the net business losses incurred by the taxpayer for the years 1970 through 1972, the taxpayer is not entitled to a deduction for a net business loss offset in the tax year 1976.

C. Interest rate. On October 8, 1979, the department commenced its field audit of the taxpayer's franchise tax returns for the years 1970 through 1976. On December 5, 1980, the department sent the taxpayer a letter indicating the estimated additional Wisconsin franchise tax liability for the years 1970 through 1976. On March 30, 1981, the department and the taxpayer held a final conference to discuss the field audit results. On August 1, 1981, the rate of interest charged by the department assessing taxes was increased from 9% to 12% by Chapter 20, Laws of 1981. The department issued a notice of franchise tax assessment dated August 25, 1981, assessing tax and interest for 1976. The interest was computed at the rate of 12% from original due date of the 1976 return (March 15, 1977).

The Commission held as follows:

A. The #4 fuel oil and SG-6 gas was consumed directly in the manufacturing process. Boilers in this process are directly used as machinery and equipment in the step-by-step manufacturing process and therefore all sales tax paid is deductible.

B. The taxpayer is not entitled to apply a 1970 Wisconsin net business loss in calculating its Wisconsin net business loss carryforward to 1976 under s. 71.06, Wis. Stats., as amended by Chapter 224, Laws of 1975.

C. Although the Commission has ruled on the retroactivity of the 12% interest statute, the taxpayer's claim of unconstitutionality of the applica-