The efficient handling of small shipments requires a national freight distribution system for efficient operation. CF's own operations, through a network of terminals and established routes, are a coordinated and organized system for long-haul movement of interstate general commodity freight.

Over-the-road or line-haul operations are effected through a system of regular routes organized into relay legs on which freight and equipment move through to destination but drivers are reversed to return to their domiciles after each relay leg. CF operates four principal east-west transcontinental mainline relays and a series of north-south mainline relays.

Wisconsin's present apportionment formula is:

Factor 1

$$\frac{\text{Gross Receipts From Carriage of Property First Acquired in Wisconsin}}{\text{Gross Receipts from Carriage of Property Everywhere}}$$

Plus Factor 2

$$\frac{\text{Ton Miles of Carriage in Wisconsin (To, From, and Through)}}{\text{Ton Miles of Carriage Everywhere}}$$

Divided by 2 equals Wisconsin apportionment factor.

The Commission determined that the department's apportionment formula, as contained in section Tax 2.47, and the department's method of taxing the taxpayer's income thereunder was not contrary to law and did not result in the taxation of extra-territorial values. The apportionment formula contained in section Tax 2.47 does not distort that portion of the taxpayer's income properly taxable by the State of Wisconsin. Neither the department nor the Commission has the authority to change the method of taxing the taxpayer's income to a "base line" or any other formula used elsewhere.

The taxpayer has appealed this decision.

Kohler Co., Kohler Co.-Successor to Kohler International Ltd., KOHLERCO DISC, INC. and KIL DISC, INC. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 22, 1985). The issues in this case are as follows:

A. What is the proper treatment under Chapter 71 of the Wisconsin Statutes of the DISCs' income during the years at issue?

B. For tax years 1975 and 1976, were Kohler Co. and KIL entitled to deduct pursuant to s. 71.04(4)(a), Wis. Stats., dividends received from the DISCs?

C. Is the department entitled to an equitable setoff in the amount of $14,616 plus interest based on a computational error against any refund Kohler Co. might be entitled to for 1976?

D. Does the tax assessed against the Kohler Co. by the assessment notice dated February 22, 1982 bear interest at the rate of 12% or 9% within the meaning of s. 71.09(5)(a), Wis. Stats.?

Kohler Co., a Wisconsin corporation with its principal offices at Kohler, Wisconsin, manufactures plumbing products, small gasoline engines and electric generators, a significant part of which are exported. Kohler Co. is the successor by statutory merger on December 31, 1977 to Kohler International Ltd. (KIL).

KIL was a Wisconsin corporation headquartered at Kohler, Wisconsin and was Kohler Co.'s wholly owned international marketing subsidiary. KIL was a substantive operating company which had its own employes, owned some property consisting principally of office furniture and equipment, and maintained branch sales offices in England and Singapore.

KOHLERCO DISC, INC. and KIL DISC, INC. (the DISCs) are Wisconsin corporations headquartered at Kohler, Wisconsin. KOHLERCO DISC, INC. is the wholly owned subsidiary of Kohler Co. and KIL DISC, INC. was the wholly owned subsidiary of KIL until by statutory merger into Kohler Co., it became the wholly owned subsidiary of Kohler Co. The DISCs were formed in September 1974 solely to avail the parent companies of the benefits of the Domestic International Sales Company provisions of Sections 991 through 997 of the Internal Revenue Code (IRC).

The DISC provisions of the IRC were enacted to encourage export trade by U.S. companies with the main objective to keep jobs in the United States, by allowing domestic corporations to defer federal income tax on a percentage of the export sales.

Although the DISC provisions of the IRC are detailed, the basic concept and structure of the DISC deferral device is quite simple. In order to qualify for the DISC deferral device, a manufacturer cannot itself be a DISC but must be a separate corporation. Through a written franchise agreement the manufacturer agrees to sell its goods which qualify for DISC treatment to a DISC which will resell them to the manufacturer's customers.

By regulation, the commission DISC approach was authorized which eliminates the need for double invoicing from the manufacturer to the DISC to the ultimate customer. Commission DISCs and buy/sell DISCs are treated exactly the same, however, and the income of either type DISC under the inter-company pricing rules of IRC Section 994 will be identical.

A part of the DISC's income is returned to the parent shareholder pursuant to IRC Section 995. Originally this was about half the DISC's income but now it is governed by a more complex formula based on the incremental growth of DISC sales. The balance of the DISC's income is retained by the DISC and, since the DISC is not taxed at the federal level, the taxes on this Accumulated DISC Income (ADI), are deferred indefinitely.

In order to remain qualified, the DISC must invest the ADI in certain "qualified export assets" which support export trade activities. The simplest and most commonly used investment is the purchase of the parent company's accounts receivables from export sales.

Under IRC Section 992, the requirements for a DISC are only that it be incorporated under the laws of any state; that 95% of its gross receipts be "qualified export receipts"; that 95% of its assets at year end be "qualified export assets"; that it have $2,500 of capital; that it elect to be a DISC; and that it have a separate bank account and maintain separate books and records. Treas. Reg. 1.992-1(a) states a corporation meeting the above requirements "is treated as a separate corporation for federal tax purposes and qualifies as a DISC even though such corporation would not be treated (if it were not a DISC) as a corporate entity for federal income tax purposes."

KOHLERCO DISC, INC. and KIL DISC, INC. were typical commission agent DISCs having only the minimal corporate substance and transactions necessary for Kohler Co. and KIL to obtain the DISC benefit of federal tax deferral and no other transactions. The DISCs were each capitalized by issuance of $2,500 of capital stock. Franchise agreements between the parent corporations and the DISCs were executed on September 27, 1974 and April 25, 1975. The DISCs were incorporated in Wisconsin but had minimal corporate activity consisting of annual unanimous consents electing their officers and directors, who were the same as the principal officers of Kohler Co. and KIL, and an annual unanimous consent declaring a dividend to the parent company.

The DISCs had separate books and records which were maintained by employes of Kohler Co.'s corporate accounting department. These consisted of journals and ledgers reflecting commissions paid by the parents to the DISCs and the immediate return of the monies to the parent companies, generally by simultaneous exchange of checks, either as payment of dividends to the parents or for the purchase of parent export account receivables. The latter device permitted the DISCs to satisfy the requirement that at least 95% of their assets be held in qualified export assets.

The DISCs had separate bank accounts but because all payments to the DISCs were immediately returned to the parent companies, they never had more than nominal balances of $192 and $211 respectively, except momentarily for the time it took the checks that were exchanged to clear.

The DISCs' only other records, its commission computation work papers, were also computed and maintained by employes of Kohler Co.'s corporate accounting department. The DISCs' sales were actually sales of the parent companies which parent company sales personnel identified as qualifying for DISC benefits (i.e., foreign destination sales of U.S. manufactured goods). Parent company sales personnel determined which parent company sales qualified for DISC and gave accountants a list of computer numbers identifying those sales in Kohler Co.'s accounting system. The DISCs' income and its books and records were generated by Kohler Co.'s accounting department pursuant to the intercompany pricing rules of IRC Section 994.

The DISCs, having no employes, had no actual involvement or activity in connection with the sales that gave rise to their income.

As required by Treas. Reg. 1.994-1(e)(3), the commission receivable was paid to the DISCs once annually within sixty days of the close of the DISCs' fiscal years ending January 31. The funds were immediately returned to the parent companies in an exchange of checks either as dividends or to purchase parent company export receivables.

The sum total of these transactions was that the DISCs ended up as the nominal owners of parent export receivables paid for with Accumulated DISC Income (ADI) which had not been subject to federal tax. Since the parent companies took federal tax deductions for the commissions paid to the DISCs, the net effect is that part of the parents' income from export sales has been transferred to and set aside in the DISCs wherein the federal taxes on such income are indefinitely deferred.

The DISCs did not carry on any substantial business activities and did not do anything to earn the income they reported. The earnings which the department contends should be taxed to the DISCs are actually the result of Kohler Co.'s labor and employment of capital and should be taxed as such.

In tax years 1975 and 1976, Kohler Co. and KIL received dividends from the DISCs which Kohler Co. and KIL took as deductions pursuant to s. 71.04(4)(a), Wis. Stats. The department disallowed this deduction to Kohler Co. and KIL in tax years 1975 and 1976.

On December 11, 1981, Kohler Co. notified the department of certain Internal Revenue Service adjustments to its income for 1975 and 1976 which resulted in additional Wisconsin franchise tax of $4,910.40 for 1975 and a refund of $2,514.27 for 1976. While making these adjustments the department discovered a computational error in its earlier assessment which increased Kohler Co.'s 1976 tax liability by $14,616.68 resulting in a net additional assessment against Kohler Co. in 1976 in the total amount of $12,102.40. The taxpayer conceded that there was an error in the taxpayer's favor of $14,616.68 made by the department on its original assessment but argued that the department's February 22, 1982 assessment of this amount was beyond the four year statute of limitations, under s. 71.11(21)(bm), Wis. Stats.

In its assessment against Kohler Co. dated February 22, 1982, the department applied a 12% interest rate to deficiencies assessed for tax years 1975 and 1976.

The Commission's conclusions were as follows:

A. Income is taxable to the one who earns it, and therefore, the income of the DISCs should be allocated to the parent corporations, Kohler Co. and KIL for purposes of determining Wisconsin franchise taxes on that income, in order to clearly reflect the income of these corporations.

B. Kohler Co. and KIL are not entitled for the tax years 1975 and 1976 to deductions under s. 71.04(4)(a), Wis. Stats., for dividends received from the DISCs.

C. The department is entitled to offset the refund of $2,514.27 for 1976 to which the taxpayer would otherwise be entitled by reason of Internal Revenue Service adjustments for that year, by virtue of the discovery by the department of a computational error of $14,616. The department is entitled to an offset only against the amount of refund due for 1976.

D. The department acted properly in applying an interest rate of 12% to the tax assessed in the February 22, 1982 assessment pursuant to s. 71.09(5)(a), Wis. Stats., as amended by Laws of 1981, Chapter 20, Section 1090n, which increased the rate of interest on assessments from 9% to 12%.

The department has appealed this decision to the Circuit Court.

NCR Corporation vs. Department of Revenue (Court of Appeals, District IV, January 10, 1986). NCR Corporation (NCR) appealed from a judgment affirming a Wisconsin Tax Appeals Commission decision denying NCR a deduction on its state corporate franchise tax return for federal income taxes paid for the years 1975, 1976, 1977, 1978 and 1980. NCR contended that the Commission's interpretation of s. 71.04(3), 1975 Wis. Stats., to disallow the deduction was erroneous as a matter of law. NCR further argued that, assuming *arguendo* that federal income taxes paid by Wisconsin corporate franchises continued to be deductible, the Legislature's 1981 effort to retroactively eliminate the deduction by amending s. 71.04(3) was unconstitutional. (See WTB #40 for a summary of the Circuit Court's decision.)

The event giving rise to this case was a 1975 amendment to s. 71.04(3) and (3a), 1973 Wis. Stats. Prior to 1975, corporations required to file Wisconsin franchise tax returns were allowed to deduct federal income taxes paid within the year covered by the income tax return. The amount of the deduction, however, was limited to a sum not to exceed 10% of the corporation's net income for the taxable year.

The 1975 amendment deleted the reference to the deductibility of federal income taxes and repealed the 10% limitation. The Legislature, however, did not repeal or amend s. 71.02(1)(c), 1973 Wis. Stats., which refers to the basis on which federal income taxes were to be deducted, or s. 71.11(8)(b), 1973 Wis. Stats., which incorporates the rules set forth in s. 71.02(1)(c).

In challenging the assessment made by the Department of Revenue, NCR contended that the statutory provisions, when read together, unambiguously allow a full deduction for federal income taxes paid. The Commission, however, ruled that s. 71.04(3), 1975 Wis. Stats., is ambiguous and determined that the Legislature's intent was to eliminate the deduction in its entirety. In addition, the Commission determined that acceptance of the statutory interpretation advanced by NCR would lead to an absurd and unreasonable result. In affirming the Commission, the Circuit Court essentially utilized the same rationale.

Because the Legislature clearly intended in 1975 to eliminate the corporate deduction of federal income taxes, the Court of Appeals affirmed the Commission. The Court did not address NCR's constitutional challenge to the retroactive impact of the 1981 amendment because their statutory interpretation of the 1975 amendment renders the issue moot.

The taxpayer has not appealed this decision.

News/Sports Radio Network, Inc. and Wisconsin Independent Radio Network vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 13, 1985). The issue for the Commission to determine was whether the taxpayers are entitled to consolidate their net incomes for purposes of 1980 and 1981 Wisconsin franchise tax returns.

During 1980 and 1981, News/Sports Radio Network, Inc. was a Wisconsin corporation which was engaged in the business of producing and selling short radio programs and radio feature stories to corporations or public relations agencies, which would provide them to radio stations for their use in exchange for "air time." Wisconsin Independent Radio Network was a Wisconsin corporation which produced programs for specific radio stations as well as commercials for advertising agencies.

The disputed assessments were made based upon (a) the department's "deconsolidation" of the income reported by both taxpayers on single Wisconsin franchise tax returns for the fiscal years ending October 31, 1980 and 1981 and (b) the department's "doomage" or estimated assessments against Wisconsin Independent Radio Network for the calendar years 1980 and 1981 for failure to file separate franchise tax returns from News/Sports Radio Network, Inc. The effect of the department's "deconsolidation" was to disallow to News/Sports Radio Network, Inc. losses attributable to Wisconsin Independent Network, Inc.'s operations for the two fiscal years in question.

In November 1979, News/Sports Radio Network, Inc. acquired the business assets of Wisconsin Independent Network, Inc. After this sale, Wisconsin Independent Network, Inc. retained corporate status and, therefore, its precise name was not available for use by News/Sports principals in incorporating a new entity.

In January of 1980, the principals of News/Sports Radio Network, Inc. incorporated Wisconsin Independent Radio Network, Inc. to preserve the name "Wisconsin Independent Network" as closely as possible. Articles of incorporation were filed with a certificate of incorporation which was received from the Wisconsin Secretary of State's office. Wisconsin Independent Radio Network never issued any capital stock, adopted any bylaws, appointed or elected officers or directors, or filed corporate annual reports with the Secretary of State, but separate books and a checking account were maintained for Wisconsin Independent Radio Network for purposes of assessing profitability of the operation and to protect News/Sports Radio Network, Inc.'s favorable financial rating for credit purposes.

News/Sports Radio Network, Inc. filed its 1980 and 1981 Wisconsin franchise returns together with a copy of its federal income tax returns for such periods. The income of News/Sports Radio Network, Inc. and Wisconsin Independent Radio Network were consolidated for federal and Wisconsin purposes. Each corporation maintained and listed on the returns separate employer numbers.

The taxpayers claimed that in order to protect the name "Wisconsin Independent Network" a paper subsidiary was formed. The corporate names "Wisconsin Independent Network, Inc." and "Wisconsin Independent News Network, Inc." were not available for use according to a determination by the Secretary of State, State of Wisconsin, and Wisconsin Independent Radio Network, Inc.'s name was approved on January 14, 1980; therefore, News/Sports Radio Network, Inc. as the parent corporation and Wisconsin Independent Radio Network as the subsidiary, filed Federal Forms 1122 and 851, consolidating both corporate returns into one return for the period under review.

The department contended that the taxpayers' filing of consolidated franchise tax returns for 1980 and 1981 fiscal years was not proper. Since each was a separate legal entity, which is beyond dispute, the doctrine of *Interstate Finance (Interstate Finance Corp. vs. Dept. of Taxation)*, 28 Wis. 2d 262 (1965)) requires separate returns. Thus, the department's removal of Wisconsin Independent Radio Network's net losses for 1980 and 1981 from News/Sports' franchise tax returns was proper. The propriety of the department's imposition of franchise tax upon its estimate of Wisconsin Independent Radio Network's calendar year 1980 and 1981 income was not refuted.

The Commission held that Wisconsin Independent Radio Network, Inc., during the period under review, was a separate legal entity which was required to file a separate rather than a consolidated franchise tax return, irrespective of its economic interdependence with News/Sports Radio Network, Inc. The income reported as that of Wisconsin Independent Radio Network, Inc. cannot be used to compute News/Sports' franchise tax liability. Wisconsin Independent Radio Network failed to file its Wisconsin income tax returns for the years 1980 and 1981 and the department's doomage assessment is presumptively correct and the taxpayer failed to meet its burden of proof to show in what respects the department's action on its petition for redetermination was in error.

The taxpayers have not appealed this decision.

Star Line Trucking Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 23, 1985). The sole issue for the Commission to decide was the proper year in which the taxpayer may write off the value of its motor carrier interstate operating rights.

The taxpayer is a motor carrier which, prior to July 1, 1980 and subsequently, had interstate operating authority licensed by the Interstate Commerce Commission (ICC).

On July 1, 1980, the Motor Carrier Act of 1980 (1980 Act) became effective deregulating motor carriers and making it easier for motor carriers to keep their licenses.

As a result of the Motor Carrier Act of 1980, the taxpayer sustained a deductible loss. The taxpayer claimed a loss of $79,178 for the tax year 1980. The department disallowed the claimed loss for 1980 but allowed an $87,549 deduction for this loss for the tax year 1981.

On December 19, 1980, the Financial Accounting Standards Board (FASB) issued "Statement of Financial Accounting Standards No. 44" addressing questions raised due to the enactment of the 1980 Act and requiring the unamortized cost of motor carrier intangible assets representing interstate operating rights to be charged to income and, if material, reported as an extraordinary item in the financial statements of motor carriers (the accounting theory upon which the deduction at issue is based).

The Securities and Exchange Commission (S.E.C.) by Release No. 150 issued December 20, 1973, adopted the principles, standards and practices promulgated by the FASB as having substantial support and thus acceptable accounting practices. Because of this 1973 Release, the S.E.C. is deemed to have accepted FASB No. 44 as of the day it was released, December 19, 1980.

During all relevant periods, the taxpayer was not regulated by the S.E.C.

By Accounting Series Circular No. 188, February 13, 1981, "Accounting for Intangible Assets of Motor Carriers to Accounting Officers of All Motor Carriers Subject to the Commissioner's Accounting and Reporting Regulations," the ICC adopted the requirements of FASB No. 44 ordering that "the accounting and reporting prescribed in this Circular shall be effective for the reporting year beginning January 1, 1980."

The Commission held that in Circular No. 188, the ICC specifically ordered that the policy adopted therein be "effective for the reporting year beginning January 1, 1980," and therefore, 1980 is the first year the write-off at issue was ordered pursuant to s. 71.04(8), Wis. Stats. The proper tax year in which the taxpayer is entitled to take the write-off at issue is the tax year 1980.

The department has not appealed this decision.

SALES/USE TAXES

Advance Pipe & Supply Co., Inc. and Milwaukee Sewer Pipe & Supply Co., Inc. vs. Wisconsin Department of Revenue (Court of Appeals, District IV, January 9, 1986). Advance Pipe & Supply Co. and Milwaukee Sewer Pipe & Supply Co. appealed from a judgment affirming a decision of the Wisconsin Tax Appeals Commission which assessed a sales tax on the companies' sales of manhole components. The issues were whether the taxpayers are real property construction contractors within the meaning of ss. 77.51(4)(i) and 77.51(18), Wis. Stats.; and if not, whether the Department of Revenue should be estopped from denying the taxpayers' status as real property construction contractors under the statutes. (See WTB #39 for a summary of the Circuit Court's decision.)

If the taxpayers are performing "real property construction activities" within the meaning of s. 77.51(18), Wis. Stats., then their purchases of raw materials are subject to the sales tax but their sales of precast manhole components to contractors are not taxable transfers. If, on the other hand, the taxpayers are manufacturers rather than real property contractors, their sales of manholes are subject to the sales tax, but their purchases of materials are not. The Commission concluded that the taxpayers did not meet the statutory definition and that their sales and deliveries of building materials to contractors are retail sales subject to taxation. As a result, the taxpayers are chargeable with collecting the appropriate tax and paying the proceeds to the department.

The Court of Appeals concluded that the taxpayers are operating as retailers who deliver building materials to plumbing and sewer contractors.

The taxpayers argued, however, that the department should be "equitably estopped" from denying their status as real property construction contractors. The argument is based on an April 1982 letter from the department stating that Advance Pipe was entitled to a refund for overpayment of sales tax. The taxpayers claim that they relied on the letter and thus, to their detriment, neither charged nor collected sales tax from their contractor-customers.

The department's letter to Advance Pipe neither acknowledges nor concludes that the taxpayers are involved in real property construction activities within the meaning of the tax laws. The refund was made solely on the basis of statements by Advance Pipe in its sales and use tax return that it was engaged in such activities. The return did not describe Advance Pipe's activities; it stated simply that its sales were "generated primarily from real construction activity and are not subject to sales tax." The department accepted Advance Pipe's representation as true, and its failure to challenge the return or perform an audit at that time should not preclude it from later revising its position after investigating the company's actual operations.

The Court of Appeals agreed with the Circuit Court that: "The taxpayers . . . were not relying upon statements made by the Department. Indeed, the Department was relying upon statements made by Advance Pipe." The taxpayers have not shown the existence of the elements of estoppel; nor have they established that the department's actions were unconscionable.

The taxpayers have not appealed this decision.

Frisch, Dudek and Slattery, Ltd. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, December 26, 1985). The issue in this case was whether the taxpayer's charges to clients for photocopies are subject to the sales tax contained in s. 77.52(1), Wis. Stats. The Wisconsin Tax Appeals Commission affirmed the department's decision imposing sales tax on photocopying charges billed by Frisch, Dudek and Slattery to their clients during the period from January 1, 1975 to October 31, 1979. (See WTB #39 for a summary of the Wisconsin Tax Appeals Commission's decision.)

The taxpayer is an incorporated law firm engaged solely in the practice of law. When billing its clients for legal services, the taxpayer itemizes certain out-of-pocket expenses and bills these separately from its flat hourly rate. During the time period in question, the taxpayer charged clients either $.20 or $.25 per photocopy, except for large orders which were farmed out to independent operators who charged substantially less per copy. The average cost to the taxpayer over the period in question was $.23 per copy.

The applicability of the sales tax was recently examined by the Court in *Kollasch v. Adamany,* 104 Wis. 2d 552 (1981). There the Court noted a circularity between s. 77.52 and s. 77.51, Wis. Stats., which contains definitions for the terms used in s. 77.52. The Court attempted to formulate a workable definition of the term "retailer" because it felt the statutory definition was ambiguous. The Court noted, "the common conception of a retailer, as shown by the dictionary definition, is one who transacts business with a consumer in hopes of making a profit on the transaction." The Court also noted that the taxability of a particular sale depends upon the specific circumstances of the transaction.

Applying this definition of a retailer to the facts of the transactions which occurred here, it is clear that the sales are not taxable. The transfer of photocopies by the taxpayer to its clients and others is not done with a profit motive in mind. The real purpose of the transactions is to complement the efficient rendering of legal services. Without the provision of legal services there would be no photocopies.

Further support for the conclusion that the transfer of photocopies is not a taxable transaction is found in section Tax 11.67 Wis. Adm. Code (1981) which provided:

> (1) GENERAL. When a transaction involves the transfer of tangible personal property along with the performance of a service, *the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service.* If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, recordkeeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which furnishes without separate charge as an incidence to the service.

The obvious objective of the purchasers here was to obtain legal services.

The department argued that this provision must be ignored because it is impossible to determine the motives of the taxpayer's clients when they purchase photocopies. However, the record makes clear that copies were only provided to the taxpayer's legal clients and then at a cost of four to five times the price which clients could have purchased the copies from other sources. This is sufficient evidence to draw the conclusion that no one dealt with the taxpayer solely for the purpose of procuring photocopies.

The Circuit Court concluded that the department has erroneously interpreted s. 77.52, Wis. Stats., and that a correct construction compels the conclusion that the taxpayer is not a retailer selling personal property.

The Commission's decision and order should be modified as follows. During the period under review, the taxpayer was not a "retailer" of photocopies as the word is defined by statute and case law. The taxpayer was a provider of legal services, a service not subject to the Wisconsin sales tax. The taxpayer's furnishing clients with photocopies were transfers of tangible personal property incidental to and in conjunction with sales of a nontaxable service. The true objective of the taxpayer was to sell the taxpayer's legal services. Its billings were for a nontaxable service, which was the true objective of its clients, and not for the sale of tangible personal property although some tangible personal property was transferred as an incidence to providing the service.

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

Montgomery Ward & Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 29, 1985). Montgomery Ward & Co., Inc. (Ward) is an Illinois Corporation with its principal place of business and corporate domicile located in Chicago, Illinois. Its principal business activity is that of retail merchant. Ward conducts this business activity in the State of Wisconsin through retail outlets, catalog stores, catalog agencies and direct mail catalog sales. This was the case throughout the period in issue, September 1, 1969 through January 31, 1981.

Direct mail catalog sales were made by Ward customers by mailing completed catalog order forms to Ward catalog house locations where goods were withdrawn from inventory and sent back to the customers by mail. Residents of Wisconsin ordered goods by mail from Ward's catalog houses in Chicago, Illinois and St. Paul, Minnesota. Prices in the