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.

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 (effective 2/18/86).

The following sales tax rules to incorporate county sales/use tax provisions were published and became effective on March 24, 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

Carl F. Isonhart
Statute of limitations

Arthur F. Jackson
Constitutionality of taxes

Arthur F. Jackson
Negligence penalty
Capital losses
Not-for-profit activity

Diane C. (Mentch) Nelson
Gain or loss—property transferred pursuant to divorce

Klaus Wacker
Foreign income taxes paid

Corporation Franchise/Income Taxes

Avon Products, Inc.
Nexus

Brown Deer Medical Building, Ltd.
Appeals—deposit of contested taxes

H.K. Ferguson Company
Allocation of income—separate accounting

McHenry Sand & Gravel Co., Inc.
Net business loss carryforward

Milwaukee Seasoning Laboratories, Inc.
Nexus
Allocation of income—apportionment

Pabst Brewing Company
Apportionment, sales factor—dock sales

Schumacher, Nelson, Grambo & Associates, Inc.
Deductions—client lists

Suburban Beverages, Inc.
Interest expense—purchase of own stock

Sales/Use Taxes

Anderson Laboratories, Inc.
Manufacturing exemption
Negligence penalty

Johnson and Johnson, a partnership, d/b/a Asphalt Products Co., and Asphalt Products Co., Inc.
Construction contractors

Thiry Daems Cheese Factory, Inc.
Manufacturing exemption

Vita Plus Corporation
Manufacturing exemption

INDIVIDUAL INCOME TAXES

Carl F. Isonhart vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 20, 1985). The issue before the Commission was whether the Wisconsin Department of Revenue can assess the 1978 reported changes after the four-year statute of s. 71.11(21) (bm), Wis. Stats.

The 1978 tax year of the taxpayer was closed to audit on April 15, 1983, pursuant to s. 71.11(21) (bm), Wis. Stats. On July 11, 1983, the IRS furnished a report adjusting the taxpayer's 1978 and 1979 tax years. An amended return for 1979 was filed with the Wisconsin Department of Revenue during September 1983 within 90 days of the IRS notice. The changes for 1978 were furnished to the Department of Revenue, but no tax was paid.

Section 71.11(21)(g)2, Wis. Stats., authorizes the Wisconsin Department of Revenue to assess a tax within 90 days after the required notice under s. 71.11 (21m) is received. The Department of Revenue issued an assessment for the 1978 tax year within 90 days.

The Commission held that the Wisconsin Department of Revenue can assess beyond the four-year statute limitation if the notice of assessment is given to the taxpayer within 90 days of the date on which the department receives a report from the taxpayer of an adjustment to IRS returns.

The taxpayer has not appealed this decision.

Arthur F. Jackson vs. Wisconsin Department of Revenue (Court of Appeals, District IV, October 24, 1985). Arthur Jackson appealed a judgment which affirmed a decision of the Wisconsin Tax Appeals Commission. The Commission had affirmed an assessment of income taxes and the imposition of a penalty by the Wisconsin Department of Revenue. On appeal, Jackson raised several objections to the concept of income taxation, to the process of assessment, and to the power of a government to subject its citizens to a levy of taxes. He argued that the income tax statutes are vague, that the Wisconsin definition of income must follow the federal definition, that wages and salaries are not income, that an assignment of income exempts him from taxation, that the administrative procedure denies him his right to a jury trial, and that the imposition of a penalty denies him the right to petition the government for redress of grievances.

The Court of Appeals concluded that the appeal presents frivolous arguments and warrants the imposition of costs and attorney fees under Rule 809.25(3). The arguments have no basis in law or equity, and no reasonable person would present them. The payment of legitimate taxes is an obligation of citizenship. Through its elected officials, the State of Wisconsin may levy taxes on its citizens, provide administrative procedures for review of tax obligations, and enforce its laws against individuals who avoid taxation through no legal basis. Jackson challenges this authority with arguments which reasonable persons would not assert. The trial court is directed to assess frivolous appeal costs and attorney fees against Jackson.

The taxpayer has appealed this decision to the Supreme Court.

Arthur F. Jackson vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 1, 1985). The issues for the Commission to determine are whether:

A. The department correctly assessed a 25% negligence penalty for improper filing of 1980 and 1981 Wisconsin individual income tax returns.

B. The department's adjustment of the taxpayer's 1980-1982 Wisconsin tax returns was correct based on a disallowance of $1,500 capital loss carryover from 1979 which was available to the taxpayer during that year, but was not used.

C. The department correctly disallowed claimed business losses for 1981 and 1982 resulting from the taxpayer's start-up costs of a horse training business.

The department imposed the 25% negligence penalty provided in s. 71.11(47), Wis. Stats., for the years 1980 and 1981 because the original tax returns were incorrectly filed.

In 1980, the taxpayer filed a Wisconsin tax return placing an asterisk on line 6 in place of wages or salaries. The asterisk was explained in an attached letter written by the taxpayer to the Internal Revenue Service. The taxpayer stated that wages and salaries were received as equal compensation for labor, resulting in no gain or profit, therefore no income was received.

The taxpayer's 1981 Wisconsin tax return again contained an asterisk in place of wages and salaries with an attached letter and affidavit by the taxpayer, declaring that he was not liable for any indirect tax and had fulfilled his obligation for all direct taxes owed.

W-2 forms attached to the taxpayer's tax returns indicate that he received $39,374.94 as wages from the Sherex Chemical Company in 1980 and $47,262.46 as wages from the same company in 1981. The taxpayer noted on his W-2 forms for both years that the wages were contract income from nominee trustee.

The taxpayer's 1980, 1981 and 1982 capital gains and losses were adjusted by the department based on a disallowance of a carryover loss from 1979 which was never taken in that year. The taxpayer applied a $1,500 capital loss carryover available in 1979, which he failed to claim as a deduction in that year, to his subsequent original and amended tax returns for 1980, 1981 and 1982 for determination of capital gains and losses.

The department disallowed the taxpayer's 1981 and 1982 business losses reported on a horse training business which the department claimed is not an activity entered into for profit.

The record included unsupported testimony that the horse training business was entered into for profit. No records or proof that the activity was conducted in a businesslike manner was presented at the hearing. The financial records of the activity consist of the general checkbook for the family trust. The taxpayer admitted no previous experience in horse training and very little personal involvement in the activity since he works full time as a plant manager. His daughter, who was twelve years old when the business was begun, and a trainer from a local stable were the people responsible for training the one horse which is the sole asset of the business.

The Commission held as follows:

A. The 25% negligence penalty provided in s. 71.11(47), Wis. Stats., is proper when a taxpayer incorrectly files a tax return without proving good cause or lack of neglect.

B. A capital loss carryover available in a particular year is lost if not taken during that year.

C. The department properly denied the business losses where the horse training business was found to be a not-for-profit activity.

The taxpayer has not appealed this decision.

Wisconsin Department of Revenue vs. Diane C. (Mentch) Nelson (Circuit Court of Racine County, February 20, 1986). This was a petition of the Wisconsin Department of Revenue for review of the decision and order of August 6, 1985 by the Wisconsin Tax Appeals Commission which reversed the Wisconsin Department of Revenue's action on Diane C. (Mentch) Nelson's petition for redetermination.

The Wisconsin Tax Appeals Commission determined that the department's assessment of gain on real estate was erroneous because the gain was a division by co-owners of jointly held property and therefore not a taxable gain.

The department contended that the decision and order of the Commission should be set aside and reversed be-

cause it rests on a misrepresentation and misapplication of *Krueger v. Wisconsin Department of Revenue*, 124 Wis. 2d 453 in which the Wisconsin Supreme Court held that an equal division of property between husband and wife pursuant to a divorce settlement is not taxable. The department contended that the division between Diane C. (Mentch) Nelson and Aaron Mentch was not an equal division; therefore, the Commission's decision is wrong as a matter of law.

The Commission did not make a finding of fact on the issue of whether the marital property was equally divided although paragraph 3 of the findings of fact recognizes that the actual value of the property is unequal.

The *Krueger* case holds that the explicit legislative announcement of s. 767.255, Wis. Stats., presumes that upon dissolution of a marriage all property which is not traceable to a gift or inheritance is to be divided equally between the parties except where specific factors are present to militate against such a division. Each spouse in Wisconsin since the statutory changes made effective in 1978, has presumptively an equal ownership interest in such property upon the dissolution of the marriage.

The divorce judgment incorporated the division of the property as made in the stipulation.The Court did not alter the distribution nor did it consider any of the 12 factors of s. 767.255, Wis. Stats.

The Court by approving the stipulation accepted the presumption that the property was divided equally. There is nothing in the record to indicate that in granting the divorce judgment, the Court indicated that it was altering the equal distribution. To say that the Court in accepting the stipulation was altering the distribution and considering the statutory factors and considered the tax consequences, would be an injustice. The Court in granting the judgment of divorce and approving the stipulation believed that it was dividing the property in conformity with s. 767.255, Wis. Stats.

Under these circumstances, the Circuit Court believed that the transfer of the taxpayer's undivided interest as a joint tenant in the two appreciated parcels of real estate under a stipulated divorce division settlement is a nontaxable division of property and within the *Krueger* decision. The petition of the department was denied.

The department has not appealed this decision.

Klaus Wacker vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 27, 1986). The sole issue for determination by the Commission was whether the department properly disallowed the taxpayer's subtract modification of $328,670 for German trade tax claimed by the taxpayer on line 37 of his 1981 Wisconsin income tax return.

During 1981, the taxpayer was a partner in two partnerships in the Federal Republic of Germany (West Germany), which were involved in the business of manufacturing construction machinery.

During 1981, the partnerships paid West German trade taxes on the income of the partnerships. During 1981, Klaus Wacker paid income tax to the Federal Republic of Germany on his distributive share of the income earned by these partnerships, which distributive share was net of the trade taxes.

For Wisconsin income tax purposes, the taxpayer did not claim a subtract modification for the German income tax which he paid on his distributive share of the income from the German partnerships. On line 37 of his 1981 Wisconsin income tax return, the taxpayer claimed a subtract modification of $328,670 for his share of the trade tax on business profits which was levied against the partnerships and paid by the partnerships.

Although trade taxes are liabilities of the partnership and not liabilities of the partners, under Internal Revenue Code Sections 702(a)(6) and 901(b)(5), an individual filing a U.S. individual income tax return is entitled to a foreign tax credit for the amount of the trade taxes.

The Commission concluded that in determining his 1981 income tax under the Internal Revenue Code for Wisconsin tax purposes as a partner, the taxpayer was required to take into account separately his distributive share (1) of the partnerships' foreign income (trade) taxes and (2) of the partnership taxable income exclusive of the deduction for such foreign income taxes.

Under the Internal Revenue Code, the taxable income of a partnership is computed in the same manner as in the case of an individual except that foreign income taxes paid or accrued and taxable income exclusive of the deduction for foreign income taxes must be separately stated and the deduction for foreign income taxes is not allowed to the partnership.

The taxpayer's distributive share of the partnerships' taxable income reported for federal purposes properly included (without deduction) the partnerships' foreign income taxes, and he is not entitled for Wisconsin tax purposes to any subtract modification to his distributive share of partnership taxable income under s. 71.05, Wis. Stats.

Under Wisconsin income tax law, there is no provision for a credit for foreign taxes paid and such taxes cannot be deducted as itemized deductions. Foreign income taxes are not deductible by the taxpayer as trade or business expenses or as a Wisconsin subtract modification.

The taxpayer has appealed this decision to the Circuit Court.

CORPORATION FRANCHISE/ INCOME TAXES

Avon Products, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 14, 1986). The issue in this matter was whether the business activities of Avon Products, Inc. within the State of Wisconsin during the period 1973 through 1978 constituted doing business in Wisconsin within the intent and meaning of s. 71.01(2), Wis. Stats., in excess of the solicitation of orders within the intent and meaning of 15 U.S.C. Section 381(a)(1) and (2).

Avon Products, Inc. (Avon) is a New York corporation with its corporate headquarters located in New York, New

York. During the years at issue, Avon manufactured cosmetics, toiletries and related items of tangible personal property and sold them throughout the United States, including the State of Wisconsin, through a method of distribution referred to as door-to-door or direct sales.

The dollar volume of the taxpayer's sales in Wisconsin during the years 1974 through 1978 was as follows:

1974	$21,600,019
1975	20,833,282
1976	24,316,586
1977	29,318,201
1978	36,012,674

In the assessment under review, the department apportioned the following income to Wisconsin for Wisconsin franchise/income tax purposes:

1973	$ 950,000
1974	1,080,000
1975	1,041,000
1976	1,210,000
1977	1,466,000
1978	1,800,000

In 1973 and thereafter, Avon maintained contracts with approximately 4,800 Avon sales representatives who sold Avon products door-to-door in Wisconsin. The number of Avon sales representatives increased to the point where, in 1978, approximately 8,200 representatives were selling Avon products in Wisconsin.

The contract between Avon and each Avon representative, which was called a "sales dealer's contract," provided that Avon agreed (1) to sell products to the representative, (2) to pay transportation charges on the merchandise it sold and (3) not to place a service charge on orders over $100. A fourth provision, which Avon agreed to, was that it reserved the right to change the three preceding provisions "at any time upon ten (10) days prior written notice." The contract provided that the sales representative agreed (1) to pay $15 for the order taking privilege, (2) to sell, purchase and deliver Avon products in the assigned territory, (3) to pay for the purchase by the due date of the next Campaign Purchase Order, (4) that the contract and all purchase orders were subject to Avon's acceptance, and (5) to furnish references subject to approval by Avon. The sixth and last provision that the sales representative agreed to provided as follows:

> The Sales Dealer is an independent contractor and has no power or authority to incur any debt, obligation or liability or to make any promise or contract on behalf of Avon. This is the sole and only Agreement between the parties and does not constitute the Sales Dealer an employee of Avon.

The contract also named the territory to which the representative was assigned.

Avon's sales representatives sold Avon products under a distribution system structured and furnished with sales aids by Avon. Avon gave new representatives an "appointment kit" or "sale kit" which is a 14-inch by 10-inch by 5-inch vinyl, open-topped bag, in which the representative carried all of the samples, brochures and related materials she needed to sell door-to-door. Every two-week period constituted a sales "campaign."

One week the representative would sell and order from Avon's branch warehouse in Morton Grove, Illinois. The next week the goods would arrive and while delivering them to her customers, the representative could take orders for the next campaign. In addition, Avon supplied the order forms on which the representative wrote up a customer's order, the order form on which the representative ordered products, the instructions for the order form, and the brochures which pictured the products.

Avon exercised control over the sales representatives in terms of assistance, training and supervision. Under an agreement with the department, Avon collected from its representatives Wisconsin sales tax as due, computed on the price the representative charged the customer. Avon then filed a single sales and use tax return with the Wisconsin Department of Revenue reporting all the sales of its representatives and paying the taxes due. Avon also conducted district sales meetings where representatives received information concerning new products, suggestions on how to sell the products, information about earnings incentive programs and recognition for sales performance.

A sales representative could end her relationship with Avon at any time by choosing not to order products. Avon could end the association in the event of inactivity, nonpayment or fraud on the part of the sales representative.

All of the material the sales representative used in her selling activities was furnished by Avon. In addition, the sales program, consisting of two-week campaigns, service fees for small orders, the sales specials, sales incentives for representatives, and sales meetings, was designed by Avon and monitored by Avon's district managers. The heavy dependence of the sales representatives on Avon for supplies and assistance and the threat of termination, all effectively caused the sales representatives to sell Avon's products exclusively in the manner desired by Avon.

In 1973, Avon employed approximately 35 district managers who lived in Wisconsin and who were assigned to districts located in Wisconsin. The number of district managers and the number of districts increased in the ensuing years to a point where in 1978 approximately 60 district managers were employed in 60 districts. Each district had on the average 137 sales representatives assigned to territories within the district. The turnover among sales representatives was more than 120% per year. District managers spent a substantial portion of their working time recruiting sales representatives. Recruiting involved district managers soliciting existing representatives and others for the names of prospects, screening the prospects and interviewing them. If a prospect agreed to become a sales representative, the district manager assigned her a territory and explained the sales dealer's contract and the other materials in the appointment kit necessary to start selling door-to-door. The rest of the district managers' time was spent attempting to motivate sales representatives to sell more by providing information about products, selling techniques and incentive programs at district sales meetings and by personal contact with the representatives. The district managers' activities, which all took place in

Wisconsin, were of a managerial and supervisory nature.

When vacancies in district managers' positions occurred, Avon advertised for persons who were leaders and motivators with a range of business and interpersonal skills who might qualify "for a challenging sales management position."

In its 1974 Annual Report, Avon stated:

> Women hold key Avon management positions. Our Company has one of the best records in business for women executives. They represent 65% of our total U.S. management staff, including about 2,300 who hold the key position of District Manager.

Similar statements were made in the 1975 Annual Report.

Avon's district managers were not engaged in soliciting orders for the sale of cosmetics and toiletries, but rather engaged in supervisory and managerial activities for Avon during the period at issue.

During the period 1973 through 1978, Avon employed three division managers who performed a portion of their duties while physically present in Wisconsin. All of the division managers performed approximately 50% of their work in their offices in Morton Grove, Illinois and the remaining 50% within their assigned divisions. The North Star division was located wholly within Wisconsin. The Premier division was located both in Wisconsin and Illinois; 6 of the 18 districts were located in Wisconsin; and one-third of the time the division manager was in her division, she was physically in Wisconsin. The Crown division consisted of 56 counties located north of the Wisconsin River and Columbia, Dodge, Washington and Ozaukee counties and, in addition, the Upper Peninsula of Michigan. In 1978, 29 districts were located within the Wisconsin portion of the Crown division. During the period 1973 through 1978, the division managers of the Crown division spent in the very least two-thirds of the working time, spent physically within the division, within the geographic boundaries of the State of Wisconsin.

The division managers had authority to effectively recommend the hiring and firing of district managers employed by Avon within their respective districts. The division managers' duties involved interviewing for vacant positions of district managers and stand-in district managers, participating in their training, assisting them and motivating them in their work through frequent staff meetings and individual visits to their districts and reporting to regional sales managers superior to themselves regarding the effectiveness of sales programs and incentives.

All of the division managers' activities, whether performed in the office in Illinois or in the field in Wisconsin, involved supervising district managers and implementing Avon's policies and procedures and were supervisory and managerial in nature.

Avon district managers held monthly staff meetings for the approximately 137 sales representatives assigned to territories within their district. Meeting rooms were rented in Wisconsin for some of the quarterly and more frequent divisional staff meetings.

Commencing in 1974 and continuing through at least 1978, Avon made available to each of its approximately 39 to 60 district managers in Wisconsin the use of an automobile for the performance of their duties.

Avon shipped to its district managers in Wisconsin "the product of the month" to give to sales representatives who attended the monthly district sales meeting to encourage attendance. The quantity shipped depended on how many sales representatives the district manager anticipated would come to the meeting. Avon provided district managers with projectors to show slide strips at sales meetings.

Avon's district managers maintained offices in their home for the purpose of discharging their duties to Avon and in furtherance of the business activities of Avon in Wisconsin.

Avon purchased telephone answering services in Madison and Milwaukee, Wisconsin to facilitate telephone contact between sales representatives and the district manager for their district and also to receive telephone calls from persons seeking to purchase Avon products or making inquiries regarding becoming a sales representative. The May 1972 through 1978 Milwaukee Telephone Directory yellow pages in their annual editions contained a listing for Avon as did the white pages for November 1973 through November 1978. Similarly, the Madison Telephone Directory white pages contained a listing for Avon in its January 1973 through January 1978 annual editions.

Avon purchased from newspapers located in Wisconsin space for advertisements designed to recruit Avon sales representatives. The district managers placed the advertisements in the newspaper, which consisted of copy prepared by Avon. Avon paid for the advertisements which listed a telephone number where a prospect could call, which in Madison and Milwaukee was the telephone number of a telephone answering service.

In 1973 through 1978, Avon operated its corporate offices and a research laboratory in New York; manufacturing laboratories in New York, Illinois, Ohio and California; and distribution branches in New York, Massachusetts, Delaware, Ohio, Georgia, Illinois, Missouri and California. It had offices in all of these states also. It did not have offices, laboratories, distribution branches or warehouses in any of the other 42 states.

During the years 1973 through 1978, Avon carried on its selling activities throughout the entire United States. District managers and division managers employed by Avon all over the United States performed the same duties.

Avon has filed income or franchise tax returns in the following 18 states for the indicated years where it neither owns nor leases real estate and where it carried on its business activities in the same manner it did in Wisconsin in 1973 through 1978:

1967 and subsequent years	New Jersey
1971 and subsequent years	Colorado
1973 and subsequent years	Arkansas
1974 and subsequent years	Iowa, Kentucky, Rhode Island

1975 and subsequent years	North Dakota
1977 and subsequent years	Minnesota
1978 and subsequent years	Alaska, Idaho, Kansas, Montana, Nebraska, New Mexico, Oregon, Utah, West Virginia
1980 and subsequent years	Hawaii

Avon has not filed a Wisconsin franchise tax return for 1973 or any subsequent year.

The Commission concluded that the taxpayer's business activities in Wisconsin, during the period under review, exceeded the mere solicitation of orders standard prescribed and defined in Public Law 86-272 (15 U.S.C. 381) and constituted doing business in Wisconsin within the intent and meaning of s. 71.01(2), Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Brown Deer Medical Building, Ltd. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 10, 1986). This matter came for hearing of the department's motion to dismiss by the Commission on stipulated facts.

Under date of May 21, 1984, the department issued a Notice of Amount Due to Brown Deer Medical Building, Ltd. Under date of July 2, 1984, the taxpayer filed a petition for redetermination with the department. Under date of April 29, 1985, the department denied the taxpayer's petition for redetermination and issued a Notice of Amount Due.

On May 21, 1985, Mr. Miller, the accountant for Brown Deer Medical Building, Ltd., was directed by the officers of Brown Deer Medical Building, Ltd. to appeal the notice of action to the Wisconsin Tax Appeals Commission and to pay the tax and interest in the Notice of Amount Due to stop interest from accruing while the appeal was pending. Mr. Miller caused a check to be drawn payable to the Wisconsin Department of Revenue in the amount of $5,386.49. The check and a copy of the Notice of Amount Due were mailed to the department on May 21, 1985. No communication other than the Notice of Amount Due and check was included in the envelope mailed May 21, 1985. The taxpayer's check was processed on May 29, 1985 by the Central Audit Bureau of the Wisconsin Department of Revenue as payment in full of the assessment at issue.

On June 28, 1985 the taxpayer filed a timely appeal with the Wisconsin Tax Appeals Commission.

The payment of May 21, 1985 was not a deposit of contested taxes made pursuant to s. 71.12(2), Wis. Stats. The provisions of s. 71.12 (2), Wis. Stats., contain the exclusive procedure for the deposit of taxes in contested franchise tax assessments. The taxpayer's payment of the additional assessment of franchise taxes to the Wisconsin Department of Revenue did not constitute compliance in any manner with provisions of s. 71.12(2), Wis. Stats.

The department has shown good and sufficient grounds for the granting of its motion. Therefore, the Commission granted the department's motion to dismiss the taxpayer's petition for review.

The taxpayer has not appealed this decision.

H.K. Ferguson Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 21, 1986). The question for the Commission to answer was first whether the department acted properly in changing the taxpayer's method of reporting its income to Wisconsin from separate accounting to apportionment, and second, if the answer is yes whether the department abused its authority by double-weighting the sales factor in the three-factor statutory apportionment formula used.

The H.K. Ferguson Company was organized under the laws of the State of Ohio in 1937 and is a wholly-owned subsidiary of Morrison-Knudson Co., Inc. The H.K. Ferguson Company is a contractor specializing in engineering, designing, construction, management and direction of equipment installation at processing plants, chemical plants, paper mills and other facilities.

During the taxable years 1977, 1978, 1979 and 1980, the H.K. Ferguson Company was engaged by the Manitowoc Co., Inc. of Manitowoc, Wisconsin for the engineering and construction management of Manitowoc's South Works Facility.

During the years 1977, 1978, 1979 and 1980, the taxpayer reported its income to the State of Wisconsin on the basis of separate accounting. Upon subsequent audit by the Wisconsin Department of Revenue, the department determined that the taxpayer's operations in Wisconsin during the period under review were a dependent part of a multistate unitary business operation and that the taxpayer should file its tax returns on the apportionment method of accounting for the subject years.

In changing the taxpayer from the separate accounting to the apportionment method, the department computed the three factors—property, payroll and sales—for both Wisconsin and other states based on information submitted by the taxpayer. The department in its apportionment computation double-weighted the sales factor.

The Commission concluded that the taxpayer's business operations within the State of Wisconsin during the period involved, were dependent upon and contributory to the taxpayer's multistate unitary business. The department acted properly in changing the taxpayer's method of reporting its income from separate accounting to apportionment to more accurately reflect that portion of its income attributable to and taxable by the State of Wisconsin. The department did not abuse its discretion in double-weighting the sales factor of the statutory three-factor apportionment formulas contained in s. 71.07(2), Wis. Stats.

The taxpayer has not appealed this decision.

McHenry Sand & Gravel Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 21, 1986). The single issue before the Commission was whether McHenry Sand & Gravel Co., Inc., a Delaware corporation, is allowed to carry forward the net business loss of McHenry Sand & Gravel Co., Inc., an Illinois corporation.