

- 2.21 Accounting for incorporated contractors-A
- 2.22 Accounting for incorporated dealers in securities-R&R
- 2.24 Accounting for incorporated retail merchants-A
- 2.25 Corporation accounting generally-A
- 2.26 "Last in, first out" method of inventorying for corporations-A
- 2.395 Sales factor option-NR
- 2.45 Apportionment in special cases-A
- 2.50 Apportionment of net business income of interstate public utilities-A
- 2.505 Apportionment of net business income of interstate professional sports clubs-A
- 2.53 Stock dividends and stock rights received by corporations-A
- 2.56 Insurance proceeds received by corporations-A
- 2.65 Interest received by corporations-A
- 2.72 Exchanges of property by corporations generally-A
- 2.721 Exchanges of property held for productive use or investment by corporations-A
- 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations-A
- 2.88 Interest rates-A
- 3.44 Organization and financing expenses—corporations-R&R
- 3.45 Bond premium, discount and expense—corporations-A

#### **B. Rules at Legislative Standing Committees**

- 11.10 Occasional sales-A

#### **C. Rules Adopted in 1987 (effective 8/1/87)**

- 1.06 Application of federal income tax regulations for persons other than corporations-A
- 1.10 Depository bank requirements for withholding, motor fuel, general aviation fuel and special fuel tax deposit reports-A
- 1.13 Power of attorney-A
- 2.01 Residence-A

- 2.03 Corporation returns-A
- 2.05 Information returns, forms 8 for corporations-A
- 2.08 Returns of persons other than corporations-A
- 3.07 Bonuses and retroactive wage adjustments paid by corporations-A
- 11.05 Governmental units-A
- 11.08 Medical appliances, prosthetic devices and aids-A
- 11.09 Medicines-A
- 11.10 Occasional sales-A
- 11.12 Farming, agriculture, horticulture and floriculture-A
- 11.14 Exemption certificates (including resale certificates)-A
- 11.16 Common or contract carriers-A
- 11.27 Warranties-A
- 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps-A
- 11.39 Manufacturing-A
- 11.41 Exemption of property consumed or destroyed in manufacturing-A
- 11.45 Sales by pharmacies and drug stores-A
- 11.49 Service stations and fuel oil dealers-A
- 11.65 Admissions-A
- 11.66 Communication and CATV services-A
- 11.80 Sales of ice-A
- 11.84 Aircraft-A
- 11.85 Boats, vessels and barges-A
- 11.88 Mobile homes-A
- 11.94 Wisconsin sales and taxable transportation charges-A
- 11.96 Interest rates-A

#### **D. Emergency Rules (effective 8/1/87)**

- 3.095 Interest income from federal obligations-A

*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**

Capital Preservation Fund, Inc., et al. (p. 8)

Interest income—mutual funds

James F. Honzik (p. 9)

Capitalized expenses

#### **Corporation Franchise or Income Taxes**

Regency Nursing Homes, Inc. (p. 9)  
Business loss carryforward (prior law)

#### **Sales/Use Taxes**

PAE Communications, Inc. (p. 10)  
Cable TV

Susie Q Fish Company, Inc. (p. 10)  
Boats, vessels and barges

Valley Veterinary Clinic, S.C. and Dairyland Veterinary Associates, S.C. (p. 11)  
Farming—livestock medicines

#### **Homestead Credit**

John H. Jackson (p. 11)  
Household income

### **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*

#### **INDIVIDUAL INCOME TAXES**

**Interest income—mutual funds.** *Capital Preservation Fund, Inc., Trust for Short Term U.S. Government Securities, Lee R. Hribar, Unrquhart L. Meeter, and*

*James E. Bartelt v. Wisconsin Department of Revenue* (Circuit Court of Dane County, May 11, 1987). Capital Preservation Fund (Fund), Trust for Short Term U.S. Government Securities (Trust), and individual investor/taxpayers claim that the taxing of dividends distributed to investors from mutual funds investing solely and exclusively in U.S. Government securities under Chapter 71, Wis. Stats., is an unconstitutional violation of the prohibition in 31 U.S.C., s. 3124(a) against direct or indirect taxation, by any state, of United States Government securities or income from those securities. Similarly, this prohibition is incorporated in s. 71.05(b)(1), Wis. Stats., exempting income, "which by federal law is exempt from taxation by this state."

The Trust and Fund are diversified investment companies qualifying as regulated investment companies (commonly known as mutual funds) under ss. 851-855 of the Internal Revenue Code of 1954, as amended. The Fund is a California corporation with its principal office in Palo Alto, California. The Trust is a no-load, open-end, diversified investment company established as a Massachusetts Business Trust under a Declaration of Trust. The Trust operates as a regulated investment company under the Internal Revenue Code, 20 U.S.C., ss. 851-855. As such, the Trust itself is exempt from federal corporate income taxation. The stated purpose of the Trust is to provide investors with, "high current income consistent with stability of principal and liquidity." The Trust and the Fund invest exclusively and directly in United States Government securities. The Trust invests in direct federal credit obligations, securities issued by or guaranteed by federal agencies. These federal securities are exempt from state taxation under 31 U.S.C., s. 3124(a).

Shares in the Trust and the Fund have been and are currently sold to individual investors in many states, including Wisconsin. The income derived from investment in U.S. Government securities is primarily distributed as "dividends" to shareholders and beneficiaries in two alternative forms: cash or additional shares.

An individual invests in the Trust by purchasing shares at net asset value. One share equals one dollar. The Fund operates in a similar manner, also restricting its investments to federal securities and obligations.

Lee R. Hribar, Unruh L. Meeter and Barbara C. Meeter are individual investors in the Fund. Cumulatively, they own 441,752 shares. James E. Bartelt is an investor in and a beneficiary of the Trust, owning 2,000 shares.

The dividend distributions which each taxpayer receives monthly from either the Fund or the Trust have been reported by the investors on their individual Wisconsin income tax returns as gross income and that income has been taxed by the Department of Revenue.

The Circuit Court concluded that in order to protect this interest codified in 31 U.S.C., s. 3124(a), the Fund, Trust and taxpayers' motion for summary judgment is granted. The department's practices of taxing the dividends from the Fund and Trust are declared to be in violation of s. 3124(a) of Title 31 U.S.C.

The department has appealed this decision.

□

**Capitalized expenses.** *James F. Honzik vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 12, 1987). The issue to be decided by the Commission is whether the expenditures incurred in the renovation of the duplex were repair expenses deductible under section 162 of the Internal Revenue Code or part of a general plan of improvement and rehabilitation which must be capitalized.

Sometime in 1982 or 1983, the taxpayer purchased a fully rented duplex located in the City of Milwaukee. Upon examination of the property, the taxpayer noticed that a hot water pipe leaked from the

ceiling, the basement had flooded and old pipe was rusting through. These leaks were fixed by running new pipes across the ceiling rather than replacing the old pipe under the concrete floor. The taxpayer also replaced copper pipes to the radiators where constriction was taking place as a result of being joined to galvanized pipe. The furnace was also rewired. As a result of the flooding and above mentioned work, the holes in the plaster and ceiling were covered by paneling the basement. Taken as a whole, the above mentioned projects were not repair but rehabilitation of the duplex.

The Commission concluded that the expenses in dispute must be capitalized and are not deductible as an expense under IRC section 162.

The taxpayer has appealed this decision.

□

## CORPORATION FRANCHISE OR INCOME TAXES

**Business loss carryforward (prior law).** *Regency Nursing Homes, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District I, February 12, 1987). Regency Nursing Homes, Inc. (Regency) appeals from a judgment affirming an order of the Wisconsin Tax Appeals Commission (Commission) upholding the assessment of additional franchise tax and interest. (See WTB 41 and 48 for a summary of the Commission and Circuit Court decisions.)

Regency owned and operated a nursing home facility during fiscal years ending in 1971 through 1975 and sustained net business losses during that time. During the fiscal year ending in 1975, the facility was sold. Regency realized a gain on the sale. Thereafter, Regency ceased business operations, and it liquidated in 1976. On its 1975 Wisconsin corporate income tax return, Regency offset the prior years' net business losses against the income realized on the sale. The department as-

sessed additional franchise taxes after concluding that the offset was inappropriate because the income from the sale of assets prior to liquidation was not "net business income" as defined by s. 71.06, Stats. (1973). The department, the Commission, and the Circuit Court concluded that s. 71.06 required that the business continue after the sale.

The Court of Appeals ordered that the judgment of the Circuit Court is summarily affirmed.

The taxpayer has not appealed this decision.



## SALES/USE TAXES

**Cable TV.** *PAE Communications, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 10, 1987). The issues are:

A. Whether underground television cable including main line, feeders and drops become part of the real estate upon installation and lose their character as tangible personal property so as to not be subject to the sales tax on services described in s. 77.52(2)(a)10, Wis. Stats.

B. Whether installing an underground cable television drop line on the subscriber's premises between the feeder line and the subscriber's house is a taxable service described in s. 77.52(2)(a)12, Wis. Stats.

C. Whether the installation of risers was a taxable service under s. 77.52(2)(a)10, Wis. Stats.

PAE Communications, Inc., is a Wisconsin corporation. The taxpayer was organized in 1978 as J. W. Romlein, Inc. The taxpayer's principal (100%) stockholder at that time was James W. Romlein, Wauwatertown, Wisconsin. During February 1980, Romlein sold 80% of his stock to Pacific Architects and Engineers, a Cali-

fornia corporation. During 1983, the corporate name was changed to PAE Communications, Inc. The taxpayer's primary business was providing consulting services to the telecommunications industry. It had offices located in Wisconsin, Indiana, and Florida.

During the period of 1980 through 1983, the taxpayer was in the business among others of installing cable for cable television companies. As part of the Department of Revenue's regular audit program, the department conducted a field audit of the taxpayer in 1984 for the period of June 1, 1979 through December 31, 1983. The taxpayer was not registered for sales or use tax or had not filed any sales or use tax returns for the period under review. The taxpayer is objecting to the department's assessment of sales tax for the laying of cable underground for cable television companies. The taxpayer did not charge a sales tax to the cable television companies for installing cable. The contracting cable television companies were responsible for necessary easements and permits.

The underground cable is buried either by "trenching" or by a process called "plow cable" 24 to 36 inches, and one could not just reach down to remove it, but rather would have to trench down to dig it up. This would be done only if a piece of cable was damaged and in need of repair or replacement. There would be no occasion to simply remove the cable. If use of the cable system was discontinued the cable would be abandoned. Cable is not buried with the idea of someday removing it. The process of laying cable television lines is very similar to underground telephone lines. The only difference is that television cables are a little "touchier" to handle. Gas and electric lines are also buried underground. The methods may be slightly different, but the principle is the same as for cable television lines.

The Commission concluded:

A. This decision is rendered under the provisions of s. 73.01(4)(e), Wis. Stats.

B. The taxpayer's installation of underground television cables was not a taxable

service described in s. 77.52(2)(a)10, Wis. Stats., and section Tax 11.68(4) and (6), Wis. Adm. Code.

C. The taxpayer's installation of underground television cables (drop lines) was not a "sale of cable television system services including installation charges" within the meaning of s. 77.52(2)(a)12 and (am), Wis. Stats., and section Tax 11.66(1)(e), Wis. Adm. Code.

D. The taxpayer's installation of "risers" was a taxable service described in s. 77.52(2)(a)10, Wis. Stats.

The taxpayer and the department have not appealed this decision.



**Boats, vessels and barges.** *Susie Q Fish Company, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 5, 1987). This matter is a review of an assessment by the department which levies a use tax against Susie Q Fish Company, Inc., for the period beginning July 1, 1977, and ending June 30, 1983.

The large majority of the assessment relates to taxes imposed on various items purchased for use in the taxpayer's commercial fishing activities on the Great Lakes and in particular the two commercial fishing vessels owned and operated by the taxpayer.

The taxpayer believes these items are exempt from tax under the exemption afforded commercial fishermen found in s. 77.54(13), Wis. Stats.

A minor portion of the assessment relates to parts the taxpayer purchased for a semi-tractor and a Ford van it purchased which it alleges is exempt from tax under the common or contract carriage exemption language contained in s. 77.54(5)(b), Wis. Stats.

The Susie Q Fish Company, Inc. is a Wisconsin corporation which, during the

period involved, namely July 1, 1977, through June 30, 1983, was engaged in the commercial fishing business.

In its commercial fishing activity, which consisted of trawling for alewives on Lake Michigan between Door County and Racine, the taxpayer owned and operated two commercial fishing vessels: the "Susie Q," which it purchased in 1965, and the "Avis-J," which it purchased in 1960.

The Commission concluded that the taxpayer was, during the period under review, primarily engaged in commercial fishing on Lake Michigan, utilizing two commercial fishing vessels, the "Susie Q" and the "Avis-J," both of which exceeded 50 ton burden, and thus is entitled to the exemption from sales and use tax contained in s. 77.54(13), Wis. Stats.

The taxpayer has not met its burden of proof to show by clear and convincing evidence that its purchase of truck parts or a 1975 Ford van fall clearly within the common or contract carriage exemption from tax, and thus is not entitled to that exemption as contained in s. 77.54(5)(b), Wis. Stats.

The department has not appealed but has adopted a position of nonacquiescence in regard to this decision.

□

**Farming—livestock medicines.** *Valley Veterinary Clinic, S.C. and Dairyland Veterinary Associates, S.C. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 16, 1987). The issues to be determined by the Commission are as follows:

A. Whether dewormers were medicines for animals purchased by veterinarians within the meaning of s. 77.51(7)(o), Wis. Stats., and, therefore, subject to the use tax under s. 77.53(1), Wis. Stats.

B. Whether teat dip, udder wash, and disinfectant were medicines for animals

purchased by veterinarians within the meaning of s. 77.51(7)(o), Wis. Stats., and, therefore, subject to the use tax under s. 77.53(1), Wis. Stats.

C. Whether freight charges on taxable purchases are included in the sales price within the meaning of s. 77.51(12), Wis. Stats.

D. Whether the taxpayers are entitled to a credit, but not to exceed the amount of the tax assessed, against the respective assessments here at issue for sales taxes paid to Wisconsin suppliers on purchases which were exempt from the sales and use tax.

Valley Veterinary Clinic, S.C. (Valley) and Dairyland Veterinary Associates, S.C. (Dairyland) are service corporations composed of veterinarians engaged in the practice of veterinary medicine and related activities. Valley has its principal office in Seymour, Wisconsin. Dairyland has its principal office in Fond du Lac, Wisconsin.

The dewormers, udder wash, teat dips, disinfectants, seed and feed supplements at issue in this proceeding were sold by the taxpayers to farmers. The primary purpose of the dewormers is the prevention of disease in livestock and poultry by the destruction of nematodes or other invertebrate animals injurious to plants and animals. The taxpayers also purchased a product called "Doc's Teat Dip" which is applied to cows immediately after milking. The taxpayer also purchased Bovadine Teat Dip, Quartermat Teat Dip, Blue Udder Wash, and Iosan Udder Wash, all used to wash cows teats and udders before milking to aid in the control of mastitis causing bacteria.

The taxpayer's purchases from Nelson Jameson, Calumet Dairy Supply, Van's Dairy Supply, and Paddock Laboratories, Inc., were preparations used to destroy insects, mites, nematodes, slugs, and other invertebrate animals injurious to plants and animals.

All of the items in dispute which the taxpayers purchased from their suppliers

and resold to Wisconsin farmers were also available and were commonly sold over-the-counter at farm supply retail stores.

The taxpayers paid sales tax to various Wisconsin suppliers on dewormers, teat dip, udder wash and disinfectants.

The Commission concluded:

A. The dewormers, teat dips, udder washes and disinfectants involved in this proceeding do not constitute "medicine for animals" within the intent and meaning of s. 77.51(7)(o), Wis. Stats., and are not subject to use tax under s. 77.53(1), Wis. Stats.

B. Freight charges on taxable purchases are properly includable as part of taxable gross receipts (sales price) for purposes of sales and use taxes, within the intent and meaning of s. 77.51(12), Wis. Stats.

C. The taxpayer who actually paid the tax in question to Wisconsin is the person entitled to claim its refund and/or credit. The taxpayers in this proceeding were not that taxpayer and, thus, lack the standing to claim a refund and/or credit.

The taxpayer and the department have not appealed this decision.

□

## HOMESTEAD CREDIT

**Household income.** *John H. Jackson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 20, 1987). The only issue in dispute is whether the claimant must report the amounts he received for AFDC as part of his household income on his 1983 and 1984 Wisconsin homestead credit claim forms.

During the years 1983 and 1984, legal custody of Camille Jackson and Kimberly Jackson was with their natural mother, Pearl Mae Jackson. Camille Jackson

and Kimberly Jackson are the grandchildren of the claimant. During the years 1983 and 1984, Camille Jackson and Kimberly Jackson resided with their grandfather rather than with their mother, Pearl Mae Jackson.

The claimant applied for AFDC and received AFDC checks in the amounts of

\$5,120 in 1983 and \$5,334 in 1984 for the support of his granddaughters. The claimant did not report the AFDC payments as household income on his 1983 and 1984 Wisconsin homestead credit claims.

The Commission concluded that the claimant is required to report as income on his 1983 and 1984 Wisconsin home-

stead credit forms the AFDC checks received for the support of his granddaughters.

The claimant has not appealed this decision.



## TAX RELEASES

*("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)*

The following Tax Releases are included:

### Individual Income Taxes

1. Credit for Income Taxes Paid to Other States (p. 12)
2. Depreciation of Luxury Automobiles (p. 14)
3. Filing Requirement for Dependents with Unearned Income (p. 14)
4. Interest Received from Student Loan Marketing Association Obligations (p. 15)
5. Itemized Deduction Credit-Interest Paid on a Loan to Purchase Stock in an Employee-Owned Business (p. 15)

### Corporation Franchise or Income Taxes

1. Mortgage Banker's Apportionment Formula (p. 16)
2. Sales Factor: Treatment of Intangible Income (p. 17)

### Sales/Use Taxes

1. Real vs. Personal Property-Service Station Canopies (p. 17)
2. Sales/Use Tax Due on the "Trade-In" of Motor Vehicles (p. 18)
3. Third Party Purchases Car Through Auto Manufacturer's Employee (p. 18)

### County Sales/Use Taxes

1. Contracts Entered Into Before Effective Date of County Tax (p. 18)
2. County Tax: Location at Which Metered Gas and Electricity is Sold (p. 19)

## INDIVIDUAL INCOME TAXES

### 1. Credit for Income Taxes Paid to Other States

**Statutes:** Section 71.09(8)(c), 1985 Wis. Stats., and section 71.60, 1983 Wis. Stats., 1985 Wis. Stats.

**Note:** This Tax Release supersedes the Tax Releases titled "Credit for Minimum Tax Paid to Other States" in *Wisconsin Tax Bulletin* 37 and "Credit for Taxes Paid to Other States - New York Minimum Income Tax" in *Wisconsin Tax Bulletin* 44.

**Facts:** Section 71.09(8)(c), Wis. Stats., provides for a credit against Wisconsin net income taxes for income taxes paid to other states. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

**Question 1:** If a taxpayer pays a minimum tax to another state based on tax preference items enumerated in section 57(a)(2) [accelerated depreciation on real property], (3) [accelerated depreciation on leased personal property], (6) [circulation and research and experimental expenditures], (8) [depletion], (9) [capital gains deductions], (11) [intangible drilling costs], and (12) [accelerated cost recovery deduction] of the Internal Revenue Code, may this minimum tax payment be claimed as a credit against Wisconsin net income taxes?

**Answer 1:** Yes, a minimum tax paid to another state which is based on the tax preference items enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

**Example A:** In 1985, a full-year Wisconsin resident sold real estate located in California and realized a \$60,000 long-term capital gain. Under California law, one-half of the gain on property held more than 5 years, or \$30,000, is reported as part of the computation of the California income tax. The other half of the gain is reported as a capital gain tax preference item in the computation of the California minimum tax. The taxpayer paid \$2,070 of California income tax and \$930 of California minimum tax, for a total of \$3,000.