

ISI&E DIVISION OFFERS TAXPAYER ASSISTANCE

During the filing season of January through April 15, 1988, department personnel will be available to answer questions.

In the department's larger offices, assistance is provided on a daily basis (Monday through Friday). Assistance in other offices generally is available on Mondays only, although there is an exception for Janesville as noted below.

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
* Appleton	265 W. Northland	(414) 832-2727	7:45-4:30
* Eau Claire	718 W. Clairemont	(715) 836-2811	7:45-4:30
* Green Bay	200 N. Jefferson St.	(414) 436-4230	7:45-4:30
* Kenosha	5500 8th Ave.	(414) 656-7100	7:45-4:30
* LaCrosse	620 Main	(608) 785-9720	7:45-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
Madison	125 S. Webster St.	NONE	8:00-4:15
* Milwaukee	819 N. Sixth St.	(414) 227-4000	7:45-4:30
* Racine	616 Lake Ave.	(414) 636-3711	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 521-5310	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Baraboo	1007 Washington	(608) 356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Grafton	220 Oak St.	(414) 377-6700	7:45-4:30
Elkhorn	300 S. Lincoln St.	(414) 723-4098	7:45-4:30
Fond du Lac	160 S. Macy St.	(414) 929-3985	7:45-4:30
Hayward	221 Kansas Ave.	(715) 634-8478	7:45-11:45
Hudson	759 Sommer St., N.	(715) 386-8225	7:45-4:30
Janesville	101 E. Milwaukee	(608) 755-2750	7:45-4:30(a)
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-4:30
Manitowoc	1314 Memorial Dr.	(414) 683-4152	7:45-4:30
Marinette	Courthouse	(715) 735-5498	9:00-12:00
Marshfield	630 S. Central Ave.	(715) 387-6346	7:45-4:30
Monroe	1220 16th Ave.	(608) 325-3013	7:45-4:30
Oshkosh	404 N. Main St.	(414) 424-2100	7:45-4:30
Park Falls	1114 S. 4th Ave.	(715) 762-2160	7:45-11:45
Rhineland	203 Schiek Plaza	(715) 362-6749	7:45-4:30
Rice Lake	9 W. John St.	(715) 234-7889	7:45-4:30
Shawano	420 E. Green Bay St.	(715) 526-5647	7:45-4:30
Sheboygan	504 S. 14th St.	(414) 459-3101	7:45-4:30
Superior	Courthouse	(715) 392-7985	8:00-4:30
Tomah	City Hall	(608) 372-3256	8:00-12:00
Watertown	415 E. Main St.	(414) 261-7700	7:45-4:30
Waupaca	201 1/2 S. Main St.	(715) 258-9564	7:45-11:45
Wausau	210 McClellan St.	(715) 842-8665	7:45-11:45
West Bend	120 N. Main St.	(414) 338-4730	7:45-4:30
Wisconsin Rapids	1681 Second Ave., S.	(715) 421-0500	7:45-4:30

* Open during noon hour

(a) Monday through Wednesday

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

Timothy E. Ryan, III (p. 8)

Business expenses - ordinary and necessary

Corporation Franchise or Income Taxes

Carl Miller Lumber Co., Inc. (p. 8)

Deduction - stock purchased

General Robotics De Puerto Rico, Inc. (p. 9)

Apportionment - sales and payroll factors

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Business expenses - wives' travel

Sales/Use Taxes

Bargo Foods North, Inc., and Republic Airlines (p. 10)

Meals - airlines

Breaktime Services, Inc., and Richard W. Hurkman d/b/a Hurkman's Breaktime Services (p. 11)

Retailer - imposition of tax

International Business Machines (p. 11)

Computer and data processing - software

Tom Kuehne Landscape Contractor, Inc.
(p. 11)
Realty vs. personality

Robert J. Zunker, d/b/a Bob's Trucking
(p. 12)
Leases and rentals

INDIVIDUAL INCOME TAXES

Business expenses - ordinary and necessary. *Timothy E. Ryan, III vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 8, 1987). The issues for the Commission to determine are:

A) Whether the taxpayer is entitled to claim as an employee business expense the amounts paid for the subscriptions to the New York Times, Milwaukee Journal, and Milwaukee Sentinel newspapers.

B) Whether the taxpayer is entitled to deduct as a nonbusiness expense the travel expenses incurred by him and his wife in attending an investment seminar in Mexico in 1983.

The taxpayer is a full-time employee of Harley's, Inc., a men's clothing concern in the Village of Shorewood, Wisconsin. During the tax years 1982 and 1983, the taxpayer was co-manager and buyer for Harley's.

On his 1982 and 1983 income tax returns the taxpayer claimed as employee business expenses the amounts paid for the subscriptions as follows:

1982 - Milwaukee Journal and Milwaukee Sentinel Newspapers subscriptions (\$110.00)

1983 - Milwaukee Journal and Milwaukee Sentinel Newspapers subscriptions (\$108.00)

New York Times Newspaper subscription (\$120.00)

The newspapers were delivered to the taxpayer's home.

The taxpayer was in charge of placing all advertisements in local newspapers, the majority of which were placed in the Milwaukee Journal and Milwaukee Sentinel, thereby requiring the taxpayer to follow these periodicals to ensure accurate and appropriate advertising copy. As a co-manager and person in charge of advertising, the taxpayer was obligated to follow the competition not only as to the clothing lines and merchandise carried by competitors, but to observe and evaluate their method and manner of advertising. The New York Times subscription was procured not only to assist taxpayer in creating and developing new advertising schemes and copy for Harley's, but to evaluate recent trends and styles of merchandise in New York, the most significant fashion source for the midwest.

The Wisconsin Department of Revenue disallowed as employee business expenses the amounts the taxpayer claimed to have paid for the subscriptions because the expenses are considered personal and nondeductible.

Timothy E. Ryan, III, and Rosemary Ryan, his wife, attended the Dana Investment Dimensions II Seminar conducted January 31 through February 7, 1983, in Cozumel, Mexico. The taxpayer has claimed deductions in the amount of \$2,352.46 related to this seminar. In 1983, the taxpayer earned only \$387.29 of interest income and he received no dividend income.

The taxpayer's and his wife's employers did not require them to travel to Mexico to attend the investment consortium seminar and they were not reimbursed for any of the expenses incurred regarding the investment consortium seminar by their respective employers. The investment consortium seminar was presented for pension plan sponsors, physicians, and professional investors. The taxpayer was not a pension plan sponsor, physician, or professional investor in 1983.

The Commission concluded that:

A) The taxpayer is entitled to claim as employee business expense the amounts paid for the subscriptions to the New York

Times, Milwaukee Journal and Milwaukee Sentinel Newspapers.

B) The travel expenses that the taxpayer and his wife incurred as a result of traveling to Mexico to attend an investment seminar in the year 1983 are personal expenses and are not deductible under Internal Revenue Code section 212 or Internal Revenue Code section 274.

The taxpayer and the department have not appealed this decision.



CORPORATION FRANCHISE OR INCOME TAXES

Deduction - stock purchased. *Carl Miller Lumber Co., Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 23, 1987). The issue to be decided by the Commission is whether, based on the facts, \$32,083 of the cost of stock purchased is deductible as an ordinary and necessary business expense, pursuant to s. 71.04(2)(a), Wis. Stats.

Carl Miller Lumber Co., Inc. is and has been since its incorporation in 1960, a Wisconsin corporation engaged in the business of selling lumber and building materials to construction companies and others, from business locations in Wisconsin. From 1960 until the time of his departure in 1979, Robert Feind was active in the day-to-day affairs of the taxpayer as Vice President, Treasurer, Assistant Secretary, and Director working directly with customers and supervising employees of the taxpayer. Feind held 85 shares of the 1,985 total shares of stock of the taxpayer.

The taxpayer attempted to terminate Feind in March 1979, and as a result, Feind filed suit in Milwaukee County Circuit Court to block the attempted termination and enforce a claimed "stock option" to permit him to acquire additional shares of the taxpayer's stock. As a means of resolving this lawsuit, the taxpayer paid Feind

\$36,400 in cash to terminate his employment and stock option. The taxpayer and Feind also agreed that the taxpayer would purchase Feind's 85 shares of common stock for \$57,583.25 or \$677.45 per share.

Subsequent to reaching this agreement, the taxpayer obtained an appraisal which it maintains shows that at the time of their purchase, the fair market value of the shares obtained from Feind was \$300 per share, or \$25,500. The appraisal also shows that from 1975 through 1978 taxpayer had exhibited a steady pattern of growth.

In filing its 1979 Wisconsin corporation franchise or income tax return, the taxpayer claimed a deduction of \$32,083.25 because, "As part of the settlement his (Feind's) stock holdings were purchased for an amount in excess of fair market value of the stock."

Pursuant to a field audit of the taxpayer's books and records for calendar years 1977 through 1980, the department made adjustments to the income reported for said years, including the disallowance of the \$32,083 deduction claimed on the purchase of stock, and issued an additional assessment of \$3,771.16 under date of September 22, 1981.

The Commission concluded that the taxpayer failed to prove that at the time it repurchased stock from one of its shareholders, that \$32,083 of the \$57,583.25 purchase price was intended to be allocated as a premium. Because the parties had not intended to allocate a portion of the purchase price as a premium payment in excess of the actual value of the stock, the entire \$57,583.25 must be considered a capital expenditure. The taxpayer has not met its burden of proving that the payment for the purchase of its own common stock from a shareholder is an ordinary and necessary business expense deductible under s. 71.04(2)(a), Wis. Stats.

The taxpayer has not appealed this decision.



Apportionment - sales and payroll factors. *General Robotics De Puerto Rico, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 6, 1987). In its 1978-80 Wisconsin franchise tax returns, the taxpayer apportioned its income under the three factor fraction composed of a payroll factor apportioned between Puerto Rico and Wisconsin, and property and sales factors in which all property and sales were reported as outside Wisconsin and, hence, not apportioned. The department's audit assigned all sales to Wisconsin and recomputed the 1979 payroll factor. The payroll reported as the taxpayer's Wisconsin payroll consisted of the management fee paid to the parent.

The taxpayer was a corporation organized under the laws of the State of Wisconsin, whose headquarters and principal place of business, during calendar years 1978, 1979, 1980, and 1981, was located in the Commonwealth of Puerto Rico. The taxpayer was a wholly-owned subsidiary of General Robotics Corporation (GRC), whose headquarters and principal place of business is 57 North Main Street, Hartford, Wisconsin 53027.

The taxpayer was liquidated in September 1981, and dissolved in January 1982, and its net assets were transferred to GRC at the above stated address.

During the years 1978 through 1981, the taxpayer manufactured and assembled microcomputers, subassemblies, and component parts, primarily for integration into computer systems manufactured and sold by the taxpayer's parent company, GRC, to both end-users and distributors. Additionally, some of the products manufactured or assembled by the taxpayer were sold directly by GRC to end-users or distributors, rather than being integrated into completed computer systems.

All of the taxpayer's products were manufactured or assembled at the direction and order of GRC, and all of such products were sold and shipped by the taxpayer to GRC. The parts used by the taxpayer in the manufacture and assembly of its products were purchased in part from GRC and in part from nonrelated third-party vendors.

Payments by GRC to the taxpayer for products and payments by the taxpayer to GRC for parts were generally made by accounting entries offsetting accounts payable and accounts receivable between the two companies, with some of the payments made in cash.

The taxpayer's business activities were conducted in rented facilities located in Puerto Rico. Personal property owned by the taxpayer during 1978 through 1981 consisted of electronic test equipment, inventory and storage equipment, electronic workbenches and chairs, equipment and tools for assembling and integrating computer chips in printed circuit boards, product conveyors, and miscellaneous office and production equipment. All of such personal property was located in Puerto Rico.

As of the close of business in 1981, there were a total of twelve people on the taxpayer's payroll. All twelve employees were residents of Puerto Rico and employed directly at the plant in Puerto Rico. Mr. Claudio Resto, operations manager for the taxpayer, was a resident of Puerto Rico and bore direct and full responsibility for supervision of all employees, including hiring and firing. The taxpayer engaged a certified public accountant in Puerto Rico to assist with bookkeeping and payroll functions, and to prepare annual balance sheets and financial statements. However, the taxpayer's tax returns were prepared by Price Waterhouse.

All of the taxpayer's manufacturing and assembly activities were conducted at its plant in Puerto Rico. All products were warehoused in Puerto Rico until shipment to GRC in Wisconsin. Shipment of products to GRC was done by air freight, and was arranged for by the taxpayer's employees in Puerto Rico.

Because all of its products were manufactured or assembled upon the direction and order of GRC, and all of such products were sold to GRC, the taxpayer did not engage in any sales or marketing activities during the period 1978 through 1981, either within or outside of Puerto Rico. During the years 1978 through 1981, the taxpayer did not own any real or personal

property outside of Puerto Rico, nor did it directly engage in any business activities of any kind outside of Puerto Rico.

During the years 1978 through 1981, the taxpayer purchased certain administrative services from GRC. The services purchased included legal and accounting services, coordination of product buying, assistance in inventorying, and general management consulting. The fee paid to GRC for such administrative services was a flat monthly charge which was intended to approximate the fair market value of the services. Payment was generally made by accounting entries offsetting accounts receivable and accounts payable between the taxpayer and GRC, with some payments made in cash.

During the years 1978 through 1981, the taxpayer was subject to federal and Puerto Rican corporate income tax. Pursuant to the Industrial Incentives Act of 1963, the taxpayer was granted an exemption from Puerto Rican corporate income tax for a period of ten years by decree issued by the Commonwealth of Puerto Rico.

The taxpayer initially objected to the first assessment for 1978-79 on the basis that the sales factor should be disregarded under s. 71.07(3), Stats., because sales were not employed to any appreciable extent in its trade or business in producing the income taxed. Upon subsequent advice of outside legal counsel the taxpayer changed its position to that under review here — that it was not engaged in business in Wisconsin.

The Commission concluded that the taxpayer, a Wisconsin corporation and legal resident, by its sales activity, the functioning of its management, and performance of other administrative services in its behalf engaged in business within this state under s. 71.07(2), Wis. Stats., so as to warrant apportionment of its income between this state and Puerto Rico, where its products were manufactured. The taxpayer's sales were Wisconsin sales for purposes of the sales factor ratio under s. 71.07(2)(c)2, Stats.

The taxpayer has appealed this decision.



Business expenses - wives' travel. *Spacesaver Corporation vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, June 18, 1987). Spacesaver Corporation claimed deductions on its state franchise tax returns for 1977 through 1981 for the expenses of its employees' wives when they attended its annual sales meetings. The department disallowed the deductions. The Tax Appeals Commission affirmed the department, and the Circuit Court's order affirmed the Commission's decision. Spacesaver appeals from that order.

The Tax Appeals Commission found that the taxpayer's officers and marketing, sales and customer service personnel attended the annual meetings. The wives performed no administrative functions in the company, were not shareholders or corporate officers, and were not salespersons hired by it. The purposes of the meetings were to market the taxpayer's product, to introduce new products, and to decide the themes of the next sales meeting.

At its annual meetings the taxpayer had separate programs, one for business sessions and the other for "ladies' optional programs," and a majority of the latter consisted of social and recreational activities. The role of the employees' wives at the annual meetings was to act as social hostesses at the ladies' programs and evening social functions.

The Court of Appeals concluded that because the taxpayer failed to show that the wives' presence at the meetings had a bona fide business purpose, the department properly disallowed the deduction and, therefore, affirmed the Commission's and Circuit Court's decisions.

The taxpayer has not appealed this decision.



SALES/USE TAXES

Meals - airlines. *Bargo Foods North, Inc., and Republic Airlines vs. Department of Revenue* (Court of Appeals, District IV, September 24, 1987). The Department of Revenue assessed a sales and use tax deficiency against Bargo Foods North, Inc., which provided food and beverage kits at Mitchell Field in Milwaukee to commercial airlines for in-flight use. The \$211,378.54 deficiency was based on Bargo's catering of airline meals for Republic Airlines between 1978 and 1981. Bargo petitioned the Wisconsin Tax Appeals Commission for review, and Republic intervened. The Commission affirmed the assessment. Bargo and Republic sought ch. 227, Stats., review in Circuit Court. Bargo and Republic appealed from the Circuit Court's judgment affirming the assessment.

The issues are

A. Whether Bargo's sale of meals to Republic was a "sale for resale" and therefore not subject to sales tax,

B. Whether section Tax 11.87(2)(j), Wis. Adm. Code, conflicts with a federal regulation, and

C. Whether a Milwaukee County Airport charge to Bargo is a "tax" which must be excluded in determining Bargo's gross receipts.

The Court of Appeals concluded from the found and undisputed facts that the department could rationally determine that Bargo's sales of airline meals to Republic were subject to sales tax. Whether section Tax 11.87(2)(j), Wis. Adm. Code, conflicts with the federal regulation is moot, since the decision is reached without reference to the administrative rule. The airport charge is not a tax and therefore the court affirms the Commission and Circuit Court decisions.

The taxpayer has not appealed this decision.

