

timely serve the Commission deprived it of jurisdiction or competency.

The taxpayers claimed: (1) The decision and order of the Commission was not a final and complete decision which began the running of the statute limiting their time to petition for review. (2) The decision and order was invalid because of the composition of the decisionmaker. (3)

Section 227.16(1), Wis. Stats., does not apply to constitutional claims which the Commission was not competent to decide.

The Court of Appeals concluded that the Commission's decision and order was a final decision within s. 227.15, Wis. Stats., and that the taxpayers' petition for review of that decision and order was required to be filed and served as pre-

scribed in s. 227.16(1)(a), Wis. Stats. Because it was not, the taxpayers failed to properly invoke the jurisdiction of the trial court.

The taxpayers have not appealed this decision.

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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

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Homestead Credit

1. Homestead Credit: Claims on Behalf of Decedents Not Allowed (p. 12)

Farmland Preservation Credit

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INDIVIDUAL INCOME TAXES

1. Interest Income Received from Bonds Issued by a Wisconsin Municipal Redevelopment Authority

Statutes: Sections 66.431(5)(a)4.c. and 71.05(1)(a)1, 1987 Wis. Stats.

Question: Is interest income which an individual receives from bonds issued by a Wisconsin municipal redevelopment authority excludable from Wisconsin taxable income?

Answer: Yes. Section 66.431(5)(a)4.c., 1987 Wis. Stats., provides that bonds issued by a redevelopment authority under this section of the Wisconsin Statutes are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt for all taxes.

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HOMESTEAD CREDIT

1. Homestead Credit: Claims on Behalf of Decedents Not Allowed

Statutes: Section 71.09(7)(b), 1987 Wis. Stats.

Wis. Adm. Code: Section Tax 14.01(5)(b)4, February 1980 Register.

Facts and Question: Mary Jones was a full-year Wisconsin resident during 1987 and paid rent on her homestead all of 1987. Mary died on January 21, 1988, after she had filled out and signed her homestead claim, but before she had mailed it to the Department of Revenue. The personal representative of her estate found the return and sent it in.

Is the estate of Mary Jones entitled to any homestead credit for 1987?

Answer: No. Section 71.09(7)(b), 1987 Wis. Stats., and section Tax 14.01(5)(b)4, Wis. Adm. Code, provide that the right to file a homestead credit claim is personal to the claimant and does not survive his or her death. Even if the claimant was alive for the entire year of the claim, the claim may be allowed only if the claimant is alive at the time the claim is filed.

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FARMLAND PRESERVATION CREDIT

1. Farmland Preservation Credit: Depreciation Addback

Statutes: Section 71.09(11)(a)6.a, 1987 Wis. Stats.

Note: This Tax Release applies only with respect to taxable years 1987 and thereafter.

Background: Section 71.09(11)(a)6.a, as amended by 1987 Wisconsin Act 27 defines household income to be household income computed under sub. (7)(a)6, plus nonfarm business losses, plus amounts under s. 46.27, less net operating loss carryforwards, less first-year depreciation allowances under section 179 of the Internal Revenue Code and *less the first \$25,000 of depreciation expenses in respect to the farm claimed by all of the individuals in a household.*

Facts and Question 1: John Deer and his wife are partners in a farm partnership. The farm partnership has \$60,000 of farm depreciation. What depreciation must be added back to household income?

Answer 1: The depreciation to be added back is \$35,000 (\$60,000 - \$25,000). Only the first \$25,000 of farm depreciation per household is excluded from this addback.

Facts and Question 2: Alex Chalmer is a 50% owner in a farm partnership. Total depreciation claimed by the partnership is \$40,000. His wife, Alice, owns and operates a beauty shop. She claims \$5,000 of depreciation on her Schedule C. What depreciation must be added back to household income?

Answer 2: The depreciation to be added back is \$5,000. This is the \$5,000 of depreciation from Alice's *nonfarm* business. Since Alex's share of farm depreciation is \$20,000, no addback is required for farm depreciation because it is less than \$25,000.

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SALES/USE TAXES

1. County Tax - Contractor Purchases Building Materials in County Having County Tax

Statutes: Sections 77.51(2) and 77.71(1), (2), and (3), 1985 Wis. Stats.

Wis. Adm. Code: Tax 11.68(7), July 1987 Register.

Facts and Question: A plumbing contractor is located in County "A" which has the county tax. The contractor pays its supplier the state and county sales/use tax on all the building materials it purchases, as most of the materials purchased are used in construction activities. This contractor does 10% of its construction work in an adjacent county, County "B," which does not have a county sales and use tax.

Can this plumbing contractor obtain a refund from the state of the county tax paid on construction materials used in County "B" which does not have a county tax?

Answer: No, there is no provision in the county sales and use tax law for a contractor located in a county that has adopted the tax to get a refund or credit for materials installed in another county, if the contractor pays county tax on the purchase of construction materials by accepting delivery of these materials in a county which has adopted the tax.

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2. Local Government Franchise Fees

Statutes: Sections 66.082(1)(b)3, 77.51(4)(a)4, and 77.52(2)(a)12, 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.26(1), December 1983 Register.

Facts and Question: Certain local governmental units in Wisconsin impose a franchise fee on the gross receipts from providing cable television service in the locality and the revenue collected by the municipality is used to regulate cable television service. Other Wisconsin municipalities raise general revenue by imposing a franchise fee on cable company revenues as provided under s. 66.082(1)(b)3, 1985 Wis. Stats.

Section 77.51(4)(a)4, 1985 Wis. Stats., provides in part that taxable gross receipts for sales tax purposes do not include "taxes" imposed by municipalities of this state upon or with respect to retail sales, if measured by a certain percentage of the sales price or gross receipts and provided the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax. The franchise fee authorized under s. 66.082

(1)(b)3, 1985 Wis. Stats., may be a tax other than one measured by a stated percentage of sales price or gross receipts.

Is the Wisconsin sales tax imposed on municipal franchise fees levied on cable companies to raise revenue if the revenue is specifically allocated to regulate cable television companies? Also, is the Wisconsin sales tax imposed on municipal franchise fees paid by cable companies which raise general revenue for the municipality as provided under s. 66.082(1)(b)3, 1985 Wis. Stats.?

Answer: If a municipality has a franchise fee imposed on cable companies for the purpose of regulating cable television service, this fee is not a "tax" and the Wisconsin sales tax is imposed on this type of franchise fee. If a municipality raises general revenue under the authority in s. 66.082(1)(b)3, 1985 Wis. Stats., from the cable franchise fee, this fee is a "tax" and the sales tax is not imposed on this local government levy provided it is measured by a stated percentage of sales price or gross receipts. "Taxes" are imposed for the purpose of general revenue of the Wisconsin municipality. See *Milwaukee vs. Milwaukee E.R.&L. Co.*, 147 Wis. 458.

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3. Milk Standards

Statutes: Section 77.51(20), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.67(1), September 1984 Register

Facts and Question: Milk standards are approximately 40 gram portions subdivided from uniform, preserved, raw milk collected from dairy cow herds and have a known milkfat and protein content. The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) determines the fat and protein values by triplicate analyses using the Association of Official Analytical Chemists (AOAC) methods. These standards are subsequently sold to and used by the dairy industry to calibrate automated testing devices, as required by s. Ag 107.06, Wis. Adm. Code, to insure the accuracy of butterfat and protein tests.

The standards are offered for sale by DATCP with a report containing the average of the three triplicate analyses for fat and for protein. These analyses must have a maximum triplicate difference of no more than 0.03%. The standard is subject to a one time use by the purchasing laboratory. DATCP prices the calibration standards, which consist of a set of duplicate 40 gram portions of 12 to 15 individual herd milks and a report giving their fat and protein values, at \$95 per set. The daily performance standards, which consist of five replicate 40 gram portions of five or six individual herd milks and a report giving their fat and protein values, are \$55 per set. Most of this cost is not reflected in the small

portion of milk transferred to the purchaser, but is in the cost of running the three fat analyses by the Mojonnier extraction method and of running the three protein analyses by the Kjeld-Foss method. The average values of these tests are sent out on the report with the samples.

These standards are physically used by the purchasing laboratory for the purpose of establishing a base level on the instrument being calibrated or on which the lab conducts a daily performance check.

Are the sales of milk standards by a government agency taxable sales of tangible personal property?

Answer: Yes. The sales of the milk standards are sales of tangible personal property which are subject to the sales tax. The objective of the purchaser, is to obtain the personal property (milk standards) used to calibrate the various testing devices used in the laboratory of a dairy plant and, thus, under s. Tax 11.67(1), Wis. Adm. Code, the sale of the property is taxable.

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4. Out-of-State Nonprofit Organizations

Statutes: Section 77.54(9a)(f), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.14(7)(a)4, July 1987 Register.

Facts And Question: Section 77.54(9a)(f), 1985 Wis. Stats., provides a sales and use tax exemption for the gross receipts from sales to, and the storage by, use by, or other consumption of tangible personal property and taxable services by:

"Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80(2), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation."

Does an out-of-state nonprofit religious, charitable, scientific, or educational organization qualify for this sales and use tax exemption?

Answer: Yes. A qualifying organization located out-of-state qualifies for this exemption to the same extent a Wisconsin located qualifying organization would be entitled to this exemption. The out-of-state organization is not required to obtain a Certificate of Exempt Status from the Department of Revenue to claim an exemption. It should give the seller the Certificate of Exemption (Form S-207) when purchasing tangible personal

property or taxable services without tax, indicating on Form S-207 that it qualifies for exemption under s. 77.54(9a)(f), Wis. Stats.

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5. Welding of Rail to Be Installed Out-of-State

Statutes: Sections 77.51(14)(h) and (14r), 77.52(2)(a)11, and 77.55(2), 1985 Wis. Stats.

Facts and Question: Company A operates a rail welding operation in Wisconsin for one railway. The railway purchases rail in 39 or 78 foot lengths from out-of-state suppliers. They are shipped via the railway's train to Company A's plant. Company A welds these sections together to make a ribbon rail which is approximately a quarter of a mile in length. These welded sections are loaded onto the railway's cars as they are being made. The railway hauls them to their destination outside Wisconsin. A Way-Bill is prepared for each shipment.

Section 77.55(2), 1985 Wis. Stats., provides a sales tax exemption for "The gross receipts from sales of tangible personal property to

a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier."

Section 77.51(14r), 1985 Wis. Stats., provides that the point of transfer of possession to the purchaser is the location of the sale for both tangible personal property and services.

Is Company A's service of welding rail a taxable fabrication service under s. 77.52(2)(a)11, 1985 Wis. Stats.? Does the exemption in s. 77.55(2), 1985 Wis. Stats., apply to this service?

Answer: This service by Company A is taxable under s. 77.52(2)(a)11, 1985 Wis. Stats. Although s. 77.55(2), 1985 Wis. Stats., provides an exemption for sales of tangible personal property sold to a common carrier which the purchasing carrier removes from Wisconsin for use out-of-state, this exemption does not apply to the purchase of fabrication services which are taxable under s. 77.52(2)(a)11. Therefore, the railway's purchases of this rail fabrication service performed in Wisconsin are subject to the sales tax, even though the fabricated rail may be installed out-of-state.

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