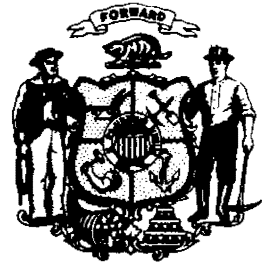


# WISCONSIN TAX BULLETIN

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## SPECIAL BULLETIN

### MAJOR TAX CHANGES IN BUDGET BILL

The 1979-1981 budget bill (Chapter 34, Laws of 1979) signed into law by Governor Dreyfus contains a number of changes to the Wisconsin tax laws. Attached to this issue of the Wisconsin Tax Bulletin is a supplement containing brief descriptions of the new income, corporation, homestead credit, farmland preservation credit, inheritance, excise and sales and use tax provisions.

### WHEN ARE EXEMPTION CERTIFICATES REQUIRED FOR FUEL EXEMPTION

Beginning November 1, 1979, sales of electricity and natural gas for residential use, and electricity for use in farming, are exempt if sold during the months of November through April each year. Sales during the remaining six months of the year (May through October) are subject to the tax. For purposes of this exemption, electricity or natural gas is considered sold at the time of the billing. If the billing is mailed, the date of the mailing is considered the time of billing.

Sales of fuel oil, propane, coal, steam and wood used for fuel in a person's permanent residence are exempt from the sales tax. The sales of these fuels are exempt all twelve months of the year, beginning July 1, 1979. For purposes of this exemption, fuel oil, propane, coal, steam and wood sold for fuel are considered sold at the time they are transferred from the seller to the purchaser.

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What is residential use? The phrase "residential use" means use in a structure or portion of a structure which is a person's permanent residence. For example, electricity, natural gas, fuel oil, propane, coal, steam or wood used in a person's home (which is used as his or her permanent residence) for hot water heaters, stoves, lights, appliances and heat (including wood for fireplaces) are exempt from the sales and use tax.

However, gross receipts from sales of electricity, natural gas, fuel oil, propane, coal, steam and wood which is sold for the following purposes are not exempt from the sales and use tax if used as follows:

- a. For commercial or business purposes.
- b. In "transient accommodations" (i.e., rooms or lodging available to the public for a fee for a continuous period of less than one

month) or other places that are not a person's permanent residence. Common examples of such taxable use are use in buildings such as hotels, motels, inns, tourist homes, tourist houses or courts, lodging houses, summer camps, resort lodges and cabins.

- c. In motor homes, travel trailers or other recreational vehicles.

### When Exemption Certificates Are Not Required

A seller of electricity or natural gas is not required to obtain an exemption certificate from a purchaser for the sale of electricity or natural gas if the sale is (1) 100% for exempt use; and (2) to an account which is properly classified as residential or farm pursuant to schedules which are filed for rate tariff purposes with the Wisconsin Public Service Commission and which are in force at the time of the sales, or to an account which is properly classified as residential or farm for classification purposes as directed by the federal Rural Electrification Administration.

A seller of fuel oil, propane, coal, steam and wood is not required to obtain an exemption certificate from a purchaser if 100% of the fuel sold to such purchaser is for residential use and if the seller maintains adequate records to identify which such sales are exempt.

### When Certificates Are Required

If the sale of fuel or electricity is partially exempt, the seller must obtain an exemption certificate. The purchaser should indicate on the certificate the percentage of the fuel or electricity sold which is for an exempt use. The seller will then not be liable

for the sales tax on the exempt portion. The purchaser should either calculate or reasonably estimate the percentage which is attributable to exempt use. Any reasonable method of estimating exempt use is acceptable.

For example, fuel is sold to the owner of a building, the lower level of which is used to conduct a business and the upper level of which is used as a person's permanent residence. An allocation between exempt and taxable use must be made. In this situation, the purchaser must estimate the percentage of fuel for exempt (residential) use. If the heat produced is evenly used throughout the building, the fuel for residential use may be calculated by comparing total number of square feet comprising the residential portion of the building to the total number of square feet in the building, or by using any reasonable method of estimate.

To obtain copies of the exemption certificates or if you have questions about this exemption, write to: Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708 or call (608) 266-2776.

#### **SIMPLIFY PAYMENT OF SPECIAL FUEL TAXES**

Payment of special fuel taxes (e.g., diesel fuel) will be simplified for many users of special fuel under a new law (Chapter 11, Laws of 1979) which becomes effective October 1, 1979.

Prior to the new law, each person who delivered special fuel (e.g., diesel fuel) into the supply tank of a highway vehicle had to be licensed with the Department of Revenue, file monthly reports and remit the tax monthly to the department. For example, if distributor A delivered diesel fuel into the fuel tank on individual B's truck, A was liable for remitting the tax to the department. However, if A delivered special fuel into a storage facility of B, and B later put such fuel into the fuel tank on B's truck, B was liable for the tax rather than A. B had to be licensed, file monthly reports and pay the tax.

Under the new law suppliers of special fuel are permitted to report and pay to the department the tax on special fuel delivered into the storage facility of a special fuel user, rather

than requiring each user to be licensed, file monthly reports and pay the tax.

In the above example, A is still liable for the tax on special fuel delivered into the fuel tank on B's truck (new law does not affect this situation). However, if A delivers special fuel into B's storage facility and B then places such fuel into the fuel tank on B's truck, the new law permits B to pay the tax to A. If this is done, B does not have to be licensed, file monthly reports or remit the tax directly to the department.

#### **BULK ORDERS OF TAX FORMS**

In early October, the Department will mail out the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1979 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a minimal handling charge on orders which they submit. No charge is made for forms which will be used for distribution to the general public (for example, in a bank, library or post office).

In view of increasing paper and printing costs, every person ordering forms is urged to determine their needs as accurately as possible. Orders should be placed as early as possible after you receive the order blank. By receiving the orders early, the Department can better identify possible shortages of specific forms.

This year's mailing list for bulk order blanks contains the names of all persons and organizations who placed orders for 1978 forms. If you are not on this mailing list and do not receive a form P-744, you may request the bulk order blank by contacting any Department office or by writing to the Wisconsin Department of Revenue, Central Services Section, P.O. Box 8903, Madison, WI 53708.

#### **SELLER'S PERMIT RENEWED EVERY TWO YEARS**

Persons holding a sales and use tax seller's permit will now have their permit renewed every 2 years. (s. 77.52(10), Wis. Stats.) This new procedure begins with those permits originally issued in August of 1977 or August of other odd-numbered years prior to 1977. (ex., August of 1975, 1973, 1971, 1969, etc.) For example, a seller's permit issued in August,

1975 will be renewed in August, 1979.

The taxpayer will receive in the mail a renewal permit to replace the original permit. The original permit does not have to be returned to the department, or retained by the taxpayer.

The department will automatically renew permits without any action required by the taxpayer, with one exception. Permits will *not* be automatically renewed if the taxpayer has a sales and use tax delinquency (including tax, interest, penalties and costs) of \$400 or more, any part of which has been delinquent for 5 months or longer. Such delinquent taxpayers are notified 30 days prior to the date their seller's permit expires that the department intends not to renew the permit. The taxpayer then has 30 days to reduce the delinquency below \$400 or 10 days to appeal the Department's determination not to renew the permit.

If the taxpayer appeals, a hearing will be held at which the taxpayer may present testimony, evidence and arguments as to why the permit should be renewed. After its consideration of the information, the department will issue a decision. During the course of an appeal, a seller's permit remains valid.

A taxpayer who has been refused renewal of a seller's permit will not be issued another permit until all delinquent sales and use taxes (including costs, penalties and interest) have been paid. An application for a new seller's permit and the \$2 fee must be submitted and any security which may be required must be deposited before a new seller's permit will be issued.

A taxpayer who continues to operate as a seller of tangible personal property or taxable services after a permit has expired is subject to criminal prosecution.

If a renewed permit is received which contains incorrect information, the taxpayer should notify the department of the error by writing to: Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, Wisconsin 53708. Information about the renewal procedure may also be obtained by writing to this address.

### SUMMARY OF 1978 INDIVIDUAL RETURNS FILED

During the first six months of 1979, 2,153,000 Wisconsin income tax returns, 251,000 Homestead Credit claims, and 2,400 Farmland Preservation Credit claims were filed for 1978. This compares to 2,034,000 Wisconsin income tax returns, 250,000 Homestead Credit claims, and 700 Farmland Preservation Credit claims filed for 1977. In total, 240,000 more returns and claims were filed for 1978 than 1977.

The 2,153,000 income tax returns for 1978 were filed by 2,930,000 individuals. The combined return of a husband and wife is considered one return.

1,755,000 individuals received income tax refunds, which averaged \$139 each. The average refund individuals received for 1977 returns was \$118.

479,000 individuals owed additional tax with their 1978 returns. The average payment was \$291, an increase over the average payment of \$213 made with 1977 returns.

Homestead Credit refunds issued averaged \$261 per claimant, a decrease from the average refund of \$265 issued last year.

An average payment of \$1,205 was issued to each Farmland Preservation claimant. The average payment for the previous year was \$870.

\$184,000,000 was received by homeowners and renters as a result of the 1978 Special Property Tax/Rent Credit.

During the month of April 700,000 tax returns were received which represented 30% of all 1978 income tax returns received by the Department.

### HOMESTEAD, FARMLAND PRESERVATION, AND SPECIAL PROPERTY TAX/RENT CREDIT FILING DEADLINES

Less than three months remain for Wisconsin residents to file claims for the 1978 Homestead Credit or 1978 Special Property Tax/Rent Credit, and for farmland owners to file a 1978 Farmland Preservation Credit claim.

December 31, 1979 is the last day allowed for filing a claim for 1978 Homestead Credit and the 1978 Special Property Tax/Rent Credit. It is also the last day for filing a 1978 Farmland Preservation Credit claim for farmland owners who are calendar year taxpayers.

Homestead Credit should be claimed on Schedule H and Farmland Preservation Credit on Schedule FC. The 1978 Special Property Tax/Rent Credit may be claimed on a Wisconsin income tax return (Form 1 or 1A), Schedule H or a special Schedule PC.

If you previously filed a 1978 Wisconsin income tax return and now wish to file either a homestead or farmland preservation claim, write the words "income tax return previously filed" at the top of your homestead or farmland preservation claim. Attach a complete copy of your income tax return to your claim and write "duplicate" at the top of your income tax return.

If you qualify for the 1978 Special Property Tax/Rent Credit, but did not claim it on your Wisconsin income tax return, you may still claim the credit by filing either Schedule PC or an amended return. If no other changes are to be made to your income tax return as originally filed, you may file Schedule PC. In filing Schedule PC, do not mark it "Amended" and do not submit a duplicate copy of your tax return with Schedule PC.

So far this year, 251,000 Homestead claims and 2,400 Farmland Preservation claims have been received. These claims have provided more than \$65 million in rent and property tax rebates. The 1978 Special Property Tax/Rent Credit has provided more than \$184 million in benefits to 1,500,000 claimants. Some of the requirements which must be met to qualify for benefits under these programs for 1978 are as follows:

*Homestead Credit* (available only to individuals). A claimant:

- Must have been a full-year Wisconsin resident.
- Must have been at least 18 years of age on December 31, 1978.
- Must have a household income of less than \$9,300 (\$9,900 if claimant, spouse, or dependent is 65 or older).
- Must have lived all or part of 1978 in property subject to real estate taxes.
- Must not have been claimed as a dependent on someone else's 1978 federal income tax return (does not apply to persons 62 or older).
- Must not be receiving general relief or Aid to Families with

Dependent Children (AFDC) at the time of filing the claim.

- Must not have claimed farmland preservation credit for 1978.

*Farmland Preservation Credit* (available to individuals and corporations owning farmland). A claimant:

- Must have been a full-year Wisconsin resident (corporations must have been organized under Wisconsin law and in existence for the entire 1978 taxable year).
- Must be the owner of at least 35 acres of farmland which is subject to agricultural use restrictions and which produced at least \$6,000 in gross farm profits (or \$18,000 in the last three years combined).
- Must have household income of less than \$38,429. (The first \$7,500 of nonfarm wages, tips and salaries earned by the household may be excluded from household income).

*1978 Special Property Tax/Rent Credit* (available only to individuals). A claimant:

- Must have been a full-year Wisconsin resident during 1978.
- Must have paid rent or had property taxes accrue on a Wisconsin homestead for 1978.
- Must not have been claimed as a dependent on another person's 1978 federal income tax return (does not apply to persons 62 or older in 1978).

For additional information concerning the eligibility requirements for these programs, instructions on how to file and the necessary claim forms, contact any Wisconsin Department of Revenue office or write to the Department of Revenue, P.O. Box 8906, Madison, WI 53708.

### TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers 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.)

## SALES TAX

### I. Coupons Issued by Manufacturers

Manufacturers frequently mail coupons to consumers which are redeemable for taxable merchandise (e.g., soap or paper products) or which may be used to purchase such merchandise at a reduced sales price at any retail store. The transfer of a bar of "free" soap or "discounted" soap to a customer by a retailer in exchange for a coupon issued by the soap manufacturer is considered a sale. The consideration for the sale upon which the sales tax is imposed is the amount the manufacturer reimburses the retailer plus the amount (if any) that the consumer pays when redeeming the coupon. This consideration constitutes taxable gross receipts of the retailer. For example, if the customer uses a 25¢ manufacturer's coupon and \$1.24 cash to purchase a box of soap with a retail price of \$1.49, the retailer has taxable gross receipts of \$1.49.

For additional information on this topic, see administrative rule Tax 11.28, entitled "Gifts, advertising specialties, coupons, premiums and trading stamps".

### II. Industrial Gases Used by Manufacturers

Industrial gases purchased by a manufacturer for use as a fuel are subject to the sales or use tax. This includes a manufacturer's purchase of oxygen, acetylene or other gases for use as a fuel in welding torches. However, shielding gases which do not burn or provide a source of power are exempt, when consumed or destroyed by a manufacturer in the manufacture of tangible personal property destined for sale.

Even though the purchase of the gas may be exempt, the charge (sometimes called "demurrage") by the gas supplier for retention by the customer of gas cylinders is subject to the sales tax.

For additional information on this and related topics, see administrative rule Tax 11.81, entitled "Industrial gases, welding rods and fluxing materials".

### III. Sandwiches, Heated Foods or Beverages

Gross receipts from sales of heated foods or heated beverages are taxable, regardless of whether the item purchased is consumed on or off the seller's premises. Thus, the tax applies when:

- a. A supermarket sells chicken or ribs roasted on a rotisserie.
- b. A bakery sells hot coffee.
- c. A fish market sells hot prepared fish.

## REPORT ON LITIGATION

*(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)*

**Affiliated Bank of Middleton vs. Department of Revenue** (Wisconsin Tax Appeals Commission, June 6, 1979.) Taxpayer held a sales tax seller's permit. It owned a building which was permanently attached to a cement foundation and had permanent water, sewer and electrical connections. The Commission stated that, for property taxation, the building was taxed as real property and not as personal property.

In September 1974, taxpayer agreed to sell the building to a savings and loan association for use at a different site as a branch building. Taxpayer employed a house mover who disconnected the permanent water, sewer and electrical connections, separated the building by hoisting it on a flat bed trailer and hauling it. At its new location, the building was immediately placed on a permanent cement foundation and permanent water, sewer and electrical connections were made. No wheels were ever attached to the building in the moving process. The purchase price represented the price of the building moved on the land of the purchaser.

The Department contended that the sale was a sale of tangible personal property subject to the sales tax. Taxpayer contended that the sale was of real property, not subject to the sales tax. The Commission held in favor of the taxpayer.

The Department has appealed this decision.

**Burch Construction Co. vs. Department of Revenue** (Wisconsin Tax Appeals Commission, May 31, 1979.) Taxpayer was in the business of constructing highways and sewers. In 1970, taxpayer's volume of highway construction business significantly declined due to diminished interstate highway construction. In 1972, taxpayer underbid a sewer construction project and incurred a \$400,000 loss. In June 1973, taxpayer auctioned off its surplus highway construction equipment grossing about \$351,000 which was distributed as follows: about \$3,700 as auction commission, about \$315,000 as payment of taxpayer's debts, about \$32,000 available for operations.

Taxpayer remained in the highway construction business after the auction with heavier emphasis on sewer construction. During each of its fiscal years covering the period 1968 to 1977, taxpayer purchased and sold a significant amount of construction equipment and auctions similar to its June 1973 auction were common in the construction industry. Taxpayer realized a capital gain on the June 1973 auction sale of its construction equipment, due in part to depreciation previously claimed. The auction was made for compelling business reasons and was attributable to the then present and continuing operations of taxpayer's business. On its 1973 Wisconsin income/franchise tax return, taxpayer carried forward losses from the previous 2 taxable years and offset them against the gain realized at the auction.

On June 30, 1973, taxpayer adopted a plan of partial liquidation under sections 331(a) (2) and 346 of the Internal Revenue Code. Under the plan, 60% of the outstanding capital stock of Burch Construction Company was redeemed by the corporation reducing the number of shareholders from 6 to 1. After the partial liquidation, taxpayer retained over \$300,000 in assets and remained active in the construction business. No auction proceeds were used to redeem corporate stock.

The Department disallowed the carry forward of the business losses from the 2 taxable years proceeding 1973 because they were not "attributable to the operation of a trade or business regularly carried on by the taxpayer" (emphasis added) within the language of s. 71.06, Wis. Stats.

The Commission held in favor of the taxpayer. It concluded that taxpayer's construction equipment auction was for compelling business reasons and was attributable to the operation of its business; that taxpayer's gain from the sale of its construction equipment constitutes net business income under s. 71.06, Wis. Stats.; and that the taxpayer may carry forward its 2 net business losses from the 2 previous taxable years and offset them against the gain it realized in its 1973 equipment business auction.

The Department did not appeal this decision.

**Department of Revenue vs. Family Hospital, Inc.** (Circuit Court of Dane County, June 18, 1979.) Taxpayer is a nonprofit Wisconsin corporation organized exclusively for charitable, scientific and educational purposes. It operates a nonprofit hospital, the Family Hospital in Milwaukee. Taxpayer receives proceeds from the operation of its parking lot adjoining the hospital, used substantially by patients, employees and guests of the hospital.

The sole issue in this case was whether gross receipts from parking received by taxpayer are subject to the sales tax. The Tax Appeals Commission had determined that the taxpayer's gross receipts from parking were not subject to sales tax. The Department appealed that decision.

The Court upheld the Commission's conclusion and ruled in favor of the taxpayer. The Court stated that it is clear that taxpayer's receipts from its parking facility are subject to sales tax under s. 77.52 (2) (a) 9 unless exempted from the tax by some other statute. The Court stated, however, that the hospital's receipts from parking were exempt by s. 77.54 (9a).

The Department has appealed this decision.

**Harold W. Fuchs Agency, Inc. vs. Department of Revenue** (Wisconsin Court of Appeals, District IV, June 26, 1979.) Taxpayer is engaged in the sale and rental of photocopy machines and copy machine paper and equipment. One issue was whether taxpayer's moneys collected from users of its coin-operated photocopy vending machines located in city of Milwaukee public buildings are subject to the sales tax. Taxpayer placed

16 machines in city buildings as specified by its contract with the city, serviced the machines and collected the money from them, periodically accounted for the receipts to the city and paid the city 5.55¢ for each 10¢ copy made. The Appeals Court affirmed the Circuit Court and concluded that these gross receipts were subject to the sales tax, even though the premises on which the machines were placed were under the control of the city.

Taxpayer also contended that one machine located in the city hall was used by city employees which constituted an exempt sale to the city under s. 77.54 (9a). The Appeals Court agreed with the Circuit Court that no evidence was presented as to whether the city or its employees paid for or had the free use of the machine. Therefore, no portion of the machine's receipts were exempt under s. 77.54 (9a) as a sale to a city.

When the city of Milwaukee advertised for bids for the installation of the 16 photocopy machines, the invitation for bids indicated bids should be submitted without the Wisconsin sales tax, because the city is exempt from such tax. This provision was in every invitation for bids used by the city under a variety of circumstances, and was not applicable to this situation where the record failed to show that any receipts came from the city, the Appeals Court concluded.

The second issue was whether transportation charges collected by the taxpayer on intrastate shipments of tangible personal property were subject to the sales tax. These transportation charges were separately stated on the invoices issued to taxpayer's customers.

The Appeals Court affirmed the holding of the Circuit Court and stated that if the transportation charges were for transportation which occurred after the sale to the customer, such charges were not taxable under s. 77.51 (11) (b) 5, Wis. Stats. If these charges represent transportation which took place before the sale, they were subject to the tax under s. 77.51 (11) (a) 3, Wis. Stats.

Under s. 77.51 (4r), a sale occurs at the location of the customer when possession is transferred to the customer by the common carrier. Section 402.401 (2) (a), Wis. Stats., provided that a sale is completed as soon as a retailer delivers the purchased

property to a common carrier. Therefore, the Court had to determine which of these two conflicting statutes prevails to determine where a sale takes place for sales tax purposes. The Appeals Court affirmed the holding of the Circuit Court and found the sales and use tax law controls, and that the sale takes place at the location of the customer. Therefore, the transportation charges collected by the taxpayer from its customers on intrastate sales are subject to the sales tax.

**Hide Service Corp. vs. Department of Revenue** (Wisconsin Tax Appeals Commission, June 19, 1979.) Section 71.043, Wis. Stats., provides that sales and use taxes paid by a corporation on fuel and electricity consumed in manufacturing may be used to reduce income/franchise taxes payable for the year. This section indicates that "manufacturing" has the meaning designated in s. 77.51 (27)

(i.e., the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing). The Department disallowed a reduction of the income/franchise taxes payable by the taxpayer on the grounds that taxpayer was not engaged in manufacturing.

Taxpayer was in the business of curing hides. The purpose of hide curing is to prevent deterioration of the hide and, through preservation, to increase the hide's usefulness by giving it the capacity to be transported long distances and stored for long periods of time.

Taxpayer uses the following machinery in its process: a fleshing machine, vibrating conveyors, screw conveyors, paddle wheels and a cylindrical washer. Taxpayer's procedure is the following: hides from slaughter houses are washed in water to remove dirt and debris; hides are soaked in a brine solution; hides are removed from the brine solution; flesh and fat are removed and the hides are trimmed, sorted, graded and stored until sold to tanners; and by-products of the taxpayer's products include waste for rendering and animal feed.

Taxpayer's hide curing process results in physical and biological changes in the hide which are irreversible. Prior to the application of taxpayer's process, the hides are called "green hides" and after the process they are called "cured hides"

as those terms are used in the hide and tanning industries. After application of taxpayer's process, cured hides have a different use than green hides as a result of the ability to transport them long distances and store them for indefinite periods of time.

The Tax Appeals Commission found that the taxpayer was engaged in manufacturing as that term is defined in s. 77.51 (27). As a result taxpayer could use sales taxes it paid during the year on fuel and electricity consumed in manufacturing to offset income/franchise taxes payable for the year.

The Department has appealed this decision.

**Department of Revenue vs. Louis G. Shew** (Circuit Court of La Crosse County, May 16, 1979.) Taxpayer purchased 2 securities after 1911 and prior to becoming a Wisconsin resident in 1974. The fair market value of the stocks had declined at the time taxpayer became a Wisconsin resident. The stocks declined further after taxpayer became a Wisconsin resident and he finally sold them.

For Wisconsin income tax purposes in reporting the loss on taxpayer's 1974 income tax return, taxpayer contended that the loss should be the difference between the stocks' purchase price and their sale price (i.e., the same as the federal loss). The Department contended that the loss should be the difference between the stocks' value at the time the taxpayer became a Wisconsin resident and their sale price. The Department's contention would result in a smaller loss (\$318.11) than the total loss contended for by the taxpayer (\$2,077.36). (The Department's position on this issue is contained in administrative rule Tax 2.97, "Sale of constant basis assets acquired prior to becoming a Wisconsin resident".)

The Tax Appeals Commission ruled in favor of the taxpayer. The Circuit Court sustained the conclusion of the Commission.

The Court concluded that the taxpayer's actual cost must be used by the Department in its income tax computations of gains and losses incurred by a Wisconsin resident-taxpayer on the sale of stock acquired after 1911 and not by gift. The Court said that Wisconsin should use federal definitions and computations as the foundation for the state income

tax on the sale of stocks by a Wisconsin resident.

The Department has appealed this decision.

**Department of Revenue vs. Moebius Printing Co. and Moebius Printing Co. vs. Department of Revenue** (89 Wis. 2d 610, Wisconsin Supreme Court, May 30, 1979.) Moebius is a printing and lithographing firm whose primary business is the sale of illustrated brochures, catalogs and folders which Moebius produces to special order. Moebius provided all the materials used in the printing involved in the sales in question and delivered all of the printed matter to its customers in Wisconsin.

In most of the sales involved in these cases, Moebius' customers executed exemption certificates. The purchasers checked the box before the line reading "Other purchases exempted by law (State items and exempt use)." Moebius' customers completed the line by stating that all or a specified percentage of the printed materials purchased was to be distributed outside of Wisconsin. In a few of the sales involved, similar statements were made by the purchasers in resale certificates or in letters.

During the time period involved—September 1, 1969 to December 31, 1971—the sales tax law did not contain such an exemption. (Such exemption was enacted, however, as s. 77.54 (25), effective May 22, 1972.) Moebius accepted the certificates and letters in the belief that the purchases covered by them were exempt from the sales tax.

In October 1970, James Lydon, a Department tax representative visited Moebius' office and examined their books and records for the month of August 1970. It appears that Moebius made available all of its sales records from September 1, 1969 to the date of the visit. However, there is no evidence that Mr. Lydon examined records for any month other than August 1970.

After his visit, Mr. Lydon wrote Moebius a letter, on plain paper and apparently typed by Mr. Lydon, dated October 9, 1970. Mr. Lydon wrote Moebius that his report to the Department "included" the statement that he had made a "spot check" of all accounts payable for August 1970. For every purchase, he

wrote, there had either been tax paid or "valid exemption certificates on file". Mr. Lydon concluded: "In my opinion Moebius is doing an excellent all around job in compliance with the Wisconsin sales tax law."

On July 7, 1972, the Department issued a sales and use tax assessment against Moebius covering the period September 1, 1969 to December 31, 1971. This was based on a field audit conducted in 1972. Moebius sought a redetermination.

Moebius petitioned the Tax Appeals Commission for review. The Commission concluded that the sales in question were subject to the sales tax, that no statutory exemption existed for them, that the exemption certificates were not valid because they did not on their face indicate a legal basis for the claimed exemption, and that Mr. Lydon's visit and subsequent letter constituted a field audit and determination for August 1970 (so that no additional field audit for that month can be made).

The Circuit Court reversed the Commission's order, exempting from the tax the disputed transactions, stating that the Legislature did not intend to subject to sales tax the transactions involved. The Court, however, upheld the portion of the Commission's order barring the Department from assessing Moebius for August 1970.

The Wisconsin Supreme Court addressed several *substantive issues* and held the following on these issues (all in favor of the Department's positions):

1. The transactions were taxable. The statute is clear and no exemption existed. Although there was a similar exemption from the use tax (for retention of tangible personal property in Wisconsin for subsequent transportation and later use solely outside Wisconsin—s. 77.51 (16)), this exemption does not justify the Court's reading into the statutes a similar sales tax exemption where there was none.

2. This interpretation of the statutes does not constitute a denial of equal protection of the law. There is a presumption of tax laws' constitutionality which had a rational basis. Moebius failed to prove beyond a reasonable doubt that the statute had no rational basis.

3 Acceptance of the exemption certificates did not make the transactions exempt where no statute exempted the transactions. The certificates on their face fail to state a legal basis for exempting the sales from the sales tax.

The Wisconsin Supreme Court addressed several *procedural issues* involving the manner in which the Department's tax representative inspected Moebius' records and the manner of his communicating the results of his inspection to Moebius. The Court's conclusions on each issue follow:

1. *Issue:* Did Mr. Lydon's "spot check" in October 1970 of Moebius' records constitute a field audit for the period September 1, 1969 to December 31, 1971 and did Mr. Lydon's October 9, 1970 letter constitute a "notice of determination"? *Holding:* Mr. Lydon's "spot check" of Moebius'

records constituted a field audit, but of the period August 1970 only, since there was no evidence that records from other time periods were examined. (The statutes, said the Court, authorize the Department to conduct either a "field audit" or "office audit", not a "spot check"; Mr. Lydon's activities most resemble a field audit.) While the letter did not meet all the statutory requirements (s. 77.59 (3)) of a "notice of determination", it was deemed such a notice because it was "in substantial compliance" with the statute.

2. *Issue:* Is the Department estopped (barred) from collecting the portion of contested sales tax based on sales made after Mr. Lydon examined Moebius' records in October 1970 and wrote Moebius that the exemption certificates which it had on file were valid? (In other words, did

the conduct of the Department through its agent cause the taxpayer to act in good faith in a certain way based on its reliance on the agent's letter?)

*Holding:* The Department is estopped from collecting sales tax based on its field audit from October 9, 1970, the date of Mr. Lydon's letter containing the representations upon which Moebius relied, to December 31, 1971. The Department is not estopped from collecting sales tax on sales prior to October 9, 1970 (except for August 1970). The majority of the Court believed that Moebius' reliance on Mr. Lydon's letter was reasonable and justifiable. Justice Abrahamson dissented from the majority opinion insofar as it concludes that Moebius relied upon the tax representative's letter and that the reliance was reasonable.