

WISCONSIN TAX BULLETIN

Published By:

Wisconsin Department of Revenue
Income, Sales, Inheritance and
Excise Tax Division
P.O. Box 8910
Madison, Wisconsin 53708

JANUARY 1980
NUMBER 16



WHAT'S NEW FOR 1979: NEW LAWS AND FORM CHANGES

Several new Wisconsin laws and tax form changes apply to 1979 tax returns. These are described below as reminders of items deserving particular attention when preparing 1979 Wisconsin individual income and corporate franchise/income tax returns.

A. Income Taxes

1. Update Internal Revenue Code Reference to December 31, 1978. For the 1979 taxable year, an individual will use the Internal Revenue Code in effect on December 31, 1978 with 3 exceptions that do not apply for Wisconsin income tax purposes: (a) special federal provisions for benefits received from an employer's educational assistance program; (b) foreign living cost deductions; and (c) amortization of pollution control facilities. In addition, individuals may continue to claim Wisconsin itemized deductions for child and dependent care expenses, and for political contributions (line 64 of Form 1). Federal tax laws enacted in 1979 do not apply for Wisconsin 1979 returns. At the time this edition of the *Wisconsin Tax Bulletin* went to press (December 1979), no new federal income tax laws had been enacted during 1979.
2. Taxes Eliminated as Itemized Deductions. State and local income taxes, real estate taxes, gas taxes, sales taxes and personal property taxes are no longer allowed as itemized deductions on the Wisconsin return. A new part of the return, titled "Computation of Wisconsin Itemized Deduc-

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tions" (lines 63 to 65), has been added to page 2 of Form 1. Included in this section are entry lines for subtracting taxes and adding child and dependent care expenses and political contributions to other allowable itemized deductions.

3. Wisconsin Standard Deduction Increased. The standard deduction has been increased to \$2,300 for single persons and \$3,400 in total for a married couple. Married persons may divide the \$3,400 between them in any manner they choose.
4. New 12% Property Tax/Rent Credit. A credit equalling 12% of property taxes paid during the taxable year on nonbusiness property and 12% of rent constituting property taxes paid during the taxable year on a person's primary residence may be claimed as a nonrefundable credit. The rent credit is claimed on line 10 and the property tax credit on line 11 of the 1979 Wisconsin returns.

5. Special 16% One-Time Tax Credit. For the 1979 taxable year only, a person's Wisconsin net income tax liability is reduced by a 16% nonrefundable credit (subject to a maximum credit of \$900). The credit may be claimed on line 15 of Forms 1 and 1A.
6. Lower Tax Rates, Widen Tax Brackets. The income tax tables in the Form 1 and 1A booklets are expanded to include the gross tax computed on incomes up to \$40,000. The tax rates have been lowered and the tax brackets widened in the revised tables.
7. Form 1A: No Estimated Tax Payments. Form 1A no longer has entry lines for estimated tax payments. Persons claiming estimated tax payments and credits for 1979 or wanting to apply any of their 1979 refund to estimated tax for 1980 must now file on Form 1.
8. Exclude \$100,000 of Gain on Sale of Principal Residence if Taxpayer 55 Years or Older. The first \$100,000 of gain on the sale or exchange of a principal residence may be excluded from Wisconsin taxable income if the seller was 55 years of age or older before the date of sale and met certain other requirements.
9. Unemployment Compensation. Unemployment compensation benefits which are taxable for federal will also be taxable for Wisconsin.
10. Alternative Energy System Program. Schedule AE ("Wisconsin Alternative Energy System Tax Benefit Claim") has been eliminated for individuals. Individuals who incurred costs during 1979 for installing an alternative energy system, rather than having to file for an income tax credit, may apply to the Department of Industry, Labor and Human Relations for a direct refund. Schedule AE is still available and must be used by

corporations claiming a tax benefit for an alternative energy system.

11. Nonresidents and Part-Year Residents Determine Additional Deduction for Dependents Based Upon Federal Income. Nonresidents and part-year residents should determine their amount of additional deduction for dependents based upon their total federal adjusted gross income, rather than their Wisconsin total income (which full-year residents use as a basis). Therefore, the instruction booklets contain two standard deduction and low-income allowance tables: one for full-year Wisconsin residents and the other for nonresidents and part-year residents.

12. Form 1X. Format changes were required to the amended return form to provide entry lines for the three new tax credits for 1979: the special 16% one-time tax credit, the property tax credit and the rent credit. The form has the year "1979" preprinted on it. In previous years, Form 1X was undated and its preparer had to indicate the calendar or fiscal year being amended.

B. Corporation Franchise/Income Taxes

1. Subchapter S Corporations. Corporations which have elected to be taxed under Subchapter S of the Internal Revenue Code for federal purposes are required to report under essentially the same provisions for Wisconsin tax purposes. A new corporation reporting form (Form 4S), titled "Shareholders' Tax-Option (Subchapter S) Corporation Modifications or Share of Income (Loss)", must be completed and attached to Form 4 or 5.

An entry line has been added to Forms 4 and 5 for Subchapter S corporations to provide a deduction for the corporation's net income or loss which will be reported by its shareholders.

2. Forms 8 and 10 Removed from Booklets. Form 8 ("Report of Transfers of Capital Stock") and

Form 10 ("Report of Inventory Location") were removed from the Form 4 and 5 booklets to provide room for the new Form 4S. Copies of Forms 8 and 10 can be obtained from any Department office.

3. Deductions for Certain Business Entertainment Expenses Disallowed. Expenses which are not deductible under section 274 of the Internal Revenue Code (such as certain business entertainment, travel, gifts, and entertainment facilities) are not allowed as deductions for Wisconsin purposes. In addition, corporations are not allowed corporate deductions for athletic club, country club or social club dues, expenses, initiation fees, special assessments and taxes thereon, whether or not they are deductible under section 274 of the Code.
4. Contributions Deductible to Out-of-State Organizations. The deduction for contributions by corporations includes contributions to out-of-state, nonprofit, religious, charitable, scientific, literary, and educational organizations, cemetery corporations, and organizations for the prevention of cruelty to children or animals.

5. Single-Weight of Throwback Sales in Apportionment Formula. For multi-state corporations using the apportionment method to compute Wisconsin net income, a change in the apportionment formula gives the effect of a single weight for sales subject to the throwback provision. Sales included in the numerator of the sales factor because the property was shipped from Wisconsin into a state which does not have jurisdiction to tax the corporation will be included at 50% of such sales.

INFORMATIONAL PUBLICATIONS AVAILABLE

Last year, the Income, Sales, Inheritance and Excise Tax Division of the Department began publishing a

new form of informational material called "publications". These are small pamphlets which provide detailed information relating to specific areas of Wisconsin tax laws. They are intended to aid the public in understanding certain aspects of the Wisconsin tax laws administered by the Division.

For 1979, the following publications may be obtained at each of the Division's offices located throughout Wisconsin:

Publication Number	Publication Title
100	1979 Wisconsin Tax Requirements For Nonresidents
101	1979 Wisconsin Tax Requirements For Part-Year Residents
102	Wisconsin Tax Treatment of Subchapter S Corporations and Their Shareholders
103	Reporting Capital Gains And Losses For Wisconsin Purposes
104	Wisconsin Taxation of Military Personnel
105	Adoption Expenses - Wisconsin Tax Benefits
106	Wisconsin Deduction For Child and Dependent Care Expenses
500	Tax Guide For Wisconsin Political Organizations And Candidates
501	Field Audit of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Tax Credit for 1979
504	Directory For Wisconsin Department of Revenue

If you have any suggestions for additional subjects which you believe should be covered by a publication, submit your suggestions to the Wisconsin Department of Revenue, Division of Income, Sales, Inheritance and Excise Taxes, Director of Technical Services, P.O. Box 8910, Madison, Wisconsin 53708.

HOW TO GET INCOME TAX FORMS

Individuals who filed 1978 Wisconsin income tax returns or homestead credit claims in 1979 were mailed a 1979 income tax or homestead credit booklet in December 1979.

Tax practitioners and other persons or organizations were permitted

to request bulk orders of 1979 Wisconsin income tax forms on an order blank (Form P-744) beginning in October 1979. These orders are expected to all be filled by mid-January 1980.

During the filing season, anyone wishing a limited supply of forms may obtain these from any Departmental office located throughout the state. Persons are limited to six copies of any single form, however. This will avoid the limited supply of forms at any office from being quickly depleted and unavailable for other persons.

Practitioners or others wishing more than six copies of a form should write the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, Wisconsin 53708.

HOMESTEAD CREDIT REMINDERS FOR 1979

A. Law changes for 1979 claims

New laws enacted in 1979 affect the eligibility requirements and computation of benefits for Homestead Credit. Individuals receiving general relief or aid to families with dependent children (AFDC) at the time of filing a claim are no longer automatically ineligible for Homestead Credit. To qualify for Homestead Credit, a claimant must not have received general relief payments of \$400 or more in each month of 1979, or AFDC for the entire year 1979. Claimants who received general relief payments of \$400 or more for any month in 1979 and claimants who received AFDC payments for any month in 1979 must reduce their property taxes and/or rent constituting property taxes. The reduction must be by one-twelfth for each month that they received public assistance benefits. Claimants who received general relief payments less than \$400 for any month are not required to make any reduction for that month.

The household income limitation has increased to \$14,000 for 1979 claims. The reduction of \$600 for household income if a claimant,

spouse or dependent was 65 or over, has been eliminated.

The maximum amount of property taxes and/or rent constituting property taxes which may be used in computing a homestead benefit has increased from \$800 to \$1,000. Also, the maximum homestead benefit has increased from \$640 to \$800 for 1979 claims.

B. Who may qualify for 1979 Homestead Credit

To qualify for 1979 Homestead Credit, a claimant must meet all of these conditions:

1. Must have been 18 years of age or over on December 31, 1979.
2. Must not be claimed as a dependent on anyone else's 1979 federal income tax return (this does not apply to claimants age 62 years old or over on December 31, 1979).
3. Must have been a legal resident of Wisconsin for all of 1979.
4. Must have household income less than \$14,000 for 1979.
5. Must have been an owner or renter of the Wisconsin homestead he or she occupied during 1979.
6. Must not be living in a nursing home and receiving medical assistance (Title XIX) at the time of filing a claim.
7. Must not have lived the entire year 1979 in housing which is exempt from real estate taxes. (Property owned and operated by a public housing authority is not considered exempt if the housing authority makes payments in lieu of real estate taxes to the municipality in which it is located.)
8. Must not claim farmland preservation credit for 1979.
9. Must not have received general relief payments of \$400 or more for each month of 1979, or aid to families with dependent children (AFDC) for the entire year 1979. If claimant received benefits from either of these sources for a portion of 1979 (but not the entire year), he or she may be eligible

but may also be required to make a one-twelfth reduction of property taxes and/or rent constituting property taxes for each month he or she received such benefits.

In addition, only one person of a household (husband and wife residing together) may claim the credit. If one or more individuals (other than husband and wife) each rent or own a homestead within a single dwelling unit, each may file a claim. Also, a claim cannot be filed for a person after his or her death.

C. Avoid errors on Homestead Credit claims

To avoid unnecessary delays in receiving a 1979 Homestead Credit check, the Department offers the following suggestions:

1. Be sure the claimant's name, address, social security number and telephone number are complete and legible. Use the mailing label provided whenever possible, making any changes necessary on the label. Enter on Schedule H the municipality and county in which the claimant lived at the end of 1979.
2. Answer all questions on Schedule H. This information is necessary to determine eligibility.
3. Enter all household income.
4. If the claim is based on property taxes, a copy of the 1979 property tax bill must be attached to Schedule H. The year "1979" must appear on the bill. If any name other than the claimant's appears on the tax bill, attach an explanation to Schedule H.
5. If the claim is based on rent paid, attach to Schedule H a fully completed "Rent Certificate" for each dwelling rented and occupied by the claimant as his or her homestead in 1979. A claimant may not claim more than twelve months of rent. If the claimant had two or more homesteads during 1979, he or she may claim rent for periods of occupancy only. The law prohibits a landlord from charging a fee for completing a rent certificate. If a claimant

experiences a problem in this regard, the person may contact the Department.

6. The claimant must sign Schedule H. If married, the claimant's spouse must also sign the claim.
7. If the claimant or the claimant's spouse is required to file a Wisconsin income tax return, attach the completed Schedule H and property tax bill or rent certificate to the income tax return.
8. All 1979 claims must be filed with the Department of Revenue by December 31, 1980. The law does not authorize paying claims filed after this date.

FARMLAND PRESERVATION TAX CREDIT REMINDERS FOR 1979

A. Law changes for 1979 claims

Increased benefits are available under a revised benefit formula for some persons filing Farmland Preservation Credit claims for 1979. In addition, a larger benefit may result from computing the credit on the taxes of all members of the claimant's household.

The formulas used to determine Farmland Preservation Credit benefits were revised by law to direct a greater amount of available benefits to farmland owners with lower incomes and property taxes. The 1979 farmland preservation credit tables reflect these formula changes.

When eligible farmland is owned by a Subchapter S corporation, the shareholders (not the corporation) are the claimants for Farmland Preservation Credit benefits. Each shareholder's claim is based on the property taxes accrued on the farmland as reflects the shareholder's percentage of ownership in the Subchapter S corporation.

Persons filing a Farmland Preservation Credit claim may determine their benefit not only on the basis of taxes attributable to eligible farmland

which they own, but also on the basis of taxes attributable to eligible farmland which any other member of their household owns.

B. Who may qualify for 1979 Farmland Preservation Credit

To qualify for 1979 Farmland Preservation Credit, a claimant must meet all of these conditions:

1. The claimant or a member of the claimant's household must have been the owner of the Wisconsin farmland for which the credit is being claimed at the close of the taxable year. ("Household" means an individual and his or her spouse and all minor dependents.)
2. An individual must have been a resident of Wisconsin for the entire 1979 taxable year. A corporation must have been organized under the laws of Wisconsin and must have been in existence for the entire 1979 taxable year. A trust or estate must have been in existence for the entire 1979 taxable year.
The 1979 taxable year may be either a calendar or fiscal year but must be a 12-month period. In addition, the 1979 taxable year must be for the same 12-month period covered by the claimant's 1979 income tax return.
3. The claimant and the claimant's spouse must not claim homestead credit for 1979.
4. The farmland on which the claim is based must be at least 35 acres.
5. Prior to January 1, 1980 the farmland to which the claim relates must be subject to a certified zoning ordinance, or a farmland preservation agreement must have been applied for by June 30, 1979 and such agreement must be executed by December 31, 1980. A contract is considered executed when it has been approved by the Wisconsin Department of Agriculture, Trade and

Consumer Protection and the farmland's owner has returned a signed copy of the contract to that department.

6. The farmland on which the claim is based must have produced at least \$6,000 of gross farm profits during 1979 or at least a total of \$18,000 in gross farm profits for 1977, 1978 and 1979 combined. (Gross farm profits means gross receipts, excluding rent, from the land's agricultural use, less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the income year.)
7. A claimant's net farm income plus other household income must be less than \$38,429. The first \$7,500 of nonfarm wages, tips and salaries earned by the household may be excluded from household income.

NEW WITHHOLDING TAX FORMULA: ALTERNATIVE METHOD

When the new "Employer's Withholding Tax Guide" (for payroll periods beginning after June 26, 1979) was developed in mid-1979, one of the alternative "formula" methods of withholding offered in previous years was discontinued. In the prior withholding guide, this formula had been identified as "Method B".

In its place, a new formula for this method of calculating Wisconsin withholding tax has been developed. Employers who wish to use this new formula should contact Central Compliance, Wisconsin Department of Revenue, P.O. Box 8902, Madison, Wisconsin 53708 for further details.

It should be noted that this formula method of withholding is designed for use principally by employers who utilize computerized payroll systems. It is an optional method of computing withholding tax available to any employer who chooses to use it.

TAXPAYER ASSISTANCE

During the 1980 filing season (January through April 15th), many of the Department's auditors and tax representatives are available to answer questions of taxpayers and tax practitioners.

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 are exceptions as noted below.

Offices Providing Daily Assistance

<u>Location</u>	<u>Address</u>	<u>Telephone No.</u>	<u>Hours</u>
* Appleton	265 W. Northland Avenue	(414) 789-4218	7:45-5:00
* Eau Claire	718 W. Clairemont Avenue	(715) 836-2811	7:45-5:00
* Green Bay	1600 W. Shawano	(414) 497-4230	7:45-4:30
* Kenosha	625 - 57th Street, Suite 601	(414) 656-7100	7:45-4:30
* La Crosse	Courthouse, 400 N. Sixth St.	(608) 785-9721	7:45-5:00
* Madison	4638 University Avenue	(608) 266-2772	7:45-4:30
Madison	201 E. Washington Ave.	None	8:30-5:00
* Milwaukee	819 North 6th Street	(414) 224-4000	7:45-5:00
* Racine	425 South Main Street, Room 305	(414) 636-3711	7:45-4:30
* Waukesha	261 South Street	(414) 544-8690	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Ashland	Courthouse, 201 2nd West	None	1:00-4:00	(a)
Baraboo	1007 Washington	(608) 356-8973	7:45-5:00	
Barron	Courthouse, 330 E. LaSalle Ave.	(715) 537-3621	7:45-4:00	
Beaver Dam	211 South Spring Street	(414) 887-8108	7:45-5:00	
Beloit	165 Liberty Street	(608) 362-0044	7:45-5:00	
Elkhorn	950 N. Lincoln St.	(414) 723-4098	7:45-5:00	
Fond du Lac	19 West First Street	(414) 921-5600	7:45-4:30	
Fort Atkinson	Municipal Building, 111 N. Main	None	8:00-5:00	(c)
Grafton/Cedarburg	101 Falls Road	(414) 377-6700	7:45-5:00	
Green Lake	529 Mills Street	(414) 294-3611	7:45-4:30	
Hayward	221 Kansas Avenue	(715) 634-8478	8:00-12:00	
Hudson	753 Sommers Street, North	(715) 386-8225	7:45-5:00	
Hurley	County Court House	None	1:00-4:00	(d)
Janesville	115 South Franklin	(608) 755-2750	7:45-5:00	(b)
Lancaster	225 N. Madison St.	(608) 723-2641	7:45-5:00	
Manitowoc	1314 Memorial Dr.	(414) 684-0653	7:45-5:00	
Marinette	Courthouse, 1926 Hall Avenue	(715) 735-3371	9:00-4:30	
Marshfield	630 South Central Avenue	(715) 387-6346	7:45-5:00	
Monroe	1220 Sixteenth Avenue	(608) 325-3013	7:45-5:00	
Oshkosh	Courthouse, 415 Jackson Street	(414) 424-2100	7:45-4:30	
Park Falls	178 South Third Avenue	(715) 762-2160	7:45-11:45	
Portage	Courthouse, 717 East Cook	None	8:00-5:00	(c)
Rhineland	Sunrise Plaza, Hwy. 8 East	(715) 362-6749	7:45-5:00	
Richland Center	Richland Memorial Bldg.	None	8:00-5:00	(d)
Shawano	Courthouse, 311 North Main	(715) 526-5647	7:45-4:30	
Sheboygan	504 S. 14th St.	(414) 459-3101	7:45-4:30	(b)
Superior	Courthouse, 1313 Belknap	(715) 394-0204	8:00-4:30	
Tomah	City Hall, 819 Superior Avenue	(608) 372-3256	8:30-5:00	
Watertown	415 East Main Street	(414) 261-7700	7:45-5:00	
Waupaca	201½ South Main Street	(715) 258-9564	7:45-4:30	
Wausau	Courthouse, Forest Street	(715) 842-0471	7:45-5:00	(b)
West Bend	519 Hickory Street	(414) 338-4730	7:45-5:00	
Wisconsin Rapids	1681 Second Ave. South	(715) 421-0500	7:45-5:00	

- (a) Tuesdays only
- (b) Monday through Wednesday
- (c) January 21, February 11, March 10, April 14
- (d) February 5, April 1

* open during noon hour

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.)

INCOME TAX

I. Standard Mileage Rates

The Internal Revenue Service has increased the standard mileage rate for the first 15,000 miles of business use of an automobile during 1979 from 17 cents to 18½ cents. The rate per mile for business use of an automobile in excess of 15,000 miles per year and for automobiles that have been fully depreciated remains at 10 cents a mile.

The rate per mile for use of an automobile for charitable, medical, and moving expense purposes during 1979 has been increased from 7 to 8 cents a mile.

The new standard mileage rates will apply in the same manner for Wisconsin income tax purposes as they do for federal purposes.

II. \$100,000 Exclusion on Sale of Residence

Beginning with the 1979 taxable year, Wisconsin follows section 121 of the Internal Revenue Code permitting individuals age 55 or over to exclude up to \$100,000 of gain from the sale of a personal residence. To qualify for this exclusion, a taxpayer must have reached age 55 before the date of sale and must have owned and used the property as his or her principal residence for at least 3 out of the 5 years before sale.

The Department has received the following inquiries regarding the \$100,000 exclusion on the sale of a personal residence:

1. When married persons own a residence but only one spouse satisfies the eligibility requirements, how is

the gain computed and reported? (For example, one spouse is over age 55 and the other is under age 55 on the date of sale.)

Under federal law, if a husband and wife file a joint return and one spouse satisfies the requirements for the \$100,000 exclusion, then both spouses are deemed to qualify, even though one of the spouses does not meet all the requirements.

Section 71.05 (1) (L), Wis. Stats., provides that married persons compute the amount of the exclusion for Wisconsin on the same basis as married persons filing a joint federal return. Therefore, if one spouse qualifies, the married couple is entitled to the full \$100,000 exclusion for Wisconsin.

The exclusion may be split between spouses in any manner they choose. For example, husband and wife sell their jointly owned personal residence for a \$150,000 gain. The husband qualifies for the exclusion. Each spouse has a gain of \$75,000. The \$100,000 exclusion can be divided between husband and wife in any manner they choose. For instance, if the husband applied \$75,000 of the \$100,000 exclusion to offset his entire share of the gain, then the wife would report a taxable gain of \$50,000 (\$75,000 gain less remaining \$25,000 portion of the \$100,000 exclusion).

If the total gain on the sale of a personal residence is \$100,000 or less, no taxable gain will be reported by either spouse. For example, husband and wife sell their jointly owned personal residence for a \$80,000 gain. The wife qualifies for the exclusion. Each spouse has a gain of \$40,000. Since the \$100,000 exclusion exceeds the total gain of \$80,000, there is no taxable gain to be reported by either spouse.

2. Is this \$100,000 exclusion allowed to taxpayers who establish residence outside of Wisconsin and then sell their Wisconsin residence while residents of another state?

Yes, if all qualifications are met under section 121 of the Internal Revenue Code. The taxpayer may choose to exclude the gain under section 121 for Wisconsin purposes, even though this \$100,000 exclusion is not used for federal purposes. A completed Form 2119 (Sale or Exchange of Personal Residence) clearly marked "For Wisconsin Pur-

poses Only" should be attached to the Wisconsin return.

III. 1978 Special Property Tax/Rent Credit Does Not Affect Computation of 1979 Property Tax Credit

Beginning with the 1979 taxable year, individuals may claim a credit equal to 12% of the property taxes they have paid during the taxable year on their residence and other non-business property. This is a nonrefundable credit which is claimed on line 11 of Wisconsin Form 1 and line 11 of Form 1A. It is provided by s. 71.53 of the Wisconsin Statutes.

A question was asked whether receipt of the 1978 Special Property Tax/Rent Credit affects the computation of the 12% Property Tax Credit claimed on a 1979 return. The answer is "no"; the 12% Property Tax Credit for 1979 is not affected by the amount of 1978 Special Property Tax/Rent Credit received. The following example illustrates this:

A taxpayer who is a resident of Wisconsin for the entire year 1979 pays 1978 property taxes accrued of \$1,440 in 1979. (The property tax bill for 1978 property taxes accrued is generally received by property owners in December 1978 or January 1979.) During 1979, this taxpayer received a 1978 Special Property Tax/Rent Credit totalling \$200 (\$100 credit claimed on a 1978 Wisconsin income tax return filed in 1979 and \$100 received as a separate check in July 1979).

On a 1979 Wisconsin income tax return, this individual should determine the 12% property tax credit by using the full amount (\$1,440) of nonbusiness property taxes paid in 1979. No reduction should be made for the \$200 of 1978 Special Property Tax/Rent Credit received in 1979. Using the computation tables provided in the instructions for the 1979 Wisconsin tax forms, this individual would claim a credit of \$173 on the 1979 tax return.

IV. How to Determine the Additional Standard Deduction or Low-Income Allowance Deduction for Dependents in 1979

Prior to 1979, the deduction for dependents which may be added to the Wisconsin standard deduction or low-

income allowance was based on Wisconsin total income (combined income of husband and wife). Because of a change in law, beginning in 1979 the deduction for dependents may be based on either Wisconsin total income or federal adjusted gross income depending on the residency status of the taxpayer.

If you are a full-year resident of Wisconsin in 1979, your deduction for dependents is based on Wisconsin total income. If you are a part-year resident or nonresident of Wisconsin in 1979, your deduction for dependents is based on federal adjusted gross income.

Because of the change in the manner in which the deduction for dependents is determined in 1979, the 1979 income tax instruction booklets will have two standard deduction and low-income allowance tables: one for full-year residents and one for nonresidents and part-year residents.

The table for full-year residents will show the standard deduction and low-income allowance including the deduction for various numbers of dependents. If you have more dependents than is shown on the table, you must use the chart on the bottom of the page to calculate the "add-on" for additional dependents.

The table for nonresidents and part-year residents shows the standard deduction and low-income allowance for only zero dependents. Nonresidents and part-year residents must use the chart on the bottom of the page to determine their add-on for all dependents claimed.

Married persons must use their combined incomes when determining the deduction for dependents. In the situation where a full-year resident is married to a nonresident or a part-year resident, the Wisconsin income of the full-year resident and the federal adjusted gross income of the nonresident or part-year resident would be combined to determine the deduction for dependents. The deduction for dependents chart on the page for nonresidents and part-year residents standard deduction and low-income allowance table must then be used to calculate the add-on.

Example: A full-year resident of Wisconsin is married to a part-year resident of Wisconsin. Their incomes

are as follows:

<u>Full-year resident</u>	<u>Part-year resident</u>
\$4,000 Wisconsin income	\$3,000 Wisconsin income
<u>2,000</u> Income not taxable to Wis. (U.S. bond interest)	<u>4,000</u> Income not taxable to Wis. (wages received before moving to Wisconsin)
<u>\$6,000</u> Federal adjusted gross income	<u>\$7,000</u> Federal adjusted gross income

The deduction for dependents would be based on \$11,000 (\$4,000 Wisconsin income for the full-year resident plus \$7,000 federal adjusted gross income for the part-year resident).

V. Annuity Payments Made Under Military Survivor Benefit Plan

Armed services reservists, including members of the Wisconsin National Guard, may elect to provide a survivor annuity to a spouse or dependent children. The election is allowed in the Federal Military Survivor Benefit Plan (10 U.S.C. chapter 73, subchapter 2, effective October 1, 1978).

Amounts paid as survivor's benefits under this plan to beneficiaries are fully taxable for Wisconsin income tax purposes in the same manner as the retirement payments would be taxable to retired members of the Wisconsin National Guard. The exemption of \$1,680 for annuities received from a retirement system established for civil service employees of the United States (s. 71.01 (3) (e), Wis. Stats.) does not apply to members of the Wisconsin National Guard since they are not classified as civil service employees. Payments made to retired members of the Wisconsin National Guard would also not qualify for the exemption for the first \$1,000 of taxable compensation which is received from the United States for service as a reserve or active member of the armed forces (s. 71.01 (3) (f), Wis. Stats.).

Survivor annuity payments made under the Federal Military Survivor Benefit Plan are fully exempt from Wisconsin inheritance and estate taxes (s. 72.12 (4) (c) 2a, Wis. Stats.).

VI. Amending Individual Income Tax Returns

The form (Form 1X) for amending individual income tax returns contains a date on it (1979) for the first time. The current version should not, therefore, be used to amend tax returns from prior years.

The proper versions of Form 1X which should be used for amending 1975 through 1979 returns are the following:

- 1979 — Use form with preprinted "1979" date
- 1978 — Use form with the revision date "R. 10-78" printed in lower left-hand corner on page 1
- 1975-77 — Use form with the revision date "R. 9-76" printed in the lower left-hand corner on page 1

SALES TAX

I. Utility Transmission and Distribution Lines

Administrative rule Tax 11.86, entitled "Utility transmission and distribution lines", was published in December 1978. It reversed in part the Department's prior policy set forth in Technical Information Memorandum (TIM) S-46.2 ("Utility transmission and distribution lines"). In that TIM, the Department's policy was that "tangible personal property" included transmission and distribution lines that were erected or installed under easement or license on land owned by others. This interpretation included underground installations, and the gross receipts from underground utility installation were taxable, and materials used in the performance of the contract could be purchased for resale without tax.

Rule Tax 11.86 reversed the policy regarding underground utility facilities. Under the rule, the gross receipts from the sale, lease, rental, repair service or maintenance of underground utility facilities are not subject to the sales and use tax, but the materials used are taxed. The policy under this rule was adopted retroactively to cover transactions on or after September 1, 1970.

The Department has issued a number of refunds to contractors on the basis of rule Tax 11.86. Other tax-

payers who may have paid sales or use tax to the Department under the original interpretation and are now entitled to a refund of that tax may request a refund of that tax.

Unless a taxable year has been field audited and is closed, a taxpayer may file a claim for refund at any time within 4 years after the due date of the sales/use tax annual information return Form ST-12A. For example, if a corporation's due date of the annual information return for 1975 was March 15, 1976, and the year has not been closed by field audit, a claim for refund for 1975 must be filed by March 15, 1980.

II. Notice to TIM Subscribers

Technical Information Memorandum (TIM) S-15.3, entitled "Printed Material Exemptions" has been replaced and superceded by administrative rule Tax 11.19, effective September 1, 1979.

Only 2 sales tax TIM's remain in effect:

A) S-27.4, "Printers' and Typesetters' Sales and Purchases"

B) S-38.4, "Automatic Data Processing"

For further information on how to subscribe to administrative rules, you may write to: Document Sales Section, Department of Administration, 202 South Thornton Avenue, Madison, WI 53702.

III. Marketing Aids

Persons who make gifts of taxable tangible personal property to others are the consumers of the property. The sales or use tax shall apply to the gross receipts from the sale of the property to the persons making the gifts.

Taxable sales include sales of samples, advertising material, display cases, display racks and other similar marketing aids. Commonly, sales are to manufacturers, distributors, jobbers and wholesalers who purchase the property to give it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers.

When a person purchases property for resale but uses the property

for any purpose other than resale, such as giving it to customers or to a charity, the purchaser is liable for use tax based on the purchaser's cost of the merchandise.

Examples of these principles regarding marketing aids are set forth in the examples below.

A. Samples. Samples furnished to Wisconsin doctors by drug manufacturers are considered consumed by the drug manufacturer in Wisconsin, and the use tax applies to the manufacturers' cost of the ingredients in the samples. If an out-of-state drug manufacturer is engaged in business in Wisconsin, the manufacturer must report the tax on samples distributed when the salesperson delivers the samples to the doctor or when the samples are mailed into Wisconsin.

If a Wisconsin manufacturer distributes free samples throughout the United States, with 3% of the samples being distributed in Wisconsin, the use tax is due only on the cost of the 3% of the samples distributed in Wisconsin.

B. Tie-in Sales. A Wisconsin manufacturer, as an inducement to its sales personnel, provides each salesperson with one free item if the salesperson sells 30 of these same items. If the manufacturer is obligated to furnish the free item by contract or because this is understood to be manufacturer's policy by both parties to the transaction, this is considered a "tie-in sale". No tax is due on the transfer of the free item. In effect, the salesperson receives a discount in the total price of all the items purchased.

C. Display Racks. A book publisher purchases cardboard display racks which are sent along with its books to Wisconsin customers who are retailers of books. The publisher may purchase these display racks without tax for resale if it is contractually obligated to furnish display racks to its customers. For example, if the publisher advertises that a display rack will be furnished with every 100 books purchased, it is deemed contractually obligated to furnish the display racks.

However, if a customer is provided a display rack only upon request, or at the discretion of the publisher, the publisher may not purchase the display racks without tax. These purchases were not for resale.

The primary function of a display rack is to display the seller's product, not to advertise the product sold.

Therefore, display racks do not qualify for an exemption as printed advertising material for use solely outside the state under s. 77.54 (25), Wis. Stats.

D. Grocers' Premiums. A grocer uses taxable tangible personal property as a premium (gift) in connection with sales of taxable items and exempt groceries. For example, if a customer spends \$7.50 in the store, he or she receives a free premium.

The grocer may use a resale certificate when purchasing taxable property which will be given as a premium when a customer purchases taxable property. However, the grocer must pay tax when purchasing a premium distributed in conjunction with exempt grocery sales. Therefore, if a grocer's gross receipts consist of 65% exempt grocery sales and 35% taxable sales, the grocer may purchase 35% of its premiums without tax, and must pay tax on the remaining 65% of premiums.

E. Cigarettes. The Wisconsin and federal excise tax on cigarettes are included in the measure of the use tax due on cigarettes given away in Wisconsin by cigarette manufacturers. For example, if the cost of tangible personal property in a pack of cigarettes is 10¢, and the excise taxes are 24¢ per pack (16¢ state, 8¢ federal tax) the measure of the use tax for this pack is 34¢ (2¢ tax in this example).

IV. Postal Employees' Uniforms

A postal employee is commonly fitted for a uniform at a retailer's place of business. At the time of sale, the retailer prepares a bill which is made out to the employee. The employee takes the bill to his or her supervisor, and subsequently the bill is forwarded to a U.S. Postal Service payroll office. A check for payment of the uniform is then sent directly to the retailer by the U.S. Postal Service. The sale of the uniform is a taxable transaction because the retailer is selling the uniform to the postal employee, rather than directly to the Postal Service.

V. Transfers of Property to a Corporation Pursuant to Its Organization, Merger or Consolidation

Section 77.51 (4g) (a) and (c), Wis. Stats., provide that two types of transfers are not considered "sales" for sales tax purposes. Accordingly

the 4% tax would not apply to the following transfers:

(1) The transfer of property to a corporation upon its organization solely in consideration for the issuance of its stock; and

(2) The transfer of property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation.

Example 1 — Exchange of Assets and Related Liabilities Solely for Stock.

Transfers of property to a corporation solely in exchange for the first issue of stock in a newly organized cor-

poration are not taxable, even though the transferor holds a Seller's Permit. For example, assume that Corporation A which has several separate operating divisions, each of which is engaged in an unrelated business, transfers all of the property and the related liabilities of one of its operating divisions to a newly formed Corporation B (at the time it is organized) solely in exchange for its capital stock. This transfer is exempt under s. 77.51 (4g) (a).

Example 2 — Exchange of Assets and Related Liabilities for Stock and Other Consideration.

If the factual conditions are the same as example 1 except that Corporation A receives Corporation B's capital stock plus other consideration (such as cash or bonds), sales tax is due on the other consideration based on the following formula:

$$\frac{\text{Other Consideration} \times \text{Sales Price of Taxable}}{\text{Total Consideration} - \text{Personalty Transferred}}$$

For example, assume that A transfers the following assets to B, a new corporation, with B assuming all of A's liabilities:

Assets Transferred:

Land and Buildings	\$110,000	
Less: Mortgage	30,000	\$80,000
Inventory (For Sale)	60,000	
Less: Accounts Payable	20,000	40,000
Furniture and Fixtures (Personalty)	30,000	30,000

Net Assets Transferred

\$150,000

Consideration Received:

Cash	\$75,000
Capital Stock	<u>75,000</u>

Total
Consideration

\$150,000

Sales Tax Computation:

$$\frac{\text{Cash}}{\text{Total Consideration}} \times \text{Taxable Personalty} = \text{Taxable Measure}$$

$$\frac{\$75,000}{\$150,000} (50\%) \times \$30,000 \text{ (furniture and fixtures)} = \$15,000 \text{ Taxable}$$

Example 3 — Merger or Consolidation.

The transfer of assets and related liabilities to a corporation solely in exchange for its capital stock pursuant to a merger or consolidation are non-taxable transfers, even though the transferor holds a Seller's Permit. If consideration other than capital stock (e.g., cash or notes) is issued to the transferor the transaction is subject to the tax, to the extent taxable personal property is involved in the transaction. The formula used in example 2 to determine the taxable measure should also be used in a merger or consolidation, if consideration other than capital stock is issued.

NOTES: (1) These examples and formulas do not apply whenever the liabilities transferred exceed the basis of the property transferred by the transferor. If a tax applies to motor vehicles transferred, the purchaser must pay the tax due when the vehicle

is registered with the Wisconsin Department of Transportation.

(2) This tax release replaces the tax release entitled "New Corporations" on page 7 of the January 1978 *Wisconsin Tax Bulletin*. The policies set forth in this release apply to all periods open to adjustment under the statute of limitations in s. 77.59, Wis. Stats.

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.)

Midcontinent Broadcasting Company of Wisconsin, Inc. v. Department of Revenue (Wisconsin Court of Appeals, District IV, August 28, 1979) The taxpayer, who operated

two television broadcasting stations, obtained a seller's permit to sell phonograph records advertised on its television stations. The phonograph records were advertised on the television stations as a service to viewers. During the 4 year period after obtaining a seller's permit (1967-1970), the taxpayer reported taxable receipts from record sales of about \$27,000, compared to nontaxable radio and television broadcasting receipts of almost \$8 million.

In October 1970, while it had a seller's permit, the taxpayer sold all the tangible and intangible business assets used in the operation of its television broadcasting stations. The tangible personal property included in the transaction amounted to about \$775,000, and the asserted sales tax on this amount approximated \$31,000.

Among taxpayer's contentions was that the sale of its broadcasting assets was an exempt "occasional

sale." This phrase is defined in s. 71.51(10) (a) as an isolated and sporadic sale of tangible personal property or taxable services where the infrequency, in relation to other circumstances, including the sales price and gross profit, support the inference that the seller is not pursuing a full-time or part-time vocation, occupation or business. Taxpayer contended that it held the seller's permit to sell records, not broadcasting equipment, and that the record sales for which it held a seller's permit were not made as part of its main business.

Taxpayer also contended that if the statute is not read as exempting the sale of its broadcasting station equipment, the statute violates (a) the federal constitution's interstate commerce clause and (b) the equal protection and due process clauses. The Department contended that under s. 77.51(10) (a), Wis. Stats., this sale was taxable. The statute's last sentence reads, in part, "No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller's permit. . . ."

The Tax Appeals Commission denied taxpayer's petition for redetermination and ruled in favor of the Department. The Circuit Court affirmed the Commission's decision.

The Court of Appeals held in favor of the taxpayer. The Court stated that where a taxpayer is in a business (ex., television broadcasting) whose primary sales (ex., broadcast time) are exempt from sales tax requirements, and sells the assets of that business when it holds a seller's permit for reasons having no connection or only a remote connection to the business whose assets are being sold, the taxpayer is not a "seller" who "holds" a permit within the meaning of s. 77.51(10) (a) defining "occasional sale". The Court concluded that the circuit court's holding was contrary to the legislative purpose to impose a sales tax on the sale of the business assets solely because the taxpayer held a seller's permit in connection with another activity only remotely connected to its business.

The Department has appealed this decision.

Sister Mary Joanne Kollasch, et. al. and Sisters of St. Benedict, of Madison, Wisconsin vs. David W. Adamany, Secretary of Revenue (Circuit Court of Dane County, Case

No. 142-256, September 7, 1979). The Sisters of St. Benedict ("taxpayer") is a religious corporation organized exclusively for religious and charitable purposes. Taxpayer commenced this judicial proceeding seeking a declaratory judgment declaring that it is not required to obtain a seller's permit and report sales tax based on its gross receipts for the activities it engages in. Primarily, this permit would be required to account for the sales tax on meals served to members of organizations which are not exempt from paying sales tax.

Taxpayer owns a building at which it rents out its facilities. These facilities include board and room, meeting rooms, and the availability of projectors, screens and tape recorders; space is provided for business and professional conferences, training sessions, weekend seminars, and other meetings which are both religious and non-religious in nature. The conferences and meetings are held under agreements made in advance by which the sponsor of the meeting promises that agreed rates will be paid for the services and facilities used.

Taxpayer contended that none of its work is done for gain or profit, but that its activities essentially are religious in nature. The Sisters eat with the participants in a common dining room where meals are served, and their work is essentially prayerful and ecumenical in nature.

Taxpayer also contends that serving meals at the center is both religious and secular, and that the purpose of the center is for study and religious meetings, without commercial taint. Evidence in the record indicates that several of the business groups which use the center are not involved in any religious activities of the Sisters. The sharing of the meals did provide opportunity for spiritual dialogue, but there was no testimony by any non-religious participant that such dialogue actually occurred.

The court upheld the Department's position that taxpayer's meal sales were subject to the sales tax. The sales tax imposition statute (s. 77.52 (1), Wis. Stats.) was held applicable to the sale of meals by taxpayer to groups not exempt from paying the tax. The court further held that the sale of meals in question did not constitute an exercise of religion protecting these sales from the sales tax through the freedom of religion

provision of the first amendment to the U.S. Constitution.

The taxpayer has appealed this decision.

Gerhard Van Beck vs. Department of Revenue (Wisconsin Tax Appeals Commission, September 14, 1979). Taxpayer was a sole proprietor who operated a vending machine business and held a seller's permit. On July 1, 1978, taxpayer sold his business to his son who began operating under a new seller's permit the same date.

Taxpayer's wife acted as bookkeeper and secretary for taxpayer's business. On May 18, 1978, she notified the Department by ordinary mail that taxpayer's seller's permit, identifying the number, was to be cancelled and surrendered as of June 30, 1978. Included with that letter was the son's application for a seller's permit. The Tax Appeals Commission's findings of fact do not indicate whether or not taxpayer's seller's permit was, in fact, ever surrendered to the Department.

The Department assessed sales and use taxes on the gross receipts from the sale of taxpayer's business assets. The Department contended that taxpayer had not properly surrendered his seller's permit by that date and that because he held it at the time of the sale, the sale did not qualify as an occasional sale.

The Tax Appeals Commission stated that on the date of the sales tax assessment (July 1, 1978), taxpayer did not hold and was not required to hold a seller's permit. Therefore, the Commission concluded, any sale on that date of taxpayer's business equipment qualifies as an occasional sale and is not subject to the sales tax.

The Department has appealed this decision.

Bergliot G. Bonneville Estate vs. Department of Revenue (91 Wis. 2d 726, Wisconsin Supreme Court, October 9, 1979). Decedent suffered a stroke on November 18, 1974 and died on January 6, 1975. Her son was appointed personal representative of her estate in February 1975. On April 15, 1975, the personal representative filed a homestead credit claim for the year 1974 on behalf of the deceased.

The Department denied the claim on the ground that s. 71.09(7) (b), Wis. Stats. requires a claim to be filed during the lifetime of the claimant and that death extinguishes the right to file for homestead credit. The Tax Ap-

peals Commission sustained the Department's interpretation. The personal representative contended that the statute limiting filing of the credit to a claimant during the claimant's lifetime constitutes an unreasonable and arbitrary classification which violates the constitutional guarantee of equal protection of the laws.

The Supreme Court held in favor of the Department. The Court recognized that the issue was whether there is a rational basis for the classification and concluded that there was. The reasonable interpretation of the statute is that the Legislature intended the homestead credit law to grant relief to the claimant herself and accordingly required that the claimant must be alive during the year following the tax year for which the credit is claimed.

The Court stated that it is a policy decision for the Legislature to determine how long a claimant must live beyond the tax year during which the expenses qualifying for homestead credit were incurred in order to qualify for relief. There is no simple, precise, mathematical or logical way to determine the appropriate period of survival, wrote the Court. It stated that the Legislature probably chose the date of filing the claim as the date on which the claimant must be alive because the date of filing is a convenient one for purposes of administering the law. The Court concluded that this was reasonable.

Kearney & Trecker Corp. vs. Department of Revenue (91 Wis. 2d 746, Wisconsin Supreme Court, October 9, 1979). During the taxable years in issue (fiscal years ended September 27, 1964 to October 1, 1967), taxpayer was a Wisconsin corporation engaged in the business of manufacturing, selling and leasing precision machine tools. Taxpayer manufactured its machine tools in Wisconsin, the place of its general offices and principal place of business, and sold and leased its machine tools throughout the United States. Taxpayer's Wisconsin operations constituted an integral part of a unitary, multistate business.

During the years involved, rental income (less depreciation and commissions) from leased machine tools and profits and losses from the disposal of leased machine tools were treated by taxpayer as income or loss which followed the situs of the property from which they were derived.

Taxpayer excluded these amounts from income subject to apportionment.

The statute involved was s. 71.07 (1), 1967 Wis. Stats., which read in part: "For the purposes of taxation income or loss from business, not requiring apportionment . . . shall follow the situs of the business from which derived. Income or loss derived from rentals . . . or from the sale of . . . tangible personal property shall follow the situs of the property from which derived. . . ."

The sole issue in the case is the tax treatment of the income which taxpayer received from the rental and subsequent sale of machines located outside Wisconsin. The question was: when a taxpayer is in the business of renting, manufacturing and selling tangible personal property, should income or loss derived from such rentals and from sales of the property previously rented be treated for tax purposes as business income subject to apportionment under s. 71.07 (2), 1967 Wis. Stats., or should it be treated as nonapportionable income which follows the situs of the property under s. 71.07 (1), 1967 Wis. Stats.?

The Department contended that taxpayer's reading of the statutes produced an absurd result. The Department's theory was that business income, which follows the situs of the business, includes such rental and sale income if the taxpayer is in the rental business, notwithstanding the out-of-state location of the rental property. The Department contended that if this interpretation were not followed, Wisconsin would not be able to tax income derived from products leased outside Wisconsin but manufactured in Wisconsin.

The Tax Appeals Commission and the Circuit Court of Dane County ruled in favor of the Department. The Wisconsin Supreme Court ruled in favor of the taxpayer.

The Supreme Court stated that the first 2 sentences of s. 71.07 (1), 1967 Wis. Stats., are clear and unambiguous. Income derived from the lease and subsequent sale of machine tools which have a situs other than in Wisconsin is income derived from the rental and sale of tangible personal property and follows the situs of the property from which derived. Such income is not income from business as defined in s. 71.07 (1), 1967 Wis. Stats.

The Court added that the power of Wisconsin to tax the income of the taxpayer was not in issue. The parties conceded that Wisconsin can constitutionally tax the income of taxpayer, a Wisconsin corporation domiciled in Wisconsin, regardless of its source. The issue in dispute was the proper interpretation of the then existing statute, and the Court held for taxpayer.

Jack McManus vs. Department of Revenue (91 Wis. 2d 682, Wisconsin Supreme Court, October 9, 1979). Taxpayer and his wife owned and lived on farmland in Dane County. Title to the land was held in joint tenancy. Taxpayer contributed all the money used to purchase the farmland. The gross income from the farm, except less than 5% from a beef cattle operation, came from cash rentals and federal payments designed to keep land out of production. Farm losses during the period 1969 to 1972 exceeded income.

Taxpayer claimed all the farm losses on his own income tax return. The Department contended that when gross income is derived from land ownership, as contrasted to the active operation and management of the land, the allocation of income and the right to take losses for income tax purposes must follow in proportion to the ownership of the joint tenants.

Both the Tax Appeals Commission and the Circuit Court for Dane County held for the Department. The Supreme Court also sustained the Department's position. It concluded that, as an incident of joint tenancy, rents and income in the nature of rents, as well as losses must be attributed to the joint tenants in equal amounts. Taxpayer was entitled to his proportionate (half) share of whatever income accrued from rents, and the losses he could take were limited to his proportionate (half) ownership.

Department of Revenue vs. Sterling Custom Homes Corp. (91 Wis. 2d 675, Wisconsin Supreme Court, October 9, 1979). Taxpayer prefabricated custom-built homes, ranging in price from \$20,000 to \$200,000, in Wisconsin. Taxpayer marketed the homes through 15 regional sales managers who worked with local builders, contractors and realtors. Customers purchased homes from a local builder, contractor or realtor and the building permit was normally is-

sued in the name of the builder or contractor. Taxpayer's contracts were with the local builders and not the ultimate homeowners. The builders executed separate agreements with the homeowner and determined the eventual price to be paid for the home.

Taxpayer generally did not deal directly with the homeowner. The builder forwarded each customer's plans and specifications to taxpayer, which prefabricated the home in its manufacturing plant. Once a design was satisfactory, the builder and sometimes the homeowner specified in detail the materials to be incorporated in the house.

The builder prepared the house's foundation. Taxpayer prefabricated each house at its Wisconsin plant in a regular sequence. It first built the wall sections, then the deck and floor sections, the roof, and finally the interior and trim. The house packages fabricated by taxpayer did not include "mechanicals," such as plumbing, wiring, heating, and drywall. The builders hired subcontractors to perform that work.

When the foundation was completed and the builder was ready to

erect the house, the taxpayer loaded the components in the sequence that conformed to the order that the components would be used at the job site. The components were delivered to the job site by the taxpayer's trucks and drivers. At the job site, the larger components were unloaded by crane.

The crane operators were hired by the builder, but were usually selected by one of the taxpayer's salespersons. The smaller components, such as trim, were unloaded by the taxpayer's employees and were placed in the portion of the house where they would be installed. Although the drivers' only defined on-site responsibility was to keep a report in respect to the erection, they often helped or supervised, because they were very familiar with the process.

The issue on appeal was whether taxpayer was (1) a contractor engaged in real property construction activities whose purchases of materials to incorporate into its homes was subject to the sales or use tax or (2) a retailer of parts of houses whose sales of such parts were subject to the sales tax.

Taxpayer contended that it was a contractor engaged in real property construction activities. The Department contended that taxpayer was not engaged in real property construction activities, but rather was a seller of tangible personal property in the form of building materials to builders and contractors.

The Tax Appeals Commission, the Circuit Court of Dane County and the Wisconsin Supreme Court held in favor of taxpayer. The Supreme Court affirmed the conclusion that taxpayer was a contractor and consumer of tangible personal property. Taxpayer was, in all respects but one, engaged in real property construction activities. The lone exception was that taxpayer conducted its activities at a factory, rather than at the building site. This single factor was not sufficient to alter the conclusion. Additionally, the taxpayer was substantially involved in the on-site erection process. Therefore, taxpayer was required to pay sales and use taxes on its purchases of tangible personal property and not required to pay sales tax on the sales of its product.