# WISCONSIN TAX BULLETIN

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Wisconsin Department of Revenue
Income, Sales, Inheritance and
Excise Tax Division
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Madison, Wisconsin 53708

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NUMBER 18

## FILING DEADLINES FOR 1979 RETURNS

### Income Tax

April 15, 1980 is the deadline for filing a 1979 calendar year Wisconsin individual income tax return. Taxpayers waiting until the deadline to file should be sure that their returns bear an April 15 postmark. Returns postmarked after April 15 will be subject to late filing penalties.

### Homestead Credit

The Wisconsin Homestead Credit Claim (Schedule H) for 1979 is not due until December 31, 1980. However, if an individual is filing a 1979 income tax return and also claims homestead credit, the department prefers that the Schedule H accompany the 1979 income tax return.

### Farmland Preservation Credit

December 31, 1980 is also the filing deadline for a 1979 Wisconsin Farmland Preservation Credit Claim (Schedule FC) filed by a calendar year taxpayer; however, claimants are encouraged to attach Schedule FC to their 1979 Wisconsin income tax returns which are required to be filed earlier.

### Alternative Energy System Tax Benefit Claims

Individuals who install qualified solar, wind or waste conversion systems in 1979 and wish to claim an alternative energy system benefit must file claims for benefit with the Wisconsin Department of Industry, Labor and Human Relations (DILHR), rather than the Department of Revenue. An income tax credit on a Wisconsin income tax return is no longer available.

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## EXTENSIONS OF TIME TO FILE TAX RETURNS FOR INDIVIDUALS

### A. Forms 1 and 1A

Any extension of time granted by the Internal Revenue Service for filing federal returns also extends the time for filing the corresponding Wisconsin individual income tax returns, provided that a copy of the federal extension (Form 4868 for a 60-day extension, or Form 2688 for an additional extension) is filed with the Wisconsin return. If the Internal Revenue Service for any reason refuses to grant an extension or terminates one previously granted, the Wisconsin income tax return is due on the same date as the federal return.

Instead of an extension allowed by the Internal Revenue Service, extensions may also be granted by the Wisconsin Department of Revenue for 30 days. A request for such a 30-day extension must be filed with the Department prior to the due date of your return.

U.S. citizens who are not in the United States or Puerto Rico on April 15, 1980 are allowed an automatic extension until June 16 to file their returns. These persons do not have to request an extension, but should attach a statement to their returns indicating that they were out of the United States and Puerto Rico on April 15.

If an individual who has been granted an extension files a return and has a tax due, the amount due is subject to interest at the rate of 9% per year for the extension period (s. 71.10 (5) (b) ). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return.

Applications for extensions and related correspondence should be sent to:

Wisconsin Department of
Revenue
P.O. Box 8903
Madison, WI 53708

### B. Schedules H (Homestead) and FC (Farmland Preservation Credit)

No extensions of time are available for filing claims for the above credits.

1979 Homestead claims must be filed no later than December 31, 1980. Farmland Preservation Credit claims for 1979 must be filed no later than 12 months after the farmland owner's 1979 taxable year ends (e.g., December 31, 1980 for calendar year taxpayers).

## FIRST 1980 ESTIMATED TAX PAYMENT IS DUE APRIL 15

Every individual, whether or not a resident of Wisconsin, is required to file a 1980 declaration of Wisconsin estimated tax (Form 1-ES) if the individual expects his or her Wisconsin income tax liability to exceed withholding upon wages, if any, by $60 or more.

A trust or estate is not required to file a declaration.

Individuals required to file a 1980 declaration during the first quarter of 1980 must do so on or before April 15, 1980. Installment payments are

also due on June 16, 1980, September 15, 1980, and January 15, 1981.

## DO YOU HAVE SUGGESTIONS FOR 1980 TAX FORMS?

Each year the Department receives helpful suggestions from the public regarding changes or improvements which can be made to the various Wisconsin income tax reporting forms. We are already taking steps to simplify next year's forms. Because many of the suggestions submitted in the past have been useful in evaluating and updating these forms and instructions, the Department is seeking your comments as we prepare the 1980 forms.

You may wish to communicate your suggestions as to how the Department might improve Forms 1 (individual long form) and 1A (individual short form), Forms 4 and 5 (corporation franchise/income tax returns) and Schedule H (Homestead). You may send them 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. Because of printing deadlines which must be met for the 1980 forms, please submit your suggestions by July 1, 1980.

## 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 TAXES

### Computing Taxable Unemployment Compensation for Wisconsin

In 1978 a federal law was enacted which taxed unemployment compensation in certain situations. As a result of updating the reference to the Internal Revenue Code to December 31, 1978 in the Wisconsin Statutes, Wisconsin follows the federal law regarding the taxation of unemployment compensation for the 1979 taxable year and thereafter.

For federal purposes, if unemployment benefit payments for the year and the recipient's adjusted gross income (including any disability payments excluded under Code sec. 105(d)) exceed a "base amount", the recipient must include in gross income the lesser of (1) the amount of unemployment compensation payments received, or (2) one-half of the amount of the excess of the sum of the recipient's unemployment benefit payments and other adjusted gross income over the base amount.

The federal "base amount" is (a) $25,000 if the recipient is married filing a joint federal return, (b) zero if the recipient is married at the close of the tax year and lived with spouse at any time during the year, but is not filing a joint federal return, or (c) $20,000 for all other taxpayers.

The base amounts are the same for Wisconsin as for federal. For purposes of determining the amount of taxable unemployment compensation to be included in Wisconsin income, married persons may elect to combine their federal adjusted gross incomes and compute the includable amount of unemployment compensation as persons filing a joint federal return, but each spouse must include in Wisconsin income her or his share of the taxable unemployment compensation (s. 71.05(1)(k), Wis. Stats.).

The Department has received inquiries as to how the taxable portion of unemployment compensation (UC) is computed for Wisconsin when (1) only one spouse receives UC, (2) both spouses receive UC, and (3) Wisconsin income is different than federal income. The following examples show how to compute the taxable UC for Wisconsin in these 3 situations.

### 1. Computing Taxable UC When Only One Spouse Receives UC

Example: Husband and wife file a joint federal return reporting federal adjusted gross income, excluding taxable unemployment compensation, of $24,700. Husband received total unemployment compensation of $3,500. The portion of the $3,500 that must be reported as gross income for federal purposes is determined as follows:

| | |
|---|---|
| Federal adjusted gross income excluding unemployment compensation | $24,700 |
| Unemployment compensation received | 3,500 |
| Sum of FAGI plus unemployment compensation | $28,200 |
| Less: Base amount for "married filing a joint return" | 25,000 |
| Excess over base amount | $ 3,200 |
| One-half of excess over base amount | $ 1,600 |

The taxable portion of the unemployment compensation is the lesser of (1) $3,500 (amount of payments received), or (2) $1,600 (one-half of excess over base amount). Since one-half of the excess over the base amount ($1,600) is the lesser amount, their federal adjusted gross income will be $26,300 ($24,700 + $1,600).

For Wisconsin tax purposes, $1,600 of taxable UC must be included in the husband's Wisconsin adjusted gross income.

### 2. Computing Taxable UC When Both Spouses Receive UC

Example: Husband and wife file a joint federal return reporting federal adjusted gross income, excluding taxable unemployment compensation, of $26,800. Husband received UC payments of $800 and wife received UC payments of $1,600 for a total of $2,400 unemployment compensation received during 1979. The portion of the $2,400 that must be reported as gross income for federal purposes is computed as follows:

| | |
|---|---|
| Federal adjusted gross income excluding unemployment compensation | $26,800 |
| Unemployment compensation received | 2,400 |
| Sum of FAGI plus unemployment compensation | $29,200 |
| Less: Base amount for "married filing a joint return" | 25,000 |
| Excess over base amount | $ 4,200 |
| One-half of excess over base amount | $ 2,100 |

As in the first example, one-half of the excess over the base amount is less than the unemployment compensation received. The married couple will report federal adjusted gross income of $28,900 ($26,800 + $2,100).

Husband and wife must report their share of the taxable unemploy-

ment compensation for Wisconsin on line 37 of Form 1. Since the taxable portion is less than the total benefits received, a proration is required to determine the amount to be reported by each spouse. The formula for this proration is as follows:

$$\frac{\text{amount of benefits received by one spouse}}{\text{amount of total benefits received}} \times \text{taxable portion of total benefits}$$

= amount of taxable benefits to be reported by such spouse

(NOTE: This proration is required only when both spouses receive taxable unemployment compensation and the one-half of excess over base amount is less than the total unemployment compensation received.)

Using this formula, the husband will report $700 in Column B, line 37 of Form 1

$$\frac{\$800}{\$2,400} \times \$2,100 = \$700.$$

The wife will report $1,400 in Column C, line 37 of Form 1

$$\frac{\$1,600}{\$2,400} \times \$2,100 = \$1,400.$$

### 3. Computing Taxable UC When Wisconsin Income Different Than Federal Income

Example: Facts are the same as in 2 above, except that the married couple received $1,000 of state and municipal bond interest taxable for Wisconsin but not for federal. For federal purposes the taxable portion of unemployment compensation is still $2,100 because the municipal bond interest (or any other source of income which affects Wisconsin income but not federal adjusted gross income) of $1,000 does not enter into the calculations.

The taxable portion of unemployment compensation is the same for both federal and Wisconsin. No adjustments are made to federal adjusted gross income for any differences between Wisconsin and federal law which are adjusted for on the Wisconsin return via a modification. (However, see "NOTE" below regarding instances when adjustments are required.)

Section 71.05 (1) (k) of the Wisconsin Statutes provides that married persons may elect (in order to avail themselves of the $25,000 base amount) "to combine their federal adjusted gross incomes and compute the includable amount as persons filing a joint federal return." The same method of prorating taxable unemployment compensation between a husband and wife would be used as is set forth in example 2 above.

(NOTE: Federal adjusted gross income as computed for Wisconsin purposes may not always be the same as that reported on a taxpayer's federal return filed with IRS. For example, this may occur because Wisconsin's reference date to the Internal Revenue Code (IRC) does not permit new federal tax laws to be used for Wisconsin purposes (thus requiring Wisconsin Schedule I adjustments). It may also result from the fact that a taxpayer elects (under provisions of the IRC) to report an item of income differently for Wisconsin and federal purposes (e.g., electing installment reporting for Wisconsin purposes but not federal).

In these types of situations, the federal adjusted gross income determined for Wisconsin purposes must be used to determine the amount of unemployment compensation taxable for Wisconsin purposes.)

## COMPUTING 1979 RENT CREDIT FOR APARTMENT MANAGERS

During 1979 a person lived in an apartment and acted as resident manager for the owner of the building. For his services he received a reduction in rent. Assume the normal rent of $300 per month was reduced to $100 per month, and he made 12 payments of $100 each to the landlord in 1979. In this situation, what amount of rent may be used to compute the 1979 rent credit on Form 1 or 1A.

This person is considered to have paid rent of $3,600 in 1979. The total of both the rent paid in cash ($100 × 12 = $1,200) and the amount represented by services performed ($200 × 12 = $2,400) may be used to compute the 1979 rent credit.

## REPORT ON LITIGATION

*(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.)*

The following decisions are included:

**Income and Franchise Taxes**
Exxon Corporation vs. Wisconsin Department of Revenue
Theodore A. Gernaey vs. Wisconsin Department of Revenue
Wisconsin Department of Revenue vs. Romain A. Howick
Wisconsin Department of Revenue vs. William B. Riley
Eldon H. Roesler vs. Wisconsin Department of Revenue
Wisconsin Department of Revenue vs. Hide Service Corp.
Raymond W. Koch vs. Wisconsin Department of Revenue
Albert O. Peterson vs. Department of Revenue
North Central Airlines, Inc. vs. Wisconsin Department of Revenue

**Homestead Credit**
Marvin J. Schwirtz vs. Wisconsin Department of Revenue

**Sales/Use Taxes**
Jane H. Caryer, Inc., d/b/a Caryer Interiors vs. Wisconsin Department of Revenue
Gene E. Greiling vs. Wisconsin Department of Revenue
Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue
Sargento Cheese Company, Inc. vs. Wisconsin Department of Revenue
Alyce N. Leutermann vs. Wisconsin Department of Revenue
Wisconsin Department of Revenue vs. Bailey-Bohrman Steel Corporation

**Gift Tax**
Estate of John F. Stratton, et al vs. Wisconsin Department of Revenue

## INCOME AND FRANCHISE TAXES

**Exxon Corporation vs. Wisconsin Department of Revenue** (Docket # 79-509) The U. S. Supreme Court noted probable jurisdiction on November 26, 1979 over Exxon's appeal of a Wisconsin Supreme Court decision holding that the Wisconsin marketing operations of a company (Exxon) in the business of producing, refining, and marketing petroleum products constituted an integral part of a unitary business, and the income therefrom was thus subject to statutory apportionment.

**Theodore A. Gernaey vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, December 14, 1979.) Taxpayer received an as-

sessment of additional income taxes for the period May 15, 1974 through December 31, 1976. The Department contended that the taxpayer was domiciled in Wisconsin during the period and so wages earned in Alaska during this time were subject to Wisconsin income tax under s. 71.01, Wis. Stats.

Taxpayer established residency in Wisconsin when he and his wife purchased an 80-acre farm south of Suring, Wisconsin and moved to Wisconsin in the summer of 1972. Taxpayer worked for the Suring Milling Company as a truck driver besides working on the farm until May of 1974 when he took employment with the Michael Baker Jr. Company as an assistant coordinator surveyor for the Alaskan Pipeline. He traveled at that time to Alaska intending that he and his family become residents of Alaska. Taxpayer's wife was unable to travel with him at the time due to medical complications during pregnancy.

While working in Alaska, taxpayer filed 1974, 1975, and 1976 resident Alaska income tax returns. Taxpayer received an Alaska driver's license and also maintained a Wisconsin driver's license. He received a member identification card from the International Brotherhood of Teamsters, giving his local number as 959 Fairbanks, Alaska. Taxpayer also voted in Alaska and received a duly registered voting card certifying that he was a registered voter in Alaska.

In February, 1976, taxpayer's family moved to Alaska for a two-month period, but they returned to Wisconsin as the winters were severe and the cost of finding other suitable accommodations was extremely expensive. In November of that year, taxpayer received a State of Alaska, Department of Labor card which stated he met the requirements as an Alaskan resident. Taxpayer also received a resident hunting license in 1976.

After taxpayer finished his construction work on the Alaskan Pipeline, he intended to remain in Alaska and bring his family there. However, in 1977 he returned to Wisconsin and took up farming. He contended that he was unable, after a long search, to find suitable permanent employment in Alaska and for that reason returned to Wisconsin.

The Wisconsin Tax Appeals Commission found the taxpayer to be a resident and domiciliary in the state of Alaska during the period May 15, 1974 through December 31, 1976 and, therefore, he was not subject to Wisconsin income tax for this period.

The Department has appealed this decision to Circuit Court.

**Department of Revenue vs. Romain A. Howick** (Wisconsin Court of Appeals, District II, January 10, 1980.) The taxpayer purchased securities prior to becoming a Wisconsin resident and then sold them after becoming a resident of this state. Securities from 12 corporations were sold in 1970 and stocks from 3 additional corporations were sold in 1973.Taxpayer used his original cost basis in computing the gain or loss. The Department computed gain or loss from each security using either the stock's market value on the date taxpayer's Wisconsin residence was established or the stock's federal basis (original cost). The Department did not compute a gain on any sale for Wisconsin purposes when federal loss actually occurred.

The issue involved in this case is how income or losses arising from capital gains or losses should be measured for Wisconsin individual income tax purposes when the taxpayer acquired the securities prior to moving to Wisconsin and sold the securities after becoming a Wisconsin resident.

The taxpayer contended that his original cost was his basis. The Department contended that the taxpayer's basis is the fair market value of the stock on the date the taxpayer became a Wisconsin resident. (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, the Circuit Court of Washington County, and the Wisconsin Court of Appeals held in favor of taxpayer. The Court of Appeals affirmed the conclusion that the Department's position had the ultimate effect of creating an artificial gain where a loss was actually incurred.

The Department has appealed this decision to the Wisconsin Supreme Court.

**Wisconsin Department of Revenue vs. William B. Riley** (Circuit Court of Dane County, November 27, 1979.) In 1972, William B. Riley was a partner in a Wisconsin partnership known as W.E. Riley & Son. On October 1, 1972, the capital assets of the partnership were sold to W.E. Riley & Son, Inc., a Wisconsin corporation comprised of Riley's two brothers and a third party, for $140,000. In addition, W.E. Riley & Son, Inc., purchaser, agreed to collect and pay to the partners of W.E. Riley & Son, partnership, its outstanding accounts receivable.

Pursuant to the terms of the purchase, William B. Riley was to receive 33⅓% of the $140,000 and 40% of the receivable collections over a period of 4 years. The intent of this arrangement was to qualify the sale for installment income tax treatment. The terms of the purchase were never reduced to a written and signed contract. At the time of the sale, William B. Riley was domiciled in West Vancouver, British Columbia, Canada.

By letter dated October 18, 1972, in response to an inquiry letter from the taxpayer dated October 14, 1972, William B. Riley was advised by the Department that his sale of a partnership interest was an intangible following residence and thus not subject to Wisconsin income taxation. However, under date of January 10, 1978, the Department issued an income tax assessment against Riley in the amount of $3,739.36 covering the years 1973, 1974 and 1975 taxing to Riley receivables collected and paid to him during those years. No assessment was made for Riley's share of the $140,000 capital asset payments.

The Department's assessment was predicated on its contention that the collection and subsequent payment to Riley of the receivables was a separate transaction, taxable to Riley as his distributive share of the Wisconsin partnership's net income. The receivables had not previously been included in Riley's taxable income since the partnership filed returns on the cash basis. Riley, however, contended that the sale on October 1, 1972 included both capital assets and receivables made when he was not a resident of or domiciled in Wisconsin and thus are not subject to Wisconsin income taxation.

The Wisconsin Tax Appeals Commission concluded that Mr. Riley's sale of his partnership interest in W.E. Riley & Son, both capital assets and accounts receivable, was consummated in one transaction on October 1, 1972. The Commission also ruled that Mr. Riley's gain on the sale of his

partnership interest in W.E. Riley & Son followed his residence per the intent and meaning of section 71.07 (1) of the Wisconsin Statutes and that, because Riley was not a resident of Wisconsin at the time of the sale, he was not subject to Wisconsin income tax on any part of the gain realized on the transaction.

The Circuit Court concluded that all material findings of fact made by the Tax Appeals Commission are supported by substantial evidence in the record, and that the Commission properly applied section 71.07 (1) in concluding that taxpayer's gain on the sale of his partnership interest including accounts receivable followed his residence outside Wisconsin.

The Department has not appealed this decision.

**Eldon H. Roesler vs. Wisconsin Department of Revenue** (Circuit Court of Waukesha County, November 1, 1979.) Taxpayer was a Wisconsin resident and had a 20% stockholder interest in a Subchapter S corporation. The corporation's main office was in Illinois but its production plant was located and its sales were handled from Iowa. Taxpayer had contacted his longtime business acquaintances which resulted in these contacts becoming distributors of the corporation's products. Later, taxpayer served as a consultant to the corporation's active management and personnel.

Taxpayer did not receive a salary from the corporation. Instead, he accepted the income from the corporation as a shareholder. On his Wisconsin income tax returns for the years 1969 to 1974, taxpayer subtracted, as a modification, his undistributed share of taxable income; these amounts were reported as income on his federal and Iowa income tax returns even though he did not receive the money. The Department conceded that these amounts were deducted as a Subchapter S modification because they were included solely by reason of Subchapter S under the Internal Revenue Code.

During the same taxable year, taxpayer received other amounts of distributed income from the Subchapter S corporation. Taxpayer did not report these amounts on his Wisconsin income tax returns. The Department subsequently taxed this income as an "add" modification under s. 71.05 (1) (f), Wis. Stats.

Taxpayer contended that his income from the Subchapter S corporation was not subject to Wisconsin taxation during the years under review because it is business income having a situs outside Wisconsin under the then current s. 71.07 (1), Wis. Stats.

The Tax Appeals Commission found that the income was subject to Wisconsin income taxation under s. 71.05 (1) (f); that such income was not derived from personal services and therefore, a credit for taxes paid to Iowa under s. 71.09 (8) is not allowable.

The Circuit Court found that taxpayer's income was from personal services and a credit for taxes paid to Iowa is allowed. His experience and knowledge gained were utilized not only to bring a dying corporation back to life, but to make it a very profitable venture, wrote the Court.

The Department has appealed this decision to the Court of Appeals.

**Wisconsin Department of Revenue vs. Hide Service Corp.** (Circuit Court, Branch 1, Milwaukee County, November 6, 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'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 Court 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 to the Court of Appeals.

**Raymond W. Koch vs. Wisconsin Department of Revenue** (Wisconsin Court of Appeals, January 15, 1980.) Raymond Koch appealed to the Court of Appeals from a Circuit Court judgement affirming a Tax Appeals Commission decision that periodic payments made by Koch to his former wife, Betty, were more in the nature of a divorce property settlement than support and were therefore not deductible by Raymond under I.R.C. s. 215.

The payments in question were occasioned by a 1972 divorce judgement that conveyed to Betty a farm owned by Raymond. The judgement gave Raymond the option of repurchasing the farm from Betty for $50,000 due in 12 annual installments of $4,166.66 each. Raymond chose to exercise this option and took an income tax deduction for the payments.

Since this was a contested divorce, the fact issue of what the $4,166.66 annual payment was had to be resolved on the basis of what it was intended to be by the judge who granted the divorce. Indicative of that intent, the court found that Betty had contributed substantially to the accumulation of the parties' assets. Both parties entered into the marriage with no assets and due to their joint efforts, they amassed considerable assets. The court did not indicate that Betty had any actual or inchoate interest in any of the property

awarded to her. Rather, it indicated that the division was meant to fairly compensate Betty for her contribution to the marriage, a contribution that assisted Raymond in his purchase of the property.

The divorce judgement also provided for interest on cash substitution payments. The court stated that this supports a finding that the payments were part of a property settlement and not support payments. Interest is unusual in maintenance or support payments, and payments which include interest have been found to be nondeductible payments.

The court indicated that the divorce judge came to what he considered to be an equitable division of the property; 45% to Betty, 55% to Raymond. The farm in question was part of Betty's share. The judge gave Raymond the option to repurchase the farm to suit Raymond's business needs. Simply because Raymond was allowed to substitute cash for property should not change the basic nature of the transaction. Raymond had the burden of proving these payments were for Betty's support, and he did not meet this burden.

The taxpayer has appealed this decision to the Wisconsin Supreme Court.

**Albert O. Peterson vs. Department of Revenue** (Wisconsin Tax Appeals Commission, January 18, 1980.) Taxpayer was self-employed during the year 1976, operating a milk hauling business for farmers in the Spring Valley, Wisconsin area. Despite requests from the Department to do so, taxpayer did not file a Wisconsin income tax return for the year 1976. On October 30, 1978, the Department issued an estimated assessment against the taxpayer for income taxes for 1976.

Taxpayer contended that he had taken a vow of poverty and had transferred all his assets to the Basic Bible Church of America and its Auxiliary Church, the Life Science Church. He stated that his minister duties consisted entirely of missionary work which he defined as setting a good example in public, handing out pamphlets and being available when called upon.

On January 30, 1976 taxpayer received a "Certificate of Ordination", as a minister of the Life Science Church of Bloomington, Minnesota. Taxpayer alleges that after receiving this certificate he transferred all his assets, including his home, vehicles and milk truck, to the Life Science Church.

During all of 1976 the taxpayer worked full time in his milk hauling operation in the same manner he had in previous years. All income received by taxpayer in 1976 from his milk hauling operation was deposited by him in a local checking account in the name of the Life Science Church over which he and his wife had complete control. These funds were used by taxpayer during the year 1976 to pay the personal living expenses of himself, his wife and two children who continued to reside in their home in Spring Valley, Wisconsin. Taxpayer retained complete control over his income and assets after they were transferred to the Life Science Church.

The Wisconsin Tax Appeals Commission held in favor of the Department. It concluded that taxpayer's conveyance of his services and the income earned therefrom in 1976 was simply an artificial assignment of income and did not relieve him of his individual obligation to file a 1976 Wisconsin income tax return and to pay the tax due thereunder. The Commission further stated that the income the taxpayer received in 1976 was reportable by him irrespective of his affiliation with the Life Science Church.

The taxpayer has not appealed this decision.

**North Central Airlines, Inc. vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, January 25, 1980.) This case is the consolidation of two appeals commenced by the taxpayer, North Central Airlines, Inc., one protesting an assessment of Wisconsin franchise tax for the years 1972 through 1975 (Docket No. I-5968) and the other claiming a refund of taxes for the same period (Docket No. I-6114).

Taxpayer is a Wisconsin corporation engaged in regulated interstate air transportation with its principal corporate offices located in Minneapolis, Minnesota. Taxpayer operated in fourteen states, including Wisconsin, using DC-9 aircraft with a 100 passenger capacity and Convair 580 aircraft with a 48 passenger capacity. Taxpayer's passenger load factor ran 45-50% system wide. The DC-9 aircraft produced more income than the Convair 580 aircraft.

During 1972 through 1975 taxpayer timely filed Wisconsin franchise tax returns and paid the taxes reflected therein based on its interpretation of the requirements of the three factor formula contained in Administrative Rule Tax 2.46, Wisconsin Administrative Code.

In its audit and assessment, the department, in computing one of the three ratios for the computation of tax prescribed by Tax 2.46, utilized weighted figures in determining aircraft arrivals and departures, attributing more weight to the DC-9 aircraft with its 100 passenger capacity than to the Convair 580 aircraft with its 48 passenger capacity. Taxpayer, on the other hand, used the actual number of aircraft arrivals and departures without consideration for aircraft passenger capacity. Taxpayer had consistently used this method for all air carriers operating in Wisconsin since the early 1950's.

This difference in the application of one of the three factors of rule Tax 2.46 was the subject of this case. There was no dispute as to the actual number of arrivals and departures, Wisconsin apportionable net income or other adjustments made in the assessment.

The sole issue for the Commission was to determine whether the department erred in weighting the aircraft arrival/departure ratio contained in rule Tax 2.46 in the assessment and claim for refund being reviewed.

The Commission ruled that the method the department used, in weighting the taxpayer's aircraft arrivals and departures, based on aircraft passenger capacity, was not contrary to the intent, meaning and prior application of rule Tax 2.46.

The taxpayer has appealed this decision to Circuit Court.

## HOMESTEAD CREDIT

**Marvin J. Schwirtz vs. Wisconsin Department of Revenue** (WTAC Docket #PTR-6780, December 12, 1979, Oral Decision.) Marvin J. Schwirtz was a maintenance employe of a 72-unit apartment complex. For his maintenance services he received a rent reduction equal to the value of his services. His federal W-2's showed total compensation for FICA purposes of $8,000-$9,000 annually for the period under consideration; however, his taxable compensation for the same years ranged from $3,000-$5,000. The difference constituted the value of his services as

measured by the annual rent reduction. Compensation for services performed for a landlord who requires that the employe reside on the premises are excludable from taxable income under IRC section 119.

In filing claims for homestead credit for the years 1976 and 1977, Schwirtz included the value of his maintenance services as rent constituting property tax accrued, but did not include such amount in household income. Upon audit of the claims, the Department reduced rent claimed by the amount represented by services performed. The Tax Appeals Commission, however, ruled that the rent credit, even though excludable from household income under s. 71.09 (7) (a) 1, Wis. Stats., constituted rent paid in cash or its equivalent, since it was a negotiated part of his actual compensation.

The Department has not appealed this decision.

## SALES/USE TAXES

**Jane H. Caryer, Inc., d/b/a Caryer Interiors vs. Wisconsin Department of Revenue** (Circuit Court of Dane County, December 10, 1979.) Taxpayer is engaged in the business of interior decorating and designing, including the purchase and installation of carpeting and related material for residential, commercial and tax exempt clients. During the period involved, one-third of the taxpayer's contracts were with tax exempt organizations, such as the state, and religious and charitable organizations. This case is only concerned with the contracts made with such exempt organizations.

The exempt organizations would contract with the taxpayer for installed carpeting and would be charged by taxpayer for both the labor and the materials installed. The taxpayer's profit was figured on the total of labor and the actual material, i.e., profit would be added on to the total cost of the carpeting as installed. Thus, there was always only one bid and one billing by the taxpayer to its tax exempt client covering the job, but the job included carpet, installation materials, and installation.

With respect to these transactions with tax exempt organizations, the taxpayer gave its suppliers resale certificates in lieu of paying sales taxes on its purchase of carpeting, and did not pay use or sales taxes on its resale of the carpeting to the tax exempt organizations. Taxpayer did pay sales and use taxes with respect to transactions involving purchasers that were not tax exempt.

The Department took the position that 4% use tax was due on the carpet and other materials used to perform this "real property construction activity".

The Court found that sales of carpeting to a person that sells and installs the carpeting are subject to the tax, even though the carpeting is installed in the premises of an exempt organization.

The taxpayer has not appealed this decision.

**Gene E. Greiling vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, January 25, 1980.) During the period involved, taxpayer Gene E. Greiling operated a wholesale bedding and potted plant business, as a sole proprietor, in Denmark, Wisconsin. Taxpayer was not required to hold a seller's permit, and did not file any sales and use tax returns with the Wisconsin Department of Revenue.

Taxpayer purchased, without paying sales or use tax, pre-cut, predrilled, and shaped metal tubing and polyethylene film, which he used to cover and protect the potted plants, bedding plants and flowers which he ultimately sold, both at his home facility in Denmark, Wisconsin, and at temporary display outlets, also utilizing said materials, throughout Wisconsin. The materials involved constituted "building materials" because they were used to erect a freestanding structure on land. The polyethylene film had a useful life of between one and two years. The structures involved were erected by hand and were easily disassembled and removed from the temporary display areas. The materials qualified for investment credit treatment under the Internal Revenue Code. Taxpayer did not intend to make his enclosures a permanent accession to the freehold.

The Department assessed a use tax on the metal tubing and polyethylene film taxpayer purchased without payment of sales or use tax during the years 1972 through 1976.

The taxpayer did not dispute the measure of tax, but alleged that the items in dispute were not subject to tax under the imposition and definition language contained in s. 77.51 and 77.52, Wis. Stats. In the alternative, taxpayer alleged that if subject to tax, the materials involved were specifically exempt under the agricultural exemption language contained in s. 77.54 (3), Wis. Stats. Taxpayer also objected to the imposition of statutory interest.

The primary issue for the Commission was to determine whether the taxpayer was engaged in the construction of real property structures or improvements, or in other words, was the structure involved when assembled a fixture and therefore part of the realty.

The Commission ruled that the structures involved when assembled did not become a fixture and part of the realty and, therefore, the metal tubing and polyethylene film used therein was not subject to tax under s. 77.51 (4) (i), Wis. Stats.

The Department of Revenue has appealed this decision to Circuit Court.

**Leicht Transfer & Storage Co., Inc., vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, November 23, 1979.) Taxpayer operated a household goods moving service under certificate of authority issued by the Wisconsin Public Service Commission. During the period involved, the taxpayer purchased for use in its moving operation, furniture pads, covers, packing supplies, tape, piano boards, ladders, walk boards, straps, lining paper and corrugated boxes, all without paying a sales tax. The miscellaneous moving van equipment and supplies in issue were used solely on the taxpayer's moving vans in connection with its household goods moving operation to load the van and hold the merchandise safely and securely in place during transit.

The corrugated boxes protected and secured articles during transit. The Wisconsin Public Service Commission tariffs for household goods movers dictate the rate for each specific size of corrugated container used in a customer's move and the charge therefore is computed on a unit basis. Taxpayer sold nothing but new corrugated containers to its customers; the ultimate control and disposition of the containers upon unpacking lying entirely with the customer. Taxpayer was bound by state and federal law to charging and collecting only the rates specified within the state and federal household goods carrier tariffs. During the period, 52.7% of the corru-

gated containers and packing materials purchased by taxpayer were used in interstate operations and delivered to taxpayer's customers outside the State of Wisconsin and 47.3% of the corrugated containers and packing materials were used solely in intrastate operations.

In addition to its household goods moving, taxpayer also operated warehousing and shipping facilities on a contract basis for various manufacturers of paper products in the Green Bay area. Taxpayer's warehousing customers directed the taxpayer to ship various orders of their finished products via railroad directly from the taxpayer's warehouse facilities. To protect the products being shipped, taxpayer used car lining paper to line the interior of the railroad cars used.

Taxpayer did not give any exemption certificates to its suppliers of the items here in question.

The Commission ruled as follows:

1. The miscellaneous items such as furniture pads, covers, packing supplies, tape, piano boards, ladders, walk boards, straps, lining paper and corrugated boxes do not qualify for the exemption from tax contained in s. 77.54 (5) (b), Wis. Stats.
2. The car lining paper is not an accessory or attachment for railroad freight cars and thus is not exempt from tax under s. 77.54 (12), Wis. Stats. Also, the car lining paper is not part of a container exempt from tax within the meaning of s. 77.54 (6) (b), Wis. Stats.
3. The corrugated boxes and packing materials are not utilized to transport the taxpayer's merchandise to its customers and thus are not exempt from tax under s. 77.54 (6) (b), Wis. Stats. The corrugated boxes and related packing materials purchased by the taxpayer and used by it in its household goods moving operation were purchased "for resale" and therefore excluded from tax under the provisions of section 77.51 (4) of the Wisconsin Statutes.

The taxpayer has appealed this decision to Circuit Court.

**Sargento Cheese Company, Inc. vs. Wisconsin Department of Revenue** (Circuit Court of Dane County, November 19, 1979.) On April 20, 1978 the Tax Appeals Commission entered its decision in the case of Sargento Cheese Company, Inc. vs. Wisconsin Department of Revenue. On that same date, the Commission mailed a copy of its decision to the taxpayer. On May 18, 1978, taxpayer filed a petition for review of the decision with the clerk of courts of Dane County. Service by mail was made upon the Department by the mailing of a copy by certified mail, bearing a post mark dated May 17, 1978. No service of the petition for review was made upon the Commission within 30 days of the service on taxpayer by mail of the Commission's decision.

The Department moved to dismiss taxpayer's petition on the ground that the Circuit Court of Dane County lacked subject matter jurisdiction because taxpayer failed to serve its petition for review on the Commission within 30 days after the service of the Commission's decision on the taxpayer.

The Department's motion to dismiss was granted by the Circuit Court because of the court's lack of subject matter jurisdiction due to taxpayer having failed to serve its petition for review on the Wisconsin Tax Appeals Commission within the time specified by section 227.16 (1) (a), Wis. Stats.

Taxpayer has appealed this decision to the Court of Appeals.

**Alyce N. Leutermann vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, January 18, 1980.) Taxpayer operated a grocery store and obtained a Wisconsin seller's permit for the business on March 17, 1975. She ceased operating the store on December 31, 1976, and sold the business which included fixtures and equipment on January 4, 1977.

The taxpayer testified that when she ceased business operations on December 31, 1976 she destroyed and threw away her Wisconsin seller's permit. On January 28, 1977 taxpayer forwarded a letter to the Department of Revenue indicating she was no longer engaged in business and that she had ceased operations.

The sole issue for the Commission to determine was whether the taxpayer held or was required to hold a Wisconsin seller's permit on the sale of her business assets on January 4, 1977, in accordance with Section 77.51 (10) (a) of the Wisconsin Statutes. 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 Commission held in favor of the department in finding that the taxpayer's self-destruction of her seller's permit did not constitute a proper surrendering of the permit. Therefore, she actually held a seller's permit on January 4, 1977 and her gross receipts from the sales of business fixtures and equipment were subject to the tax.

Taxpayer has not appealed the decision.

**Wisconsin Department of Revenue vs. Bailey-Bohrman Steel Corporation**, (Wisconsin Supreme Court, February 7, 1980.) The question in this case was whether the Bailey-Bohrman Steel Corporation was engaged in manufacturing as defined in s. 77.51 (27), Wis. Stats., and was therefore exempt from use taxes under s. 77.54 (6) (a). The Supreme Court concluded that, under these statutes and in light of the undisputed facts, the machinery used by the taxpayer, Bailey-Bohrman Steel Corporation, was exempt from the Wisconsin use tax and accordingly, reversed the judgment of the circuit court.

This litigation resulted from an assessment of use taxes levied upon the taxpayer for the period commencing on December 1, 1972, and ending on September 30, 1974. Following the levy by the Wisconsin Department of Revenue, the taxpayer petitioned for a redetermination of the tax. That petition was denied. The Department's action was reversed by the Wisconsin Tax Appeals Commission on April 27, 1977. Subsequently, the Department commenced an action in the circuit court for Dane County to review the decision of the Tax Appeals Commission that Bailey-Bohrman was exempt from use taxes. The circuit court reversed the Commission's order of nontaxability and held that the taxpayer was not a manufacturer. A judgement ordering Bailey-Bohrman to pay the use tax was entered, and it is from that judgement that the taxpayer appealed to the Supreme Court.

Bailey-Bohrman advertised itself as an independent "steel service center and 'Processor.' " Its claim for exemption was based upon the assertion that it was a "manufacturer" as

that term is defined in s. 77.51 (27), Wis. Stats.

The taxpayer's business essentially consisted of purchasing large rolls of hot rolled coiled steel and cutting the steel into narrower widths by the use of the machinery whose tax status was in question on this appeal. The taxpayer purchased hot rolled sheets of steel stock having a width of not more than 48 inches and a thickness of less than one-half inch. Each of these rolls or coils of steel weighed approximately 15 tons.

The first step in the process involved lifting the coils by crane onto a line, where they were unrolled on a decoiler. This decoiled or flattened steel was then conveyed by rollers through a slitter, which consisted of two rotary knives, adjusted to accord with the eventual width of steel desired. This machine also trimmed off the rough outside edge of the steel sheet. Oil was sometimes added during the cutting operation upon a customer's request or because it facilitated cutting by acting as a lubricant. After the steel was cut into narrower widths, the strips were recoiled, lifted off the line, tagged with a customer's part number, and made ready for shipment to customers. The cutting was generally done in accordance with specific customer requests, and the width was cut to conform to the use to be made of it by the customer. The only thing the taxpayer did in addition to cutting the steel into the narrower widths was to occasionally cut the length of the coil in half. The taxpayer's plant consisted of the large rollers, cutting devices, and the cranes. The cranes were used for handling the original hot rolled coils and the steel which had been split and recoiled in accordance with the customer's order.

The Commission found, and the Department conceded, that the large coils of hot rolled steel stock had no practical use prior to Bailey-Bohrman's splitting them into the desired width. The narrower widths were specified by the taxpayer's customers in order that the steel could be fed into the presses or other machinery at a customer's plant. The steel was tailored by the taxpayer for a particular succeeding manufacturing step in a customer's operation. Almost all of the cut steel was tagged with a part number conforming to the customer's intended use.

After processing by the taxpayer, the steel had a different dimension and configuration than it had when it came from the steel mill. However, after being cut, the narrower strips were recoiled into rolls resembling the original uncut roll of steel. The taxpayer did not press, stamp, or in any way change the thickness of the steel. Ordinarily, the length of the steel strip was left unchanged. The taxpayer's president, in response to a question, stated that he would categorize the operation as "slitting steel".

The Supreme Court indicated that the only question was one of law—whether the undisputed facts revealed in the record satisfy the objective standards for exemption detailed in s. 77.51 (27). The six objective elements set forth therein require that, for the exemption to apply, there must be production by machinery, of a new article, with a different form, with a different use, with a different name, and by a process popularly regarded as manufacturing. The Department of Revenue did not dispute that the taxpayer used machinery, that the split steel had a different use from the uncut steel, and that the process is popularly regarded as manufacturing. The Commission found that all of the elements of the definition were satisfied. The circuit court, however, set aside the Commission's finding that the taxpayer produced "a new article with a different form," and it also found it to be "debatable whether there had been a change in name within the meaning of the statute".

The Department asserted that the taxpayer's machinery was not exempt because the process did not result in a new article with a different form and name. The Department contended that a new article was not produced because the material before the taxpayer's processing was coiled steel and after processing it remained coiled steel. The Department also asserted that the only change in the steel by the taxpayer's processing was a change in width and occasionally a change in length when the original coil length was cut in half. It also argued that the eventual product did not have a significantly different name because, prior to processing, the steel was referred to as "hot rolled coiled steel" and afterwards was called "coiled steel".

The Supreme Court disagreed with each of these contentions and stated that it must be acknowledged that the chemical, metallurgical, and physical characteristics of the steel was unchanged by the taxpayer's processing; but the fact that there had been no change of that kind did not mean that the statutory criteria are unsatisfied. The processing by the taxpayer converted a roll of steel, which was essentially unusable by the taxpayer's customers, into an article which could be utilized in further production processes. The original 15-ton coiled steel roll had no known use before being slit into desired widths. The processing converted the rolled steel into a new article. Although that new article possesses a number of the characteristics of the original one, the slitting process created a new and usable article that did not exist before.

The Court also found it difficult to accept the Department's argument that the original material did not assume a different form as a result of the processing. While the original material was a coiled roll of steel and the end product was also a coiled roll of steel, the shape, outline, configuration, and weight of the cut steel was different from that of the uncut steel. The steel in its rolled form may have been shorter than the original material used and, in any event, was narrower. The shape of the steel was altered. The coiling process was performed in either case only for the purpose of facilitating transportation and handling. The steel emerged from the process in a different form.

The Supreme Court concluded that the end product of the Bailey-Bohrman Steel Corporation was the result of production by machinery by a process popularly regarded as manufacturing of a new article with a different form and with a different name.

The Department has not appealed this decision.

## GIFT TAX

**Estate of John F. Stratton, et al vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, December 10, 1979.) This case involved the distribution of the assets of two trusts. The first was a testamentary trust under the will of Harold M. Stratton for the benefit of John F. Stratton and his family. The second was the Bessie A. Stratton Living Trust, also for the benefit of John F. Stratton and his family. Harold M. and

Bessie A. Stratton were the parents of John F. Stratton.

The issue was whether the 1968 distributions to John F. Stratton's daughters, on termination of the two trusts over the assets of which he had a general power of appointment, constituted taxable gifts.

The Wisconsin Tax Appeals Commission affirmed the conclusion that John F. Stratton effectively released his power of appointment within the intent and meaning of s. 232.09, Stats., 1967, and that the 1968 distribution was a taxable transfer under s. 72.75, Stats., 1967.

The taxpayers have appealed this decision to Circuit Court.