WISCONSIN TAX BULLETIN

JULY, 1980
NUMBER 19

NEW WISCONSIN INHERITANCE TAX RETURN

A new, simplified one-page inheritance tax return has been developed for use by a surviving husband or wife to report the estate of a deceased spouse for Wisconsin inheritance tax purposes. The new return is known as Form 101S, Wisconsin Spousal Inheritance Tax Return.

Form 101S may be used when *all* the following conditions are met:

1. The deceased spouse died on or after July 1, 1979.
2. The *surviving spouse* is the *only* person receiving property because of the decedent's death.
3. No federal estate tax return is required to be filed.
4. The deceased spouse was a Wisconsin resident when he or she died.
5. The decedent did not own real estate or tangible property located outside Wisconsin when he or she died.

The new return may be used regardless of the type of proceeding used to administer a decedent's estate or to transfer property to the surviving spouse. Form 101S will be easier to complete than the other two multipage inheritance tax returns, Forms 101 and 101A.

Form 101S will be available by August 1, 1980. Requests for copies should be sent to the Department of Revenue at Post Office Box 8904, Madison, WI 53708 or call (608) 266-1231.

NEW WISCONSIN TAX LAWS IN 1980

In recent months a number of Wisconsin tax law changes have been enacted. This article contains brief descriptions of new laws relating to individual income, corporation franchise/income, inheritance, sales and use, withholding and excise taxes. The majority of these changes were enacted in the 1980 budget review bill (Chapter 221, Laws of 1979, Assembly Bill 1180) which was published on April 29, 1980.

IN THIS ISSUE

Income Taxes

1. **Update Internal Revenue Code Reference to December 31, 1979** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1980 taxable year and thereafter.)

   For the 1980 taxable year and thereafter, individuals, estates and trusts will use the Internal Revenue Code in effect on December 31, 1979 with three exceptions that do not apply for Wisconsin: (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 and exclude certain amounts of foreign earned income.

   Federal tax laws enacted in 1980 and thereafter will not apply in computing 1980 Wisconsin income and deductions.

2. **Offset One Spouse's Overpayment Against Other Spouse's Underpayment for Computing Addition to Tax Penalty** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1980 taxable year and thereafter.)

   In computing the "addition to tax" penalty for underpayment of tax by individuals, an underpayment by a person may be reduced by any overpayment of the person's spouse, if the spouse with the overpayment filed all required declarations of estimated tax and timely paid all required declaration amounts. Prior to this law change, this offset between spouses was not permitted for purposes of computing the "addition to tax" penalty.

3. **Declaration Filing Requirement Increased from $60 to $100** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1981 taxable year and thereafter.)

   A person will be required to file a declaration of estimated tax if the person's tax can be expected to exceed withholding on wages by $100 or more.

4. **Addition and Subtraction Modifications to Adjust Basis of Partnership Interest for Pre-1975 Out-of-State Losses and Gains** (Chapter 277, Laws of 1979, Senate Bill 316, effective for 1975 taxable year and thereafter.)

   This new law provides that whenever a Wisconsin resident disposes of an interest in a partnership in a transaction in which gain or loss is recognized, a modification must be made to reflect any increases or decreases in the basis of the partnership interest which occurred in taxable years prior to 1975 as a result of losses or gains relating to business or property which had a situs outside of Wisconsin under the provisions of s. 71.07 in effect for years prior to 1975.

   Prior to 1975, income or loss which a partnership derived from partnership business or property located outside of Wisconsin,

followed the situs of the business activity or property. In other words, such partnership income or loss was not reportable for Wisconsin income tax purposes. However, during these same years the partner's basis for the partnership interest was required to be increased or decreased each year to account for distributive shares of partnership income or loss.

Since the basis of a partnership interest for Wisconsin purposes is the same as the federal basis, prior to this new law when a partnership interest was sold, the same amount of gain or loss includable in federal income was includable in Wisconsin income. Therefore, for example, a partner's gain from such sale was increased (as a result of decreases in federal basis) by out-of-state partnership losses which were never deductible for Wisconsin purposes and his or her gain was decreased by out-of-state partnership income (not withdrawn by the partner) which was never reported for Wisconsin tax purposes.

The new law provides modification adjustments which have the effect of reversing any adjustments made to the federal basis of a partnership interest for distributive shares of pre-1975 income and losses derived from partnership business or property located outside of Wisconsin.

The following example illustrates the gain which would be recognized prior to Chapter 277 and the gain recognized under Chapter 277.

Partnership Interest

	Federal and Wis. prior to Chapter 277	Wis. Per Chapter 277
Original Investment	$10,000	$10,000
Distributive Share of Pre-1975 losses	(8,000)	-0-
Distributive Share of Pre-1975 income (not withdrawn)	3,000	-0-
Distributive Share of 1975-79 losses	(1,500)	(1,500)
Distributive Share of 1975-79 income (not withdrawn)	2,000	2,000
Basis of partnership interest on 1-1-80	5,500	10,500
Selling price on 1-1-80	9,000	9,000
Gain or (loss)	$ 3,500	($1,500)

In this example the taxpayer would claim a subtraction modification of $5,000 on his or her 1980 Wisconsin income tax return. This would reverse the $5,000 decrease (pre-75 loss of $8,000 minus pre-75 gain of $3,000) made in the federal basis for pre-1975 out-of-state income and losses.

Note: Although this law change is retroactive to 1975, s. 71.10 (10) (bn) provides that a claim for refund may be made only if filed within 4 years of the last day prescribed by law for the filing of a return. Therefore, a refund may no longer be granted for a calendar year 1975 return. The deadline for filing a refund claim for a calendar year 1975 return was April 15, 1980 (i.e., 4 years after the due date for a 1975 return).

Corporation Franchise/Income Taxes

1. **50% Deduction for Dividends from 80% Owned Corporations** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1980 taxable year and thereafter.)

   A deduction is allowed for 50% of the cash dividends received during a taxable year from a corporation with respect to its common stock, provided the corporation receiving the dividends owned directly or indirectly during the entire taxable year at least 80% of the total combined voting stock of the payor corporation.

2. **Combining Net Income of DISC with Parent and Affiliated Corporation** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1980 taxable year and thereafter.)

   In the case of a parent corporation or affiliate which has a DISC (Domestic International Sales Corporation), the DISC net income derived from business transacted with its parent shall be combined with the parent's income to determine the amount of income subject to Wisconsin tax for each entity as separate taxpayers. If a DISC also has activities with an affiliate of the parent corporation, the DISC income relating to activities with the affiliate shall be combined with the affiliate's income to determine the amount of income subject to Wisconsin tax for each entity as separate taxpayers. For purposes of this provision, a corporation is considered affiliated if at least 50% of its total combined voting stock is owned directly or indirectly by its parent corporation.

   Income of the parent corporation shall not include dividends received from the DISC paid from income previously combined for taxation. "DISC" has the same meaning as defined in section 992 of the December 31, 1979 Internal Revenue Code.

   Note: A publication explaining this new law will be available in December, 1980.

3. **Eliminate Deduction for Sales and Use Taxes if Manufacturer's Sales Tax Credit Claimed** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1980 taxable year and thereafter.)

   Any sales and use taxes paid during the taxable year which under s. 71.043 (2) and (3) are used in computing the manufacturing sales tax credit shall not be deductible from gross income of a corporation.

1. **Update Internal Revenue Reference to December 31, 1979** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1980 taxable year and thereafter.)

   For the 1980 taxable year and thereafter, insurance companies, regulated investment companies and real estate investment trusts will compute their income under the Internal Revenue Code in effect on December 31, 1979.

5. **Expenses Incurred for Alcohol Fuel Production Systems Prior to March 1, 1980** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980, but applies to expenses incurred prior to March 1, 1980.)

   No expenses incurred for alcohol fuel production systems prior to March 1, 1980 may be deducted, depreciated or amortized under s. 71.04 (16) (a), which relates to alternative energy system expenses being deducted in the year paid, amortized over 5 years or depreciated.

6. **Convert Alternative Energy System Program for Corporations from a Fast Write-off to a Direct Refund** (Chapter 350, Laws of 1979, Assembly Bill 777, effective for taxable years 1980 to 1985.)

   Corporations which incur expenses for an alternative energy system after the close of their 1979 taxable year will no longer be allowed a one or 5 year rapid write-off; however, depreciation over the useful life of the system will still be allowed. For expenses incurred for approved systems beginning with the 1980 taxable year, a refund (equal to 10% of the first $1,000,000 of total cost) will be available from the Wisconsin Department of Industry, Labor and Human Relations. This is the same agency which administers the alternative energy system refund program for individuals. (NOTE: In addition to changing the benefit provided to a refund, this new law also expanded the definition of a qualifying alternative energy system to include alcohol fuel production systems and cogeneration (e.g., electric power plant) facilities.)

7. **Clarify Statutory Language Relating to Alternative Energy Systems** (Chapter 329, Laws of 1979, Assembly Bill 636, effective for claims filed under s. 101.57 on or after January 1, 1979.)

   This law clarifies a number of provisions relating to the income tax credit for individuals and the rapid write-off for corporations installing alternative energy systems as follows:

   a. The corporate deduction is limited to systems installed in Wisconsin.

   b. The new direct refund program for individuals which is administered by the Wisconsin Department of Industry, Labor and Human Relations (DILHR) is extended for one additional year to include costs incurred during 1985.

   c. A corporation deduction may not be taken if an individual tax credit (or a refund from DILHR) has been claimed for the same system. Likewise, an individual may not claim a credit (or refund) if a corporation deduction has been taken for the same system.

   d. Taxpayers aggrieved by the Department of Revenue's adjustment of a credit claim may appeal to the department and then to the Tax Appeals Commission.

   e. The Department of Revenue is authorized to correct incorrect claims and assess amounts incorrectly paid to a claimant.

   f. The individual credit may be claimed only if a claim is filed within 4 years after the taxable year in which the system is installed.

   g. DILHR is required to inspect some installed alternative energy systems to ensure compliance with certification standards.

   h. Business partners owning an alternative energy system are each allowed to claim a credit based on up to $10,000 of cost, but not to exceed a grand total of $50,000 of costs per system.

   i. Any person intentionally filing fraudulent information with DILHR to obtain certification is subject to penalties for filing fraudulent income tax information.

   (NOTE: Both the tax credit program for individuals and the rapid write-off tax benefit program for corporations have been converted to direct refund programs administered by the Wisconsin Department of Industry, Labor and Human Relations. Individuals installing qualifed systems after December 31, 1978 must file claims for benefit with DILHR. Corporations incurring expenses for a qualified system after the close of their 1979 taxable year must also apply to DILHR for a refund.)

8. **Filing of Election Relating to Corporate Liquidations** (Chapter 132, Laws of 1979, Assembly Bill 517, effective March 13, 1980.)

   Prior to this new law, s. 71.333 (3) required a shareholder to file a written election with the "assessing authority" within 30 days after the plan of liquidation in order to qualify for certain tax benefits. The new law in Chapter 132 deletes the words "assessing authority" and provides that the written election must be filed with the Department of Revenue.

Sales and Use Taxes

1. **Eliminate Requirement to File Annual Sales Tax Return** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for 1981 taxable year and thereafter.)

Beginning with the 1981 taxable year, sales and use tax permittees will no longer be required to file an annual sales tax return, Form ST-12A.

Field audit determinations may be made (1) within 4 years of the due date of the taxpayer's Wisconsin income or franchise tax return, or, if exempt therefrom, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year, or (2) within 4 years of the date any sales and use tax return required to be filed for any period in that year was filed, whichever is later. Field audit determinations will be based on the total receipts, deductions and exemptions for the total taxable year. Interest on field audit determinations will be computed from the due date of the taxpayer's Wisconsin income or franchise tax return, or if exempt therefrom, from the 15th day of the 4th month following the close of the calendar or fiscal year.

Claims for refund may be filed within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year.

2. **Parking Provided by Governmental Units Subject to Sales Tax** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective June 1, 1980.)

   Governmental units (counties, cities, villages, townships, etc.) providing parking for motor vehicles and docking or storage space for boats will be subject to sales tax on gross receipts from providing such services.

3. **No $10 Late Filing Fee if the Department Failed to Issue a Seller's Permit Within 30 Days** (Chapter 230, Laws of 1979, effective May 10, 1980.)

   The $10 late filing fee shall not be imposed on sales and use tax returns if the Department of Revenue failed to issue a seller's permit or use tax registration within 30 days of the receipt of an application for seller's permit or use tax registration accompanied by the permit fee required under s. 77.52 (8) and either the security required under s. 77.61 (2) or evidence of compliance with the two year renewal provisions of s. 77.52 (10) (c).

4. **Clarify Sales and Use Tax Law and Delete Obsolete Language** (Chapter 174, Laws of 1979, Assembly Bill 976, effective May 2, 1980.)

   This bill eliminates obsolete language and clarifies certain provisions of the sales tax law as follows:

   a. Several statutes because of the passage of time have become obsolete. This law repeals obsolete income tax personal exemption credit language in s. 71.09 (6m) and obsolete homestead credit language in s. 71.09 (7) (g) and (h) 1. Obsolete language is also eliminated by amending or repealing the following sales tax sections: 77.51 (11) (c) 5, 77.52 (1) and (2), 77.53 (18), 77.54 (18), 77.54 (20) (c) 4, 77.58 (1) and (2), 77.59 (4) (a), 77.61 (4) (b), and 77.621.

   b. The cross reference to "municipality" has been corrected and clarified. Chapter 214, Laws of 1971, amended s. 41.02 (4) by substituting "employer" for "municipality". However, s. 77.54 (9a) was not amended to reflect this change. Section 77.54 (9a) is amended to eliminate this incorrect cross reference and also enumerates all types of municipalities referred to in the old and the current s. 41.02 (4).

   c. Uniformity is created between two sales and use tax definition statutes. The definition of "gross receipts" in s. 77.51 (11) (a) 4 is amended to specify that the taxes imposed by ss. 78.01 and 78.40 (motor and special fuel taxes), s. 139.31 (cigarette tax) and the federal motor fuel tax shall be added to the purchase price before imposition of the sales and use tax. This is in conformity with the "sales price" definition in s. 77.51 (12) (a) 4.

   d. Conflicting statutes concerning auctions are reconciled. Before this law change, two sales tax statutes s. 77.54 (4) (a) and s. 77.51 (7) (e) were in conflict concerning the situation where a person bid on his or her own property and if the bid prevails, there was an understanding that the property involved would either not be delivered to the successful bidder or that any amount which the successful bidder may pay would be returned. Section 77.54 (4) (a) provided that the transaction was taxable whereas s. 77.51 (7) (e) provided that the transaction was not taxable. Since 1969, the department policy has been that such a transaction was not taxable. The repeal of s. 77.51 (7) (e) and amendment to 77.51 (4) (a) reconciles the conflicting statutes and provides that such a transaction is not taxable.

   e. The "Occasional Sales" statute is clarified. The reference to a seller's permit is inserted in s. 77.51 (10) (b) to clarify the meaning of the statute.

5. **Returning Security Deposits** (Chapter 125, Laws of 1979, Assembly Bill 70, effective March 13, 1980.)

   Any sales tax security deposited with the Department of Revenue under Chapter 77 must be returned to the taxpayer if the taxpayer has complied with all the requirements of the sales and use tax law for 24 consecutive months.

Withholding

1. **Employers to Submit Copies of Certain Withholding Exemption Certificates to Department of**

Revenue (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

Whenever the Internal Revenue Code or regulations or rulings of the Internal Revenue Service (IRS) require an employer to submit copies of, or information taken from an employe's withholding exemption certificate to the IRS, the employer is also required to furnish copies of the certificate to the Department of Revenue. Such copies must be furnished to the department within 15 days after the employer is required to file the certificate or information with the IRS.

The department sent a notice to employers in late June, 1980 advising them of this new law.

(Note: The IRS recently amended the Employment Tax Regulations (26 CFR Part 31) to require an employer to submit to the IRS a copy of an employe's withholding exemption certificate if the total number of exemptions claimed on the certificate exceeded 9 or if the certificate indicated that the employe was claiming a status exempting him or her from withholding, and at the time the certificate was filed with the employer, it was reasonably expected that the employe's wages would exceed $200 per week. This amended IRS regulation applies to withholding certificates received by an employer on or after April 1, 1980.)

2. **Employes Filing Incorrect Withholding Exemption Certificates, Forms or Agreements** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

Section 71.20 (15) provides that the Department of Revenue may verify the correctness of any withholding exemption certificate, form or agreement filed by an employe with an employer. This would include Federal Form W-4 (Employee's Withholding Allowance Certificate), Wisconsin Form WT-4 (Employe's Wisconsin Withholding Exemption Certificate), Wisconsin Form WT-4A (Wisconsin Employe Withholding Agreement, which is used to claim "lesser" withholding because the maximum number of allowable exemptions are claimed and over-withholding still occurs) and Wisconsin Form WT-4E (Exemption from Withholding of Wisconsin Income Tax, which is used to claim no withholding when the employe incurred no income tax liability for the preceding taxable year and anticipates no liability will be incurred for the current year). (Note: Form WT-4E is no longer being used and has been eliminated; persons claiming complete exemption from withholding should use Form WT-4, which was revised in November, 1979.)

The department may require the production of any books, records, testimony or proof needed to determine the correctness of the withholding document. If it appears that a person has filed an incorrect certificate, form or agreement with an employer, the Department of Revenue may void such document by notifying both the employer and employe. The employer shall then withhold based on the number of exemptions prescribed by the department in its notice to the employer and employe. If an employe fails to furnish information requested by the department to verify the correctness of the certificate, form or agreement, the employe shall be considered as claiming no withholding exemptions and the employer shall then withhold on that basis, after the employer and employe are notified by the department.

A penalty is provided in s. 71.20 (16) for any employe who files a withholding exemption certificate, form or agreement with the intent to defeat or evade the proper withholding of tax. The penalty is equal to the difference between the amount required to be withheld and the amount actually withheld for the period the incorrect certificate, form or agreement was in effect. The 50% penalty provided in s. 71.20 (22) (d) for filing a Form WT-4A (to withhold a "lesser" amount) with intent to evade proper withholding is repealed.

The language in 71.20 (9) (e) is clarified to provide that an employe may claim the same number of withholding exemptions for Wisconsin as **are allowable** for federal withholding tax purposes.

3. **Self-Insurers Indicated on Annual Withholding Report** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

A person who is a self-insurer for purposes of subchapter II of ch. 619 of the Wisconsin Statutes must indicate on the annual withholding report filed under s. 71.20 (4) that the person is a self-insurer.

Excise Taxes

1. **Increase Motor Vehicle Fuel Taxes 2¢ Per Gallon** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective May 1, 1980.)

The excise tax rate on motor vehicle fuels is increased from 7¢ to 9¢ per gallon, effective May 1, 1980. The new tax rate applies to motor fuel (gasoline, gasohol, aviation gasoline) and special fuels (diesel fuel, propane). The tax increase of 2¢ per gallon also applies to all motor fuel in the possession of retailers and wholesalers on May 1, 1980 on which the motor fuel tax of 7¢ per gallon had already been imposed.

2. **Eliminate Nonhighway Refund for Motor Fuel Used in Snowmobiles and Transfer a Portion of Segregated Funds for Snowmobile Trails** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective July 1, 1980.)

Effective July 1, 1980, motor fuel tax refunds will no longer be available to persons who consume motor fuel in snowmobiles. In lieu of tax refunds to consumers, the Department of Natural Resources will receive from the transportation fund an amount equal to the estimated snowmobile gas tax payment for use in snowmobile trail areas.

3. **Transfer Administration of Unfair Sales Act for Cigarettes to Department of Agriculture** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective July 1, 1980.)

   Administration of the Unfair Sales Act as it relates to cigarettes, which was scheduled to be transferred to the Department of Revenue on July 1, 1980 by Chapter 34, Laws of 1979, has been reversed. The administration therefore remains with the Department of Agriculture, Trade and Consumer Protection.

4. **Change Cigarette Law Definition of "Jobber", "Vending Machine Operator" and "Multiple Retailer" and Decrease Permit Fees** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective July 1, 1980.)

   Proposed changes in cigarette permit definitions and fees scheduled to be effective July 1, 1980 by Chapter 34, Laws of 1979, have been reversed. The definitions and fees are therefore the same as prior to the law change in Chapter 34, Laws of 1979.

5. **Notification of Issuance of Limited Manufacturer's Permits** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

   The secretary of revenue is required to notify the Department of Natural Resources of the name and address of each person to whom a limited manufacturer's permit is issued.

6. **Allows Holders of Limited Manufacturer's Permits to Use the Alcohol Produced for Fuel** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

   Under prior law, alcohol produced under a limited manufacturer's permit could be used only as fuel in an internal combustion engine. The new law provides that such alcohol can be used for fuel for heating purposes.

7. **Prohibition Against Intoxicating Liquor Sales Within One Mile of Mental Health Institute Revised** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

   The prohibition against selling, dealing or trafficking in intoxicating liquor within one mile of a "state hospital for the insane" was changed by Chapter 418, Laws of 1977, to "mental health institute" to be effective January 1, 1981. This change now becomes effective April 30, 1980.

8. **Auctions and Flea Markets Permitted on Class B Licensed Premises** (Chapter 165, Laws of 1979, Assembly Bill 763, effective April 8, 1980.)

   A Class "B" beer or liquor retail licensee will be authorized to conduct, each month, up to 4 days of auctions or markets of retail secondhand or antique merchandise or art on the licensed premises. Any day on which both an auction and market are held shall be counted as 2 days. The sale or consumption of liquor or beer in the room where the auction or market is being conducted is prohibited. A minor may enter a Class "B" beer or liquor licensed premises to attend an auction or market if he or she does not enter the room where beer or liquor is sold. The issuance of a Class "B" beer or liquor retail license for premises on which an auction or market was held within the previous year is prohibited unless the premises were licensed at the time and the auction or market was permitted by statute.

9. **Permit Unaccompanied Minors to Enter Class "B" Licensed Premises** (Chapter 212, Laws of 1979, Assembly Bill 998, effective May 8, 1980.)

   Unaccompanied minors will be able to enter Class "B" licensed premises or premises where liquor is sold if the place is an arena, a coliseum, a facility located on the same grounds and used for the same purpose as a coliseum or for a center for the performing of visual arts and is owned by a county or municipality. Also, a county may obtain a Class "B" intoxicating liquor retailer's license for a coliseum or exposition facility or a center for the performing of visual arts directly from the Secretary of the Department of Revenue rather than from the municipality.

10. **Special Liquor License for Historic Buildings** (Chapter 284, Laws of 1979, Assembly Bill 401, effective May 13, 1980.)

    Municipalities will be authorized to grant a retail Class "B" intoxicating liquor license to any person engaged in preserving a place of historic significance built during the early populist period in Wisconsin (1886-1892) and operating such place as a restaurant, if the person submits an application for a license prior to January 1, 1981. This license does not affect the license quota of a town, village or city.

Inheritance Taxes

1. **Update Internal Revenue Code Reference to December 31, 1979 for Making Installment Payments** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for transfers because of deaths occuring on or after July 1, 1979.)

   The reference to the Internal Revenue Code is updated to December 31, 1979 for purposes of determining if an estate would be authorized to pay in installments.

Other Law Changes

1. **Increase Appeal Period From 30 to 60 Days** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for appeals of notices of assessments and refunds, notices of denials of refunds and notices of determinations and redeterminations issued on or after November 1, 1980.)

   Taxpayers will have 60 days to appeal an assessment or refund (or denial of claim for refund) to the Department of Revenue's Appellate Bureau. Taxpayers will also have 60 days to appeal a decision by the Appellate Bureau to the Tax Appeals Commission. Prior to this law change, the time period for appealing was 30 days. The 60 day appeal

period applies to income, corporation franchise/income, withholding, sales/use, and gift taxes and homestead and farmland preservation credits.

2. **Deposit Amounts While Appeal is Pending in Appellate Bureau** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective for appeals (petitions for redetermination) filed on or after November 1, 1980.)

   The Department of Revenue will notify any person who files a petition for redetermination that the person may deposit the amount of an additional assessment, including any interest and penalty, with the Department of Revenue at the time an appeal is filed, or at any time before the department makes its redetermination. Any deposited amount which is later refunded will bear interest at the rate of 9% per year.

   A person may also pay any portion of the assessment which he or she admits to be correct. Such payment shall then be considered an admission of the correctness of that portion of the assessment and may not be recovered in an appeal or any other action or proceeding.

   The new provisions in s. 20.855 (4) (a), 71.12 (1) (b) and 77.59 (6) (c) apply to appeals relating to income, corporation franchise/income, withholding, sales/use, and gift taxes and homestead and farmland preservation credit.

3. **Clarify Confidentiality Provisions** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

   The confidentiality provisions are clarified relating to income, corporation, franchise/income, withholding, sales/use, gift, inheritance and estate taxes and homestead and farmland preservation credits.

   The new s. 71.11 (44) (c) 8 provides that a member of the board of arbitration established under s. 71.03 (3) or a consultant under joint contract with Minnesota and Wisconsin for the purpose of determining the reciprocity loss to which either state is entitled, may examine tax returns and related tax information under s. 71.11 (44).

   (NOTE: Chapter 221, Laws of 1979 also creates s. 72.06, effective April 30, 1980 to provide that any information the Department of Revenue receives on inheritance or estate tax returns, reports, schedules, exhibits or other documents or from an audit report is subject to the confidentiality provisions of s. 71.11 (44) (a) and (c) to (h). This provision in s. 72.06 is an exact duplication of Chapter 139, Laws of 1979 which became effective March 29, 1980.)

4. **Correct Erroneous Warrants Filed With Clerk of Court** (Chapter 221, Laws of 1979, Assembly Bill 1180, effective April 30, 1980.)

   If the Department of Revenue filed an erroneous warrant, the department will issue to the clerk of circuit court for the county in which the warrant was filed, a notice of withdrawal of the warrant. The clerk will then void the warrant and any liens attached by it.

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

Paul William Bandow vs. Wisconsin Department of Revenue

Kansas City Star Company vs. Department of Revenue

Kurz & Root Company vs. Wisconsin Department of Revenue

Milwaukee Mutual Insurance Co. vs. Wisconsin Department of Revenue

Anna K. Rees vs. Wisconsin Department of Revenue

Colin A. Regan vs. Wisconsin Department of Revenue

Erwin J. Thoenes vs. Wisconsin Department of Revenue

Wausau Homes Inc. vs. Wisconsin Department of Revenue

Sales/Use Taxes

Metalplate and Products Inc. vs. Department of Revenue

Wisconsin Department of Revenue vs. Trudell Trailer Sales, Inc.

Excise Taxes

Reinhart Institutional Foods Inc. vs. Dennis J. Conta, In His Capacity As Secretary of the Wisconsin Department of Revenue, and J.K. Leidiger, In His Capacity As Director of the Excise Tax Bureau of the Wisconsin Department of Revenue

APPEAL WITHDRAWN

In issue number 18 of the WTB it was reported that the Circuit Court (Branch 1) of Milwaukee County decision in the case of "Wisconsin Department of Revenue vs. Hide Service Corporation" had been appealed by the Department to the Court of Appeals. That appeal has now been withdrawn.

INCOME AND FRANCHISE TAXES

Paul William Bandow vs. Wisconsin Department Of Revenue, (Wisconsin Tax Appeals Commission, January 25, 1980.) During 1975 and 1976, taxpayer, Paul William Bandow, was a resident of Oshkosh, Wisconsin. The sole issue for the Commission to determine was whether the taxpayer should be allowed in the years 1975 and 1976 an exclusion for a scholarship or fellowship grant received from the Wisconsin Department of Health and Social Services.

In 1974, taxpayer entered into an employe training contract with the State of Wisconsin, Department of Health and Social Services for the primary purpose of training him in the field of psychiatry and attaining a certificate from the American Board of Psychiatry and Neurology, Inc. The contract contained the following provision:

"6. The Appointing Authority agrees to provide a Fellowship Grant of $42,726.00. The resident will be processed for payroll purposes as a limited term employe and will be paid on a bi-weekly basis as follows: First year, $13,714; second year, $14,242; third year, $14,770, divided into 26 bi-weekly paychecks."

During 1975 and 1976, taxpayer, a graduate of the medical school of the University of Georgia, was performing medical services for the State of Wisconsin under the Employee Trainee Contract for the State of Wisconsin at the Winnebago Mental Health Institute located near Oshkosh, Wisconsin. Taxpayer received limited benefits under the Employee Trainee Contract and was eligible for worker's compensation and unemployment compensation from the State of Wisconsin and further received 26 bi-weekly paychecks each year. He received vacation time and holiday time while under said contract. Taxpayer prescribed and administered drugs to patients at the Winnebago Mental Health Institute and performed other medical services for the State of Wisconsin while employed at the Institute.

The Commission concluded that the payments received by the taxpayer did not constitute income from a "fellowship grant" but were compensation for taxpayer's services.

Taxpayer has appealed this decision to Circuit Court.

Kansas City Star Company vs. Department of Revenue (Wisconsin Court of Appeals, March 4, 1980.) Taxpayer owned and operated the Flambeau Paper Mill in Park Falls, Wisconsin as a separate division from its only other division which published a daily newspaper in Kansas City, Missouri. The only business carried on in Wisconsin by taxpayer was its paper mill. The newspaper division and the paper mill division were entirely separate with separate operations, management, employes and properties. The books, records and accounts were entirely separate both for financial accounting and for Wisconsin tax purposes.

During the years just prior to 1969, taxpayer's management decided to expand its paper mill operations. Taxpayer decided that it could provide the necessary financing within the corporation at lower cost than borrowing from outside sources. The Wisconsin division provided about $2 million and the Missouri division transferred $7,842,000 of its funds in Missouri to the Wisconsin division's Wisconsin bank. The transferred funds were secured by bona fide notes signed by the Wisconsin division's management which bore interest at 5½% per year.

During the years 1969 through 1973, the Wisconsin division sent interest checks to the Kansas City Star Company in Missouri. In reporting its income from its Wisconsin division on a separate accounting basis, taxpayer claimed the interest payments as deductions from gross income under s. 71.04 (2), Wis. Stats. The Department disallowed the interest payments as deductions.

The Court of Appeals affirmed the Tax Appeals Commission and Circuit Court decisions which concluded that the taxpayer's intra-company payment of interest constitutes interest paid which is deductible under s. 71.04 (2), Wis. Stats. The interest expenses were properly allocable as expenses relating to Wisconsin operations under the separate accounting method used by taxpayer in reporting for Wisconsin franchise tax purposes.

The Department of Revenue has not appealed this decision.

Kurz & Root Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 3, 1980.) The taxpayer, Kurz & Root Company, is a corporation organized under the laws of the State of Wisconsin with its principal offices located in Appleton, Wisconsin.

Until 1966, the taxpayer's organization consisted of 3 divisions: one headquartered in Appleton, Wisconsin, one in Cedarburg, Wisconsin and one in California (hereafter, "Pacific Division"). The Pacific Division terminated its operations during the corporation's 1966 fiscal year.

During the years 1961 through 1964, the Pacific Division was engaged in manufacturing equipment for the U.S. Air Force under a contract entered into in 1960 with the federal government. Taxpayer and the U.S. government encountered differences of opinion concerning the government's requirements and the taxpayer's performance under the contract. These differences resulted in taxpayer's appeal to the Armed Services Board of Contract Appeals.

Under the settlement reached, the taxpayer received $404,745 in full settlement of its claim. The amount was received during taxpayer's fiscal year ending September 30, 1967. This was after the Pacific Division had terminated its operations. The amount was received by the taxpayer at its Appleton, Wisconsin office.

Taxpayer contended that the contract settlement amount was not subject to Wisconsin's franchise tax.

The Department contended that $309,479.23 of the settlement (82.1% per apportionment ratio for 1967) was taxable to Wisconsin in fiscal year 1967.

The Commission ruled that the settlement which was received at the Wisconsin office in its fiscal year 1967 (after taxpayer's Pacific Division had terminated its operations) is subject to Wisconsin's franchise tax law.

The taxpayer has appealed this decision to Circuit Court.

Milwaukee Mutual Insurance Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 19, 1980.) The taxpayer, Milwaukee Mutual Insurance Co., is a mutual insurance corporation organized under the laws of Wisconsin. Taxpayer timely filed a Wisconsin franchise tax return for the calendar year 1974.

For calendar years beginning after December 31, 1962, taxpayer has been subject to the Federal income tax on mutual insurance companies computed under Sections 821-825 of the Internal Revenue Code. Taxpayer has filed the required Federal income tax return for each of the calendar years 1963 through 1974. On its Federal income tax returns for each of the years 1963 through 1974, taxpayer established and maintained the Pro-

ɔction Against Loss (PAL) account ,rescribed by Section 824 (b). On the returns for such years taxpayer deducted from underwriting income and added to the PAL account the amounts required by Section 824 (a) and Section 824 (c) and subtracted from the PAL account and included in taxable income the amounts required by Section 824 (d). For 1963 through 1971, the amounts added to the PAL account exceeded the amounts subtracted therefrom so that there was a balance in the PAL account as of December 31, 1971 of $359,708.34.

For the years 1972, 1973, and 1974, $697,219.70 was deducted from underwriting income and added to the PAL account, thus increasing the balance in the PAL account to $1,056,928.04. For 1974, $1,056,928.04 was deducted from the PAL account and included in taxpayer's mutual insurance company taxable income for Federal income tax purposes, thus reducing the balance in the PAL account as of December 31, 1974 to zero. Such amount of $1,056,928.04 subtracted from the PAL account and included in axpayer's mutual insurance company taxable income for Federal income tax purposes for 1974 included the balance as of December 31, 1971 of $359,708.34. The only item in dispute was whether the $359,708.34 was includable in Wisconsin income.

The Commission held that (1) the $359,708.34 in question was earned prior to 1972, (2) the statutes operate prospectively only, unless a contrary intention is expressly stated or necessarily implied; there is no express or necessarily implied retroactivity in s. 71.01 (4) (a), and the Department of Revenue's application of s. 71.01 (4) (a) in this case improperly imposed retroactive taxation on the monies involved herein, and (3) the taxpayer is entitled to exclude the $359,708.34 added to its PAL account prior to 1972 and subtracted from said account in 1974 from its "Adjusted Federal Taxable Income" for the purposes of calculating its 1974 Wisconsin franchise tax liability under s. 71.01 (4) (a).

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

Anna K. Rees vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 25, 1980.) During the period involved in this case, Anna K. Rees was a resident of Wisconsin. The sole issue for the Commission to determine was whether the capital gains portion of a lump-sum distribution made to the taxpayer as the beneficiary under a profit sharing and savings plan was includable in Wisconsin taxable income for 1977.

Taxpayer's husband, Robert W. Rees, died on May 18, 1977 and the taxpayer was named as beneficiary under a profit sharing and savings plan of Western Electric Company, Inc., the decedent's employer. Of the lump-sum distribution, taxpayer received $45,345.19 representing the capital gain portion of the distribution and $14,273.87 representing the ordinary income portion of the distribution.

Pursuant to Section 402 (e) (4) (L), Internal Revenue Code, taxpayer elected to treat pre-1974 participation as post-1973 participation, thereby electing to have the capital gains portion of the lump-sum distribution be treated as ordinary income so that taxpayer could use the special 10-year averaging method of reporting for federal tax purposes. The above election was made on Internal Revenue Service Form 4972, attached to taxpayer's 1977 federal tax return.

Taxpayer included the amount of $14,273.87, representing the ordinary income portion of the lump-sum distribution, as an add modification on her 1977 Wisconsin income tax return but did not include the amount of $45,345.19 representing the capital gain portion of the distribution in her 1977 Wisconsin taxable income.

The instructions on federal Form 4972 state that if a taxpayer chooses to make the election to treat the capital gain portion of a distribution as ordinary income, the capital gain portion should not be separately stated on line 1 of Form 4972, labeled "capital gain portion" but that amount should be added to the amount to be entered on line 2 labeled "ordinary income".

The Commission concluded that in making the election under Sec. 402 (e) (4) (L), Internal Revenue Code, the "capital gain" portion of the lump-sum distribution became a part of the "ordinary income" portion of the distribution and as such should have been added to federal adjusted gross income as a modification under s. 71.05 (1) (a) 8, Wis. Stats., in arriving at 1977 Wisconsin adjusted gross income. Amounts properly reported on line 1, of the Internal Revenue Service Form 4972, should have been included on Schedule D of taxpayer's 1977 federal income tax return and thus were includable in 1977 Wisconsin taxable income as part of her 1977 federal adjusted gross income under s. 71.02 (2) (e), Wis. Stats., in conjunction with the modification prescribed in s. 71.05 (1) (a) 2, Wis. Stats. The entire amount of the lump-sum distribution made to taxpayer in 1977 under Western Electric Co., Inc.'s profit sharing and savings plan should have been included in her 1977 Wisconsin taxable income.

Taxpayer has appealed this decision to Circuit Court.

Colin A. Regan vs. Wisconsin Department of Revenue (Circuit Court of Dane County, March 20, 1980.) During the calendar year 1974, taxpayer was a resident of Wisconsin. Taxpayer was one of six joint venturers in the Ginger Creek Office Venture, a general partnership, and during 1974 he owned a 10% interest in said venture. The Ginger Creek Office Venture acquired land located in Illinois and constructed a building thereon. Taxpayer was also one of five joint venturers in Parcel 2 Schaumburg Venture and during 1974 he owned a 10% interest in said venture.

On his 1974 Wisconsin income tax return, taxpayer declared a $114,150 loss relating to the Ginger Creek Office Venture and a $10,874 loss relating to the Parcel 2 Schaumburg Venture.

The sole issue before the Commission involved taxpayer's interest in the two Illinois general partnerships. The Department of Revenue contended that an interest in a foreign general partnership is business interest having a situs outside of Wisconsin and not, therefore, included in determining net Wisconsin income. The taxpayer contended that an interest in a foreign

general partnership is an interest in intangible personal property includable in Wisconsin taxable income in the category of "All Other Income or Loss" under Section 71.07 (1), Wis. Statutes (1973).

The Circuit Court upheld the decision of the Wisconsin Tax Appeals Commission by concluding that the operating losses constituted a loss from business. Therefore, under s. 71.07 (1), Wis. Stats., 1973, the losses followed the situs of the businesses and the taxpayer was not permitted to deduct such losses in reporting his income for Wisconsin income tax purposes.

Taxpayer has not appealed this decision.

Erwin J. Thoenes vs. Wisconsin Department of Revenue (Circuit Court of Milwaukee County, April 28, 1980.) The taxpayer, a resident of the State of Wisconsin, created a "Family Trust", also known as an equity or constitutional trust, and conveyed to it various items of his real and/or personal property and the right to all income he received. In return, he received all the beneficial ownership of his family trust, including the right to designate all owners of beneficial interest.

All income he received was attributed by him to the trust, which used same to pay the personal deductible and non-deductible living expenses of the taxpayer and his family.

Taxpayer also served as manager of his family trust, and any monies left over after the allocations specified above were paid to him for services he allegedly rendered in said capacity or to his designate. He retained complete control over his income and/or assets after the creation of the family trust involved.

The Department determined that the family trust could not be recognized for Wisconsin income tax purposes and recomputed the taxpayer's Wisconsin income tax liability accordingly. The taxpayer appealed that determination to the Wisconsin Tax Appeals Commission.

The Commission held that the taxpayer's conveyance of his lifetime services and the income earned through the performance of those services to the "Family Trust" was simply an assignment of income and ineffective to shift the tax burden from the taxpayer to the trust. It stated that amounts taxpayer received in return for his services and income from real or personal property he conveyed to the trust were income to him and should have been reported that way.

The taxpayer appealed that decision to the Circuit Court of Milwaukee County stating that it violated his rights under Article 1, Section 10 of the Wisconsin Constitution; Section 701.02 of the Wisconsin Statutes; and his rights under the Fifth and Fourteenth Amendments.

The Circuit Court upheld the Commission's decision. It did not find that the taxpayer's rights had been violated as he alleged.

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

Wausau Homes, Incorporated vs. Wisconsin Department of Revenue (Circuit Court of Marathon County, March 10, 1980.) The Department appealed a decision of the Wisconsin Tax Appeals Commission that Wausau Homes owed less income tax for the period March 1, 1968 through February 28, 1973 than the Department originally assessed. The Department challenged the Commission's application and interpretation of the statutory apportionment formula for the company's sales in s. 71.07 (2), Wis. Stats., 1969.

The Department's objection to the Commission's decision centered on s. 71.07 (2) (c), Wis. Stats., 1969 which explains how the Department is to consider one of three ratios in determining a corporation's income tax.

The Department argued that there was no substantial evidence to support the Commission's findings regarding the situs of sales that 1) Wausau Homes dealers throughout the country completed their sales contracts at their offices or the buyer's residence, 2) the dealers had the power to bind the company on sales and 3) each sale occurred when the dealer executed a contract. The Department also objected to the conclusion that sales of Wausau homes must be allocated under s. 71.07 (2) (c) among the states where the sales contracts were signed, instead of all being allocated to Wisconsin or Iowa where the company's two plants are located. The Department argued that all sales originate and take place in Wausau and Ottumwa, Iowa where the homes are manufactured even though dealers act as intermediaries for the company in some 14 states. It alleged that the evidence demonstrates that the Wausau office exercises complete control over each step of the sales process through guidelines and franchise agreements given to the dealers.

The court rejected the Department's position and found that there was substantial evidence to support the Commission's findings that sales took place in the various states where dealers contracted with buyers for homes.

Wausau Homes challenged the Commission's finding that the Department properly computed the apportionment formula by determining that the property that Wausau Homes leases in Iowa for its plant is not "owned and used" by it and is not includable in the denominator of the ratio under s. 71.07 (2) (a).

The court rejected this argument by Wausau Homes.

Wausau Homes also contended that there was no substantial evidence in the record to support the Commission's conclusion that all engineering and drafting services were allocable to Wisconsin. This argument was directed at the way the Department and Commission calculated the manufacturing ratio under s. 71.07 (2) (b). Wausau Homes contended that the costs of the engineering services done at the Wausau plant for the Iowa plant should be allocated to Iowa. The Department argued that there is substantial evidence to support the Commission's conclusions that the cost of all engineering services done in Wausau must be allocated to Wisconsin.

The Circuit Court found that there was no substantial evidence to sup-

ort that conclusion by the ommission.

The court therefore reversed the Commission and held that the cost of drafting work done for the Ottumwa plant could have been allocated to Iowa, not Wisconsin.

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

SALES/USE TAXES

Metalplate and Products, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, April 3, 1980.) The question in this case was whether the corporation was engaged in manufacturing as defined in 77.51 (27), Wis. Statutes, and therefore its machinery was exempt from the sales and use tax under the exemption provided in s. 77.54 (6) (a). The Commission concluded that under these statutes, and based on the facts presented, the machinery used by the taxpayer was exempt from the sales and use tax.

The company's principal business activity was electroplating metal stampings, forgings, castings, machine parts and similar metal items with zinc or cadmium. In addition to putting metallic coatings on metallic items, 5% or less of the company's business consisted of cleaning metallic parts and putting an oil surface on them to prevent rust. Customers provide the parts on which the company applies its processes.

The procedure used by the taxpayer involves the use of heavy machinery which lifts cylinders ("plating barrels") full of metallic items and lowers them into a series of tanks containing several types of liquid solutions which results in the electroplating of the items. Each tank used is approximately 2½ feet deep, 5½ to 6 feet long and 4 feet wide. The solution in the first tank cleans the items and the next tank rinses the items. The next tank contains acid pickle where the items are etched to allow creation of a surface that will accept plating; next are 2 more rinsing tanks. The following tanks are electroplating tanks containing chemicals and liquid metal in which the plated items remain for 30 to 45 minutes while electricity is applied. The plated item is then rinsed and run through final solutions which cure the dried finish. Some of the electroplated items are then baked. The taxpayer uses lifting devices, such as electric hoists, rectifiers, tanks, a spin dryer and a fork lift truck to perform this process.

This process produces a new article with a different form, use and name according to the Commission. One item was called a "Grade 2 hex-head cap screw plain" prior to the process and a "Grade 2 hex-head cap screw plated" after the process. Two expert witnesses familiar with this process testified the company was engaged in manufacturing.

The Department has not appealed this decision.

Wisconsin Department of Revenue vs. Trudell Trailer Sales, Inc. (Circuit Court of Dane County, Branch #1, January 29, 1980.) Taxpayer was engaged in the business of selling semitrailers both inside and outside Wisconsin. Some semitrailers were sold to customers located outside Wisconsin and these semitrailers were to be used outside the state. The issue before the Court was whether semitrailers come within the language of s. 77.54 (5) (a), Wis. Stats., exempting from the sales and use tax "motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such . . . motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such . . . motor vehicles or trucks from this state".

The Court concluded that the semitrailers involved are within the exemption provided in s. 77.54 (5) (a), Wis. Stats., and sales of such semitrailers to nonresidents are exempt from sales and use tax.

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

EXCISE TAXES

Reinhart Institutional Foods, Inc. vs. Dennis J. Conta, in his Capacity as Secretary of the Wisconsin Department of Revenue, and J. K. Leidiger, in his Capacity as Director of the Excise Tax Bureau of the Wisconsin Department of Revenue (Circuit Court of Dane County, September 14, 1979.) Reinhart Institutional Foods brought an action in mandamus to compel the Department to issue a wholesale liquor permit which had been applied for under Sec. 176.05 (1a), Wis. Stats.

Taxpayer is a Wisconsin corporation engaged in the distribution and wholesale marketing of institutional food products. Mr. D. B. Reinhart owns 90% of its stock and Mr. D. P. Zeitlow owns the other 10%.

Kwik-Trip, Inc. is another Wisconsin corporation. It has seven wholly-owned subsidiaries, four of which have two retail liquor licenses each. Mr. Reinhart and Mr. Zeitlow each own ⅓ of the stock of Kwik-Trip, Inc., while the remaining ⅓ is owned by Mr. John Hansen.

Reinhart Institutional Foods applied for a wholesale liquor permit which was denied on the basis of its interest in a retail establishment, which is prohibited by s. 176.05 (1a) (a). The purpose of the statute, referred to as the "tied-house" law, is to prevent any interest other than normal purchase and sale relationship between the liquor wholesaler and retailer.

Taxpayer contended its stockholders, not Reinhart Institutional Foods, had an interest in Kwik-Trip. However, the court held that Reinhart and Zeitlow are in essence the Reinhart Institutional Foods corporation. They also own two-thirds of the stock of a corporation that has four subsidiaries who have eight retail licenses. This shows a significant unity of interest between Reinhart Institutional Foods and the retailers.

Accordingly the court found the Department of Revenue acted within its authority in denying the wholesale liquor permit to Reinhart Institutional Foods.

The taxpayer has not appealed this decision.