WISCONSIN TAX BULLETIN

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REMINDER OF MAJOR 1980 LAW CHANGES AND FORMS CHANGES

Major Individual Income Tax Law Changes

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.

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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.

For further information regarding this new law and an example illustrating the gain which would be recognized under its provisions, refer to issue number 19 of the Wisconsin Tax Bulletin.

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).

Major Corporation Franchise/ Income Tax Law Changes

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 or 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.

Note: Publication 107, "Combining DISC and Parent or Affiliated Corporation's Incomes", explains this new law and is available at any Department of Revenue office.

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.

4. 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, 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. 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.)

Rapid write-off provisions for expenses incurred for an alternative energy system are no longer allowed, effective for the taxable year 1980 and thereafter. Instead, a 10% refund for expenses incurred for approved systems is available from the Wisconsin Department of Industry, Labor and Human Relations.

6. 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.

Major Form Changes

As indicated in the October 1980 issue of the Wisconsin Tax Bulletin (Number 20), the long form Wisconsin individual income tax return (Form 1) has been redesigned for 1980. The income and tax computation areas have been rearranged and appear in a different sequence than on the 1979 return. This should make the form easier to fill out. However, because the format is different from last years, care should be taken to read the instructions carefully.

Two other forms changes are the removal of the Wisconsin Homestead Credit filing form (Schedule H) from all income tax booklets and the removal of the declaration of estimated tax form (Form 1-ES) from the Form 1 booklets. Persons who filed such forms last year will now receive them in a separate mailing. The mailing of 1980 Homestead forms was made in December, 1980. The estimated tax form for 1981 will be mailed late this month (January, 1981).

INFORMATIONAL PUBLICATIONS AVAILABLE

The Income, Sales, Inheritance and Excise Tax Division of the Department publishes a form of informational material called "publications". These are small pamphlets which provide detailed information relating to specific areas of Wisconsin tax laws. They are intended to aid the public in understanding certain aspects of the Wisconsin tax laws administered by the Division.

For 1980, the following publications may be obtained at each of the Division's offices located throughout Wisconsin:

Publication Number	Publication Title
100	1980 Wisconsin Tax Requirements For Nonresidents
101	1980 Wisconsin Tax Requirements For Part-Year Residents
102	Wisconsin Tax Treatment Of Subchapter S Corporations And Their Shareholders
103	Reporting Capital Gains And Losses For Wisconsin Purposes
104	Wisconsin Taxation Of Military Personnel
105	Adoption Expenses - Wisconsin Tax Benefits
106	Wisconsin Deduction For Child And Dependent Care Expenses
107	Combining DISC And Parent Or Affiliated Corporation's Incomes
500	Tax Guide For Wisconsin Political Organizations And Candidates
501	Field Audit Of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Tax Credit For 1980
504	Directory For Wisconsin Department Of Revenue

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

FEDERAL TAX LAWS ENACTED IN 1980

For the taxable year 1980, Wisconsin's income tax law for individuals recognizes only those provisions of the Internal Revenue Code which became law by December 31, 1979. Federal laws enacted in 1980 do not apply for Wisconsin purposes for the taxable year 1980.

The October issue of the WTB contained an article which listed a number of federal law changes which were enacted in 1980 as part of the Crude Oil Windfall Profit Tax Act of 1980 and the Technical Corrections Act of 1979. However, additional research has determined that one item identified as "Deduction for Windfall Profit Tax" should be deleted from that list. That item does not represent a difference between Wisconsin and federal law for 1980 which would require an adjustment on Wisconsin Schedule I. The change made to federal law was the addition of an itemized deduction for the windfall profit tax under Internal Revenue Code section 164. If the windfall profit tax is claimed as an itemized deduction on line 16 of a person's 1980 federal Schedule A, such tax will not be included in computing Wisconsin itemized deductions on a 1980 Wisconsin Form 1. Wisconsin does not allow a deduction for taxes claimed under section 164 of the IRC. Therefore, it is not necessary to use Schedule I to eliminate the new itemized deduction for windfall profit tax for Wisconsin purposes since the tax is already eliminated in computing Wisconsin itemized deductions on the 1980 Form 1.

Also, since the time the previous article was written, another new federal law has been enacted. That law is the Installment Sales Revision Act of 1980 (Public Law 96-471) which was enacted on October 19, 1980. Its provisions significantly revise the manner in which gain from installment sales is reported.

An explanation of all differences between Wisconsin and federal law for 1980 is included in the instructions for the 1980 Wisconsin Schedule I. A copy of that form and its instructions is reproduced in the back pages of this bulletin.

HOW TO GET INCOME TAX FORMS

In December the department mailed more than 2.3 million booklets of 1980 income tax and Homestead Credit forms. These were mailed to individuals who filed 1979 Wisconsin income tax returns or Homestead claims.

Orders for bulk supplies of tax forms are now being shipped to tax practitioners and to organizations (e.g., banks and post offices) which distribute them to the public. The orders are expected to all be filled by mid-January 1981.

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

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

REMINDER! NEW IRS STANDARD MILEAGE RATE ALSO APPLIES FOR WISCONSIN

The optional standard mileage rate used to compute deductions for business use of an automobile was increased by IRS from 18½ cents to 20 cents for the first 15,000 business miles and from 10 cents to 11 cents per mile for mileage over 15,000. The rate per mile used to calculate auto expenses for charitable, medical and moving expense deduction purposes was also increased — from 8 to 9 cents per mile. All of the new rates apply for the entire 1980 taxable year.

As previously reported in the October issue of the Wisconsin Tax Bulletin in a "Tax Release", the new federal rates apply in the same manner for Wisconsin purposes for 1980.

DEDUCTION FOR WINDFALL PROFIT TAX

The October 1980 issue of the Wisconsin Tax Bulletin (Number 20) included an article entitled "Federal Tax Laws Enacted In 1980 Do Not Apply For Wisconsin Purposes" which listed the deduction for Windfall Profit Tax created by Public Law 96-223 as one of the new federal laws that will not apply for Wisconsin individual income tax purposes for 1980. The purpose of this article is to clarify that even though that new federal law does not apply for Wisconsin, in certain instances the Windfall Profit Tax may still be deducted in computing Wisconsin taxable income for 1980.

A deduction is permitted on a 1980 Wisconsin return under section 162 of the Internal Revenue Code (IRC) if such tax qualifies as an "ordinary and necessary business expense", or under section 212, IRC which allows a miscellaneous itemized deduction if the Windfall Profit Tax represents an expense incurred in producing income. Both sections 162 and 212 of the IRC were enacted on or before December 31, 1979 (the cutoff date provided by Wisconsin law for computing 1980 Wisconsin income and deductions) and apply in the same manner for Wisconsin as they do for federal purposes for the taxable year 1980.

Note: Wisconsin law excludes itemized deductions for taxes which are allowable under section 164 of the IRC. Therefore, a person claiming the Windfall Profit Tax on a 1980 federal return as an itemized deduction for "taxes" under section 164 of IRC will not be allowed such a deduction under section 164 on a 1980 Wisconsin return.

FEDERAL INSTALLMENT SALES REVISION ACT OF 1980 DOES NOT APPLY FOR WISCONSIN

The federal Installment Sales Revision Act of 1980, signed on October 19, 1980, amended the Internal Revenue Code to make substantial changes in the federal rules for reporting gain under the installment method, for electing the installment method and for installment sales to related parties.

Wisconsin Income Tax: An individual's, estate's or trust's Wisconsin income and deductions for the 1980 taxable year are determined by using the Internal Revenue Code as of December 31, 1979, with certain modifications. Therefore, the new federal provisions for reporting income on the installment basis pursuant to the Installment Sales Revision Act of 1980 will not apply for Wisconsin income tax purposes for

the 1980 taxable year. If a sale is reported on a 1980 Wisconsin return on the installment method pursuant to the Installment Sales Revision Act, but such sale does not qualify for the use of that method under the December 31, 1979 Internal Revenue Code, an adjustment must be made on Schedule I to account for this difference in law.

Wisconsin Corporation Franchise/Income Taxes: The Wisconsin net income of corporations is not determined by reference to the federal Internal Revenue Code. The requirements for reporting sales of real estate and isolated sales of personal property using the installment method by corporations are contained in Wisconsin Code section Tax 2.19. Some of the provisions in this rule are similar to the requirements for reporting under the Internal Revenue Code prior to its amendment in 1980. As a result of a Wisconsin Supreme Court decision in the case of State ex rel Waldheim & Co. v. Wisconsin Tax Commission, 187 Wis. 539, Wisconsin does not permit corporations to use the installment method to report income from personal property regularly sold during the course of business. The Waldheim decision is incorporated in the provisions of rule Tax 2.19. In view of rule Tax 2.19 and the Waldheim case, the Installment Sales Revision Act of 1980 will not apply to the computation of Wisconsin net income of corporations for the taxable year 1980.

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

Edward H. Anderson vs. Wisconsin Department of Revenue
Sharon M. Chappa vs. Wisconsin Department of Revenue
Donna L. Daniels vs. Wisconsin Department of Revenue
Kenneth F. DeBoer vs. Wisconsin Department of Revenue
Eslinger, Mark H. and Lorraine R. vs. Wisconsin Department of Revenue
Vance A. Glewen vs. Wisconsin Department of Revenue
J. John Gudenschwager, J. John Gudenschwager Family Estate vs. Wisconsin Department of Revenue
Curt G. Joa, Inc. vs. Wisconsin Department of Revenue
Randy Larsen vs. Wisconsin Department of Revenue
Nick Novasic vs. Wisconsin Department of Revenue
Old Orchard Corporation vs. Wisconsin Department of Revenue
Joseph J. Puta vs. Wisconsin Department of Revenue
Steven R. Shumaker and Karen L. Shumaker vs. Wisconsin Department of Revenue
Howard U. Taylor, Margaret T. Taylor, Wayne Thomas Feyereisen, Frances C. Feyereisen, James W. McCarville, Karen Beth McCarville, Michael E. Fairfield, and Donna J. Fairfield vs. Dennis J. Conta, Individually and as Former Secretary of the Wisconsin Department of Revenue, and Mark E. Musolf, Individually and as Secretary of the Wisconsin Department of Revenue
Peter Y. Taylor, Jr., and the Peter Y. Taylor, Jr. Family Estate (A Trust), Et. Al. vs. Wisconsin Department of Revenue
Erwin J. Thoenes vs. Wisconsin Department of Revenue
Union Prescription Centers, Inc. vs. Wisconsin Department of Revenue
WTMJ, Inc. and Newspapers, Inc. vs. Wisconsin Department of Revenue

Sales/Use Taxes

Donna Brewer vs. Wisconsin Department of Revenue
Chicago Bridge & Iron Company vs. Wisconsin Department of Revenue
H. Derksen & Sons Co., Inc. vs. Wisconsin Department of Revenue
Midcontinent Broadcasting Company of Wisconsin, Inc. vs. Wisconsin Department of Revenue
Milwaukee Brewers Baseball Club vs. Wisconsin Department of Revenue
William A. Mitchell vs. Wisconsin Department of Revenue
Gordon Obermann vs. Wisconsin Department of Revenue
Dennis R. Olkwitz vs. Wisconsin Department of Revenue
Peck Meat Packing Corporation vs. Wisconsin Department of Revenue
J. C. Penney Co., Inc. vs. Wisconsin Department of Revenue
James Peterson Sons, Inc., Et. Al. vs. Wisconsin Department of Revenue

Homestead Credit

Kurt M. Stege vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Edward H. Anderson (Deceased) vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 29, 1980). During the year 1973, Edward H. Anderson, was the sole shareholder of the Washington Island Storage Corporation, a Wisconsin corporation, which was incorporated in 1959. On September 30, 1973 the corporation, Washington Island Storage Corporation, was liquidated. Edward H. Anderson was the sole transferee of the corporation's assets. Subsequent to September 30, 1973 no further activities were conducted by the Washington Island Storage Corporation.

A 1973 Wisconsin Franchise Income Tax Return was filed by Washington Island Storage Corporation covering the last fiscal year beginning November 1, 1972 and ending September 30, 1973. The return was filed under date of December 5, 1973 and indicated a net tax due and unpaid of $3,296.59. Payment of this tax was not made at the time of submission of the return or at any subsequent time. As a result of this outstanding, unpaid liability, an assessment was issued on January 29, 1974 against Washington Island Storage Corporation for $3,296.59 plus interest. The assessment was not contested, however, the amount due remained unpaid. On May 23, 1977, an assessment for the amount due from Washington Island Storage Corporation was issued against Edward H. Anderson, pursuant to s. 71.11(21n), Wisconsin Statutes, which was enacted on May 5, 1976.

Section 71.11(21n) reads as follows:

"(21n) ADDITIONAL ASSESSMENTS AGAINST DISSOLVED CORPORATION. If all or substantially all of the business or property of a corporation is transferred to one or more persons and the corporation is liquidated, dissolved, merged, consolidated or otherwise terminated, any tax imposed by this chapter on such corporation may be assessed and collected as prescribed in this section against the transferee or transferees of such business or property. Notice shall be given to such transferee or transferees under sub. (22) within the time specified in sub. (21) irrespective of any other limitations imposed by law. If such corporation has dissolved, such notice may be served on any one of the last officers or members of the board of directors of such corporation."

The Commission concluded that s. 71.11(21n) clearly indicates that it was intended to have prospective and not retrospective application and that the assessment against Edward H. Anderson is not an additional assessment which would make him personally liable under s. 71.11(21n).

The Department has not appealed this decision.

Sharon M. Chappa vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). The sole issue in this case is whether the department's assessment based on estimates of income for the years 1976 and 1977 was correct.

The taxpayer did not file a return for the year 1976 despite requests from the department to do so. The taxpayer did file her 1977 return, reported Wisconsin total income in the amount of $13,304.77 and claimed on Schedule A & B of her federal Form 1040 contributions as follows: "entire salary was turned over to the Order of Almighty God, a Religious Order" in the amount of $13,304.77.

The taxpayer was emloyed by the Oshkosh Truck Corporation and received wages as an employee of said corporation as follows: 1976 - undetermined, 1977 - $13,304.77. In the year 1976, the taxpayer did not have any withholding taxes withheld from her wages. In the year 1977, she had $15.49 withheld for state taxes, of which she filed a return claiming a refund in said amount.

In the years 1976 and 1977 the taxpayer turned over her paychecks that she received as an employee to the Order of Almighty God, Chapter 11003 of the Life Science Church of Bloomington, Minnesota; in return, said church paid for her expenses which included such items as food, housing, transportation, chiropractic and other expenses, all of which were of a personal expense directly attributable to the taxpayer's daily living.

The Commission ruled that the taxpayer's 1976 conveyance of her services and the income earned therefrom was simply an anticipatory assignment of income and did not relieve her of her individual obligation to file a Wisconsin income tax return for the calendar years 1976 and 1977 and to pay the taxes due thereunder. It stated that the income the taxpayer received in 1976 and 1977 was reportable by her irrespective of her affiliation with the Life Science Church of Bloomington, Minnesota.

The Commission further ruled the department acted properly in issuing an estimated income tax assessment against the taxpayer for the year 1976, after her refusal to voluntarily file a return for said year. However, the estimated assessment against the taxpayer for the year 1977 was not correct because she filed a return for that year. The department's estimated income of $15,000 was adjusted to $13,304.77 as the taxpayer's taxable income for 1977. The taxpayer's deduction on her 1977 return of her contribution in the amount of $13,304.77 to the Life Science Church of Bloomington, Minnesota was denied.

The taxpayer has not appealed this decision.

Donna L. Daniels vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). During taxable years 1976 and 1977, the taxpayer was a graduate student in the University of Wisconsin - Madison's Department of Genetics. In each of those years taxpayer received $3,900 under the federal Public Health Service Act of 1974, designated as a "National Research Service Award" (NRSA).

The taxpayer filed a 1976 return on which she did not declare the $3,900 NRSA award as income. She did not file a 1977 return because she did not believe the $3,900 was taxable and because she believed she did not meet the minimum filing requirement for that year with any other income. Taxpayer contended that the $3,900 NRSA award for each year is exempt from Wisconsin income taxation under sec. 117 of the Internal Revenue Code as a scholarship or fellowship grant. The department contended that the amounts are subject to Wisconsin individual income tax for the years in question.

One portion of the federal "Revenue Act of 1978" (P.L. 95-600), enacted on November 6, 1978, provided that amounts received as NRSA awards made in calendar years 1974 through 1979 may be excluded from recipients' incomes for federal income tax purposes as tax-free scholarships or fellowships.

The Commission ruled that the two $3,900 amounts which taxpayer received in taxable years 1976 and 1977 were not exempt from Wisconsin income taxation under section 117 of the Internal Revenue Code in the years received. They are taxable by the Wisconsin individual income tax for those years. The Commission also ruled that enactment of the federal "Revenue Act of 1978" exempting NRSA awards from federal income taxation retroactive to 1974 does not also exempt the awards from Wisconsin income taxation for taxable years 1976 and 1977 because of the very clear and unambiguous language precluding that result in s. 71.02(2)(b)2 and 3, Wis. Stats.

The taxpayer has not appealed this decision.

Kenneth F. De Boer vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1980). During the years 1975-1977, Kenneth De Boer was a resident of Wisconsin. For the years 1975 and 1976, the department disallowed deductions by the taxpayer of land rents he paid to his wife, Sandra L. De Boer, in the amounts of $2,290 and $1,962, respectively. Also, for the years 1975 and 1976,

the department disallowed the taxpayer's splitting between himself and his wife income from the sale of livestock in the amount of $426. For the year 1977, the department disallowed $200 in wages paid by Mr. De Boer to his wife, but did allow $3,985 in wages verified as being actually paid to her. The taxpayer did not challenge this disallowance. The taxpayer did challenge the remaining adjustments to his 1975-77 Wisconsin returns.

Prior to and during the years 1975-77, Mr. De Boer engaged in the business of farming on farm lands he and his wife owned in joint tenancy. The buildings, machinery and livestock were owned in joint tenancy. Mr. De Boer and his wife purchased the farm in 1964 on a land contract with no down payment. Payments were made from the net farming income.

During the years 1975-77, milk and dividend checks were made out to both the taxpayer and his wife; both of them signed the checks; and the checks were deposited into joint checking accounts. The taxpayer and his wife had a joint checking account; Mrs. De Boer also had a personal account into which she deposited wages paid to her. In 1967, Mr. De Boer and his wife signed a joint venture agreement stating that their farm operation was, prior to 1967 and would be after 1967, conducted as a joint venture and that all their farm property was jointly owned.

During the years 1975-77, Mrs. De Boer functioned equally with the taxpayer in operating the farm with the exception that she did not milk. Her functions included: washing and feeding cows; raising calves; cleaning barns; hauling hay; running and repairing machinery; keeping books; and planning. The taxpayer and his wife did not keep partnership books during these years.

In the years 1975 and 1976, the rents paid by the taxpayer to his wife did not reflect the rental value of the farm but were amounts determined by the taxpayer in an attempt to give Mrs. De Boer one-half of what was left after paying taxes, bills and household expenses and paid every once in awhile.

During the years 1975-77, the taxpayer paid social security taxes on himself but Mrs. De Boer paid no social security taxes on herself. The farm income, with the exception of income from sale of livestock, was reported as a sole proprietorship. In 1975, amounts reported as sale of livestock included sales of swine. Subsequent to that year, Mr. De Boer and his wife no longer had a hog operation.

The Tax Appeals Commission ruled that the income and/or loss from sale of livestock in the years in question was income/loss from the farm business operations conducted by the taxpayer as a sole proprietor and as such was taxable solely to the taxpayer and could not be split with Mrs. De Boer.

The Commission also ruled that the taxpayer may not deduct from his farm business income land rents paid to his wife.

The taxpayer has appealed this decision to Circuit Court.

Eslinger, Mark H. and Lorraine R. vs. Wisconsin Department of Revenue, (Wisconsin Tax Appeals Commission, July 8, 1980). Taxpayers received an estimated assessment for the years 1977 and 1978 during which time they were residents of Wisconsin.

They maintained that they did not receive any income of any type for the years 1977 and 1978. Both taxpayers prepared, signed and filed with the Department of Revenue, Form 1, Wisconsin combined individual income tax returns for each year. The returns reflected zero Wisconsin income.

During the year 1977, Mark H. Eslinger was an employee for The Landy Company of Eau Claire and received $13,820.02 in wages. During the year 1978, he worked for The Landy Company, Armour-Star Company, Rochester Silo Company and Packerland Company, and received substantial wages therefrom.

During the year 1977, Lorraine Rose Eslinger was an employee of The Landy Company of Eau Claire and received $9,164.28 in wages. During the year 1978, she was an employee of The Landy Company, Wisconsin Beef Institute and Whitehall Packing Company, and received substantial wages therefrom.

During the period involved, the Eslingers sold two parcels of real estate they owned in Wisconsin. They did not report the sales on either their 1977 or 1978 Wisconsin income tax return. During 1977 and 1978, they also received rental income from the real estate they owned in Wisconsin, and in 1978 they held an auction sale at which they sold various items of personal property.

The Eslingers allege that the federal reserve notes they received during 1977 and 1978 from the above activities do not constitute legal tender and thus are non-reportable to and non-taxable by the State of Wisconsin. Mark H. Eslinger testified that he received approximately $16,500.00 in 1977 and $7,000.00 in 1978 in federal reserve notes.

The Wisconsin Tax Appeals Commission concluded that the federal reserve notes received by taxpayers during the years 1977 and 1978 constitute legal tender subject to Wisconsin income taxation. It ruled that the department acted properly in issuing an estimated assessment against taxpayers when they failed to accurately report their income for the years 1977 and 1978.

The taxpayers have appealed this decision to Circuit Court.

Vance A. Glewen vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1980). During the years 1975-1977, Vance A. Glewen was a resident of Wisconsin and engaged in the business of farming. For the years 1975-77, the taxpayer reported the farm income as a sole proprietorship, except the income from the sale of livestock which he allocated one-half to his wife. The department disallowed the taxpayer's allocation to his wife of one-half of the income from the sale of livestock.

The farming business was conducted on land rented from the taxpayer's father. Taxpayer owned no real estate during the years in question. Mr. Glewen and his wife started farming in 1972. During the years 1975-77, the taxpayer's operation was mostly a hog operation. He did have some cash crops but most crops he raised were used for feed. The taxpayer owned his own breeding stock during the years involved. In 1972 the taxpayer and his wife acquired 100 hogs, both signed the note to acquire these hogs. Mr. Glewen never bought sows; he always raised his own sows. He did

buy 10-15 boars once a year because he needed different stock.

For the years involved, the taxpayer and his wife do not claim to have had a partnership, but claim to be a joint venture. The taxpayer and his wife signed a joint venture agreement on February 15, 1979 although this agreement was not filed with the county clerk.

During the years involved, the taxpayer and his wife did not utilize partnership or joint venture accounting methods. Checks received by the taxpayer and his wife were written out in both names. The husband deposited proceeds from the sales in joint checking accounts. Mrs. Glewen testified it was her understanding that she owned one-half the livestock on the farm. Also, Mrs. Glewen participated substantially in the operation of the farming business and was paid wages for these services.

The Tax Appeals Commission ruled that the income from sale of livestock was income from the farm business operations conducted by the taxpayer as a sole proprietor. The income from the sale of livestock was assessable and taxable solely to the taxpayer.

The taxpayer has appealed this decision to Circuit Court.

J. John Gudenschwager, J. John Gudenschwager Family Estate vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 11, 1980). During the period 1973 through 1976, J. John Gudenschwager a/k/a J. John Gudenschwager Family Estate, was a resident of West Allis, Wisconsin. The issues for the Commission to determine were as follows:

(1) Whether the taxpayer's income earned during the year 1973 as an individual was reportable by him and not by a trust for Wisconsin income tax purposes.

(2) Whether the department's doomage assessment for the years 1974, 1975 and 1976 should be affirmed. The taxpayer failed to file returns for those years.

During the period under review, J. John Gudenschwager was a real estate salesman and managed a little laundry, did file and report his 1973 Wisconsin income as required but failed to file and report his 1974, 1975 and 1976 income to the department. The taxpayer contends that in the years 1974, 1975 and 1976 his business enterprise operated at a loss, therefore, he was not required to file his Wisconsin income tax return. Taxpayer claims he communicated to the department regarding his nonfiling for the years 1974 through 1976 as follows:

> "Re: Form 1 returns for 1974 and 1975
>
> The writer is the representative for the above named persons and will be happy to answer any inquiries you may have.
>
> The current address of the above is, 2304 S 66th Street, West Allis, WI 53214. For the periods here in question, the persons have been in a state of flux moving a total of three times.
>
> Mr. Gudenschwager has been self-employed for the periods here involved and for calendar year 1976 and 1977; in the commercial laundry business. Because of unsettled conditions, it has been difficult to file timely returns. The writer is in the process currently of bringing these filings up to date. Please be assured that there are nothing but reportable losses for all periods here involved. Any further questions, please address the writer. Signed Peter Y. Taylor, Sr."

The Department of Revenue based its assessment for the years 1974, 1975 and 1976 on the estimated (doomage) assessment in the following manner: For the year 1974 - $12,000 of taxable income, for the year 1975 - $13,000 of taxable income, for the year 1976 - $14,000 of taxable income.

During 1973 taxpayer had a "Family Trust", also known as an equity or constitutional trust, and conveyed to same various items of his real and/or personal property and the right to all income he received. In return, the taxpayer received all the beneficial ownership of his family trust, including the right to designate all owners of beneficial interests. After the taxpayer assigned his property and/or lifetime services to his trust, all the income he received was attributed by him to the trust, which used same to pay the personal deductible and nondeductible 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. Taxpayer retained complete control over this income and/or assets after the creation of the family trust involved.

The department, in its assessment, determined that the family trust could not be recognized for Wisconsin income tax purposes and recomputed the taxpayer's Wisconsin income tax liability based on said conclusion. Taxpayer appealed that determination to the Commission. The taxpayer was required by the department to report and file 1974, 1975 and 1976 Wisconsin income tax returns and taxpayer neglected and failed to report and file these returns as required.

The Commission concluded that:

(1) Income is taxed to the individual who earns it.

(2) The taxpayer performed services during the period under consideration and was compensated therefor; those amounts constituted gross income to the taxpayer when received, notwithstanding the trust agreement involved.

(3) The taxpayer's conveyance of his lifetime services and the income earned through the performance of those services was simply an assignment of income and ineffective to shift the tax burden from the taxpayer to his family trust.

(4) The amounts paid taxpayer in return for his services was income to him and should have been so reported.

(5) The taxpayer failed to file his Wisconsin income tax returns for the years 1974, 1975 and 1976 and the department's doomage assessment as assessed is presumptively correct and that the taxpayer failed to meet his burden of proof to show in what respects the department's action on his petition for redetermination was in error.

The taxpayer has appealed this decision to Circuit Court.

Curt G. Joa, Inc. vs. Wisconsin Department of Revenue (Wisconsin

Tax Appeals Commission, October 21, 1980). The taxpayer, Curt G. Joa, Inc., is a Wisconsin corporation which was engaged in business in Wisconsin during the year 1975. The department issued a $4,893.67 franchise tax assessment against the taxpayer covering the year 1975 in which it assessed tax, interest, fees and penalties. The taxpayer appealed the imposition of the 25% negligence penalty provided by s. 71.11(46), Wis. Stats.

The taxpayer was required by statute to file a Wisconsin corporation franchise/income tax return for the year 1975 by the 15th day of the third month following the close of the corporation's income year (March 15, 1976). It filed a "tentative" Wisconsin corporation franchise/income tax return on March 15, 1976. The taxpayer requested and was granted a thirty-day extension for filing its required 1975 Wisconsin return. It failed, however, to file its required Wisconsin franchise/income tax return by the extended date and did not file a return for 1975 until September 19, 1977. The taxpayer also requested and was granted extensions of time by the Internal Revenue Service in which to file its federal 1975 income tax return but failed to do so in a timely fashion.

The Wisconsin Department of Revenue and the Internal Revenue Service both audited the taxpayer's books and records covering the period 1971 through 1974 in 1975 and 1976. At the end of 1974, the taxpayer changed accountants and an assistant comptroller terminated his employment with Curt G. Joa, Inc. During the year 1975, the taxpayer moved a domestic subsidiary from Northbrook, Illinois to Wisconsin. It also expanded foreign sales, was engaged in business in 24 countries, and was invovled with a DISC, Joa, International.

As a business decision, the taxpayer desired to reflect both Wisconsin and federal audit changes in its 1975 franchise/income tax returns. However, neither the federal nor the state audits impaired the taxpayer's opportunity to file a timely 1975 Wisconsin franchise/income tax return.

The Commission concluded that the taxpayer's failure to file its 1975 Wisconsin corporation franchise tax return within the time allowed was not due to reasonable cause. Therefore, the department's imposition of the 25% negligence penalty was correct under the circumstances.

The taxpayer has not appealed this decision.

Randy Larsen vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 13, 1980). Taxpayer was a Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats. Taxpayer claims to have filed a 1975 Wisconsin income tax return. He testified that the return is what "people commonly call a Fifth Amendment return" and explained that on the return he objected to answering questions or providing information on the basis of the 5th Amendment to the U.S. Constitution, specifically his privilege against self-incrimination. The Department of Revenue denies receiving the return as it did not have it in its files.

On December 19, 1977, the department issued taxpayer a "Notice of Amount Due" for $1,660 of individual income tax, attaching an explanation that because taxpayer did not file a Wisconsin return as required by statute, the department estimated taxpayer's income and computed the tax due on that income.

At the February 20, 1979 public hearing before the Tax Appeals Commission on this appeal, taxpayer did not introduce a copy of his allegedly-filed 1975 Wisconsin income tax return and declined the afforded opportunity of introducing evidence or testimony regarding his income, deductions or other tax information for the calendar year 1975. Taxpayer repeatedly stated that he so declined on the basis of his privilege under the first, fourth, fifth, ninth, thirteenth and fourteenth amendments to the U.S. Constitution. He added that such evidence or testimony might tend to incriminate him under federal tax criminal statutes and said that he would testify only if he were guaranteed complete immunity from all federal and state prosecution.

At the Commission's hearing on this matter, taxpayer was afforded 30 days after his receipt of the hearing transcript to submit a written brief of his position, however, no written brief was submitted.

The Commission concluded that income tax assessments made by the department are presumptively correct and the burden of proof to establish that assessments are incorrect is on the person assessed.

Taxpayer failed to meet his burden of proof.

The taxpayer has not appealed this decision.

Nick Novasic vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 13, 1980). During taxable year 1974, taxpayer was a nonresident of Wisconsin who owned rental real property in Oak Creek, Wisconsin from which he derived a net profit of $50,862.20. This amount comprised taxpayer's only income subject to the Wisconsin tax during 1974.

Taxpayer filed his 1974 Wisconsin income tax return under date of June 18, 1976. Attached to that return was a copy of the 1974 federal income tax return for taxpayer and his wife. That return reflected federal adjusted gross income of $17,116.43 and itemized deductions of $12,795.17. On the federal return, besides the Wisconsin real property rental income, taxpayer reported dividend and interest income, capital gain income and a large net loss from rental property located outside of Wisconsin. This loss basically accounts for the difference between federal adjusted gross income ($17,116.43) and Wisconsin taxable income ($50,862.20).

On his 1974 Wisconsin income tax return, taxpayer claimed $38,001.65 as Wisconsin itemized deductions, rather than the $12,795.17 itemized deductions claimed on his 1974 federal return. Taxpayer calculated this amount by multiplying the federal itemized deductions by 2.97, a factor he determined, his representative testified, by literally applying the formula for nonresidents contained in s. 71.02(2)(f), Wis. Stats. ($50,862.20 ÷ $17,116.43 = 2.97; $12,795.17 × 2.97 = $38,001.65).

The issue was whether taxpayer was limited to claiming itemized deductions of $12,795.17 as shown on his 1974 federal income tax return, or may he claim $38,001.65 as itemized deductions as determined by his interpretation of the formula in s. 71.02(2)(f), Wis. Stats.

The Commission concluded that taxpayer may only claim $12,795.17 as Wisconsin itemized deductions.

The taxpayer has not appealed this decision.

Old Orchard Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). Taxpayer, Old Orchard Corporation, is a business corporation organized and existing under the laws of the State of Wisconsin with its principal offices located in Green Bay, Wisconsin. Taxpayer was formed in 1969 to build an apartment building in Green Bay, Wisconsin. It operated on a fiscal year ending on September 30 and reported net business losses from its operations of $53,633.03 in 1970, $51,503.98 in 1971, $35,183.69 in 1972 and $48,481.70 in 1973 for losses totaling $188,802.40.

In 1974, the apartment building in question was sold to a partnership consisting of the ten original stockholders of taxpayer plus another individual for the sum of $949,050.00 resulting in a gain of $183,430.65. Taxpayer used the loss carryover from the years 1970 through 1973 on its Wisconsin franchise/income tax return for the fiscal year ended September 30, 1974 to offset the gain from the sale of the building. Taxpayer was not in the business of buying and selling real estate and has not shown any compelling business reasons for the sale of its apartment building.

The department disallowed the loss carry forward claimed by taxpayer to the extent the loss carry forward was offset against capital gains income from the sale of the apartment building, which amounted to $183,430.65.

At the hearing before the Wisconsin Tax Appeals Commission, taxpayer modified its position reducing its claimed loss carryover of the business losses at issue from $183,430.65 to $73,017.69 which is the amount of depreciation claimed by taxpayer on the apartment building for the fiscal years 1970-1973.

The Commission ruled that the depreciation deducted by taxpayer during the fiscal years 1970-1973 as an annual expense was a write-off of the cost of an asset over the asset's life which could not be recovered as business income upon the sale of the asset in 1974. The Commission also ruled that the gain from the sale of taxpayer's apartment building does not constitute "net business income" within the intent and meaning of section 71.06 of the Wisconsin Statutes and cannot be offset by net business losses from prior years.

The taxpayer has not appealed this decision.

Joseph J. Puta vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). The sole issue in this case is whether or not the taxpayer properly filed a Wisconsin individual income tax return for the year 1977 without reporting his income on said return and by writing in the words "Object - 5th Amendment" and signing said return as "Object - 5th Amendment".

The taxpayer did not introduce any testimony or evidence as to his income for the year 1977 and refused to answer the department's questions as to his income.

The Commission stated that the department's estimated assessment of taxes in the amount of $1,665.00 is presumptively correct and that the burden of proof is on the taxpayer to offer credible testimony and evidence on his behalf. It ruled the taxpayer failed to prove his claim.

The taxpayer has not appealed this decision.

Steven R. Shumaker and Karen L. Shumaker vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 11, 1980). During the period January 1, 1977 through August 1, 1977, Steven R. Shumaker and Karen L. Shumaker were residents of La Crosse, Wisconsin. Taxpayers moved to Ohio where they became domiciled and which they claimed as their new residence after August 1, 1977.

In 1977 they sold their Wisconsin home, realizing a gain from the sale, and during 1977 purchased a replacement residence in a state other than Wisconsin (Ohio). Taxpayers also deducted their moving expenses incurred in moving from Wisconsin to Ohio.

The department assessed the 1977 gain on the sale of the Wisconsin residence, since the replacement residence was not located in Wisconsin. Also, moving expenses incurred to move from Wisconsin were disallowed.

Taxpayers contended these adjustments were in violation of the Wisconsin statutes, in violation of the Constitution of the State of Wisconsin, in violation of a person's rights under the Fourteenth Amendment to the Constitution of the United States and in violation of Article I, Section 8, and Article IV, Section 2 of the Constitution of the United States.

The Commission concluded that (1) the gain on a sale of real estate located in Wisconsin in 1977 as assessed was proper, and (2) the moving expenses incurred by the taxpayers in moving from the State of Wisconsin to another state are not deductible. The Commission indicated it does not have the authority to rule on questions of constitutionality, said power being retained by courts of record in the State of Wisconsin.

The taxpayers have not appealed this decision.

Howard U. Taylor, Margaret T. Taylor,Wayne Thomas Feyereisen, Frances C. Feyereisen, James W. McCarville, Karen Beth McCarville, Michael E. Fairfield, and Donna J. Fairfield vs. Dennis J. Conta, Individually and as Former Secretary of the Wisconsin Department of Revenue, and Mark E. Musolf, Individually and as Former Secretary of the Wisconsin Department of Revenue (Dane County Circuit Court, October 21, 1980). Taxpayers commenced this action on June 8, 1977 seeking declaratory judgment as to their Wisconsin income tax liability. On December 8, 1977, Judge Michael Torphy, to whom this case was then assigned, denied the department's motion to dismiss, ruling that this action was appropriate for declaratory judgment.

Subsequently, taxpayers filed a motion for summary judgment. In furtherance of that motion, both parties submitted a stipulation of facts. Those facts were repeated by taxpayers in their brief. The following summary of the facts is taken largely from that brief.

The eight taxpayers, (four couples), all resided in Wisconsin for varying periods of time prior to

calendar year 1976. Each couple owned the home in which they resided. In 1976, all male taxpayers were relocated by their respective employers to a location outside of Wisconsin. All taxpayers sold their homes in Wisconsin in 1976 and purchased new homes in the cities in which they resettled.

Each couple sold their Wisconsin residence at a gain. In all cases, all or substantially all of the realized gain was used to make the downpayment on the new residence or applied on the indebtedness owed on the new residence.

Under the federal income tax law, the gain on the sale of a taxpayer's principal residence is deferred from income taxation if certain conditions are met. In such case, the federal statutes require that the basis of the new residence be reduced by the amount of the nonrecognized gain so that, presumably, the gain will be carried forward and be reflected when and if the new residence is sold, (unless again deferred or forgiven under this or other code sections).

All taxpayers in this matter qualified for nonrecognition of their respective gain under section 1034 of the Internal Revenue Code of 1954. As a consequence, all taxpayers prepared and filed Form 2119 with their 1976 federal income tax returns, which form is required for the implementation of section 1034 (a).

Since all taxpayers were residents of Wisconsin for part of 1976, all were required to file and did file Wisconsin income tax returns for 1976. All disclosed on their respective Wisconsin income tax returns for 1976 the amount of the gain realized on the sale of their respective Wisconsin residences.

However, while the Wisconsin income taxation scheme is largely federalized, in the sense that it has adopted by reference most of the personal income and tax definitions, and permits most of the personal deductions and exemptions from income found in the Internal Revenue Code of 1954, including the nonrecognition of gain provision (sec. 1034 (a)) quoted above, the statutes make several significant departures from the federal law. Among these distinctions is one that has given rise to this action for declaratory relief. Specifically, Wisconsin accords its continuing residents the nonrecognition treatment of gain on the sale of a principal residence as provided for in section 1034 (a). That is, if a homeowning resident sells his or her principal residence for a gain, relocates within the boundaries of the State of Wisconsin, buys a new principal residence and otherwise qualifies under section 1034, he or she is permitted to defer that realized gain. However, if the home-owning resident happens to relocate beyond the boundaries of the State of Wisconsin, and would otherwise qualify for nonrecognition treatment under section 1034 (a), Wis. Stats. Sec. 71.05 (1) (a) 5 (1975) requires that taxpayer to include in his or her Wisconsin income for that year, the:

> "Gain on the sale or exchange of a principal residence, excluded under section 1034 (a) of the internal revenue code if the 'new residence' referred to therein is located outside this state."

Based on the above-quoted Wisconsin statute section, all taxpayers in this matter were assessed additional taxes for 1976, because none included their respective realized gains in their Wisconsin income for 1976.

In addition to the gain on the sale of their principal residences, at least some of the taxpayers also chose to deduct from their federal gross income, moving expenses incurred in their moves to their new homes in 1976. Such deductions are permitted by the federal law.

As in the case of the treatment of the gain on the sale of a principal residence, Wisconsin permits such moving expense deductions for relocating Wisconsin residents, but only if they remain in the state. Thus, Wis. Stats. Sec. 71.05 (1) (a) 7 (1975) provides that the following must be added back to federal adjusted gross income in order to arrive at a taxpayer's Wisconsin taxable income: "Moving expenses incurred to move from the state."

Taxpayers Howard Taylor and Michael Fairfield deducted their 1976 moving expenses. As a result, both were assessed additional taxes for 1976. The reason for the assessment was the fact that the taxpayers moved from the State of Wisconsin.

The issues before the Court were (1) whether s. 71.05 (1) (a) 5, Wis. Stats., which allows Wisconsin residents who sell their principal residence, relocate within Wisconsin, and otherwise qualify under I.R.C. section 1034 to defer recognition of the gain realized on the sale, while denying this deferral right to taxpayers who relocate outside the state, violates the privileges and immunities clauses (s. 2, Article IV and s. 1, 14th Amendment) of the U.S. Constitution, and (2) whether s. 71.05 (1) (a) 7, Wis. Stats., which allows a deduction for moving expenses for Wisconsin residents who relocate for employment purposes within the state but denies a similar deduction when the taxpayer relocates outside the state, violates the same privileges and immunities clauses.

The Court concluded that neither s. 71.05 (1) (a) 5 nor s. 71.05 (1) (a) 7, Wis. Stats., violates the privileges and immunities clauses of the U.S. Constitution and the motion for summary judgment was denied.

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

Peter Y. Taylor, Jr., and the Peter Y. Taylor, Jr. Family Estate (A Trust), Et. Al. vs. Wisconsin Department of Revenue (Supreme Court of the United States, June 2, 1980). This is an appeal of a Wisconsin Supreme Court order that denied taxpayers' petition to appeal the decision of the Wisconsin Court of Appeals which affirmed a judgment of the Milwaukee County Circuit Court denying a transfer of tax burden on compensation earned by taxpayers individually to a Family Trust.

Each of the taxpayers had created a "Family Trust", also known as an equity or constitutional trust, and conveyed to same various items of real estate and/or personal property and the right to all income they received. In return each taxpayer received all the beneficial ownership of his or her family trust, including the right to designate all owners of beneficial interest.

Income earned by the taxpayers and transferred to their respective trusts was used by the trusts to pay the personal deductible and non-deductible living expenses of the taxpayers and their families. Each taxpayer also served as manager of his or her trust, and any monies left over after payment of the living expenses

were paid to the taxpayer for services allegedly rendered in said capacity or to his or her designate. The taxpayers retained complete control over their income and/or assets after creation of the family trust involved.

The Court of Appeals concluded that the taxpayers could not transfer the tax burden on compensation which they earned to a family trust by transfer and assignment of their earned income for lifetime services to the family trust.

The Wisconsin Supreme Court subsequently denied the taxpayer's petition for review of the Court of Appeals decision and the taxpayers appealed to the Supreme Court of the United States.

The U.S. Supreme Court dismissed this appeal for want of jurisdiction.

Erwin J. Thoenes vs. Wisconsin Department of Revenue (Wisconsin Court of Appeals, September 25, 1980). This is an appeal of a Circuit Court of Milwaukee County judgment which affirmed a Wisconsin Tax Appeals Commission decision that denied a shifting of tax burden from the taxpayer to a family trust. (A summary of the Circuit Court's decision is in WTB #19.)

The issue on appeal was whether taxpayer can transfer his tax burden on income earned by real estate transferred to a "Family", constitutional or equity trust, effective control over which was retained by him. The Court of Appeals concluded he cannot. Although income was not expressly assigned to the trusts by the taxpayer, the facts support the findings that income attributed to the trusts during the taxable years in question, 1972 and 1973, was in fact income earned by the taxpayer which should have been reported as such.

The Wisconsin Court of Appeals affirmed the Circuit Court judgment.

The taxpayer has not appealed this decision.

Union Prescription Centers, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1980). Union Prescription Centers, Inc. was a Delaware corporation doing business in Wisconsin, subject to the franchise tax provisions of Chapter 71, Wis. Stats. For the taxable years ending May 31, 1971 to May 31, 1975 the department issued an assessment of franchise tax and interest for income from the sale of franchises and from payments based on 4% of the franchisees' gross receipts. The taxpayer contended that this income was allocable to the taxpayer's state of residence (Delaware) and not subject to the Wisconsin franchise tax.

During the years involved, the taxpayer engaged in 2 types of business operations in Wisconsin: (1) selling franchises for retail drug stores, and (2) managing or assisting in managing franchised retail drug stores. Taxpayer's business activities included locating potential franchisees and helping the franchisee begin operations. Such help has included loaning money to franchisees to assist their starting business. In taxable year 1974, taxpayer acquired and ran a store in Wisconsin Rapids for a portion of the taxable year and had income from that operation. Taxpayer also purchased prescription drugs in large quantities from manufacturers, stocked the drugs in its Milwaukee warehouse, and sold the drugs to franchisees at cost plus 4% (to cover the operations of the warehouse); this allowed the relatively small franchisees the benefit of mass purchasing. Beginning January 1972, taxpayer continued this service but discontinued maintaining its warehouse; at that time, it arranged mass purchasing from major wholesalers and manufacturers which agreed to ship directly to franchisees.

During the years involved, the taxpayer assisted franchisees as follows: obtaining prescription drugs at volume discount rates; choosing the location for the pharmacy; ordering, stocking and displaying products; developing proper labor organization and community contacts; providing financial and accounting services; and assisting in promotion and advertising.

A franchisee had 2 obligations to the taxpayer. First, a franchisee was required to pay a one-time franchise fee. This fee entitled a franchisee to use the name "Union Prescription Center", to benefit from the goodwill attached to the name, to benefit from taxpayer's close relationship with labor union organizations, and to purchase from taxpayer prescription drugs at beneficial rates. Secondly, after a franchisee began operating, it was required to pay the taxpayer 4% of its gross receipts.

During the taxable years ending May 31, 1971 to 1973, taxpayer received one-time franchise fees and the continuing 4% payments of $1,910,207.70. Taxpayer contended that under the statutes, the amounts are allocable to the taxpayer's state of residence (Delaware) and are not subject to the Wisconsin franchise tax.

On its Wisconsin franchise tax returns for the taxable years ending May 31, 1971 to 1973, taxpayer listed the income identified above in its total gross receipts from all sources and subtracted it, claiming it was not subject to Wisconsin's franchise tax. The taxpayer also claimed that the department's assessment for taxable years ending May 31, 1971 and 1972 was foreclosed by the 4-year statute of limitations and is not permitted under the 6-year statute of limitations. The department contended that the assessment is allowable under the 6-year statute of limitations.

On the 1971 and 1972 Wisconsin tax returns filed, the taxpayer did not include franchise payments received during 1971 and 1972 taxable years. Nor did the Wisconsin total income reported contain at least 75% of taxpayer's "net income properly assessable".

The statutes involved were s. 71.07(1), 1969 Wis. Stats. and 71.11(21)(bm) and (g), 1975 Wis. Stats., which read in part:

> "71.07(1) For the purposes of taxation income or loss from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived . . . All other income or loss, including royalties from patents, income or loss derived from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall follow the residence of the recipient, except as provided in s. 71.07(7) . . ."
>
> "71.11(21) Additional Assessments, When Permitted.
>
> (bm) With respect to assessments of income received in the calendar year 1954 or corresponding fiscal year, and in sub-

sequent years, such notice shall be given within 4 years of the date the income tax or franchise tax return was filed.

(g) Notwithstanding any other limitations expressed in this chapter, an assessment or refund may be made: 1. If notice of assessment is given within 6 years after a return was filed, if the taxpayer reported for taxation on his or her return less than 75% of the net income properly assessable, except that no assessment of additional income may be made under this paragraph for any year beyond the period specified in par. (bm) unless the aggregate of the taxes on the additional income of such year is in excess of $100." (emphasis added)

The issues involved are as follows: Is the income received by the taxpayer from the sale of franchises and from payments based on 4% of a franchisee's gross receipts "income. . . from business" and subject to Wisconsin's franchise tax or "other income" and not subject to Wisconsin's franchise tax?

Are the assessments of franchise tax for taxable years ending May 31, 1971 and 1972 barred by the 4-year statute of limitations under s. 71.11(21) (bm) or are the assessments allowable under s. 71.11(21) (g), Wis. Stats.?

The Tax Appeals Commission ruled that the taxpayer's income received in taxable years ending May 31, 1971 to 1973 from the sale of franchises and from payments based on 4% of a franchisee's gross receipts constitutes "income . . . from business" under s. 71.07(1), Wis. Stats., and is subject to Wisconsin's franchise tax. Also, the taxpayer's assessments of franchise tax for taxable years ending May 31, 1971 and 1972 are barred by the 4-year statute of limitations under s. 71.11(21) (bm), Wis. Stats., but are not barred under the 6-year statute of limitations under s. 71.11(21) (g), Wis. Stats.

The taxpayer has not appealed this decision.

WTMJ, Inc. and Newspapers, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 23, 1980). The sole issue relates to whether or not it was correct for the department to impose on taxpayers the addition to the tax and delinquent interest for taxable year 1973. The taxpayers, WTMJ, Inc. and Newspapers, Inc., were Wisconsin corporations, wholly owned by The Journal Company.

Neither taxpayer filed a declaration of estimated tax nor paid any estimated tax during 1973. Instead, The Milwaukee Journal, the parent corporation of each taxpayer, filed its own declarations and paid its own estimated taxes in a large enough amount to cover the taxes estimated to be due of The Journal Company and of the taxpayers. Taxpayers contend that the declarations filed and estimated taxes paid by their parent corporation satisfy the requirements and liabilities of the taxpayers. They contend that the intent of s. 71.22, Wis. Stats., is to assure timely payment of taxes owing and that this intent was satisfied and met by the parent corporation.

The Commission ruled that each taxpayer was required to file its own timely declarations of estimated tax and pay each installment on the due date. It concluded that the assessments for additions to the tax were correct and the department was correct in assessing each taxpayer delinquent interest for failure to timely pay estimated franchise taxes in 1973. The Commission also stated that the increased amount of the parent corporation's estimated tax payments did not excuse taxpayers from the declaration and payment requirements of the Wisconsin statutes.

The taxpayers have not appealed this decision.

SALES/USE TAX

Donna Brewer vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission Oral Decision of October 28, 1980). The taxpayer operated two separate businesses in Eagle River, a motel and a tavern. The department issued the taxpayer a seller's permit for each location under the same number, but with a suffix "A" on the permit for the motel and a "B" for the tavern.

On June 17, 1979 the taxpayer ceased business operations at both the motel and the tavern and the next day, June 18, surrendered both seller's permits to the department's local office. The taxpayer then sold the business assets of the tavern on June 20 and on the next day reopened the motel. Therefore, the taxpayer ceased operating her motel for 3 days during which she sold her tavern and claimed the sale of the tavern assets was an exempt occasional sale under ss. 77.51 (10) (a) and 77.54 (7), Wis. Stats.

The department's contention was that this was not an exempt occasional sale because the sale was *not* an "isolated and sporadic" sale. The taxpayer operated a motel business continuously except for the 3 day period. Since she intended to continue to operate the motel at the time she sold the tavern business assets, the department's position was that she needed a seller's permit at the time the tavern assets were sold.

The Wisconsin Tax Appeals Commission found that at the time of the sale of the tavern business assets the taxpayer did not hold and was not required to hold a seller's permit. Therefore, the sale was an exempt occasional sale.

The department has appealed this decision to Circuit Court.

Chicago Bridge & Iron Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission Oral Decision of September 12, 1980). The issue in this case is the measure of the tax in computing the Wisconsin use tax on items fabricated out-of-state that are installed in Wisconsin. The use tax is imposed under s. 77.53(1), Wis. Stats.

The taxpayer fabricates tanks and vessels in Illinois which it used in construction work in Wisconsin. The taxpayer contended that it should be taxed on the actual materials brought into Wisconsin (average cost of material times the weight of the materials actually shipped into Wisconsin). The department computed the tax based on the purchase price of all the materials purchased for use in fabricating tanks and vessels which are to be installed in Wisconsin, including the materials which end up as scrap in the fabricating process, reduced by the sales price of scrap subsequently sold.

Section 77.53(1) specifically provides that "an excise tax is hereby levied and imposed on the storage, use or other consumption in this state of tangible personal property

. . . at the rate of 4% of the sales price of the property . . . . " Several words and phrases require definition; the first being the word "use", which is defined in s. 77.51 (15) and (16), and the phrase "sales price" defined in s. 77.51 (12), especially paragraph (a) (intro).

In looking at s. 77.53 (1), the use tax is imposed upon use in this state of tangible personal property measured by the sales price. The phrase "in this state" is important and would favor the taxpayer's argument, the Tax Appeals Commission indicated.

Interpreting the phrase "sales price" in s. 77.53 (1) is also a problem. Applying the rule of interpretation that tax cannot be imposed without clear and express language for that purpose, it appeared to the Commission that the phrase "sales price" as defined in s. 77.51 (12) can apply to the purchase by the taxpayer of the tangible personal property which it acquired in Illinois. This is very general language and under the very unique circumstances of this case and different circumstances, this very general language of s. 77.51 (12) (a) can be interpreted to apply to the purchase by the taxpayer of its raw materials.

The Commission was concerned that the department's interpretation allowing a credit for scrap sold against the measure of the tax is not supported by clear statutory language. The Commission referred to the Wisconsin Supreme Court's decision in the Moebius case, which had been discussed and cited by the taxpayer. The language in that case reads "Although the use and sales taxes are complementary and supplementary, the scope of the use tax is not merely a function of the scope of the sales tax. The two are separate taxes." The Supreme Court also said in this case that, "If tangible property . . . is not stored, used or otherwise consumed in this state within the statutory meaning of those words, then no event taxable under the use tax provisions has occurred, even if the sale of that property or service in Wisconsin would be taxable under Section 77.52 . . .", which the Commission said "we all know to be the imposition of the sales tax".

The Commission also was concerned that a holding in favor of the department might appear to result in an interpretation of the use tax whereby Wisconsin's use tax could possibly be perceived as applying to uses and transactions occurring outside the State of Wisconsin. In this very unique factual situation this use took place in Illinois.

The Commission found that the proper way for the taxpayer to determine its use tax liability is based on the price it paid for tangible personal property which it actually incorporated into the finished items which it sold to Wisconsin users. Therefore, the measure of the use tax is based on the average cost of the materials becoming a component part of the tanks and vessels shipped into Wisconsin times the weight of the items actually shipped into Wisconsin.

The department has not appealed this decision.

H. Derksen & Sons Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1980). In September 1976 the taxpayer purchased cigarette and candy vending machines and a one dollar changing machine from Winchester Vending Corp. at the time Winchester went out of business. It also purchased the Winchester name and put the name "Winchester Vending Corp., a division of H. Derksen & Sons, Inc." on a calendar it distributed.

The department assessed sales tax against the daxpayer as a successor to Winchester and the assessment consisted of two elements: (1) additional sales tax in the amount of $734.66 for the period December 1973 through September 1976 based on amended returns filed by Winchester subsequent to the sale of its vending machines to the taxpayer; and (2) sales tax in an amount of $1,453.60 assessed on the sale of Winchester's assets to the taxpayer because Winchester held a seller's permit at the time of the sale.

The department obtained a judgment against Winchester for the $734.66 liability but was unable to collect this amount. The department also entered into an installment agreement with an officer of Winchester and he made payments of $350 to reduce the liability.

The Commission concluded that as a successor of Winchester the taxpayer was liable for the additional sales tax of $734.66 from business operations during the period December 1973 through September 1976. However, the taxpayer was not liable as a successor for the $1,453.60 due from Winchester's sale of its assets to the taxpayer because Winchester could have surrendered its seller's permit at any time on the day of the sale.

The department has appealed this decision to Circuit Court.

Midcontinent Broadcasting Company of Wisconsin, Inc. vs. Wisconsin Department of Revenue (Wisconsin Supreme Court, Docket 78-203, September 30, 1980). This was an appeal from a decision of the Court of Appeals holding that a sale of broadcasting equipment by the taxpayer who held a seller's permit was an exempt "occasional sale" under ss. 77.54 (7) and 77.51 (10) (a), Wis. Stats. (A report of the Court of Appeals decision is found in Wisconsin Tax Bulletin, Number 16.) The Supreme Court reversed the Court of Appeals decision and found the sale was taxable.

The taxpayer obtained a seller's permit to sell phonograph records advertised on its two television stations. While it held the seller's permit, the taxpayer sold its tangible and intangible business assets used in operating its television broadcasting stations. The Supreme Court found the sale of the taxpayer's business assets was taxable because it held a seller's permit at the time of the sale.

Milwaukee Brewers Baseball Club vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 27, 1980). The issues in this case are whether a person who has taxable admissions is able to purchase tickets used to conduct the business, and promotional items transferred to certain customers, without the imposition of a sales or use tax.

The taxpayer is engaged in the ownership and operation of a professional baseball franchise known as the Milwaukee Brewers, with the principal office located at Milwaukee County Stadium. The Milwaukee Brewers are a member team of the American League and play a home and away schedule consisting of ap-

proximately 162 games during the baseball season. The baseball games played in Wisconsin at Milwaukee County Stadium are referred to as "home games" and the remaining games played outside Wisconsin are "road games". During the regular professional season the taxpayer has 81 scheduled home games and 81 scheduled road games. In connection with its home games, taxpayer sells admission tickets on both a season ticket and individual game basis.

For the audit period, the Department of Revenue increased the taxpayer's use tax base by $95,274 which represented amounts paid by the taxpayer to an out-of-state vendor for the purchase of admission tickets. The use tax base was also increased by the amount of $172,331 representing amounts paid by the taxpayer to out-of-state vendors for purchases of baseball bats, jackets, seat cushions, baseball helmets and other promotional items. The promotional items are transferred only to customers in connection with the purchase of paid admission tickets to one of the taxpayer's home games.

The Commission concluded that the admission tickets do not constitute taxable retail sales within the meaning of s. 77.51 (4), Wis. Stats., as the cost of the admission tickets are already charged sales tax in its price of admission. The promotional items, such as baseball helmets, seat cushions and jackets, which are acquired by taxpayer for transfer to its customers by buying an admission ticket for certain home games, are acquired in transactions and do not constitute separate retail sales within the meaning of s. 77.51 (4), Wis. Stats.

The department has appealed this decision to Circuit Court.

William A. Mitchell vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). The taxpayer was doing business as Mitchell Vending Company, a sole proprietorship, with its principal office in Menomonie Falls, Wisconsin.

The taxpayer was in the business of providing coin-operated amusement devices (for example, juke boxes, pinball machines, pool tables, bowling games and other coin-operated amusement devices) to business establishments, such as bowling alleys, bars and restaurants. The taxpayer agreed with the owners of the business establishments that in exchange for the privilege of locating its equipment on their premises, the owners would receive a percentage of the gross receipts from the equipment. The percentages varied between owners and types of business premises and did not appear to have an established pattern. There was no testimony or evidence that any of the gross receipts splitting arrangements were done by written agreement; testimony implied that the arrangements were verbally agreed to. The company collected the receipts from its equipment, divided the receipts with the owners of the business premises, and was responsible for the equipment's maintenance and repair.

For taxable year 1974, the taxpayer filed sales tax returns, declaring $80,468.50 as his measure of tax and $3,218.74 as his gross sales tax, all resulting from receipts from the coin-operated amusement equipment. The taxpayer credited against the gross tax from receipts the amount of sales or use tax he paid on his purchase of equipment. The department disallowed this credit.

The taxpayer did not file a timely sales or use tax return for 1975. The department determined that the taxpayer's taxable gross receipts from his equipment were $68,698.11 in 1975, resulting in $2,747.92 gross tax. Taxpayer claimed as a credit against this gross tax the sales or use tax which he paid when he purchased coin-operated equipment for the business. The department disallowed the credit and asserted the negligence penalty under s. 77.60 (4), Wis. Stats., for the taxpayer's negligent failure to file timely.

On September 10, 1976, the taxpayer terminated his business and sold all his coin-operated amusement devices for $104,200 while he held a seller's permit, and he did not collect or report sales tax on the sale. The department assessed gross tax of $4,168 on this sale, plus interest. The taxpayer claimed the transaction constituted an exempt occasional sale under s. 77.54 (7), Wis. Stats.

The taxpayer testified that he merely ran his business and left all tax accounting, preparation and filing up to his accountant; that he signed any tax documents prepared by his accountant; and that he did not recall whether or not he signed or filed returns for taxable year 1975. The accountant testified that he believed he filed sales tax returns for 1975, but he really was not certain that he did.

(a) Issue: Did the taxpayer prove that his failure to file a timely 1975 sales tax return "was due to reasonable cause and not due to neglect" under s. 77.60 (4), Wis. Stats.? Decision: No. The taxpayer did not prove that his failure to file a timely 1975 sales tax return "was due to reasonable cause and not due to neglect" under s. 77.60 (4), Wis. Stats. Both the taxpayer and his practitioner did not demonstrate failure due to reasonable cause. Negligence of a practitioner is imputed to a taxpayer and, in this case, the taxpayer's reliance on his practitioner and the practitioner's negligence in not filing does not excuse the taxpayer.

(b) Issue: Was the taxpayer's September 10, 1976 sale of his coin-operated amusement devices while he held a valid seller's permit an occasional sale and exempt under s. 77.54 (7), Wis. Stats.? Decision: No. The taxpayer's September 10, 1976 sale of the coin-operated amusement devices which he used in his business, while he held a seller's permit for that business, is not an exempt occasional sale.

(c) Issue: Was the taxpayer a lessor of the coin-operated amusement devices so that he would be eligible for a credit for sales taxes paid on equipment purchases under s. 77.51 (11) (c) 5, Wis. Stats.? Decision: No, taxpayer was not a lessor of coin-operated amusement devices and, therefore, was not entitled to the credit. Taxpayer purchased tangible personal property (the devices) then used the property to provide a taxable service. The Commission cited ss. 77.51 (24) and 77.52 (2) (a) 2, Wis. Stats., as authority for this decision.

The taxpayer has appealed this decision to Circuit Court.

Gordon Obermann vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission Oral Decision of October 28, 1980). The issue in this case was whether a per-

son with 2 seller's permits for 2 businesses can surrender both permits, and then sell one business as an exempt occasional sale, when he knows the other business will be reopened in several days.

The taxpayer operated 2 separate businesses, the Rest Well Resort and the Eagle River Appliance Center. Each business had a seller's permit. On April 26, 1979 the taxpayer ceased business operations all day at both locations, and at 5:45 p.m. the taxpayer surrendered both his seller's permits to a representative of the department. On April 27 the business assets of the Rest Well Resort were sold. Then on May 1 the department reactivated the seller's permit of the Eagle River Appliance Center, and on May 3, 1979 the Appliance Center again opened its doors for the sale of appliances.

The department's position was that the sale of the resort was not an exempt occasional sale, because during this entire period the taxpayer was required to hold a seller's permit for the operation of its appliance business. However, the Commission ruled in favor of the taxpayer and found that the sale of the resort was an exempt occasional sale under s. 77.51(10) (a) and s. 77.54(7), Wis. Stats.

The department has appealed the decision.

Dennis R. Olkwitz vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 13, 1980). Taxpayer, Dennis R. Olkwitz, was the president of Comunicon Corp., from 1973 to 1975 when the corporation filed for bankruptcy. During that period, Comunicon incurred a sales tax delinquency in the total amount of $978.78 plus interest. On July 31, 1978, the Department of Revenue issued an assessment against taxpayer, as an officer of Comunicon Corp., under s. 77.60(9), Wis. Stats., providing for personal liability of any officer or employee meeting requirements of that section.

Taxpayer did not dispute his liability as an officer of Comunicon for the sales tax at issue but challenged the imposition of interest on said assessment. Taxpayer contended that the department was aware in 1975 of Comunicon's sales tax liability and bankruptcy but failed to assess him personally at that time, waiting until August 10, 1978, nearly three years later, to issue an assessment. Taxpayer contends that the department by this delay, unnecessarily ran up interest on the assessment at issue.

Prior to filing bankruptcy, taxpayer, as officer of Comunicon, had filed sales tax returns timely but didn't always pay on time, and taxpayer and the department had worked out a payment plan whereby a representative of department collected delinquent taxes at regular intervals.

The Commission concluded that s. 77.60(9), Wis. Stats., expressly provides that statutory time limitations imposed for sales tax assessments do not apply in cases of officer liability. Therefore, the department was within its statutory authority in making the assessment. Also, the imposition of interest is mandatory under s. 77.60, Wis. Stats., and the Commission stated it lacked authority to overrule the department's imposition of interest.

The taxpayer has not appealed this decision.

Peck Meat Packing Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 13, 1980). Taxpayer was a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. The Department of Revenue maintained that taxpayer's activities did not constitute "manufacturing" under s. 77.51(27), Wis. Stats. Taxpayer contended that its activities consisted of "manufacturing" under this statute's definition for purposes of the sales and use tax exemption under s. 77.54(6) (a) for machines, specific processing equipment and replacement parts therefor.

During the period involved herein, taxpayer's principal business activity was "deboning" cow beef carcasses by separating the carcasses into several boneless cuts of beef, all according to customer specifications. The beef was removed from carcasses and had bones, muscles and fat removed to make it suitable for further processing by other manufacturers, such as sausage makers, hamburger makers, chili makers, chopped, molded, and frozen steak makers, and large restaurant commissaries. Sales were made to wholesalers, not retailers, at locations throughout the United States and abroad. The bones were sold for further processing, either to renderers or soup makers. The inedible product was sold to renderers or to others to make chemicals.

A substantial portion of the cow carcasses was furnished to taxpayer's Milwaukee boning plant by either wholly-owned slaughterhouse subsidiaries or by taxpayer itself which purchased the cows and slaughtered them at its Michigan slaughterhouse facility.

The deboning process conducted at the Milwaukee facility involved the following steps: slaughtered cow carcasses, which had no commercial use at that time, were delivered to the facility; the carcasses came into the facility under the supervision of federal inspectors where they were cut into quarters and placed in coolers; quarters of like kind and physical quality required to fill special orders were assembled and sent down a moving table top where boners deboned the meat; front quarters were then broken down into primal cuts (such as chuck, rib, naval and shank) which are then deboned and trimmed to meet a customer's specifications; as bones and other nonedible materials are removed from meat, they are placed on a separate conveyor system for removal; the physical content of boneless meat is regulated during the boning and trimming process and an in-plant laboratory chemically analyzes each load sold; boneless meat is sorted and trimmed by people according to orders and packed to customer specification; some boneless meat is sold fresh and some stored in taxpayer's freezers or outside freezers; boneless beef is boxed in containers ranging from 5 lb. boxes to 2,000 lb. containers; taxpayer's refrigerated trucks often ship boneless beef to customers.

Taxpayer's factory personnel who work in meat deboning are referred to as "boners" and "trimmers". They are highly skilled, require a training period varying from 2 months for trimmers to one year for some boners, and are highly compensated for their work.

The entire operation is under the supervision of the U.S. Department of Agriculture ("USDA"), which monitors and regulates every aspect of the operation. For example, the USDA inspects the carcasses which

enter the facility, inspects the meat at various stages of processing, and approves and stamps the finished product that leaves the facility according to U.S. government specifications. Taxpayer can only use machinery and equipment which is USDA approved. Taxpayer uses machinery in its processes, including electric band saws, conveyor systems and a skinning machine.

Taxpayer's processes produce a new article with a different form, different use and different name. The live cattle and carcasses which taxpayer starts with are broken down into boneless beef of various sizes, qualities and physical characteristics, many of which are prescribed by taxpayer's customers. The use of the boneless beef is entirely different from the use of the carcasses (ex., carcasses have no use in their original form other than to be subjected to taxpayer's processes; boneless beef has many uses). Before a carcass goes through taxpayer's processes, it is a "carcass"; afterward, each end product has its own trade name, such as chuck, rib, navel, shank, boneless rib, spencer roll, rib-eye, inside muscle, clods, and knuckles. Each finished product is traded and priced in commerce under its own name and trade specification.

Taxpayer's processes are popularly regarded as manufacturing by persons familiar with the processes, with manufacturing in general, and with the industry in which taxpayer is engaged. Expert witnesses testified to this effect.

The Commission concluded that taxpayer was engaged in "manufacturing" as the term is defined in s. 77.51 (27), Wis. Stats., and is entitled to the sales and use tax exemption under s. 77.54 (6) (a), Wis. Stats.

The department has not appealed this decision.

J. C. Penney Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 6, 1980). The appeal to the Commission related to the Department of Revenue's action on the taxpayer's two petitions for redetermination of two assessments of sales and use taxes for the periods February 1, 1970 through January 31, 1975 and September 1, 1969 through January 31, 1970. During this period J. C. Penney Co., Inc., was a Delaware corporation, and had its principal place of business in New York, New York, and was qualified to conduct business in Wisconsin and therefore was subject to the sales and use tax provisions of Chapter 77, Wis. Stats.

Taxpayer, J. C. Penney Co., Inc., has a large chain of department stores in Wisconsin and is principally engaged in the general merchandising business. Taxpayer conducts a state-wide mail order business and has J.C. Penney catalogs mailed from Indiana to prospective customers throughout Wisconsin. Taxpayer's catalogs are produced outside of Wisconsin by R.R. Donnelley Company in Warsaw, Indiana. The catalogs in question are shipped from Indiana to designated addresses, free of charge, throughout Wisconsin in accordance with address labels prepared in advance and placed on said catalogs in Indiana. Taxpayer uses additional methods of distributing its catalogs to residents of Wisconsin by distributing said catalogs to independent contractors or through its department stores located in Wisconsin.

J. C. Penney Co., Inc., by the use of its catalog system, transacts business with nonresidents who direct Penney's to ship purchased goods to a designated address in Wisconsin. Taxpayer will collect a use tax from the out-of-state purchaser when the Wisconsin user has the same last name as the purchaser and will remit the tax to Wisconsin. But taxpayer considers an out-of-state nonresident purchaser whose last name is different from the person receiving the purchased merchandise in Wisconsin to be making a gift and does not impose a sales tax on said merchandise.

Taxpayer, in order to promote sales in its general merchandising stores throughout the United States, advertises through various media including newspapers. Taxpayer had printed for its use various advertising supplements for insertion in various newspapers located in Wisconsin. Said supplements were produced by an independent contractor, R. A. Ramberg, located in Minnesota. The printer, R. A. Ramberg, arranged for shipment of these "advertising supplements" to be included in certain Wisconsin newspapers, as an advertising supplement, with a small amount of supplements being sent to the taxpayer's department stores in Wisconsin.

The Department of Revenue contended that the catalogs, out-of-state purchases and advertising supplements were taxable. The taxpayer contended that Wisconsin cannot tax these items.

The Commission concluded that J. C. Penney Co., Inc. catalogs shipped from Indiana to its prospective customers in Wisconsin are not taxable within the intent and meaning of the sales and use tax provisions of s. 77.53 (1), Wis.Stats. The Commission also concluded that the sales and use tax provisions of s. 77.52 (1) do not contemplate the imposition of a sales tax on merchandise purchased through the taxpayer's catalog by nonresident out-of-state customers for shipment to Wisconsin residents. Finally, the Commission concluded that the advertising supplements printed on behalf of the taxpayer for insertion into designated Wisconsin newspapers are exempt under s. 77.54 (15).

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

James Peterson Sons, Inc., Et. Al. vs. Wisconsin Department of Revenue (Circuit Court of Taylor County, July 25, 1980). This was an appeal from the January 18, 1979 decision of the Wisconsin Tax Appeals Commission. The question in this case is whether the furnishing of trucks by a partnership and sole proprietor to James Peterson Sons, Inc. and others were taxable leases of trucks or nontaxable hauling operations.

The stipulated facts essential to the appeal are found in paragraphs 10, 11, 12 and 13 of the Stipulation, as follows:

> "10. The partnership and sole proprietorship both own trucks, and both have LC authorities to haul certain products within a specified area. The corporation is a contractor and its principal business is in road construction."
>
> "11. Quite often the corporation is in need of the use of a vehicle for the hauling of products used in their road construction activity. The corporation would then make arrangements for the utilization of the partnership's trucks, as well

as the trucks of the sole proprietorship."

"12. Neither the partnership, nor the sole proprietorship furnish the drivers. The drivers are the employees of the corporation."

"13. There are instances in which the partnership and sole proprietorship charge still other parties for the use of these vehicles, and in those situations the corporation again furnishes the driver, but the corporation is paid by the partnership for the driver's wages, and the other party in turn pays the partnership one payment which includes the charge for the driver."

Section 77.52 (1), Wis. Stats., imposes a tax on the gross receipts from the sale, lease or rental of tangible personal property as the term lease is defined in s. 77.51 (23), Wis. Stats., to include "rental, hire and license". No further definition is provided in Chapter 77, nor are any examples or guidelines given.

The Court indicated that in the law, a lease of tangible personal property usually means a contract by which one owning such property grants to another the right to possess, use and enjoy it for a specified period of time in exchange for a periodic payment of a stipulated price or amount, referred to as rent.

Given the stipulated set of facts, it appears clear that the partnership and the sole proprietorship furnish trucks for the use of the corporation and in turn are compensated for such use (Stipulations 10-12). Further, it was stipulated that, on occasion, the partnership and sole proprietorship furnish for compensation trucks to still other parties (Stipulation 13).

In comparing these facts with the applicable statute, s. 77.52 (1), Wis. Stats., and the obvious, ordinary, and accepted meaning of the term "lease", the Court said the activities in question appear to fall clearly within the statute and thus would be taxable.

The taxpayer argued that the statute is essentially defective in that no specific definition of a truck-type lease is provided, and based upon this alleged omission, reviewed the motor vehicle code and the definitions included therein. The Court found that the Legislature in enacting statutes of this nature is not required to list or itemize every possible specific object of taxation, nor to otherwise specifically define the parameters of each and every taxing enterprise. The alleged failure of s. 77.52 (1), Wis. Stats., to further define "lease" or its application to motor vehicle leasing arrangements is not fatal. This is particularly so when the term "lease" has a common and well understood meaning amongst the general populace.

Therefore, the Court found that the statute is legally sufficient for the purposes of imposing a tax on leasing operations, including motor vehicle leasing operations.

The taxpayer claimed that the situation is muddied, however, by the interjection of Wis. Adm. Code Tax 11.29 (4) (c) which provides:

"Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks and the Public Service Commission and the Department of Transportation's Division of Motor Vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable."

This administrative regulation appears to follow the provisions of s. 194.01 (15), Wis. Stats., which states:

". . . The lease or rental of a motor vehicle to a person for transportation of the person's property which lease or rental directly or indirectly includes the lessor's services as a driver shall be presumed to be transportation for hire and not private carriage, except under arrangements approved by the commission and the department . . ."

The taxpayer claimed that under this provision its common carrier services are not "leases". By implication they are not taxable under the sales tax statutes. However, the Court found there was a flaw in this argument because neither the Legislature nor the Department of Transportation, nor the Public Service Commission have determined that such transportation services are or are not leases. What has been determined, and codified is that for regulatory purposes when a driver is supplied by the lessor the service is a transportation service and regulated as a common carrier rather than as a private carrier. According to Ch. 194, the service is still designated and considered to be a leasing arrangement, but for motor vehicle regulatory purposes, when a driver is provided it falls under the purview of the common carrier regulations and not private carriage.

The Court indicated the administrative decision codified in Wis. Adm. Code rule Tax 11.29 (4) (c) is based on s. 194.01 (15), Wis. Stats. The administrative code section creates a distinction between transportation services in which a driver is provided and those in which a driver is not provided. The former is not subject to sales tax while the latter is. Such a distinction does not by its existence create an ambiguity. Further, the distinction appears to have a rational basis.

When a driver is furnished more than mere "tangible personal property" is being furnished—a human being is also being furnished. Although there can be instances in which a human being can be "rented", such an arrangement seems more in the nature of a "hiring" than a rental. No such distinction occurs when the only item being rented is a piece of mechanical equipment.

Secondly, the taxpayer's argument about the degree of control over the property being a determining factor in a lease vs. nonlease question is support for the proposition that this is a leasing situation. Certainly the providing of a human driver provides the lessor with a greater degree of control over the ultimate use and care afforded equipment than when such a driver is not provided. A human driver, ultimately responsible to the lessor for his or her job, is more likely to be concerned about the continued welfare and well being of the vehicles being used than would a driver employed by the lessee. The lessor's driver would be more inclined to ensure that the vehicle is used in a manner commensurate with the interest of the employer and not in a manner adverse to the best interests of the lessor. When the vehicle is turned over to a lessee without a driver the vehicle is far more vulnerable to being used in a manner unknown or unforeseen by the lessor.

Finally, the effect of the administrative regulation on this question is misdirected. Even assuming that the regulation is somehow illegal - which the taxpayer has not contended - it would not insulate the taxpayer from the payment of sales taxes.

Based on the foregoing, the Court finds that there is no ambiguity in the taxing statutes and that the leasing arrangement described in the stipulated facts is taxable under Chapter 77, Wis. Stats.

The taxpayer has not appealed this decision to Circuit Court.

HOMESTEAD CREDIT

Kurt M. Stege vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 16, 1980). During the entire calendar year 1977, taxpayer, Kurt M. Stege, was a legal resident of Wisconsin. Mr. Stege timely filed a Wisconsin combined individual income tax return for 1977 and attached a 1977 Wisconsin homestead credit claim (Schedule H) to that return. On his 1977 Wisconsin income tax return, Mr. Stege reported net taxable income of $0 and showed $18.52 of Wisconsin tax withheld from his wages for 1977. The taxpayer claimed a $136.52 refund, comprised of his homestead credit claim of $118 for 1977, together with the excess Wisconsin withholding tax of $18.52.

The department disallowed the taxpayer's claim of $118 for homestead credit stating as its reason that at the time of filing such claim, the taxpayer was residing in a homestead which was not subject to real estate taxes. The department did allow, however, a refund of $18.52 claimed as excess income tax withheld.

During the entire calendar year 1977, the taxpayer and his spouse resided at 812-D Eagle Heights Apartments, Madison, Wisconsin, which were and are owned by the University of Wisconsin and operated under the authority of the University of Wisconsin Board of Regents. Such apartments were available to married students attending the University of Wisconsin-Madison. Mr. Stege and his wife continued to reside at the Eagle Heights address at the time of filing the homestead credit claim on or about February 27, 1978.

As residential property for married students at the Madison campus, the University of Wisconsin-Madison pays a school tax under s. 70.114, Wis. Stats., to the City of Madison (for the Madison school district) for the property comprising Eagle Heights Apartments. The department and the taxpayer were not aware of any other taxes under Chapter 70, Wis. Stats., which the University pays or is legally obligated to pay with respect to such property.

The level of rents charged by the University of Wisconsin-Madison to the residents of Eagle Heights Apartments reflects the school tax which the University is required to pay on behalf of those residents. For the 1977 calendar year, the taxpayer paid rent totaling $1,479, of which $705.98 represented rent for occupancy only, to the University Housing Office, 625 Babcock Drive, Madison, Wisconsin, which collected the rent on behalf of the University of Wisconsin-Madison.

The sole issue involved was whether the taxpayer at the time of filing his 1977 homestead credit claim resided in housing that was exempt from taxation under Chapter 70, within the meaning of s. 71.09 (7) (t), Wis. Stats. Taxpayer is otherwise qualified under s. 71.09, Wis. Stats., to receive the homestead credit he claimed.

The Tax Appeals Commission ruled that at the time the taxpayer filed his 1977 Wisconsin homestead credit claim, he was residing in housing which was subject to taxation under Chapter 70 of the Wisconsin Statutes, and therefore this housing was not "exempt from taxation under ch. 70" within the meaning of s. 71.09 (7) (t) 1, 1977 Wis. Stats. The taxpayer being otherwise eligible was entitled to file a Wisconsin homestead credit claim for 1977.

The department has not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

INCOME TAXES

I. Federal Revenue Rulings Issued In 1980

Facts and Question: Do 1980 federal revenue rulings affect Wisconsin? For the 1980 taxable year, Wisconsin follows the federal law in effect as of December 31, 1979 in computing income and deductions, with exceptions for special federal provisions for benefits received from an employer's educational assistance program, foreign living cost deductions, and amortization of pollution control facilities. Federal laws enacted in 1980 do not apply for Wisconsin for 1980. A question has been raised whether a federal revenue ruling issued in 1980 applies to Wisconsin for the taxable year 1980.

Answer: A federal revenue ruling is an Internal Revenue Service interpretation of an existing federal law. If a federal revenue ruling issued in 1980 or thereafter relates to an interpretation of a federal law enacted on or before December 31, 1979, the revenue ruling will apply for Wisconsin as well as federal for the taxable year 1980. For example, Revenue Ruling 80-275, which was issued in 1980 (as indicated by the first two serial numbers of the ruling), applies to Wisconsin for 1980, since it interprets a law which was enacted on or before December 31, 1979.

If a revenue ruling was issued in 1980 which interpreted a federal law enacted after December 31, 1979, such revenue ruling would not apply to Wisconsin for 1980 because for the taxable year 1980, Wisconsin does not follow federal laws (or interpretations thereof) which were enacted after December 31, 1979.

II. 12% Rent Credit/Homestead Credit Based on Rent Paid by the Performance of Services

Facts & Questions: Situation #1 - A resident manager occupies an apartment for which the normal rent is $3,600 per year. Because of her managerial services she is only required to pay $1,200.

Situation #2 - A resident manager occupies an apartment free of charge. The normal rent is $4,800. As manager, he is paid $5,000 cash for performing managerial services. The entire $9,800 ($4,800 + $5,000) is subject to social security tax, but only $5,000 is subject to income tax.

Situation #3 - A minister employed as a teacher at a parochial school receives a rental allowance of $1,200 per year from the church and this rental allowance is determined to be not includible in income for tax purposes. He makes total cash rental payments of $2,400 per year to his landlord.

Situation #4 - A minister of a church occupies a parsonage rent free. The parsonage is assessed real property taxes of $1,000 which the church pays. The fair rental value of the house is $4,200 per year.

What amount of rent may be used to compute the rent credit under s. 71.53 and homestead credit under 71.09(7) assuming the persons in these 4 situations qualify for these credits.

Answers: Situation #1: For both the 12% rent credit and homestead credit, the manager may use total rent of $3,600 ($1,200 in cash and $2,400). The fair rental value of services performed, as measured by the $2,400 reduction in rent allowed, constitutes rent paid in cash or its equivalent.

Situation #2: The manager may base his 12% rent credit and homestead credit on $4,800 of tax free rent, which is deemed to be rent paid by equivalent services.

Situation #3: The minister employed as a teacher is able to claim both the 12% rent credit and homestead credit based on rent paid of $2,400, even though $1,200 of the teacher's salary designated for housing is not includible in taxable income.

Situation #4: The minister is considered to have paid rent in the form of ministerial services for the free rent received. The 12% rent credit and homestead credit are based on the total fair rental value of the residence of $4,200. Fair rental value means the rent that would normally be paid at arms length. If the parsonage was exempt from real property tax, no rent credit or homestead credit would be allowed unless the exempt housing is owned and operated by a public housing authority, which makes payments in lieu of property taxes to the municipality in which the property is located.

In all of the above situations, rent paid in cash or its equivalent must be reduced as follows: For the 12% rent credit, rent paid must be reduced by the reasonable value of domestic, food, medical or other services furnished by the landlord which are unrelated to use of the dwelling as housing. For homestead credit, rent must be reduced by the reasonable value of utilities, and the reasonable fair rental value of furniture and appliances furnished by the landlord.

Limitations are applied to the amount of rent used in the computations. For the rent credit, 20% of the rent is considered if the landlord furnishes the heat, or 25% if the tenant furnishes the heat. For homestead credit, 25% of the rent for occupancy only is considered, limited to $1,000 for the year 1980.

III. 12% Rent Credit-Computing Rent Paid By Farmers Operating on Shares

Facts & Question: Many agreements between operating farmers and landowners state that each will provide certain property, supplies or services, and gross receipts will be split between them in some manner. For example, assume the agreement provided for the farmer to live in a house owned by the landowner and for the farmer to give 25% of the crop proceeds to the landowner. For 1979, the landowner received $2,000 from the farmer as the landowner's 25% share of the crop proceeds. In this example, how is the farmer's "rent paid" computed for purposes of determining the 12% rent credit under s. 71.53, Wis. Stats.?

Answer: The amount which may be used as "rent paid" by such farmers for the 12% rent credit allowed on 1979 and subsequent years Wisconsin individual income tax returns is the fair rental value of the residence. For example, if the fair rental value of the residence was $1,200, the amount of "rent paid" for the 12% rent credit would be $1,200. However, if the fair rental value of the residence was $2,400, the "rent paid" could be no more than the total crop proceeds paid to the landowner, i.e., $2,000 in this example.

The fair rental value of the residence should be determined by comparing the cost of renting similar residences in the area. The fair rental value can be established by obtaining an appraisal from a qualified real estate or rental agent, or by a reasonable determination made by the landowner. The fair rental value may be questioned by the department if the amount appears unreasonable.

IV. Itemized Deduction For Death Taxes

Facts and Question: Under Internal Revenue Code section 691(c), a miscellaneous itemized deduction is allowed for federal estate taxes (reduced by any credits against the tax) attributable to income in respect of a decedent.

Effective for the 1979 taxable year and thereafter, s. 71.02(2)(f), Wis. Stats., excludes itemized deductions for taxes allowable under section 164 of the Internal Revenue Code. Section 164 of the Code provides for a deduction of state and local income taxes, real estate taxes, gas taxes, sales taxes, and personal property taxes.

Can individuals claim federal estate taxes attributable to income in respect of a decedent as an itemized deduction for Wisconsin purposes in the 1979 taxable year and subsequent taxable years?

Answer: Yes, since Wisconsin law excludes only deductions for taxes allowable under section 164 of the Internal Revenue Code, the deduction for death taxes provided under section 691(c) continues to be available for Wisconsin purposes in 1979 and subsequent years as a miscellaneous itemized deduction.

V. How to Prorate Deductions and Personal Exemption Credits When Husband and Wife Have Different Residency Status

BACKGROUND:

Part-year residents and nonresidents of Wisconsin are required to prorate their itemized deductions or standard deduction and personal exemption credits on their Wisconsin income tax returns. For married persons (both nonresidents and part-year residents), the proration of itemized deductions or the standard deduction is based on the ratio of their combined Wisconsin total income to their joint or combined federal adjusted gross income. (Section 71.02(2)(f) for itemized deductions and Section 71.02(2)(gq)7 for the standard deduction.) The proration of personal exemption credits for nonresidents is based on this same ratio (Section 71.09(6p)(d)2). The proration of personal exemption credits for part-year residents is based on the number of months they were Wisconsin residents (Section 71.09(6p)(d)1).

The question arises as to how the deductions and personal exemption credits should be computed where residency status of one spouse is different than the residency status of the other spouse.

LAW RELATING TO PRORATION:

Section 71.02(2)(f) - Itemized Deductions "Itemized deductions means deductions from federal adjusted gross income allowable under the internal revenue code in determining federal taxable income, other than the federal standard deduction, low-income allowance and deductions for personal exemptions; but with respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state in the calendar year 1972 or corresponding fiscal year or thereafter, "itemized deductions" are limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except for married persons "itemized deductions" are limited to such fraction of the amount so determined as combined Wisconsin adjusted gross income is of combined or joint federal adjusted gross income."

Section 71.02(2)(gq)7 - Standard Deduction "With respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state, for the taxable year 1977 and thereafter, the low-income allowance authorized under this paragraph is limited by such fraction of that amount as Wisconsin adjusted gross income is of federal adjusted gross income for unmarried persons, and as combined Wisconsin adjusted gross income is of combined or joint federal adjusted gross income for married persons."

Section 71.09(6p)(d) - Personal Exemption Credits "Beginning with the calendar year 1975 and corresponding fiscal years and thereafter, the deduction for personal exemptions provided for in this subsection shall be limited as follows:

1. With respect to persons who change their domicile into or from this state during the taxable year, personal exemptions shall be limited to such fraction of the amount so determined that the time of domicile within this state is of the total time during the taxable year, but the total deduction for all personal exemptions shall not be less than $5.

2. With respect to nonresident persons, personal exemptions shall be limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except that for married persons personal exemptions shall be limited to such fraction of the amount so determined as combined Wisconsin adjusted gross income is of combined federal adjusted gross income, but the total deduction for all personal exemptions shall not be less than $5."

HOW TO DETERMINE PRORATION

When husband and wife have different periods of Wisconsin residency, the spouse who claims the deduction or exemptions determines what, if any, proration must be made. This means that a different total deduction or exemption credit may be allowable on a tax return, depending on which spouse actually claims the deductions or the exemption credit. The following examples indicate how the itemized deductions, standard deduction and personal exemption credits are prorated when husband and wife have different periods of Wisconsin residency during a taxable year:

Part-year residents prorating personal exemption credits must use the following proration ratios:

Number of Months a Resident	Proration Ratio	Number of Months a Resident	Proration Ratio
1 month	= .083	7 months	= .583
2 months	= .167	8 months	= .667
3 months	= .250	9 months	= .750
4 months	= .333	10 months	= .833
5 months	= .417	11 months	= .917
6 months	= .500	12 months	= 1.00

EXAMPLES:

Situation 1: Full-year resident and part-year resident

FACTS:

Taxpayer is a full-year Wisconsin resident who marries a person who is a nonresident until marriage in 1980. His wife then becomes a Wisconsin resident. She is a Wisconsin resident for six months in 1980.

Joint federal adjusted gross income (husband & wife)	$20,000
Husband's Wisconsin total income (1980 Form1, Line 38)	$13,000
Wife's Wisconsin total income (1980 Form 1, Line 38)	$ 2,000
Total itemized deductions available for Wisconsin	$ 4,000

SOLUTION:

Any portion of the itemized deductions claimed by the husband (a full-year resident) are not prorated. If he claims the full $4,000, the entire amount is allowable. If the wife would claim any portion of the itemized deductions, that portion would be prorated in a ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income. For example, if the husband claims $3,000 of the itemized deductions, that amount would not need proration. The other $1,000 allocated to the wife (a part-year resident) would be prorated using a proration percentage of 75% [15,000 (Wis. Total Income of H & W) ÷ 20,000 (Fed. Adj. Gross Income of H & W) = 75%]. She would be allowed a deduction of $750 ($1,000 × 75%). The same reasoning would be used in determining how much personal exemption credit would be allowed. There are two exemptions ($20 for each spouse) for a total of $40. If the husband claimed the full $40, there would be no proration. If the wife claimed any portion of the credit, that portion would be prorated based on the number of months of her Wisconsin residency in 1980. For example, if she claimed the whole exemption credit, the $20 credit for each spouse would be prorated based on six months residency to arrive at a total credit allowed to her of $20 ($20 × .500 = $10 for each spouse; $10 + $10 = $20 total credit allowed).

Situation 2: Part-year resident and nonresident

FACTS:

Taxpayer is a single individual and a resident of Wisconsin for three months in 1980 until her marriage to a nonresident of Wisconsin at which time she moves out of Wisconsin. She is a part-year resident of Wisconsin for three months in 1980 and her husband is a nonresident of Wisconsin for the entire year 1980. Husband has two dependents.

Joint federal adjusted gross income (husband and wife)	$15,000
Wife's Wisconsin total income (1980 Form 1, Line 38)	$ 5,000
Husband's Wisconsin total income (1980 Form 1, Line 38)	-0-
Total itemized deductions available for Wisconsin	$ 3,500

SOLUTION:

The first step is to determine whether the itemized deductions or the Wisconsin standard deduction is greater. Using Table C of the part-year residents and nonresidents standard deduction tables, and Wisconsin combined total income of $5,000, a standard deduction of $4,000 is determined. There would be no add-on for dependents since their federal adjusted gross income exceeds $12,000. Therefore, the $4,000 standard deduction would be prorated since it is larger than the itemized deductions ($3,500). To prorate this amount, the ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income is used to find the allowable standard deduction of $1,333 [$4,000 × ($5,000 ÷ $15,000) = $1,333]. Since the husband (a nonresident) has no Wisconsin income, he would not claim any personal exemption credit. The exemption credits would be claimed by the wife (a part-year resident) and must be prorated using the part-year resident method. There are four exemptions (husband, wife and two dependents) for a total of $80 available and these would be prorated based on the number of months (3) that the wife was a resident of Wisconsin in 1980. The total allowable credit would be $20 ($20 × .250 = $5 for each spouse, $40 × .250 = $10 for dependents; $5 + $5 + $10 = $20 total credit allowed).

Situation 3: Part-year resident and nonresident

FACTS:

Taxpayer is a widow with four dependents and is a Wisconsin resident for six months in 1980 until her marriage to a nonresident of Wisconsin after which she moves out of Wisconsin. Her spouse has two dependents.

Joint federal adjusted gross income (husband and wife)	$100,000
Husband's Wisconsin total income (1980 Form 1, line 38)	$ 5,000
Wife's Wisconsin total income (1980 Form 1, line 38)	$ 5,000
Total itemized deductions available for Wisconsin	$ 15,000

SOLUTION:

The itemized deductions would require proration using the ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income. The allowable deduction would be $1,500 [$15,000 × ($10,000 ÷ $100,000)]. This amount could be divided between spouses in any manner they choose. The manner in which the amount of personal exemption credit available is to be prorated is dependent on which spouse claims the credit. There are eight exemptions (husband, wife and 6 dependents) or $160 available for prorating. If the wife (a part-year resident) claimed the whole credit, the allowable amount would be $80 ($20 × .500 = $10 for each spouse, $120 × .500 = $60 for dependents; $10 + $10 + $60 = $80 total credit allowed). If the husband (a nonresident) claimed the credit, the allowable amount would be $16 [$20 × ($10,000 ÷ $100,000) = $2 for each spouse, $120 × ($10,000 ÷ $100,000) = $12 for dependents; $2 + $2 + $12 = $16 total credit allowed]. Therefore, the total personal exemption credit allowed would vary depending on which spouse claimed the credit.

Situation 4: Part-year resident and nonresident

FACTS:

Taxpayer is single and a resident of Wisconsin for one month in 1980 until her marriage to a nonresident after which she moves out of Wisconsin. There are no dependents.

Joint federal adjusted gross income (husband and wife)	$25,000
Husband's Wisconsin total income (1980 Form 1, line 38)	$ 2,500
Wife's Wisconsin total income (1980 Form 1, line 38)	-0-
Total itemized deductions available for Wisconsin	-0-

SOLUTION:

The first step is to determine the correct available deduction. Using Table C of the part-year residents and nonresidents standard deduction tables, a deduction of $4,000 would be determined. This amount would be prorated using the ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income to get the allowable deduction of $400 [$4,000 × ($2,500 ÷ $25,000)]. The total personal exemption credit available for two exemptions is $40. Since the husband (a nonresident) would be claiming the entire credit (because the part-year resident wife has no income), the allowable amount would be $4 [$20 × ($2,500 ÷ $25,000) = $2 for each spouse; $2 + $2 = $4 total credit allowed]. Since this is less than the $5 minimum total personal exemption credit allowable, the $5 minimum should be claimed.

Situation 5: Full-year resident and nonresident

FACTS:

Wife is a full-year resident of Wisconsin for 1980, married to a person who is a nonresident of Wisconsin for the entire year 1980. They maintain separate domiciles for the entire year 1980. Wife has one dependent and husband has one dependent.

Joint federal adjusted gross income (husband and wife)	$40,000
Wife's Wisconsin total income (1980 Form 1, line 38)	$ 6,000
Husband's Wisconsin total income (1980 Form 1, line 38)	$10,000
Total itemized deductions available for Wisconsin	$ 6,000

SOLUTION:

Since wife is a full-year resident of Wisconsin, any deductions or exemption credit claimed by her need no proration. If, for example, she claimed the full $6,000 of itemized deductions, she is allowed the entire amount. Any amount of itemized deductions claimed by the husband (a nonresident) must be prorated using the ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income. For example, if the wife (a full-year resident) claims $1,000 of deduction, no proration of that amount would be required. The $5,000 allocated to the husband would have to be prorated to determine his allowable deduction of $2,000 [$5,000 × ($16,000 ÷ $40,000)]. There are four exemptions (husband, wife and 2 dependents) or a total of $80 available. If the full-year resident wife claimed the entire $80, no proration would be needed. If the nonresident husband claimed the $80, his allowable credit would be $32 [$20 × ($16,000 ÷ $40,000) = $8 for each spouse, $40 × ($16,000 ÷ $40,000) = $16 for dependents; $8 + $8 + $16 = $32 total credit allowed].

Situation 6: Full-year resident and nonresident

FACTS:

Taxpayer is a full-year resident of Wisconsin for 1980 who marries a nonresident on December 31, 1980. Her spouse is a nonresident for the entire year 1980. There are no dependents.

Joint federal adjusted gross income (husband and wife)	$40,000
Husband's Wisconsin total income (1980 Form 1, line 38)	$10,000
Wife's Wisconsin total income (1980 Form 1, line 38)	-0-
Total itemized deductions available for Wisconsin	$ 8,000

SOLUTION:

The husband (a nonresident) would be claiming the itemized deductions since the wife had no income. Therefore the itemized deductions must be prorated using the ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income to get $2,000 allowable [$8,000 × ($10,000 ÷ $40,000)]. The personal exemption credits would be prorated using the

same formula since the husband would be claiming the credit. A total of $40 is available, so the prorated credit would be $10 [$20 × ($10,000 ÷ $40,000) = $5 for each spouse; $5 + $5 = $10 total credit allowed].

Situation 7: Both part-year residents but for different periods

FACTS:

Taxpayer was a nonresident of Wisconsin who moved into Wisconsin on April 1, 1980 (he was a part-year resident of Wisconsin for 9 months in 1980). He then marries a nonresident who also moves to Wisconsin on October 1 (she was a part-year resident for 3 months in 1980). There are no dependents, but wife is over age 65.

Joint federal adjusted gross income (husband and wife)	$10,000
Husband's Wisconsin total income (1980 Form 1, line 38)	$ 5,000
Wife's Wisconsin total income (1980 Form 1, line 38)	$ 1,000
Total itemized deductions available for Wisconsin	-0-

SOLUTION:

Since both husband and wife are part-year residents, the amount of standard deduction available requires proration based on the ratio of the spouses' combined Wisconsin total income to their joint federal adjusted gross income. Using Table D of the part-year residents and nonresidents standard deduction tables, and combined Wisconsin total income of $6,000, a standard deduction of $4,800 is determined. The allowable prorated standard deduction would be $2,880 [$4,800 × ($6,000 ÷ $10,000)]. This total can be divided between husband and wife in any way they choose. A total personal exemption credit of $45 is available ($20 exemption credit for the husband and $25 credit for the wife). If the husband, a part-year resident for nine months, claims the whole $45, a total credit of $33.75 would be allowed ($20 × .750 = $15 for husband, $25 × .750 = $18.75 for wife; $15 + $18.75 = $33.75 total credit allowed). If the wife, a part-year resident for three months, claims the whole $45, a total of $11.25 would be claimed by her ($20 × .250 = $5 for husband, $25 × .250 = $6.25 for wife; $5 + $6.25 = $11.25 total credit allowed).

CORPORATION INCOME/FRANCHISE TAX

I. Corporation's Rental Income and Sale of Rental Property

Facts & Questions: A corporation headquartered outside of Wisconsin has a Wisconsin division that manufactures products, has retail sales of its manufactured products, rents its manufactured products and has sales of its rented manufactured products both within and without Wisconsin. The Wisconsin Supreme Court in Kearney & Trecker Corporation vs. Wisconsin Department of Revenue (91 Wis.2d 746, October 9, 1979) stated that income derived from the lease of tangible personal property follows the situs of the property from which derived. How is the rental income from manufactured products to be treated? How are sales of equipment previously rented to be treated?

Answers: Rental income from the manufactured products follows the situs of the property and is non-apportionable under s. 71.07(1m), Wis. Stats. Gains and losses on the disposal of the previously rented property are business income or loss and subject to apportionment for the years 1976 and thereafter.

II. Wisconsin Net Operating Loss and Wisconsin Net Operating Loss Carryforward

For income years 1976 and thereafter, s. 71.06, Wis. Stats., provides that a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 5 preceding income years to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the income year for which an offset is claimed. Income having a Wisconsin situs under s. 71.07(1m), Wis. Stats., whether taxable or exempt, shall be included in Wisconsin income and Wisconsin net business income. How is s. 71.06 interpreted as it relates to the situations described below:

a. What constitutes an income year?
   Any period for which a corporation is required to file a return in an income year. This normally is for a 12 month period. However, if a corporation changes its year end from one fiscal year to another fiscal year or calendar year or from a calendar year to a fiscal year, a short period return is required (in no case shall a return be made for a period of more than 12 months). In such a case, this short period return constitutes one income year.
b. What happens to the net business loss of a corporation which is a party to a reorganization?
   If the laws of the state pursuant to which the reorganization was accomplished provide for continued existence of the dissolved company in the survivor, the Wisconsin net business loss may be carried forward; if they do not provide for continued existence, the Wisconsin net business loss may not be carried forward. The laws of Wisconsin do not provide for continued existence, so that in reorganizations accomplished pursuant to Wisconsin statutes, the Wisconsin net business loss of the dissolved corporation cannot be carried forward.
c. For what items of income must the loss be adjusted or offset against? The Wisconsin net business loss reported for tax purposes must be adjusted for such items as exempt interest, deductible dividends, and nontaxable life insurance proceeds. The income to which this loss is carried forward must be adjusted for these same items (exempt interest, deductible dividends and nontaxable life insurance proceeds) plus Section 337 capital gains that were excluded from income.
d. How Wisconsin net business loss offset is determined.

   1) "Wisconsin only" Corporation. A corporation which has business income only attributable to Wisconsin is required to adjust its Wisconsin net business loss offset by the items mentioned in part c. above. If the corporation has other nonbusiness income outside Wisconsin (income following situs of property) pursuant to s. 71.07(1m), Wis. Stats., it is not required to adjust its loss by this nontaxable income. The fol-

lowing example illustrates this type of corporation.

(a) FACTS:	1979	1980
Wisconsin Net Income (Loss) Before Offset	$ (30,000)	$ 50,000
Nontaxable or Exempt Income Deducted:		
Outside Wisconsin Rent Income (Net)	$ 4,000	$ 4,000
Outside Farm or Mining Income (Net)		$ 2,000
Deductible Dividends	$ 1,000	$ 2,000
Gain on Life Insurance Death Benefit	$ 15,000	

(b) COMPUTATION OF LOSS OFFSET AVAILABLE:

Wisconsin Net Income (Loss) Before Offset	$ (30,000)	$ 50,000
Adjustments:		
Deductible Dividends	1,000	2,000
Gain on Life Insurance Death Benefit	15,000	
Adjusted Wisconsin Net Income (Loss)	$ (14,000)	$ 52,000
Net Income Before Offset per Return		50,000
Income to Reduce Loss Offset		$ 2,000
1979 Adjusted Loss		(14,000)
Wisconsin Net Business Loss Offset to Claim on 1980 Return		$ (12,000)

2) "Multi-State" Corporation. A corporation that has business income in more than one state that is filing on apportionment would have two types of income: Situs income (following situs of property) and business income (following situs of business). The Wisconsin net business loss is determined by the amount of such loss attributable to Wisconsin. Total company income (loss) must be adjusted by items of income as set forth in part c. above. Items of income following situs of the property are shown as non-apportionable in computing the Wisconsin net income (loss). Gains (losses) on the sale of business assets are treated as business income. Gains (losses) on non-business assets are treated as non-apportionable. The following example illustrates this type of corporation:

(a) FACTS:	1979	1980
Total Company Net Income (Loss)	$ (25,000)	$ 32,000
Total Company Non-Apportionable Income (Loss)	(1,000)	2,000
Apportionable Income (Loss)	$ (24,000)	$ 30,000
Percent to Wisconsin	66.67%	60%
Amount to Wisconsin	$ (16,000)	$ 18,000
Wisconsin Non-Apportionable Income (Loss)	-0-	-0-
Wisconsin Net Income Before Offsets (per return)	$ (16,000)	$ 18,000
Items included or deducted in above:		
Loss on Sale of Out-of-State Business Assets	$ 6,000	
Loss on Sale of Out-of-State Non-Business Assets	$ 4,000	
Net Rental Income Outside Wisconsin	$ 3,000	$ 2,000
Deductible Dividend	$ 9,000	$ 10,000

(b) COMPUTATION OF LOSS OFFSET AVAILABLE:

Total Company Net Income (Loss)	$ (25,000)	$ 32,000
Adjustment: Deductible Dividends	9,000	10,000
Adjusted Total Net Income (Loss)	$ (16,000)	$ 42,000
Total Company Non-Apportionable Income (Loss)	(1,000)	2,000
Apportionable Income (Loss)	$ (15,000)	$ 40,000

Percent to Wisconsin	66.67%	60%
Amount to Wisconsin	$(10,000)	$ 24,000
Wisconsin Non-Apportionable Income	-0-	-0-
Adjusted Wisconsin Net Income (Loss)	$(10,000)	$ 24,000
Wisconsin Net Income Before Offset (per return)		18,000
Income to Reduce Loss Offset		$ 6,000
1979 Adjusted Loss		(10,000)
Wisconsin Net Business Loss Offset to Claim on 1980 Return		$(4,000)

Note: The gain or loss on the sale of business and non-business assets are included in the computation of the net income or loss. Beginning with the law change to s. 71.06, Wis. Stats., for 1976 and thereafter (Chapter 224, Laws of 1975), the loss offset is not adjusted for non-business losses.

e. What effect do nontaxable gains due to a Section 337 liquidation have on the loss carryover?
Gains on the sale of assets in liquidation which are nontaxable pursuant to s. 71.337, Wis. Stats., must be included in income to determine a loss offset available. The following example illustrates this situation:

(a) FACTS:	1979	1980
Wisconsin Net Income (Loss) Before Offset	$(30,000)	$ 40,000
Nontaxable or Income Items Deducted:		
Deductible Dividends	$ 3,000	$ 5,000
Sec. 337 Gains Excluded		$ 20,000
(b) COMPUTATION OF LOSS OFFSET AVAILABLE:		
Wisconsin Net Income (Loss) Before Offset	$(30,000)	$ 40,000
Adjustments:		
Deductible Dividends	3,000	5,000
Sec. 337 Gains Excluded		20,000
Adjusted Wisconsin Net Income (Loss)	$(27,000)	$ 65,000
Net Income Before Offset (per return)		40,000
Income to Reduce Loss Offset		$ 25,000
1979 Adjusted Loss		(27,000)
Wisconsin Net Business Loss Offset to Claim on 1980 Return		$(2,000)

FARMLAND PRESERVATION CREDIT

Determining A Corporation's Income

Facts and Question: For purposes of meeting the eligibility requirements for the Farmland Preservation Credit, the first income year of the newly formed corporation may consist of twelve months or less. For example, a corporation formed on July 1, 1980 and adopting a calendar income year would have a 1980 income year of July 1, 1980 through December 31, 1980, a period of six months. In computing the "income" of a corporation claiming a farmland preservation credit, s. 71.09 (11) (a) 6.b., Wis. Stats., provides that such income shall include not only the corporation's income for the income year but also the household income of each of its shareholders of record at the end of its income year. In computing the corporation's farmland preservation credit for 1980, how is "income" computed for the corporation and its shareholders?

Answer: The "income" would include (a) the corporation's income for the period July 1, 1980 through December 31, 1980, and (b) for each shareholder of record as of December 31, 1980, such shareholder's income for the 12 month period ending December 31, 1980. It should be noted that even though the corporation includes its income for only a six month period, the shareholders must report their income for a twelve month income year ending December 31, 1980.

The income of the corporation for the six month period July 1, 1980 through December 31, 1980 does not have to be annualized.