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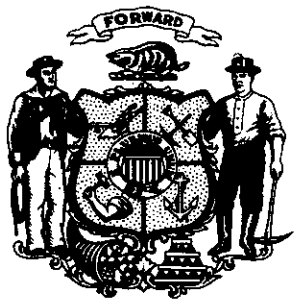

EFFECT OF HOWICK DECISION ON GAINS

A Tax Release on pages 9-11 of Wisconsin Tax Bulletin (WTB) Number 23 (July, 1981) relating to the Howick decision explains how to determine gain or loss from sales of assets acquired prior to becoming a Wisconsin resident. Information in that Tax Release concerning the computation of gains should be disregarded. The Tax Release on page 13 of this WTB explains how gains should be computed.

The information on pages 9-11 in WTB Number 23 pertaining to losses is still valid.

PROPERTY TAX DEFERRAL PROGRAM DELAYED

Secretary of Revenue Mark Musolf indicated that loans will not be granted for 1981 property taxes under the Property Tax Deferral Program (see WTB #24 for a description of this program). Rather, *loans will first be granted for 1982 taxes based on loan applications filed January 1 through June 30, 1983.* High interest rates and bonding are reasons for the delay in implementing this program.

NEW TAX LAWS ENACTED IN NOVEMBER AND DECEMBER

The following new tax laws were enacted by the Legislature during November and December, 1981.

Gift Tax

Gifts Between Spouses Are Not Taxable (Chapter 93, Laws of 1981, effective July 1, 1982). Gifts made between spouses on or after July 1, 1982 will be exempt from Wisconsin gift taxes. (Note: For Wisconsin income tax purposes, the donee's basis of the property is still the basis of the donor.)

IN THIS ISSUE

Inheritance Tax

Property Inherited From Spouse Not Subject To Inheritance Tax (Chapter 93, Laws of 1981, effective for transfers because of deaths on or after July 1, 1982). Interspousal transfers of property, when date of death is on or after July 1, 1982, will be exempt from Wisconsin inheritance taxes.

Income Tax

Basis Of Property Acquired By Inheritance From Deceased Spouse (Chapter 93, Laws of 1981, effective July 1, 1982). The basis of an interest in property received by a surviving spouse from the deceased spouse will be the fair market value of that interest at date of death of the decedent, provided the date of death is on or after July 1, 1982. For example, if a house was acquired in joint tenancy by a husband and wife for $40,000 and it has a date of death value on July 1, 1982 of $90,000, the surviving spouse will have a basis of $65,000 (one-half the original cost as a joint owner ($20,000) and one-half the date of death value ($45,000) which was received from the deceased spouse). If the house had been solely owned by the decedent and the house passed to the surviving spouse, the surviving spouse would have a basis of $90,000.

Farmland Preservation Credit

10% Minimum Credit For Farmland Subject To Exclusive Agricultural Zoning (Chapter 93, Laws of 1981, effective for claims filed for the year 1981 and thereafter). Claimants who own farmland which is subject to a certified exclusive agricultural use zoning ordinance may claim a minimum farmland preservation credit of 10% of the property taxes accrued (up to a maximum of $6,000 property taxes) on the land. Also, such claimants are eligible to file a farmland preservation credit claim regardless of the amount of household income they may have for the year. (Note: Claimants who own farmland which is *not* subject to exclusive agricultural zoning continue to be subject to a maximum household income limitation of $36,621.)

Corporation Franchise/Income Tax

Mining Tax Deductible By Corporations (Chapter 86, Laws of 1981, effective for 1981 taxable year and thereafter). The net proceeds occupation tax imposed under s. 70.375, Wis. Stats., on corporations engaged in mining metalliferous minerals in Wisconsin will be deductible for corporation franchise/income tax purposes.

Excise Tax

1. Allows Exempt Universities to Receive Things of Value From Brewers, Bottlers and Wholesalers (Chapter 48, Laws of 1981, effective November 11, 1981). Brewers, bottlers and wholesalers will be permitted to furnish money or other things of value to private tax exempt institutions of higher education.

2. Tied-House Provisions Extended to UW Campuses (Chapter 49, Laws of 1981, effective November 11, 1981). This new law changes the restrictions applicable to the sale of alcoholic beverages at wholesale to University of Wisconsin system campuses.

3. Recodification of Alcoholic Beverage Laws (Chapter 79, Laws of 1981, various effective dates). This law recodifies the alcoholic beverage laws and includes technical changes, a reorganization of the statutes relating to the sale of alcoholic beverages, modernizes outdated language, removes obsolete provisions and clarifies certain provisions.

4. Beer and Liquor on Vessels Carrying Passengers (Chapter 76, Laws of 1981, effective November 28, 1981.) The Department of Revenue is authorized to issue a class B retail beer or liquor license for a vessel that is regularly moored in Wisconsin and has a passenger capacity of 100 or more, if the sale of liquor and beer accounts for less than 50% of the vessel's gross receipts, the vessel is certified by the U.S. Coast Guard and intends to leave its place of mooring while the sales take place.

REMINDER OF MAJOR 1981 LAW CHANGES

Major Individual Income Tax Law Changes: (All changes were enacted as part of Chapter 20, Laws of 1981.)

1. **Update Internal Revenue Code Reference to December 31, 1980.** For taxable year 1981 and thereafter, individuals, estates and trusts must use the Internal Revenue Code in effect on December 31, 1980. With one exception, federal tax laws enacted during 1981 may not be used in determining Wisconsin income and deductions for 1981. The exception is that the new accelerated cost recovery system (ACRS) enacted as part of the federal 1981 Economic Recovery Tax Act applies for Wisconsin purposes for 1981.

Wisconsin law also provides that the following three provisions of federal law may not be used for Wisconsin purposes in 1981, even though they were enacted before December 31, 1980:

a. Special provisions relating to benefits received from an employer's educational assistance program.

b. Foreign living cost deductions.

c. Amortization provisions for pollution control facilities.

As a result of the change in Wisconsin's reference date to the Internal Revenue Code from December 31, 1979 to December 31, 1980, federal laws enacted during 1980 may now be used for Wisconsin purposes. For example, the provisions of the federal Installment Sales Revision Act of 1980 now apply for Wisconsin purposes.

2. **Work Requirements to Qualify for Child Care Expense Deduction Changed.** Beginning in 1981 an itemized deduction for work-related child and dependent care expenses may be claimed even though the employment involved is only a part-time job. Previously, it was necessary to be employed on at least a three-quarter time basis to claim an itemized deduction for these work-related expenses.

Generally, in the case of married persons both spouses must meet the work requirements. However, an exception is provided in situations where one spouse does not work but is a full-time student. The non-working (student) spouse will be treated as meeting the work requirement, provided he or she is a full-time student during at least 5 months of the taxable year.

3. **5% Minimum Tax Created.** Individuals, estates and trusts having tax preference items and adjusted itemized deductions which total more than $10,000 for 1981 and subsequent years will be subject to a 5% minimum tax. In the case of married persons, the $10,000 limitation applies separately to each spouse. A copy of the new reporting form (Schedule MT) which will be used to compute the amount of minimum tax due is included as part of this issue of the WTB. (Note: Any minimum tax due is required to be paid by the due date of the person's, estate's or trust's income tax return. The minimum tax is not required to be included in computing estimated tax payments on Form 1-ES.)

Major Corporation Franchise/Income Tax Law Changes: (These changes were enacted as part of Chapter 20, Laws of 1981 and are effective for the taxable year 1981.)

1. **Update Internal Revenue Code Reference to December 31, 1980 for Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts.** For taxable year 1981 and thereafter, insurance companies, regulated investment companies and real estate investment trusts must compute their income under the Internal Revenue Code in effect on December 31, 1980. Federal tax laws enacted after that date may not be used for Wisconsin purposes. (Exception: Depreciation provisions enacted during 1981 may be used on a 1981 Wisconsin return as described in item 13 below.)

2. **Deduction for State Taxes Eliminated.** Corporations are no longer allowed a deduction for state (including District of Columbia) taxes which are imposed on or measured by gross income, net income, gross receipts or capital stock. Only gross receipts taxes which are assessed in lieu of property taxes continue to be allowable as a deduction.

3. **Federal Windfall Profit Tax Not Deductible.** No deduction will be allowed to corporations for the federal windfall profit tax.

4. **Addition to Tax Penalty Not Deductible.** No deduction may be claimed for amounts paid as an underpayment of estimated tax penalty.

5. **Real Estate Taxes May Be Accrued.** Corporations are permitted to accrue the current year's real estate taxes (but not personal property taxes) for Wisconsin purposes in the same manner as for federal.

6. **Certain Corporations May Replace Involuntarily Converted Wisconsin Property With Property Outside Wisconsin.** The gain on Wisconsin property which is involuntarily converted may be deferred when the replacement property is located in another state, provided that the corporation is subject to Wisconsin's taxing jurisdiction both before and after such transactions.

7. **Imputed Interest Provisions of Internal Revenue Code Section 483 Apply for Wisconsin.** Amounts which are deductible as imputed interest under IRC section 483 may also be claimed as a deduction on the Wisconsin corporation franchise/income tax return. Similarly, basis adjustments pertaining to imputed interest which are required by section 483 must also be made for Wisconsin purposes.

8. **Intangible Drilling Costs Must be Capitalized.** Intangible drilling and development costs relating to oil, gas and geothermal wells must be capitalized in the manner prescribed by section 263 (c) of the Internal Revenue Code. Rather than being expensed in the current year, these costs must be deducted as depreciation or cost depletion.

9. **Eliminate Requirement to File Extension Form 7005 Within Ten days.** Corporations will no longer be required to submit a copy of federal extension form 7005 (the federal form which is used for an additional three month extension) to the Department of Revenue within ten days after it is received from the Internal Revenue Service. However, corporations will still be required to furnish a copy of form 7005 with the Wisconsin tax return when it is filed with the department.

10. **Six Month Extensions Available to DISC's and Cooperatives.** DISC's and Cooperatives may apply for a six month extension of the time to file a Wisconsin franchise/income tax return. (Note: Requests for this extension should be made on Wisconsin form IC-830 which is available from any department office.

11. **Corporate Reorganization Provisions Modified.** The provisions in Wisconsin law relating to the tax treatment of corporate reorganizations have been changed to conform more closely to the provisions of federal law.

12. **New Minimum Payment Required to Meet Certain Exceptions to Addition to Tax Penalty.** Corporations making declaration payments must meet a new minimum payment requirement for purposes of claiming exception 1 or 2 to avoid the addition to tax penalty. Exception 1 (s. 71.22 (10) (a)) provides that the addition to tax penalty does not apply if installment payments for the current year equal or exceed the tax shown on the preceding year's return. Exception 2 (s. 71.22 (10 (b)) provides that no penalty applies if current year installment payments equal or exceed an amount determined by using the tax rates applicable to the current year but otherwise on the basis of the facts and income shown on the tax return for the immediate preceding year.

The new law establishes a minimum installment payment requirement to claim exception 1 or 2. To qualify for exception 1 or 2, a corporation's installment payments must be the larger of (a) the amounts required under exception 1 or 2, or (b) 60% of the corporation's actual tax liability for the taxable year.

13. **New Federal Depreciation Provisions May Be Used for Wisconsin.** All corporations filing a Wisconsin franchise/income tax return may elect to use the new depreciation provisions enacted as part of the federal Economic Recovery Tax Act of 1981 in determining their Wisconsin taxable income for 1981 and thereafter.

14. **Corporate Tax Rate Changed.** The tax rate for corporate franchise/income taxes has been changed to a flat rate of 7.9%.

Major Homestead Credit Law Change: (This change was enacted as part of Chapter 20, Laws of 1981 and is effective for claims filed for the year 1981.)

1. **Depreciation Must be Added Back in Determining Household Income.** All amounts of depreciation which have been deducted in determining the Wisconsin adjusted gross income of a claimant (and his or her spouse) must be added to household income for purposes of determining a homestead credit.

Major Farmland Preservation Credit Law Changes: (All changes were enacted as part of Chapter 20, Laws of 1981 and are effective for claims filed for the year 1981.)

1. **Nonfarm Wages May No Longer be Excluded from Household Income.** All nonfarm wages earned by members of a claimant's household must be included in household income. The exclusion previously available for nonfarm wages (of up to $7,500) has been repealed.

2. **Depreciation Deductions Limited to $20,000 for Purposes of Determining Household Income.** Any depreciation in excess of $20,000 which has been deducted in determining the amount of income reportable on the Wisconsin tax return of a claimant or any member of a claimant's household must be added to household income for purposes of determining a farmland preservation credit. The $20,000 limitation on depreciation deductions applies separately to the claimant and each member of the claimant's household.

3. **Nonfarm Business Losses Must be Added Back in Determining Household Income.** Nonfarm business losses which have been offset against other income of a claimant or any member of a claimant's household must be added back when household income is determined. (Note: The amount of nonfarm loss to be added back to income should be determined without regard for the depreciation expense of such nonfarm business. Thus, if the loss is less than or equal to the depreciation expense for that business, no add back will be necessary. If the loss is greater than the depreciation, the depreciation will be subtracted from the loss and the resulting amount will be added back to household income.)

MAJOR FORM CHANGES

Although new legislation has required certain forms changes, the basic design of the major Wisconsin reporting forms for 1981 is very similar to last year's. The major changes

which have been made to each are described below.

Individual Income Tax Forms

Form 1A

- A new entry line (line 6) has been added for reporting taxable unemployment compensation.
- A new entry space has been added in the personal exemption credit area at line 11c. This space must be used to indicate the first names of individuals being claimed as a dependent.

Form 1

- Changes have been made in the "Computation of Wisconsin Total Income" area (lines 6 through 23) on page 1 to conform with changes made to the federal Form 1040 for 1981. The interest and dividend income entry lines have been combined into a single line and an "Other Adjustments" line (line 21) has been added. Also, a separate entry line (line 8) is now provided in this area for refunds of state and local income taxes.
- A new entry line (line 54) has been added for reporting minimum tax.

Homestead Credit Form

Schedule H

- Questions 1 through 7 which pertain to the eligibility requirements to be met by persons claiming a Homestead credit have been reworded and rearranged for 1981.
- A new entry line (line 10) has been added for reporting depreciation which must be added back in determining household income.

Farmland Credit Form

Schedule FC

- The entry line previously used to remove the first $7,500 of nonfarm wages from household income has been deleted. (A law change repealed this exclusion.)
- A new entry line (line 6) has been added for reporting depreciation which must be added back in determining household income.
- A new entry line (line 7) has been added for reporting nonfarm business losses which must be added back in determining household income.

Corporation Forms

Form 5

- Schedule V on page 2 has been revised to reflect a law change which repealed the deduction for state taxes.
- Schedule W on page 2 has been revised to reflect law changes which (a) repealed the deduction for state taxes, (b) repealed the deduction for the federal Windfall Profit Tax, and (c) allow the accrual of real estate taxes.

Form 4

- Schedule G on page 2 has been revised to reflect a law change which repealed the deduction for state taxes.

Form 4U

- This form (which is used to determine if an underpayment of estimated tax penalty must be paid) has been revised to reflect a law change which requires corporations to make declaration payments equal to 60% of their actual tax liability for the year.

HOW TO GET INCOME TAX FORMS

In December the department mailed more than 2.3 million booklets of 1981 income tax and Homestead Credit forms. These were mailed to individuals who filed 1980 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. All the orders are expected to be filled by mid-January 1982.

During the filing season, anyone wishing a small 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 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.

1982 ESTIMATED TAX FORMS TO BE MAILED

In late January, 1982 the department will mail to individuals the 1982 Estimated Tax Forms, including four preaddressed payment vouchers. These declaration forms for 1982 will be mailed to all individuals who filed a declaration of estimated tax for the year 1981. If a person needs a 1982 declaration form but did not receive it in the mail, he or she should contact any Department of Revenue office after January 25, 1982 for the form.

IRS STANDARD MILEAGE RATE APPLIES FOR WISCONSIN

The optional standard mileage rate specified by IRS for computing business automobile expenses for 1981 also applies for Wisconsin. The rate is 20¢ for the first 15,000 business miles and 11¢ per mile for mileage in excess of 15,000. A rate of 9¢ per mile which is used to calculate auto expenses for charitable, medical and moving expense deductions for federal purposes also applies for Wisconsin for 1981.

DON'T FORGET TO REPORT USE TAX ON FORM ST-12

Failure to properly report use tax is the most common error on sales and use tax returns. Before you file Form ST-12, make sure use tax is correctly reported on lines 7 and 8 of the return. The March 1981 issue of the *Sales/Use Tax Report* explains how to report use tax on the sales and use tax return, Form ST-12. If you have questions about sales or use tax, you may contact any Department of Revenue office for free assistance.

REMINDER - SALES TAX ANNUAL INFORMATION RETURN NOT REQUIRED FOR 1981

Beginning with the 1981 tax year, retailers will no longer have to file Form ST-12A, Sales Tax Annual Information Return. Eliminating the filing of this form for the 1981 tax year and thereafter resulted from legislation enacted in 1980.

INFORMATIONAL PUBLICATIONS AVAILABLE

The Income, Sales, Inheritance and Excise Tax Division of the Department of Revenue 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.

For 1981, the following publications may be obtained at each of the Division's offices located throughout Wisconsin:

Publication Number	Publication Title
100	1981 Wisconsin Tax Requirements For Nonresidents
101	1981 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 By Individuals, Estates and Trusts
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 1981
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.

EMPLOYER CONVICTED FOR FAILURE TO PAY WITHHOLDING TAXES

A Madison businessman has been ordered to pay a $500 fine and serve probation for one year for criminal violations of the Wisconsin income tax withholding law.

Darrell J. Foss, Madison, Wisconsin doing business as Badger Restoration Company, was found guilty in September in Dane County Circuit Court, after he entered a no contest plea to one count of failing to pay over to the Wisconsin Department of Revenue, income taxes he had withheld from wages of employes. Sentencing was withheld and Foss was placed on probation for one year. Under the conditions of probation, Foss must pay accrued taxes in excess of $15,000 to the department and pay a $500 fine.

Criminal charges were filed against Foss in June by the Dane County District Attorney's Office after an investigation by the Intelligence Section of the ISI & E Division. Failure to make deposits of state income tax withheld is a crime punishable by a maximum fine of $500 or imprisonment not to exceed six months or both on each count.

FISHERMAN FINED FOR FILING FRAUDULENT RETURNS

A Door County commercial fisherman has been ordered to serve a three year probationary period and pay $7,500 in fines for criminal violations of the Wisconsin state income tax law.

Robert E. LeClair, Jacksonport, Wisconsin was placed on probation for three years. Under the conditions of probation, LeClair is jointly and severally responsible for payment of a $7,500 fine which Judge Bartell ordered paid in sentencing LeClair's wife, Joan, last July. Mr. and Mrs. LeClair were found guilty by Judge Bartell in April after they entered no contest pleas to two counts of state income tax evasion. The LeClairs must also pay the civil tax liability, penalties and interest. The civil assessment is expected to exceed $24,000.

Criminal charges were filed against the LeClairs by the State Department of Justice after an investigation by the Intelligence Section of the ISI & E Division. They were charged with failing to report more than $85,000 in taxable income for the years 1975 and 1976 and evading more than $9,000 in state income taxes for those years.

NEW ISI & E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A and B are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of January 1, 1982. Part C lists new rules and amendments which have been adopted in 1981.

A. Rules At Legislative Council Rules Clearinghouse

2.39	Apportionment method	- amendment
2.40	Nonapportionable income	- repealed and recreated
11.71	Automatic data processing	- new rule

B. Rules At Legislative Standing Committees

5.01	Filing reports	- amendment
10.10	Taxation of savings, mortgage and credit life insurance	- amendment
10.11	Federal estate tax deduction	- amendment
10.12	Deductibility of income taxes	- amendment
10.13	Apportionment of property qualifying for exception	- new rule
10.14	Valuation of United States treasury bonds	- new rule
11.53	Temporary events	- new rule
11.56	Printing industry	- new rule

C. Rules Adopted in 1981 (In parentheses is the date the rule was adopted.)

1.11	Requirements for examination of returns (8/1/81)	- amendment
2.081	Indexed income tax rate schedule (5/1/81)	- new rule
2.081 (3)	Indexed income tax rate schedule for taxable year 1981	- new rule
2.31	Taxation of personal service income of nonresident professional athletes (1/1/81)	- new rule
2.505	Apportionment of net business income of interstate professional sports clubs (1/1/81)	- new rule
2.955	Credit for income taxes paid to other states (2/1/81)	- amendment
4.53	Certificate of authorization (1/1/81)	- new rule
8.87	Intoxicating liquor tied-house prohibitions (6/1/81)	- new rule
9.08	Cigarette sales to and by Indians (8/1/81)	- new rule
11.12	Farming, agriculture, horticulture and floriculture (12/1/81)	- amendment
11.16	Common or contract carriers (12/1/81)	- amendment
11.40	Exemption of machines and processing equipment (12/1/81)	- amendment
11.83	Motor vehicles (7/1/81)	- amendment
11.88	Mobile homes (1/1/81)	- new rule
11.925	Sales and use tax security deposits (8/1/81)	- new rule

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 last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: 1) "the department appealed", 2) "the department has not appealed but has filed a notice of nonacquiescence" or 3) "the department has not appealed" (in this case the department has acquiesced to the Commission's decision).

The following decisions are included:

Income and Franchise Taxes

Kenko, Inc. vs. Wisconsin Department of Revenue
Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue
Wolfgang O. Horn vs. Wisconsin Department of Revenue

Sales/Use Taxes

Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club
Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue
Robert E. Curtis vs. Wisconsin Department of Revenue
Servomation Corporation, Successor to Servomation of Wisconsin, Inc. vs. Wisconsin Department of Revenue
Trudell Trailer Sales, Inc. vs. Wisconsin Department of Revenue

Gift Tax

Estate of John F. Stratton et. al. vs. Wisconsin Department of Revenue

Homestead Credit

Helen M. Raschik vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Kenko, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 28, 1981). Kenko, Inc., a corporation organized under the laws of Minnesota, was actively engaged in the construction business in the state of Wisconsin during the year 1979 and was subject to the provisions of ch. 71, Wis. Stats. Prior to the year 1979, the taxpayer did not engage in any activity in the state of Wisconsin, and thus was not subject to the provisions of ch. 71, Wis. Stats. Kenko, Inc., however, was actively engaged in the construction business in Minnesota. Kenko, Inc. did not file a Form 4, Wisconsin "Corporation Franchise or Income Tax Return" with the department for 1978, and was not required to file for this period of time.

Taxpayer filed a 1979 Form 4, Wisconsin "Corporation Franchise or Income Tax Return" with the department on or about March 19, 1980. A net tax liability of $8,687 was shown on Line 38 of the return, and this amount was remitted to the department at the time of filing the return.

Kenko, Inc. did not file estimated tax returns or remit estimated tax payments to the department for the year 1979 as set forth in s. 71.21, Wis. Stats. Taxpayer was required to file estimated tax returns and remit estimated tax installments in the following amounts at the following prescribed times:

Installment Due Date:	Required Installment:
3-15-79	$1,737.40
6-15-79	$1,737.40
9-15-79	$1,737.40
1-15-80	$1,737.40

Taxpayer was subject to the addition to tax assessment and applicable interest, unless it qualified for an exception to avoid the payment of the addition to tax under s. 71.22 (10) (a), Wis. Stats.

The issue involved is as follows: Assuming that Kenko, Inc., was not required to file (and did not file) a 1978 Wisconsin franchise or income tax return and was required to file (and filed) a 1979 return, and assuming that the taxpayer was required to file a declaration of estimated tax under s. 71.22 (1), Wis. Stats., for 1979 but did not so file, is Kenko, Inc. excused from the 9% addition to the tax by virtue of s. 71.22 (10) (a), Wis. Stats.? Section 71.22 (10) (a), Wis. Stats., provides that an addition to the tax shall not be imposed if total payments of

estimated tax equal or exceed "The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation on or measured by the income of the preceding year and such preceding year was a taxable year of 12 months. . . ."

The Commission held that the corporation's failure to file a declaration of estimated tax for taxable year 1979 is not excused from the 9% addition to the tax by the exception provided in s. 71.22(10)(a), Wis. Stats. Kenko, Inc. did not meet the following requirements of s. 71.22(10)(a), Wis. Stats.: (a) it did not file a 1978 Wisconsin franchise or income tax return (the year prior to taxable year 1979, the year in question); (b) no tax was shown on a 1978 return; and (c) since no 1978 return was filed for 1978, no return was filed covering the 12 month period preceding taxable year 1979, the year in question.

The taxpayer has not appealed this decision.

Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1981). Taxpayer is a production credit association organized under the Farm Credit Act of 1971, 12 U.S.C. Section 2001 *et. seq.*, with offices in Wisconsin.

The Farm Credit Act of 1971, 12 U.S.C. Section 2095(a) provides that:

> Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in amount equal to one-half of one percentum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed 3½ percentum of the loans outstanding at the end of the fiscal year, beyond which 3½ percentum further additions to such reserves are not required but may be made) first to the restoration of the impairment, if any, of capital; and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

At the beginning of 1977, Production Credit Association of Dodgeville had total outstanding loans in the amount of $28,594,527.00. It had a balance in its loan valuation reserve account as required by the statutory provision described, above, in the amount of $1,000,808.44, or 3½ percent of its total outstanding loans. During 1977 the taxpayer experienced bad debt losses in the amount of $30,000.00 and recoveries on previously written off loans in the amount of $4,031.99 for a net loss of $25,968.12. The balance in the loan valuation reserve account at the end of 1977, prior to any addition for 1977, was thus $974,840.32. Total outstanding loans were $29,219,561.34 at the end of 1977. 3½ percent of that figure is $1,022,684.64. Taxpayer thus added the amount of $47,844.32 to its loan reserve valuation account with a resulting total in that account of $1,022,684.64.

Pursuant to Section 166(c) of the Internal Revenue Code, the taxpayer is allowed a deduction for federal income tax purposes "for a reasonable addition to a reserve for bad debts". At the beginning of 1977 the balance in the taxpayer's reserve for bad debts, which resulted from previous additions, losses, and recoveries, was $1,000,808.44. Production Credit Association took a deduction for federal income tax purposes for 1977 in the amount of $47,844.32, computed similarly to its addition to its loan valuation reserve account.

Section 71.04(9)(b), Wis. Stats., provides:

> Savings and loan associations, mutual service banks, production credit associations and credit unions may make a deduction for a reasonable addition to reserve for bad debts of 2/3 of such sums as they are required to allocate to their loss reserves pursuant to satutory provisions or rules and regulations or orders of any state or federal governmental supervisory authorities.

Taxpayer contended that it is entitled to compute in the following manner an addition to bad debt reserves for Wisconsin franchise tax purposes. At the beginning of 1977 the balance in the Wisconsin reserve for bad debts, resulting from previous additions, losses, and recoveries, was $444,403.84. At the end of 1977, after deducting the net losses in the amount of $25,968.12, but before any addition, the balance was $418,435.72. Taxpayer took a deduction for reasonable addition to Wisconsin reserve for bad debts for 1977 in the amount of $97,398.53, computed as 2/3 of one-half percent of total loans outstanding at the end of 1977. This deduction and addition to Wisconsin reserve for bad debts resulted in a balance in Wisconsin reserve for bad debts at the end of 1977 in the amount of $515,834.25.

The department contended that the taxpayer is not entitled to compute an addition to bad debt reserves in the manner provided above, since the taxpayer's accounts contain only the $47,844.32 addition to bad debt reserves. The department contended that in 1977 taxpayer was entitled to a deduction of two-thirds of the amount taxpayer added to its loan reserve valuation account, or $31,896.21 (2/3 x $47,844.32). If the taxpayer had incurred bad debt losses in 1977 in excess of the $31,896.21 deduction for addition to bad debt reserves the department would have allowed a deduction for actual net bad debts losses in lieu of a deduction for the addition to the bad debt reserves.

The Commission held that the department's action in allowing as a deduction two-thirds ($31,896.21) of the total sum allocated by the taxpayer in 1977 to its loan reserves account ($47,844.32) is in conformity with a literal interpretation of the provisions of s. 71.04(9)(b), Wis. Stats.

The taxpayer has appealed this decision to Circuit Court.

Wolfgang O. Horn vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 9, 1981). During the period under review, Wolfgang Horn was a Wisconsin resident serving on a full-time basis as a professor of psychology at the University of Wisconsin—Stevens Point. This is an appeal of an income tax assessment involving the following three items of income and deductions: (1) taxpayer's net income from rents and royalties from foreign sources for the years

1975 through 1978, (2) certain charitable contributions claimed by taxpayer as itemized deductions on his 1978 income tax return, and (3) taxpayer's sale of real estate in Portage County, Wisconsin in tax year 1978.

During the years 1975 through 1978 Wolfgang Horn received income consisting of royalties from Germany and rents from real property he owned in Germany and Spain. For each of these years, taxpayer included this foreign source income on his federal income tax return and subtracted it from his Wisconsin income. Taxpayer contended that he believed his foreign source income was not taxable by Wisconsin because in 1971 he was audited by the department for the tax years 1969 and 1970. During the course of the audit, a department employe wrote a letter to the taxpayer which read in part:

> "A review of the tax treaties between the United States and West Germany reveals that we should not tax the rent received from German real estate or the royalties received on German copyrights. Our assessment has been changed accordingly. The expenses relating to these items, including interest on loans on foreign property, cannot be allowed because of the direct relationship to non-taxable income."

This statement which was not contradicted until the commencement of the audit under review, induced the taxpayer to rely on it by subtracting his German source income on his Wisconsin income tax return. This reliance was to his detriment, as it resulted in his not reporting income which the department later claimed was taxable. This statement also induced taxpayer to rely on it by subtracting his Spanish source income on his Wisconsin tax return. This reliance was also to his detriment.

The second issue involved the taxpayer's 1978 itemized deductions for contributions. In 1978, taxpayer obtained a charter and a certificate of ordination from the Universal Life Church of Modesto, California. The Universal Life Church of Modesto, California is a corporation which had been recognized by the Internal Revenue Service in Publication 78 as an organization to which contributions are deductible under sec. 170 of the Internal Revenue Code. The taxpayer named his church the Universal Life Church of the Healing Spirit. A document was filed with the register of deeds of Portage County on November 30, 1978 regarding the organization's status as a religious society under Chapter 187, Wis. Stats.

Neither Universal Life Church of the Healing Spirit nor its assets are controlled by the Universal Life Church of Modesto, California. However, taxpayer had detailed guidelines from the California church as to how his church should be operated and sent the California church reports on his church's activities and finances every 6 months. The Universal Life Church of the Healing Spirit did not submit an application for tax exempt status to the Internal Revenue Service. Taxpayer believed this was not necessary as he believed his church was only a branch of the California church. No listing under the Universal Life Church of the Healing Spirit of Stevens Point is carried in any publication of the Internal Revenue Service as an organization exempt from tax, contributions to which are deductible.

On August 2, 1978, taxpayer requested that the California church send him additional information and an official church flag, for which he submitted $105 which he identified as a "donation". In return, Wolfgang Horn received a loose-leaf binder with the title "We Are One" which included information and forms on how to organize a church and avoid taxes. The taxpayer followed these instructions in organizing his church and his financial affairs. Taxpayer testified that his church was organized because he and his wife could not find an existing church that met with their approval. The directors of the Universal Life Church of the Healing Spirit were Wolfgang Horn, his wife and his son Frank. The operations of the church were controlled by the majority of the Board of Directors.

In 1978, the taxpayer claimed an itemized deduction on his income tax return for a large charitable donation consisting of cash and property to the Universal Life Church of the Healing Spirit. Nothing in the record indicates that there was a cash donation in the year claimed although one exhibit indicates that there was a transfer of real estate by quit claim deed of land in Portage County, Wisconsin recorded on November 30, 1978 by Frank H. Horn, Wolfgang O. Horn and Frieda T. Horn to themselves as trustees of the Universal Life Church of the Healing Sprit, Inc. There is no evidence of the portion owned by any of the grantors. The taxpayer also testified that the total amount of donations claimed includes donations of others.

Taxpayer's church operated out of his home. The church consisted of 9 members; 7 members of his family and 2 others. The "ULC Chapter Report" signed by taxpayer and dated January 28, 1979, covers the period of July 26, 1978 to January 25, 1979, which includes the period under review and states there are 7 members on the roll. Taxpayer refused to disclose the names of the other members. Wolfgang Horn also testified that he did not want other members because his family planned to move to North Carolina.

The donations to this church were mainly used to purchase real estate although funds were used for other purposes. Some of the funds were used to purchase two vacuum cleaners. One vacuum cleaner was used at the personal residence of the taxpayer. The other vacuum cleaner was used at a North Carolina church owned building which was occupied by a caretaker. Some of the funds were used for transportation. Transportation included the cost of sending his son Frank to California to get a younger son out of a California religious group and costs of scouting for real estate to purchase. The taxpayer testified that his church could have spent more for personal purposes but it wanted to conserve its capital to purchase real estate.

The taxpayer's church has two ordained ministers, the taxpayer and his son. No formal training is required to become ordained. Services were held in taxpayer's dining room.

The third issue involved the sale of a parcel of real estate in Portage County. The parcel was owned by Frank H., Freida T. and Wolfgang O. Horn. According to a real estate closing statement in the record it was sold under a contract dated October 21, 1978. The date of closing was December 1, 1978. The real estate was transferred by the tax-

payer, his wife and son to themselves as the trustees of Universal Life Church of the Healing Spirit on November 30, 1978 and, on the same day, transferred by the trustees to the purchasers. Taxpayer did not present evidence of title ownership of the Portage real estate prior to the property transfer to the church. Nor did he present any evidence to challenge the department's calculation of gain on the sale.

The Commission held that the department is barred for the period under review from collecting Wisconsin income tax on taxpayer's German royalties and rents, but not barred from collecting Wisconsin income tax on Spanish rents, under the doctrine of equitable estoppel. The reliance on the department's statement as it related to the German rents and royalties was reasonable. However, the reliance on the department's statement in determining the taxability of the Spanish source income was not reasonable as the letter did *not* state that tax treaties between the U.S. and Spain were examined nor did the letter make a statement relating to Spanish income.

The Commission further concluded that the taxpayer is not entitled to an itemized deduction on his 1978 income tax return for the asserted $3,729 portion of the value of the Portage real estate nor for the asserted $10,934 cash contributions he made to the Universal Life Church of the Healing Spirit. The church was technically not an organization to which contributions may be made and itemized deductions taken therefor under sec. 170 of the Internal Revenue Code.

Also, the taxpayer did not meet his burden of proof in overcoming the presumptive correctness of the department's assessment resulting from the 1978 gain on the sale by the taxpayer of the Portage real estate.

Neither the department nor the taxpayer have appealed this decision.

SALES/USE TAXES

Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club (Circuit Court of Dane County, August 17, 1981). This case involves two issues: 1) Does the sales or use tax apply to the purchase by the Milwaukee Brewers Baseball Club of the tickets which when purchased by the customer give him or her the right to enter the stadium to view the game? and 2) Does the sales or use tax apply to the baseball club's purchase of promotional items distributed to a class of ticket holders on special occasions? The Wisconsin Tax Appeals Commission held that neither of the above situations involved taxable sales. (See Wisconsin Tax Bulletin #21 for a summary of the Commission's decision.)

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. In connection with its home games, taxpayer sells admission tickets on a season ticket and individual game basis. The department assessed use tax on amounts paid by the taxpayer to an out-of-state vendor for the purchase of admission tickets and amounts paid by the taxpayer to out-of-state vendors for purchases of promotional items.

The Circuit Court held that the purchase and use of the paper tickets by the taxpayer were not taxable. The Court considered the paper tickets items sold at retail as part and parcel of admissions. The sale of admissions is taxable as a service. A ticket is the permission to enter a place ("admission") and its sale is also considered a service which is taxed under s. 77.52 (2) (a) 2, Wis. Stats.

The Circuit Court reversed the Tax Appeals Commission's decision relating to the promotional items. The Court held that the promotional items are not part of a "sale of admissions". The promotional items are taxable under s. 77.51 (4) (k), Wis. Stats., which provides that a sale to a purchaser who distributes an article "gratuitously apart from the sale of other tangible personal property or service" is taxable as a sale.

The department and the taxpayer have appealed this decision to the Court of Appeals.

Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1981). Cuna Mutual Insurance Society is a life insurance company, organized under the laws of the state of Wisconsin, whose principal place of business is located in Madison, Wisconsin. For the years 1975 through 1978, the department assessed use tax against the taxpayer. The issue involved is whether the taxpayer's publication, Dimensions, constitutes institutional advertising which would be exempt from the use tax under s. 77.54 (25), Wis. Stats.

The taxpayer's business purpose is to provide for the insurance needs of credit unions and credit union members. The taxpayer has from time to time from 1975 to the present contracted with a Wisconsin printer to supply the paper and print a publication entitled Dimensions and the printer has, except for the first 9 months of 1975, delivered the publication each month to the taxpayer for distribution. The taxpayer distributed Dimensions free of charge and 94.3% of all issues were sent outside of Wisconsin. The publication is distributed free of charge to credit unions only.

Dimensions is a 16 page monthly publication of the taxpayer's paid for by the taxpayer and clearly identified on its cover as a Cuna Mutual Group publication. Cuna Mutual Group is the collective entity of the taxpayer and its subsidiaries. Dimensions contains a wide variety of articles relating to the companies within the Cuna Mutual Group, the products and services of those companies, the companies' relationship to the credit union movement and other subjects of interest to the credit unions. Dimensions advertises companies of the Cuna Mutual Insurance Group, their activities, products and services, and their commitment to the credit union movement.

A series of monthly editions of the publication were submitted into evidence and they contained in addition to the preceding identified contents, the following: specific advertisements for specific services of the taxpayer or members of its group; interviews and profiles with individual employes or agents of the taxpayer; information regarding appointments to positions within the credit union movement or the taxpayer's group; schedules of various events; articles regarding consumer protection legislation; and messages of seasons greeting.

The publication Dimensions is used by and is helpful to agents of the taxpayer in marketing taxpayer's line of services to its customers who receive the publication. Taxpayer competes with many major insurance companies for sales of services to credit unions but the taxpayer is the only organization which deals exclusively with credit unions and their members.

The taxpayer contended that the purpose in its distribution of Dimensions is to identify the taxpayer as a corporation sensitive to the needs of the credit union movement and as one with products and services uniquely designed to serve the needs of credit unions and credit union members.

The taxpayer's vice-president of public relations testified that "Public Relations" constitutes an attempt by a corporation to communicate policies, programs and positive image to the general public, special interest groups, to customers, etc. He further defined "advertising" as a "part of" public relations involving the use of media or other similar vehicles. The same officer defined "institutional advertising" as an effort seeking to create a positive impression of a company with respect to any particular product with the objective to precondition the market place.

The Commission held that the publication, Dimensions, while including what could be characterized as advertising to promote the taxpayer's services and products, does not when taken as a whole constitute advertising or institutional advertising so as to qualify for the exemption under s. 77.54 (25), Wis Stats. Dimensions publication does not constitute advertising or institutional advertising, when taken as a whole, under the ordinary and accepted meaning of those terms, and therefore does not constitute printed material designed to advertise and promote the sale of taxpayer's merchandise or services.

The Commission also held that the issues of Dimensions which are purchased and stored solely for the purpose of transportation and use outside of the state are not exempt from the use tax imposed by s. 77.53, Wis. Stats., by virtue of the definition of the terms of "storage" and "use" under s. 77.51 (16), Wis. Stats.

The taxpayer has appealed this decision to Circuit Court.

Robert E. Curtis vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1981). Robert E. Curtis is a Wisconsin resident, doing business as Oshkosh Leasing Company in Oshkosh, Wisconsin. Curtis paid timely sales tax of $1,012.49 in 1973, $1,236.58 in 1974, $1,268.86 in 1975 and $312.85 in 1976.

On April 8, 1977, taxpayer filed amended sales tax returns requesting a refund of all sales taxes paid for 1973 through 1976. The taxpayer contended the sales tax had been paid in error. On May 11, 1977 the department issued a second Notice of Refund Determination refunding the full amount of the sales tax requested by the taxpayer for the years 1973 through 1976, stating that the earlier Notice had been superseded. The refund totaled $4,699.70 and included interest at 9% through May 11, 1977. Said Notices stated that the refund was based on an office audit determination.

On October 1, 1979 the department issued an office audit assessment notice for $5,686.64 for sales tax. Said amount was based on the amount of tax refunded on May 11, 1977 plus interest. The notice of assessment stated that the prior refund was made in error. Taxpayer filed a letter with the department, dated October 9, 1979, asserting that the assessment was blocked by section 77.59 (6), Wis. Stats.

The department, in an action letter dated December 17, 1979, conceded that the years 1973 and 1974 were closed to adjustment under s. 77.59 (3), Wis. Stats., but maintained that the years 1975 and 1976 were not closed to adjustment by sections 77.59 (2) and 77.59 (6), Wis. Stats. The department has never conducted a field audit of the taxpayer's 1975 and 1976 sales tax returns.

The only issue in this case is whether sections 77.59 (2) and 77.59 (6), Wis. Stats., prohibit the department from assessing sales tax to the taxpayer for the years 1975 and 1976 under these circumstances. The Commission concluded that the assessment for the years 1975 and 1976 was made within the 4 year period allowed in section 77.59 (3), Wis. Stats. There were no facts in the record to support taxpayer's contention that the department's assessment is barred by the doctrine of equitable estoppel.

The taxpayer has not appealed this decision.

Servomation Corporation, Successor to Servomation of Wisconsin, Inc. vs. Wisconsin Department of Revenue (Court of Appeals, District IV, July 28, 1981). The issues before the Court were as follows:

1. Whether the taxpayer's expenditures for the purchase and repair of hot and cold drink vending machines qualify for the "manufacturing and equipment" exemption provided by s. 77.54 (6) (a), Wis. Stats.

2. Whether sales of beverages through such machines located in schools and hospitals are exempt from sales taxation under ss. 77.54 (4), 77.54 (9a) and 77.54 (20) (c) 4, Wis. Stats.

3. Whether the taxpayer's purchases of plastic eating utensils furnished for use by customers of these machines are subject to use tax under s. 77.54 (1), Wis. Stats.

The taxpayer owned and serviced coin-operated hot and cold drink vending machines installed in various locations in Wisconsin. Each machine is activated when a customer inserts a coin and depresses a selector button designating the beverage desired. Upon activation the cold drink machines prepare carbonated beverages by combining pre-formulated drink syrup, water, and carbon dioxide which is delivered to the customer, with or without ice, in a paper cup. These machines utilize the same type of syrup used in soda water bottling plants and follow manufacturer's recommended mixing proportions to produce a final product substantially identical to the brands produced by such plants. The hot drink machines similarly produce coffee, tea, chocolate, or soup by mixing predetermined measures of dry ingredients and water in the machine's brewer and dispensing them in a paper container.

The taxpayer contended that it is a "manufacturer" within the meaning

of the statutory exemption and that the mechanical operation of its machines falls within the statutory definition of "manufacturing". Taxpayer relied on a Technical Information Memorandum which indicated that the department considered brewing, distilling, and soda water bottling plants as being manufacturers for purposes of the exemption while considering restaurants, for example, as non-manufacturers.

The department contended that the Servomation Corporation is not a manufacturer but a retail supplier of vending services, that the operations of its machines do not involve a "process popularly regarded as manufacturing" and that it does not qualify for the exemption in any event because the machines are not used "exclusively" for manufacturing as required by s. 77.54 (6) (a), Wis. Stats.

The Court of Appeals held that Servomation's machines do not qualify for the exemption because they are not exclusively used in the manufacture of tangible personal property.

Servomation Corporation also contended that its gross receipts from sales of food and beverages through vending machines located in schools and hospitals pursuant to written or oral contracts with those institutions are exempt under s. 77.54, Wis. Stats. Exemptions from the sales tax are provided to hospitals and educational institutions under this statute. Each institution gave the taxpayer an exemption certificate stating that sales through the machines were made on its behalf and were therefore exempt from taxation. Each institution set the prices at which the products would be sold, and received a percentage of the gross receipts as a commission. The institution was responsible for any damage to the machines or their contents and controlled access to the areas in which they were located. The taxpayer retained ownership, however, and its personnel had the only keys to the machines which it serviced and repaired and from which it regularly collected the gross receipts. The net profit received by the taxpayer from sales at the schools and hospitals was the same as that received from sales at nonexempt locations. The schools and hospitals, however, generally received a higher commission than Servomation paid to others based upon the understanding that no sales tax would be due on the gross receipts.

The department did not impose a tax on the receipts from machines located at six schools under agreements where the schools' employees or students loaded and unloaded the merchandise from the machines, turned over the receipts to the taxpayer, and received a subsequent accounting and commission. It did not impose a tax on food sold by a hospital cafeteria but did impose a tax on food sold from the taxpayer's vending machines in that hospital, despite testimony from a hospital administrator that the purpose of the machines was to supplement cafeteria service for its employees.

Servomation claimed that the sales in question are exempt either as sales to exempt institutions or as sales by those institutions.

The Court ruled that the vending machine owner, and not the hospitals, was the retail seller, noting that the responsibility for installation, servicing, and removal remained with the owner, despite the fact that some hospital employees had keys to the machines.

The third issue involved the department's assessment of use tax on Servomation's purchase of plastic eating utensils which it furnished to vending machine customers by placing them on condiment counters near the machines. The definition of a taxable retail sale set forth in s. 77.51 (4), Wis. Stats., excludes property purchased "for resale". The Tax Appeals Commission determined that the taxpayer's purchases of the utensils were not for resale because no separate charge was made to the ultimate consumer for their use.

The Court of Appeals reversed this decision and held that the final use of the utensils does not occur when the taxpayer places them on the condiment counter, but rather when the customer employs them to consume food. In this case, as in Milwaukee Refining, the final use of the personal property which is the subject of the tax sought to be imposed is by the ultimate customer. The purpose of taxpayer's purchase of the utensils is for use by its customers, even though it has no way of preventing other persons from taking the utensils without purchasing a product from the machines. The cost of the utensils is indirectly included in the price to the customer of the food product dispensed in the machines.

The Court ruled that purchases of plastic utensils were for resale, and not for the taxpayer's use or consumption within the meaning of s. 77.51 (4), Wis. Stats., and that they were consequently not taxable pursuant to s. 77.53 (1), Wis. Stats.

The department and the taxpayer have appealed this decision to the Supreme Court.

Trudell Trailer Sales, Inc. vs. Wisconsin Department of Revenue (Wisconsin Supreme Court, October 6, 1981). The issue in this case is whether sales of semitrailers to be used outside the state are exempt from Wisconsin sales tax under s. 77.54 (5) (a), Wis. Stats.

Taxpayer was engaged in the sale of semitrailers. The department's assessment was based on sales made by the taxpayer to nonresidents for use solely outside of Wisconsin. Delivery was taken by these buyers within Wisconsin, but the semitrailers were immediately removed from the state and registered and operated elsewhere. The taxpayer accepted from each nonresident customer a certificate to the effect that the sale was exempt from payment of the Wisconsin sales tax.

Under s. 77.54 (5) (a), Wis. Stats., "motor vehicle or truck bodies sold to persons who are not residents of this state and who will not use such. . . motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such . . . motor vehicles or trucks from this state" are exempt from the sales and use tax. The Court of Appeals held that a semitrailer is not considered a self-propelled vehicle (except when it is used with a tractor) and that the taxpayer's sales were not exempt under s. 77.54 (5) (a), Wis. Stats. (See Newsletter #14 for a summary of the Court of Appeals decision.)

The Supreme Court reversed the Court of Appeals decision and held that the taxpayer is entitled to the sales tax exemption. The Supreme Court held that "truck body", as used in the statute, includes a semitrailer and that is consistent with legislative intent. A semitrailer is built to

and does carry the cargo. Without it or some other unit to carry the load, a tractor, which is the power unit, serves little or no purpose. When the two pieces of equipment are joined, the semitrailer is the "truck body", and it fits that definition and purpose when constructed and sold. No basis exists for distinguishing that type of truck body from one with a self-contained motor.

The fact that "semitrailer" is listed in another section of the sales tax statute at s. 77.54 (5) (b), Wis. Stats., does not interfere with the Supreme Court's analysis of legislative meaning. "Truck body" is nowhere defined in the statute and thus must be defined. The Supreme Court defined that term to include semitrailers as that term is commonly understood and used. The general rule is that in the absence of applicable statutory definition, it is the common usage of nontechnical words and phrases which is presumed meant by the legislature. (See State v. Ehlenfeldt, 94 Wis. 2d 347, 356, 288 N.W. 2d 786 (1980).)

GIFT TAX

Estate of John F. Stratton Et. Al. vs. Wisconsin Department of Revenue (Court of Appeals, October 23, 1981). The Wisconsin Tax Appeals Commission had previously concluded that within the meaning of ss. 72.75 (3) and 232.09 (2), Wis. Stats., (1967), John F. Stratton made a taxable gift as a result of his alleged release of a power of appointment granted under a trust. The Circuit Court in November, 1980 reversed the Commission. (See WTB #22 for a summary of the Circuit Court decision.) The Department of Revenue appealed the Circuit Court decision to the Court of Appeals.

The Court of Appeals disagreed with the trial court's conclusion that John only held a contingent power of appointment. The Court of Appeals stated that John had a vested power of appointment.

The Court of Appeals concluded that although John F. Stratton possessed a power of appointment, he neither exercised nor released it within the meaning of s. 72.75 (3) and 232.09 (2), Wis. Stats., and therefore there was no taxable gift. The Court of Appeals stated that although John possessed a power of appointment, it was subject to defeasance by the disinterested trustee, Brady. Once Brady exercised his discretion in distributing the trust assets, John no longer could exercise or release his power of appointment. Accordingly, the Court of Appeals affirmed the Circuit Court's decision.

The department has not appealed this decision.

HOMESTEAD CREDIT

Helen M. Raschik vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 9, 1981). Helen M. Raschik, a Wisconsin resident, filed a 1978 Wisconsin Homestead Credit claim with the department on November 3, 1979 for $278. The department adjusted this claim to $10.

In computing her 1978 Homestead Credit claim, taxpayer included as "property taxes accrued" the property taxes for 2 parcels in Burnett County, Wisconsin: (a) an approximately one acre parcel on which her dwelling was located, and (b) a group of parcels comprised of 36.92 acres, part of which contained mature woodland. The 36.92 acre parcel was located at least 500 yards at the closest point from the taxpayer's residential parcel, had its own access from public highways and was situated across and down such highways from the homestead. Utility rights-of-way and land privately owned by third parties were also located between the residential and other parcels.

The 36.92 acre parcel was acquired separately from the residential parcel. The 2 parcels were not by nature or by operation functionally integrated, although Raschik utilized dead wood from the larger parcel as fuel in her dwelling. The dwelling was heated by both an oil burner and a wood furnace, with wood for the furnace coming from the 36.92 acre parcel. Taxpayer could live in, utilize and enjoy the residential parcel without owning or having access to the 36.92 acre parcel. Likewise, the larger parcel could be utilized without ownership or access to the residential parcel. The large supply of wood on the 36.92 acre parcel made heating the dwelling far less expensive; however, without the wood, the dwelling could be heated.

The department audited Helen Raschik's 1978 Homestead Credit claim and determined the amount claimed as "property taxes accrued" and the claim based on it to be incorrect. The amount of the credit was lowered on the basis of not permitting the taxes paid on the 36.92 acre parcel to be included in the calculations. The notice of assessment stated: "Taxes on the secondary parcel (s) are not allowed because that land is not adjacent to your homestead parcel, or is not a necessary part of your homestead." Taxes accrued upon the one acre dwelling parcel were allowed.

The Commission held that the taxpayer's "homestead" was the one acre parcel including her dwelling for purposes of her 1978 Homestead Credit claim under s. 71.09 (7) (a) 4, 1977 Wis. Stats. Raschik's homestead was not "an integral part of a larger unit" which included the 36.92 acre property under s. 71.09 (7) (a) 8, 1977 Wis. Stats. Also, the 36.92 acre parcel was not "necessary for the use of the dwelling as a home" under s. 71.09 (7) (a) 4, 1977 Wis. Stats. (Also see Section Tax 14.03 (10), Wis Adm. Code.) Therefore, the taxpayer was not entitled to claim as Wisconsin "property taxes accrued" 1978 real estate taxes upon the 36.92 acre parcel in computing her 1978 Homestead Credit claim.

The taxpayer has 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. Determining Gain on Assets Acquired Prior to Becoming a Wisconsin Resident

A Tax Release in WTB #23 (July, 1981) indicated that when a resident of Wisconsin disposed of property which he or she had acquired prior to becoming a Wisconsin resident, both gains and losses on such property are generally determined in the same manner for Wisconsin as for federal purposes. That Tax Release on pages 9-11 in WTB #23 was prepared as a result of the Wisconsin Supreme Court decision in Romain A. Howick vs. Wisconsin Department of Revenue, 100 Wis. 2d 274.

The information in WTB #23 relating to computation of *losses* continues to apply; that is, the loss on the disposition of property acquired prior to becoming a Wisconsin resident must generally be determined in the same manner for Wisconsin as for federal purposes. However, the information relating to the computation of *gains* as stated in WTB #23 should not be followed until after rules Tax 2.30 and 2.97 have been repealed. Gains should be computed as explained below.

How to Compute Gains on Assets Acquired Prior to Becoming a Wisconsin Resident. Information in WTB #23 relating to the computation of gains should be disregarded. Rather, the computation of a gain on property which had been acquired while a nonresident of Wisconsin will be limited to the lesser of:

(a) Gain reportable for federal income tax purposes; or

(b) The gain determined by comparing the selling price with the fair market value of the property on the date Wisconsin residency was established. (Any depreciation allowed or allowable during the period of Wisconsin residency would first be subtracted from the fair market value.)

The portions of Wisconsin Administrative Code section Tax 2.30 and 2.97 relating to the computation of gains are still in effect; however, the provisions in the two rules relating to losses are invalid.

Example: Taxpayer purchased stock while a nonresident of Wisconsin for $5,000. He later became a Wisconsin resident on which date the fair market value of the stock was $7,000. In 1981 he sold the stock for $9,000. The Wisconsin gain is $2,000 which is computed by subtracting $7,000 (the fair market value on the date Wisconsin residency was established) from the selling price of $9,000. The federal gain would be $4,000 ($9,000 selling price less $5,000 original cost).

Note: If a gain has been determined for federal purposes and a loss is determined by using the computation prescribed under method b, then no gain or loss on the transaction is reportable for Wisconsin purposes.

Example: Assume the same facts as in the example above, except change the selling price to $6,500. A loss of $500 ($6,500 selling price less $7,000, the fair market value on date Wisconsin residency was established) would then be determined under method "b". The federal gain would be $1,500 ($6,500 selling price less $5,000 original cost). In this situation no gain or loss from the transaction should be included in Wisconsin taxable income.

The Department of Revenue is in the process of repealing rules Tax 2.30 and 2.97. Until these two rules are repealed, gains will be computed as explained above.

For transactions occuring after these two rules are repealed, the computation of gains will generally be determined in the same manner for Wisconsin as for federal purposes. The April, 1982 issue of the WTB will inform you of the status of the repeal of these two rules and when the new computation of gains will begin.

If a taxpayer was assessed by the Department of Revenue because the gain was computed as stated in WTB #23 (rather than computing gains under rules Tax 2.30 and 2.97), the taxpayer should file a claim for refund of the office audit assessment, provided the assessment was paid and not appealed. The claim for refund must be filed within 2 years of the date of the assessment notice. If the assessment was appealed and it has not yet been acted upon by the Appellate Bureau, the person should write to the Appellate Bureau, Wisconsin Department of Revenue, P.O. Box 8907, Madison, WI 53708 and request that the assessment be modified for the computation of the gain.

Anyone having questions regarding the computation of gains should write to the Technical Services Staff, Wisconsin Department of Revenue, P.O. Box 8910, Madison, WI 53708.

II. Reporting Interest and Dividend Income on a 1981 Wisconsin Income Tax Return

For 1981 the Internal Revenue Code (IRC) provides two exclusion provisions relating to interest income received during 1981. One of the exclusion provisions also extends to dividend income. These provisions are:

1. A $200 ($400 on a joint federal return) exclusion for interest and dividend income provided by section 116 of the IRC.

2. A $1,000 ($2,000 on a joint federal return) lifetime exclusion for interest income received from All-Savers Certificates which is provided by section 128 of the IRC.

However, Wisconsin law for 1981 does not allow the use of both of these exclusions. Only the $200 exclusion for interest and dividends (number 1 above) applies for Wisconsin purposes for 1981. The exclusion for All-Savers interest (number 2 above) was enacted after December 31, 1980 and, therefore, does not apply in determining Wisconsin taxable income for 1981.

The following rules must be followed when the $200 interest and dividend income exclusion is claimed on a Wisconsin return:

A. The maximum amount of exclusion which may be claimed by a single or married person is $200. (Federal separate return provisions which provide a $200 exclusion to each spouse must be followed for Wisconsin. If both spouses have interest and dividend income, each is entitled to a $200 exclusion.)

B. Any portion of the $200 interest and dividend exclusion which is not used to offset other interest and dividend income may be used to offset amounts of All-Savers Certificate interest reportable to Wisconsin.

C. The $200 interest and dividend exclusion may not be used to offset interest which is received from state or municipal bonds. The entire amount of such interest income must be included in Wisconsin taxable income.

Since Wisconsin does not recognize the All-Savers Certificate interest exclusion for 1981 and because married persons must determine their income for Wisconsin by using the separate return (rather than joint return) provisions of federal law, the amount of interest and dividend income reportable to Wisconsin may differ from the amount reportable on a 1981 federal return. Both the Wisconsin Form 1 and Form 1A instructions for 1981 contain detailed information on how the proper amount of interest and dividend income is computed for Wisconsin. A worksheet which can be used to make the necessary calculations is provided as part of the instructions for both forms.

Persons filing Form 1 and having interest from United States Government securities may claim a subtract modification for only the net amount of U.S. interest included in federal income (i.e., the amount after application of the exclusion). For purposes of determining the "net amount", the $200 exclusion is considered to first apply against other types of interest and dividends of the person. (Examples 6 and 7 below illustrate the proper method of determining a subtract modification for U.S. interest.)

As in prior years, Wisconsin Schedule I is used to adjust differences in income and deduction items which arise because Wisconsin does not allow the use of all current Internal Revenue Code provisions. However, if the only difference affecting a particular individual is the difference in the treatment of All-Savers Certificate interest, it is not necessary to complete Schedule I. In this instance the difference will be accounted for when line 7 of the Wisconsin Form 1 is completed.

The examples below illustrate how taxable interest and dividend income is to be determined on a Wisconsin Form 1 for 1981. For all examples involving married persons, it should be assumed that a joint federal income tax return is being filed.

Example 1: Husband-$250 credit union interest income, wife-$67 savings and loan association interest income.

Federal - Report -0- interest ($317 less $400 interest and dividend exclusion)

Wisconsin - Husband-report $50 interest ($250 less $200 interest and dividend exclusion)
Wife-report -0- interest ($67 less $200 interest and dividend exclusion)

Example 2: Husband-$250 corporate bond interest and $150 dividend income, wife-$40 bank interest income.

Federal - Report $40 interest and dividends ($440 less $400 interest and dividend exclusion)

Wisconsin - Husband-report $200 interest and dividends ($400 less $200 interest and dividend exclusion)
Wife-report -0- interest ($40 less $200 interest and dividend exclusion)

Example 3: Husband-$300 All-Savers Certificate interest income, wife-$175 All-Savers Certificate interest income.

Federal - Report -0- interest ($475 less $2,000 All-Savers interest exclusion)

Wisconsin - Husband-report $100 interest ($300 less $200 interest and dividend exclusion)
Wife-report -0- interest ($175 less $200 interest and dividend exclusion)

Example 4: Husband-$300 All-Savers Certificate interest and $250 dividend income. wife-$300 All-Savers Certificate interest and $60 dividend income.

Federal - Report -0- interest and dividend income ($310 less $400 interest and dividend exclusion; $600 less $2,000 All-Savers interest exclusion)

Wisconsin - Husband-report $350 interest and dividends ($550 less $200 interest and dividend exclusion)
Wife-report $160 interest and dividends ($360 less $200 interest and dividend exclusion)

Example 5: Husband-$100 municipal bond interest and $75 dividend income, wife-$700 municipal bond interest income.

Federal - Report -0- interest and dividends ($75 less $400 interest and dividend exclusion; municipal bond interest is excludable from federal income)

Wisconsin - Husband-report -0- interest and dividends ($75 less $200 interest and dividend exclusion) on line 7, Form 1
Husband-report $100 addition to federal income for municipal bond interest on line 26, Form 1
Wife-report -0- interest and dividends on line 7, Form 1
Wife-report $700 addition to federal income for municipal bond interest on line 26, Form 1

NOTE: The $200 interest and dividend exclusion cannot be applied against state and municipal bond interest income.

Example 6: Husband-$600 U.S. government interest income, wife $175 U.S. government interest income.

Federal - Report-$375 interest ($775 less $400 interest and dividend exclusion)

Wisconsin - Husband-report $400 interest and dividends ($600 less $200 interest and dividend exclusion) on line 7, Form 1
Husband-report $400 subtraction from federal income for U.S. government interest on line 33, Form 1
Wife-report -0- interest and dividends ($175 less $200 interest and dividend exclusion) on line 7, Form 1

Example 7: Husband-$300 bank interest and $700 U.S. government interest, wife received no interest or dividends.

Federal - Report-$600 interest ($1,000 less $400 interest and dividend exclusion)

Wisconsin - Husband-report $800 interest and dividends ($1,000 less $200 interest and dividend exclusion) on line 7, Form 1
Husband-report $700 subtraction from federal income for U.S. government interest on line 33, Form 1

III. Interest and Dividend Exclusion for Part-Year Residents and Nonresidents

Question - How is the $200 interest and dividend exclusion provided by Wisconsin law for 1981 to be claimed by part-year residents and nonresidents?

Answer - Nonresidents: Interest and dividend income received by persons who were nonresidents of Wisconsin for the entire year 1981 is not taxable to Wisconsin. Therefore, the $200 interest and dividend exclusion will not be claimed by a nonresident. All interest and dividend income included in federal adjusted gross income (the starting point for computing Wisconsin taxable income) will be removed.

Part-year residents: The full $200 interest and dividend exclusion may be offset against the portion of a part-year resident's interest and dividend income which is taxable to Wisconsin. The exclusion does not have to be prorated. Also, the exclusion is not required to be applied against the first amounts of interest and dividend income received during the year.

Example: Taxpayers became Wisconsin residents on October 1, 1981. Husband received $600 interest income from a bank and wife received $400 interest income from a credit union prior to becoming Wisconsin residents. Husband received $175 interest income from a bank and wife received $75 dividend income after becoming Wisconsin residents. Taxpayers file a joint federal return.

Federal - Report $850 interest and dividends. ($1,250 less $400 interest and dividend exclusion)

Wisconsin - Husband report $575 interest ($775 less $200 interest and dividend exclusion) on line 7, Form 1.
- Husband report $575 subtraction modification for interest which is included in federal income but was received before becoming Wisconsin resident.
- Wife report $275 interest and dividends ($475 less $200 interest and dividend exclusion) on line 7, Form 1.
- Wife report $275 subtraction modification for interest and dividends which are included in federal income but were received before becoming Wisconsin resident.

IV. Partnership Distributions of Interest on US Government Securities

Facts and Question: A Wisconsin individual taxpayer invests in a money market fund organized as a partnership. The taxpayer receives a distribution from the fund of interest income earned on investments in US government securities. Are the distributions considered income from a federal security which will be exempt from Wisconsin income tax under s. 71.05 (1) (b), Wis. Stats.?

Answer: Yes. The interest income has the same tax-exempt character when received by the partner (taxpayer) as it had in the hands of the partnership. A partner may claim a subtraction from federal adjusted gross income on his or her Wisconsin return (Form 1) for the distributive share of partnership interest income from US government securities (s. 71.05 (1) (e), Wis. Stats.). The interest income retains its tax exempt character whether received by a general or limited partner. (Note: As indicated in Wisconsin Tax Bulletin #23, a money market trust (mutual fund) *cannot* pass through to the investor the tax-exempt character of income it receives from federal securities.)

V. Taxing Unemployment Compensation to Nonresident and Part-Year Residents

Facts and Question: In 1978 a federal law was enacted which taxed unemployment compensation in certain situations. Wisconsin follows the federal law regarding the taxation of unemployment compensation for the 1979 taxable year and thereafter.

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

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

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

Questions:

1. A nonresident taxpayer works in Wisconsin and received unemployment compensation relating to the Wisconsin employment. Is any part of the unemployment compensation taxable to Wisconsin?

2. A taxpayer who is a Wisconsin resident and works in Wisconsin becomes unemployed (collecting unemployment compensation) and then changes his or her residence to another state (continuing to collect unemployment compensation). Is any of this unemployment compensation taxable to Wisconsin?

3. A taxpayer lives and works in another state and then changes his or her residence to Wisconsin at which time the taxpayer starts collecting unemployment compensation based on out of state employment. Is any of this unemployment compensation taxable to Wisconsin?

Answer:

1. No part is taxable since the taxpayer was a nonresident. Unemployment compensation is not income from "services rendered" but is in the category of "all other income" which, under section 71.07 (1), Wisconsin Statutes, follows the residence of the recipient.

2. Since unemployment compensation follows the residence of the recipient, that part of the total unemployment compensation received while a resident of Wisconsin is taxable to Wisconsin if the total unemployment compensation received was entirely includable in federal adjusted gross income.

   For example, if total unemployment compensation of $4,000 was received in the year ($1,500 while a Wisconsin resident) and the entire $4,000 was included in federal adjusted gross income, then $1,500 would be taxable for Wisconsin. If only a portion of the total unemployment compensation received was includable in federal adjusted gross income, then the amount taxable for Wisconsin must be prorated based on the following formula:

$$\frac{\text{U/C received while a Wis. resident}}{\text{Total U/C received}} \times \text{Federal amount of taxable U/C} = \text{Wis. amount of taxable U/C}$$

   For example, a married taxpayer had $27,000 total income, including unemployment compensation of $4,000. The reportable unemployment compensation for federal tax purposes would be $1,000 (1/2 x (27,000 total income less $25,000 base amount)). Thus, the taxpayer's federal adjusted gross income would be $24,000 ($23,000 other income plus $1,000 taxable unemployment compensation). If the taxpayer collected $1,500 of the $4,000 unemployment compensation while a Wisconsin resident and then became a resident of another state when the remaining $2,500 was received, how much of the $1,000 that was included for federal purposes would be included in Wisconsin income?

   Using the above formula and substituting these dollar amounts, $375 would be included in Wisconsin income.

$$\frac{\$1,500}{\$4,000} \times \$1,000 = \$375 = \text{(Amount of unemployment comp. included in Wisconsin income.)}$$

3. Since unemployment compensation follows the residence of the recipient and the taxpayer received all the unemployment compensation after becoming a Wisconsin resident, the total amount taxable for federal purposes is also taxable for Wisconsin purposes.

CORPORATION INCOME/FRANCHISE TAX

I. Manufacturers' Credit for Sales or Use Taxes

Facts and Question: Section 71.043 (2) of the Wisconsin Statutes provides a credit against a corporation's Wisconsin income or franchise tax for Wisconsin sales and use taxes paid during the year on fuel and electricity consumed in manufacturing. Does this credit include all Wisconsin sales and use taxes paid during a taxable year on such fuel and electricity, whether or not the fuel and electricity is actually consumed in manufacturing during the same taxable year in which it is paid for?

Answer: Yes, the credit which may be offset against income or franchise taxes for a taxable year includes all Wisconsin sales and use taxes paid during that taxable year on fuel or electricity which has or will be consumed in manufacturing, even though some of the fuel or electricity may be actually consumed in manufacturing in a succeeding tax year.

II. Corporation Income From Rentals and Subsequent Disposals of Property Rented

Facts and Questions: All income or loss from the rental of real estate or tangible personal property follows the situs of the property and is non-apportionable as provided by s. 71.07 (1m), Wis. Stats. This section further provides, however, that although the income or loss from the rental of property used in the production of business income is non-apportionable, income or loss from the disposal of such business property follows the situs of the business and is apportionable. Gain or loss from the disposition of property not used in the production of business income follows the situs of the property and is non-apportionable.

For example, consider the cases of three corporations each having income from the rental of property and from the subsequent sale of the property rented. Corporation X, a manufacturer of road building equipment, has income from the rental and subsequent sale of such equipment. Corporation Y, a distributor of computers, has income from the rental and subsequent sale of computers. Corporation Z, a manufacturer of office furniture, realizes non-business income from the rental of an apartment building and from its subsequent sale. How should the rental income of each of the three corporations be treated? How should the income realized upon the sales of the property previously rented be treated?

Answers: The rental income of all three corporations is non-apportionable income, without regard to whether the property rented is business property or non-business property, and follows the situs of the property. The gains realized by corporations X and Y on the disposition of "business" property are reportable as apportionable business income in accordance with s. 71.07 (1m), Wis. Stats. The gain realized by Corporation Z on the disposition of the apartment building is non-apportionable and follows the situs of the property since the apartment building was not used in the production of business income.

SALES/USE TAXES

I. Court Reporter Transcripts

Facts and Question: Upon the request of a party to an action or proceeding, a court reporter transcribes and makes a typewritten transcript of the testimony given. At the time the original is typed a number of carbon copies and photocopies also may be produced. Are the fees charged for the original transcript, the carbon copies and photocopies of the original subject to the sales tax?

Answer: The gross receipts of a court reporter from recording testimony and proceedings generally are considered receipts from a nontaxable court reporter service, including receipts for the original and copies of transcripts requested by any parties present or participating in an action or proceeding. However, in certain instances other persons may desire copies; and in these situations the court reporter's gross receipts from sales of copies are considered to be taxable receipts from the sale of tangible personal property. An example of a taxable sale is when a court reporter reproduces hundreds of copies of a transcript to the proceedings of a case which has attracted wide attention and sells them to persons who are not parties to or participants in the proceedings.

II. Grain Bins

Facts and Question: A farmer purchases a grain bin and attaches the bin with bolts to a concrete foundation on land the farmer owns. The grain bin may be in either a "knocked-down" kit form or be assembled or prefabricated by the seller prior to purchase by the farmer. Is the purchase of the grain bin by the farmer a taxable transaction?

Answer: No, the farmer may purchase a grain bin in "knocked-down" kit form or one that is prefabricated and fully assembled but not installed without tax under the grain container exemption in s. 77.54(3m), Wis. Stats. When sold in this form, the container is personal property and the farmer may give a farmer's exemption certificate to the seller. A dealer selling a bin to the farmer may purchase the bin exempt from tax with a resale certificate.

Facts and Question: A farmer enters into an agreement for the purchase of a grain bin which the seller is to install and attach to a concrete foundation on the farmer's land. The grain bin may be delivered to the job site in "knocked-down" kit form which the seller, or a subcontractor hired by the seller, erects on the farmer's land. Or, the bin may be prefabricated and delivered in tact to the job site by a truck and then attached to the realty by the seller or by a subcontractor hired by the seller. Is the sale of the installed grain bin to the farmer a taxable transaction?

Answer: The sale and installation by the seller of the grain bin, whether the bin is brought to the job site knocked-down or fully assembled, is a realty improvement, and therefore, there is no tax on this sale to the farmer. The seller-installer is the consumer of the materials and is liable for the tax on the cost of the materials used in this realty improvement.