WISCONSIN TAX BULLETIN

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INCOME BRACKETS INDEXED FOR 1982

The income brackets for individuals, estates and trusts are indexed (adjusted) each year to reflect the percentage change which has occurred in the consumer price index from June of the preceeding year to June of the current year (s. 71.09 (2), Wis. Stats.). The index which is used for this purpose is the U.S. consumer price index for all urban consumers, U.S. city average. The maximum adjustment permitted for any single year is 10%. Only the income brackets are adjusted; the tax rates are not changed.

In June of 1981 the consumer price index was 271.3 and in June of 1982 it was 290.6. This represents a percentage change of 7.1%. The 1981 income brackets for individuals have therefore been adjusted by this percentage. The new income brackets for the 1982 taxable year are shown below, as well as the tax rate which applies to each bracket.

Income Brackets	Tax Rate
$ 0 - 3,900	3.4%
3,900 - 7,700	5.2%
7,700 - 11,700	7.0%
11,700 - 15,500	8.2%
15,500 - 19,400	8.7%
19,400 - 25,800	9.1%
25,800 - 51,600	9.5%
51,600 and over	10.0%

Administrative rule Tax 2.081 is in the process of being revised to reflect the new brackets for 1982.

IRA TREATMENT FOR WISCONSIN

Federal: The federal Economic Recovery Tax Act of 1981 provides new eligibility standards for individual retirement accounts (IRA's). Beginning with the 1982 tax year, an individual who is an active participant in any qualified employer retirement plan will now be permitted to establish an IRA.

The person may deduct on his or her federal income tax return the amount contributed to the IRA. The maximum deduction allowable for contributions which an individual makes to his or her IRA is $2,000 or 100% of the individual's earned income for the year, whichever amount is smaller. If husband and wife both work and meet the IRA qualifications, the maximum deduction available for contributions which they make to their IRA's is $4,000 per year on a joint federal return, or $2,000 each if they file separate federal returns.

A person with a nonworking spouse is subject to the $2,000 annual maximum unless a spousal IRA is established for a nonworking spouse. If a regular IRA is established for the working spouse and a spousal IRA for the nonworking spouse, the total amount that may be deducted by husband and wife for contributions they make to both IRA's is $2,250 or 100% of the working spouse's earned income, whichever amount is smaller. Assuming a married couple's total IRA deduction is $2,250, the contribution they make to each spouse's IRA must be $2,000 or less and the total contributions to both IRA's may not exceed $2,250.

Wisconsin: Chapter 317, Laws of 1981 created s. 71.02 (2) (b) 8, Wis. Stats., to provide that individuals must compute their 1982 Wisconsin income and deductions (with a few exceptions), under the federal Internal Revenue Code in effect on December 31, 1981. This reference to the December 31, 1981 code means that Wisconsin follows the new federal IRA provisions.

On a 1982 Wisconsin income tax return, Form 1, each spouse will be allowed to claim a deduction for contributions made to his or her IRA account. (Form 1A, the short form, may not be used to claim IRA deductions.)

The maximum deduction allowable for contributions which an individual makes to his or her IRA is $2,000 per spouse. In situations involving a

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spousal IRA, a further limitation of $2,250 in the aggregate for both spouses applies; however, a spouse may only deduct the contributions made to his or her IRA account.

Example 1: Spouse A has earned income of $30,000 for 1982 and has established an IRA account for both himself and his nonworking spouse. Contributions totaling $2,000 are made to his IRA during 1982 and $250 is contributed to his nonworking spouse's IRA.

IRA deduction allowable on 1982 Wisconsin return, Form 1:

Spouse A: $2,000
Spouse B: $250

Example 2: Same facts as in example 1, except that the contribution to Spouse A's IRA is $1,125 and the contribution to the nonworking spouse's IRA is $1,125.

IRA deduction allowable on 1982 Wisconsin return, Form 1:

Spouse A: $1,125
Spouse B: $1,125

Example 3: Spouse A has earned income of $10,000 and Spouse B has earned income of $20,000. Each spouse makes contributions of $2,000 to his or her IRA account.

IRA deduction allowable on 1982 Wisconsin return, Form 1:

Spouse A: $2,000
Spouse B: $2,000

NOTE: In the above examples, one spouse may *not* claim an IRA deduction for contributions to the other spouse's IRA account. If Spouse B in examples 1 and 2 had no income, she would not receive any tax benefit for the IRA deduction on her 1982 Wisconsin return. Spouse A may not claim any of Spouse B's $250 IRA deduction in example 1 or $1,125 deduction in example 2.

HOWICK CASE: RULES 2.30 AND 2.97

In prior issues of the WTB it was reported that the department was in the process of amending administrative rule Tax 2.30 and repealing rule Tax 2.97. The changes were proposed so that the principles established by the Wisconsin Supreme Court's decision in the Romain A. Howick case relating to losses will also apply for determining gains when property acquired before becoming a Wisconsin resident is sold by an individual while he or she is a Wisconsin resident.

The action on these rules has been completed and the amendment of 2.30 and the repeal of 2.97 became effective August 1, 1982. The result of this action is that gains and losses from sales of property acquired prior to becoming a Wisconsin resident are to be determined in the following manner for Wisconsin income tax purposes:

(a) Sales prior to August 1, 1982

Losses are to be determined in the same manner for Wisconsin as for federal purposes.

Gains are to be determined in accordance with the provisions of administrative rules Tax 2.30 and 2.97 as these rules existed before the amendment and repeal which became effective August 1, 1982. (Copies of rules Tax 2.30 and 2.97 as they apply to transactions in which gain was recognized and which occurred prior to August 1, 1982 are included as Attachments A and B on pages 15 through 19 of this issue.)

(b) Sales on or after August 1, 1982

Losses are to be determined in the same manner for Wisconsin as for federal purposes.

Gains are to be determined in the same manner for Wisconsin as for federal purposes.

A copy of rule Tax 2.30 as it applies to transactions which occur on or after August 1, 1982 is included in this issue as Attachment C on page 20.

There are exceptions to the general rule that gains and losses from sales of assets which were acquired before becoming a Wisconsin resident are to be determined in the same manner for Wisconsin as for federal purposes. Examples of two exceptions were included in WTB number 23 on page 10. The two examples involve property which was sold in an installment sale while the seller was a nonresident of Wisconsin and property which was acquired in an involuntary conversion while an individual was a nonresident of Wisconsin.

CORPORATION DECLARATION FORMS CHANGED FOR 1983

For 1983 there will be a change in the manner in which declaration forms are distributed to corporations. Under the new system, corporations will receive only a single mailing of declaration forms. The mailing will provide all declaration forms (including 4 pre-addressed payment vouchers) and instructions for the 1983 taxable year. Form 4-ES for 1983 will not be included in the 1982 corporate booklets.

Declaration forms for 1983 will automatically be mailed to all corporations who filed a Form 4-ES and made declaration payments for 1982. The 1983 declaration forms will be mailed at least 4 weeks before the due date of the corporation's first installment payment.

In prior years, Form 4-ES and instructions were provided in the corporate forms booklets. Any corporation that filed the Form 4-ES would later receive installment payment cards from the department for any remaining installments due.

MAJOR FORM CHANGES FOR 1982

Major changes which will be made to the Wisconsin tax forms for 1982 are as follows:

Individual Income Tax Forms

Form 1A

- A new line (line 23) has been added for married persons to indicate if they want one combined refund check rather than two separate refund checks *if* both spouses are receiving refunds. The combined refund check will be issued in both spouses' names. Mailing only a combined check will save time and costs.

  Form 1 will also include a new line similar to line 23 on Form 1A.

  (Note: Persons claiming deductions to an IRA (Individual Retirement Arrangement) must file Form 1 rather than Form 1A.)

Form 1

- Changes to the 1982 Form 1 were not finalized at the time the October issue of the Wisconsin Tax Bulletin was published. Descriptions of the changes made will be provided in the January, 1983 WTB.

Homestead Credit Form

Rent Certificate

- A new entry space has been added for entering the Social Security number of landlords who are individuals and the Federal Employer Identification number of landlords who are corporations or partnerships.

Farmland Credit Form

Schedule FC

- The two separate lines (lines 14 and 15 on the 1981 Schedule FC) which were previously used to indicate the type of credit, percentage of credit and amount of credit claimed have been combined into a single line. The new line (line 14 on the 1982 Schedule FC) is broken down into 3 categories: (a) regular (current law) credit, (b) 10% special minimum credit and (c) credit based on prior year's law.
- A worksheet is provided in the instructions for use by claimants who use prior year's law (the law in effect when they entered into a farmland preservation agreement) to compute their farmland credit. This worksheet must be attached to the Schedule FC filed.

Corporation Forms

Form 5

- A new entry line (line 26b) has been added to reflect a law change which added a 10% surtax to the franchise and income tax payable.
- Schedule Z has been revised to account for the increase in the sales tax rate from 4% to 5%.

Form 4

- Line 36b has been added to provide for the 10% surtax.
- Schedule Z has been revised to account for the sales tax rate increase.

CAPITAL GAINS SUBJECT TO MINIMUM TAX FOR 1982

Wisconsin's minimum tax first became effective for the 1981 taxable year. Individuals, estates and trusts are required to pay a minimum tax if the total of their tax preference items exceeds $10,000. Adjusted itemized deductions, accelerated depreciation on real property, and accelerated depreciation on personal property subject to a lease are examples of tax preference items.

Beginning with the 1982 taxable year, an individual, estate or trust may exclude a portion of net long-term capital gain income from Wisconsin taxable income which is reported on a Wisconsin Form 1 (or Form 2 for estates and trusts). The portion of the long-term capital gain excludable is 20% in 1982, 40% in 1983 and 60% in 1984 and thereafter. As a result of a new law enacted by the Legislature, the portion of net long-term capital gain excluded from Wisconsin taxable income is also considered a tax preference item for purposes of computing the minimum tax for 1982 and thereafter. For example, if an individual had a $100,000 net long-term capital gain in 1982, $20,000 ($100,000 × 20% = $20,000) would be reported as a tax preference item on Wisconsin Schedule MT.

Schedule MT for 1982, the form used to compute the Wisconsin minimum tax, will include this new tax preference item for capital gains.

TAXPAYERS CONVICTED FOR FAILING TO FILE

Two individuals were recently convicted for failing to file Wisconsin income tax returns.

John P. Adams, Belleville, publisher of the Belleville Recorder, a weekly newspaper, was convicted in Dane County Circuit Court after he entered no contest pleas to three counts of failing to file Wisconsin income tax returns. He was ordered by Circuit Judge Mark A. Frankel to serve two years probation and fined $1,500 for criminal violations of the Wisconsin income tax law. Adams had been charged with failing to file 1978, 1979 and 1980 returns reflecting gross incomes of $39,000, $49,000 and $50,000, respectively.

Robert D. Stewart, Waukesha, was convicted in Dane County Circuit Court after he entered a guilty plea to one count of failing to file a Wisconsin income tax return. He was ordered by Reserve Circuit Judge William C. Sachtjen to pay a $500 fine or serve 30 days in jail for criminal violation of the Wisconsin income tax law. Stewart had been charged with failing to file a 1979 return when he had a gross income of more than $145,000 for that year.

Both of these convictions were the result of investigations by the Intelligence Section of the Wisconsin Department of Revenue.

Failure to file a Wisconsin state income tax return is a crime punishable by a maximum fine of $500 or imprisonment not to exceed six months or both. In addition to the criminal penalties provided by statute, Wisconsin law provides for substantial civil penalties on the civil law liability. Assessment and collection of the additional taxes, penalties and interest due follows conviction from criminal violations.

BULK ORDERS OF TAX FORMS

In early October, the department will mail out the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1982 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a handling charge on orders which they submit. No charge is made for forms which will be used for distribution to the general public (for example, in a bank, library or post office).

Orders should be placed as early as possible after you receive the order blank. By receiving the orders early, the department can better identify possible shortages of specific forms.

This year's mailing list of bulk order blanks contains the names of all persons and organizations who placed orders for 1981 forms. If you are not on this mailing list and do not receive a Form P-744, you may request the bulk order blank by contacting any department office or by writing to the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, WI 53708.

TAX RETURN STATISTICS FOR 1981

During the first six months of 1982, 1,990,000 Wisconsin income tax returns were filed for the taxable year 1981. Homestead Credit claims totaling 290,000 and 8,500 Farmland Preservation Credit claims were also filed for 1981.

The 1,990,000 income tax returns for 1981 were filed by 2,780,000 individuals. (The combined return of a

husband and wife is consdered one return.) Itemized deductions were claimed by 20% of the individuals, and the standard deduction was claimed by 80%.

A total of 1,500,000 income tax refunds were issued to taxpayers, which averaged $180 each. The average refund issued for 1980 returns was $160.

Homestead Credit refunds averaged $350 per claimant, an increase from the average refund of $330 issued last year. Over 50% of the claimants were age 65 or older. Approximately 40% of the individuals claiming Homestead Credit were renters and 60% were homeowners.

An average payment of $1,500 was issued to each Farmland Preservation claimant. The average payment for the previous year was $1,600. As a result of Wisconsin's new 5% minimum tax which became effective for 1981, 1,250 persons made an average payment of $1,000 each.

NEW IS! & E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A, B and C, 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 August 1, 1982. Part D lists new rules and amendments which have been adopted in 1982.

A. Rules at Legislative Council Rules Clearinghouse

2.081 (5) Indexed income tax rate schedule for 1982
- new rule

2.39 Apportionment method
- amendment

2.40 Nonapportionable income
- repealed and recreated

2.82 Nexus
- amendment

2.945 Spousal individual retirement contributions
- new rule

4.50 Assignment, use and reporting of Wisconsin state tax number
- amendment

7.21 Labeling
- amendment

7.22 Tied house law; volume and quantity discounts
- repealed

7.23 Activities of brewers, bottlers and wholesalers
- amendment

8.02 Revenue stamps-occupational tax
- amendment

8.11 Reports
- amendment

8.21 Purchases by the retailer
- amendment

8.22 Purchases made outside of state
- amendment

8.35 Interstate shipments
- amendment

8.42 Wine containers
- repealed

8.43 Empty containers
- amendment

8.66 Merchandise on collateral
- amendment

8.76 Salesperson
- amendment

8.81 Transfer of retail liquor stocks
- amendment

8.85 Procedure for apportionment of cost of administration of s. 176.05 (23), Stats.
- amendment

8.86 Tied house law; volume and quantity discounts
- repealed

9.12 Refunds-military
- amendment

11.001 Definitions and use of terms
- amendment

11.03 Elementary and secondary schools and related organizations
- amendment

11.05 Governmental units
- amendment

11.32 "Gross receipts" and "sales price"
- amendment

11.66 Communications and CATV services
- amendment

11.71 Automatic data processing
- new rule

16.01 Administrative provisions
- new rule

16.02 Eligibility
- new rule

16.03 Application and review
- new rule

16.04 Repayment of loan
- new rule

B. Rules at Legislative Standing Committees

11.01 Sales and use tax return forms
- amendment

11.08 Medical appliances, prosthetic devices and aids
- amendment

11.10 Occasional sales
- amendment

11.16 Common or contract carriers
- amendment

11.17 Hospitals, clinics and medical professions
- amendment

11.26 Other taxes in taxable gross receipts and sales price
- amendment

11.38 Fabricating and processing
- amendment

11.49 Service station and fuel oil dealers
- amendment

11.56 Printing industry
- new rule

11.57 Public utilities
- amendment

11.66 Communication and CATV services
- amendment

11.69 Financial institutions
- amendment

11.84 Aircraft
- amendment

11.85 Boats, vessels and barges
- amendment

11.87 Meals, food, food products and beverages
- amendment

11.93 Annual filing of sales tax returns
- amendment

11.97 "Engaged in business" in Wisconsin
- amendment

C. Rules Approved By Legislature But Not Effective

2.165 Change in taxable year
- amendment

11.11 Waste treatment facilities
- amendment

D. Rules Adopted in 1982 (in parentheses is the date the rule was adopted.)

2.081 (3) Indexed income tax rate schedule for taxable year 1981 (1/1/82)
- new rule

2.30	Property located outside Wisconsin - depreciation and sale (8/1/82) - repealed and recreated
2.97	Sale of constant basis assets acquired prior to becoming a Wisconsin resident (8/1/82) - repeal
5.01	Filing reports (8/1/82) - amendment
10.10	Taxation of savings, mortgage and credit life insurance (8/1/82) - amendment
10.11	Federal estate tax deduction (8/1/82) - new rule
10.12	Deductibility of income taxes (8/1/82) - amendment
10.13	Apportionment of property qualifying for exception (8/1/82) - new rule
11.12	Farming, agriculture, horticulture and floriculture (1/1/82) - amendment
11.16	Common or contract carriers (1/1/82) - amendment
11.40	Exemption of machines and processing equipment (1/1/82) - amendment
11.53	Temporary events (2/1/82) - new rule

NOTE: In Wisconsin Tax Bulletin #28 it was indicated that rule Tax 10.14, Valuation of United States treasury bonds (new rule), was at the legislative standing committees. This rule has since been withdrawn.

Also, the proposed rules in Chapter Tax 16 relate to the Senior Citizen's Property Tax Deferral Loan Program.

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 Commission's decision).

The following decisions are included:

Income and Franchise Taxes

Irv Berlin vs. Wisconsin Department of Revenue
Paul F. Hausman vs. Wisconsin Department of Revenue
Tadeusz Jaworski and Halina Jaworski vs. Wisconsin Department of Revenue
Kenneth M. Kenney vs. Wisconsin Department of Revenue
Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue
Kurz & Root Company vs. Wisconsin Department of Revenue
Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue

Sales/Use Taxes

Richard or Alvin Hamland vs. Wisconsin Department of Revenue
Hunter Heating and Air Conditioning, Inc. vs. Wisconsin Department of Revenue
Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue
Rause Enterprises, et. al. vs. Wisconsin Department of Revenue
Eric F. Tamm vs. Wisconsin Department of Revenue

Homestead

Helen M. Raschick vs. Wisconsin Department of Revenue

Gift Tax

Carolyn Hribar vs. Wisconsin Department of Revenue
Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Irv Berlin vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 26, 1982). The issue in this case is whether advances made by Irv Berlin in 1974 and 1975 to Compact Distributors of Wisconsin, Inc. represented contributions to capital or loans and if said advances represent loans to the above corporation, whether they may be treated as deductible bad debts in 1976. Berlin incorporated Compact Distributors of Wisconsin, Inc. in 1974. Taxpayer was the sole shareholder. Berlin's initial capitalization was $2,500.00. Taxpayer was president of Compact and his duties were to oversee its operations. He did not draw salary in 1974 and 1975. His employment with Compact was his sole employment, and he had no income from other sources except from investments.

Compact's operations were the door to door sales of vacuum cleaners. Compact employed four to six salespersons who were paid on a commission basis. Compact also employed an office staff of about seven persons. Compact's operations were based upon providing financing for purchasers. In 1974 and 1975 the sources of financing tightened up. The finance company with which Berlin was dealing could no longer provide money. Taxpayer sought other sources of financing but was not able to establish another long term source.

Berlin believed the lack of available financing would be temporary. However, Compact stopped doing business in April or May, 1975. Compact was not dissolved for insurance reasons. Taxpayer made a series of advances to Compact in 1974 and 1975 in order to keep the company going. He made these advances several times per month in 1974 and 1975. He received one-month to six-month notes from Compact at a 0% rate of interest. The first advance was made August 19, 1974, ten days after the company incorporated. No security was given for the notes.

Two of the notes were repaid. The remainder of the notes were never repaid. No account was established to pay back the advances. Taxpayer never attempted to collect on the notes. The advances were used for paying commissions, salaries and operating expenses. Berlin believed that Compact would be a profitable company and that once the company was profitable, he would begin to draw a salary and receive repayments of the advances at issue. Taxpayer deducted the unpaid loans in 1976 as bad debts.

The Commission held that the taxpayer's advances to Compact Dis-

tributors of Wisconsin, Inc. during the years 1974 and 1975 were contributions of capital of said corporations and, thus, the losses sustained by the taxpayer must be taken as capital losses rather than business bad debts.

The taxpayer has not appealed this decision.

Paul F. Hausman vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 10, 1982). Taxpayer, Paul F. Hausman, is a physician who practices surgery and is licensed to practice medicine in Wisconsin.

In about 1954, with retirement planning in mind, taxpayer and his wife purchased 152 acres of timberland in Waukesha County. Hausman testified that he chose to purchase the wooded land and plant trees on it over the years so that the land would generate little, if any, income during his years of active practice of medicine. On his retirement, he felt, the trees he had planted would have matured and he could harvest them and sell them at a gain at a time when he needed retirement income. During subsequent years taxpayer acquired additional adjacent and nearby land.

During 1954 through 1978 the Hausmans planted or were responsible for planting about 100,000 trees. Paul Hausman also purchased much heavy farm equipment and machinery with his funds, such as chain saws, rotary mowers, plows, a water wagon, spray rigs, a front end loader, trucks and tractor. Taxpayer's wife kept some of the tree operation's books, supervised employes who worked on the land, and met with foresters and rangers in getting ideas to improve the operation at times during the day when taxpayer could not because of his medical practice.

During the years 1975 through 1978 the time Hausman devoted to the wooded land was primarily on weekends, holidays, vacations, and on evenings on work days when it was light out. He testified that between 1954 and 1975, he did not believe that the land produced a profit. During these years about 75% of the total acreage contained trees. Taxpayer and his wife planted or caused to be planted about 40% of the 75% acreage containing trees. The checking account from which many wooded land related expenses were paid was in the name "Foliy Farms, Bernice Hausman". (Paul Hausman could also sign checks on this account.) Taxpayer's wife made out most checks with funds Paul Hausman gave her; he gave her $1,000 per month for this account.

The department disallowed the taxpayer's claimed losses as follows:

1975	$15,116
1976	$12,823
1977	$12,515
1978	$12,043

These losses resulted from offsetting the small amounts of income from the land ($515 in 1975, $569 in 1976, $708 in 1977 and $570 in 1978) by larger amounts of expenses and depreciation for those years.

The issues in this case are 1) Were the losses incurred related to the wooded land activity properly deductible as losses from a business or an activity engaged in for profit? and 2) If so, was the taxpayer the sole proprietor of the wooded land activity and entitled to deduct the losses in full?

The Commission held that the losses incurred by the taxpayer in his activities concerning the wooded land owned by his wife are not properly deductible as losses from a business activity engaged in for profit and the department's disallowance of taxpayer's claimed losses for tax years 1975 to 1978 was correct. The issue of whether the taxpayer is the sole proprietor of the activity and entitled to deduct the losses in full was not decided because of the prior two conclusions of law.

The taxpayer has appealed this decision to the Circuit Court.

Tadeusz Jaworski and Halina Jaworski vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 12, 1982). In 1965 Tadeusz and Halina Jaworski acquired a farm with a farmhouse and farm buildings on it in Bevent, Wisconsin. The taxpayers paid $25,000 for the farm. Just prior to taxpayers sale of a portion of the farm in 1978, the farm was encumbered by a mortgage to the FMHA in the amount of $202,190. In 1978 taxpayers were delinquent in their mortgage payments and were forced to sell the farmland portions of their farm. The complete farm was divided into three parts; parcel "A" was 180 acres of farmland which was sold for $112,869; parcel "B" was 200 acres of farmland which was sold for $86,493 on a land contract; and parcel "J" was five acres which contained the farmhouse and farm buildings, which were retained by the taxpayers. The taxpayers' original cost for parcel A was $8,679 and the original cost for parcel B was $3,160.

The taxpayers contended that their basis for parcel A consists of the original cost and in addition an allocation of a portion of the amount owing FMHA of $73,193, as prorated by the taxpayers in their 1978 income tax return. Further, they contended that their basis for parcel B is their original cost plus $25,071, as allocated by the taxpayers in their 1978 income tax return.

The department contended that the taxpayers' basis for parcels A and B should not include the allocation for the indebtedness.

The Commission held that the taxpayers cannot include the FMHA mortgage indebtedness as they have allocated it in their 1978 Wisconsin combined income tax return regarding the deduction taken for the sale of parcel A and B above.

The taxpayers have not appealed this decision.

Kenneth M. Kenney vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 12, 1982). The issue in this case is whether for the years 1976, 1977 and 1978, Kenneth Kenney properly took as a business expense, expenses incurred for parking near his office. Kenneth Kenney is a lawyer and is required to take trips throughout the state to court houses and to visit clients at their businesses, their homes or hospitals. During the years involved his office was located in downtown Milwaukee. In order to have his automobile available for travel during a work day, Kenney paid for a parking space in a parking lot close to his office.

The taxpayer's automobile used in his business was used 82% for business use in 1977 and 80% for business use in 1978. Taxpayer contended that the same percentages should be applied to his total parking expenses. More than one-half of

the taxpayer's law practice involved representing insurance companies concerning catastrophies, requiring Kenney to go to the scene of the catastrophy.

Taxpayer customarily came from his home to the office and parked in the lot. He spent some days entirely in his office without using his car. Many days he would leave his office and use his automobile for a business trip. Kenney only used his downtown parking space when he was at his office. He could not park in his downtown parking lot after 6:00 p.m. or before 7:00 a.m., on Sundays or for special events. His parking privileges were not transferrable. Kenney testified that had he not needed his car during his work day he would have taken the bus to work. Taxpayer never took the bus to work during the years involved.

The Commission held that the expenses incurred by Kenneth M. Kenney for leasing a parking space near his downtown Milwaukee office were personal expenses and must be considered as nondeductible commuting expenses.

The taxpayer has not appealed this decision.

Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 22, 1982). Edward Kraemer & Sons, Inc. has as its principal business rock crushing and road and bridge construction in Wisconsin and other states. On May 24, 1976 the department issued a notice of assessment of additional income taxes against the taxpayer with adjustments indicated thereon being made to reported income for the fiscal years ending March 31, 1971 and March 31, 1972. The issues in this case are whether and in what manner the Wisconsin net business losses incurred by the taxpayer in its fiscal years ended March 31, 1969 and 1970 should be taken into account in determining net business income in its fiscal years ended March 31, 1971 and March 31, 1972.

For its fiscal year ended March 31, 1969, Edward Kraemer & Sons, Inc. properly computed its Wisconsin income on the separate accounting method as authorized by s. 71.07 (2), Wis. Stats. During its fiscal year ended March 31, 1969, taxpayer had total company income from operations of $196,567.97 but incurred a Wisconsin net business loss of $194,611.32 on the separate accounting method. For its fiscal year ended March 31, 1970 taxpayer again properly computed its Wisconsin income on the separate accounting method; taxpayer had total company income from operations of $261,797.97 but incurred a Wisconsin net business loss of $322,801.58 on the separate accounting method, in addition to such loss as incurred in the preceding fiscal year.

For its fiscal year ended March 31, 1971 taxpayer computed its Wisconsin income on the apportionment method as defined in s. 71.07 (2), Wis. Stats.

The Commission held that s. 71.06, Wis. Stats., does not provide for a corporate taxpayer on the apportionment method of reporting income to carry forward Wisconsin losses and offset them against Wisconsin income. Losses, if any, must be applied forward on a company-wide basis subtracted from company-wide income before the apportionment ratio is applied in determining Wisconsin taxable income.

The taxpayer has appealed this decision to the Circuit Court.

Kurz & Root Company vs. Wisconsin Department of Revenue (Circuit Court of Outagamie County, January 25, 1982. See WTB#19 for decision of Wisconsin Tax Appeals Commission.) Taxpayer is a manufacturer of electrical generators and related equipment who maintained from the mid-1950's until 1966 two plants in Wisconsin and one plant in California. The assessment being challenged in this case arises from a contract entered into between the taxpayer's California plant and the United States Air Force for the construction of certain equipment to be used by the Air Force. During the performance of the contract considerable difficulty and differences of opinion arose between taxpayer and the Air Force, ultimately concluding with a stipulated settlement under the terms of which $404,745.00 was paid by the Air Force to the taxpayer to settle all claims arising as a result of this contract. Payment was made in 1967 one year following the closing of the California operation (although apparently an additional $88,255.00 had been paid the previous year which sum was attributable to the final settlement of this claim).

The Department of Revenue assessed a franchise tax in the amount of $16,891.89 on additional income of $309,479.23 which was achieved from subtracting from the settlement amount the taxpayer's adjustment of its gross income.

The Court indicated that there was simply no way in which the monies received as a result of the settlement of the contract with the Air Force could be categorized as anything other than income.

The taxpayer next argued that this income was not subject to Wisconsin tax since it was derived from a business transacted in California. The Court found that there was no California operation in the year in which the funds were received. In calculating taxable income, the year of receipt determines tax consequences and not the year in which the work was performed, the place in which the work was performed, or even the corporate structure as it existed during the performance of such work. In the year in which the money was received the taxpayer maintained only Wisconsin offices and the money was received in Wisconsin as a result of negotiations conducted by the corporate president who had his principal office in Wisconsin.

Finally, the taxpayer argued that the imposition of the tax by the department exceeded Wisconsin's constitutional power and must be declared invalid. The taxpayer's position on Wisconsin's power to assess taxes on income derived from another state was dependent upon the department's findings of fact. The department found that the income was derived in Wisconsin and not California. The Court stated that there was no question that the department has the power to assess taxes based upon income which is derived in Wisconsin. The department's conclusion that the income was derived as a result of business conducted in Wisconsin was supported by the evidence which the Court would not overturn.

The taxpayer has not appealed this decision.

Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue (Circuit Court of Iowa County, June 24, 1982). The issue in this case involves the manner in which the taxpayer may compute its addition to bad debt reserves for Wisconsin franchise tax purposes. (See WTB #26 for summary of the Tax Appeals Commission's decision.)

The issue in this case involves an interpretation of s. 71.04 (9) (b), Wis. Stats. This section permits a production credit association to take a deduction for an addition to its reserve for bad debts of ⅔ of the amount that they are required to allocate for federal loss reserve purposes. The taxpayer interprets that section to mean that it is entitled, each year, to deduct as an addition to its reserve for bad debts a sum equal to ⅔ of one-half percent of its loans outstanding at the end of a particular year. It is the position of the department that this section permits the taxpayer to deduct ⅔ of the amount actually added to its valuation reserve against loan assets. Thus, regardless of the amount of the outstanding loans made by the taxpayer for a given year, the department contends that a deduction for bad debt reserve is allowable only up to an amount equal to ⅔ of the sum actually allocated for federal loss reserve purposes.

The Circuit Court upheld the Tax Appeals Commission's decision. The Court held that production credit associations are permitted to deduct as a reserve for bad debts ⅔ of the sums that they are required to allocate for federal loss reserve purposes. In this case, the requirement necessitated the taxpayer allocate for federal loss reserve purposes the sum of $47,844.32.

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

SALES/USE TAXES

Richard or Alvin Hamland vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 14, 1982). The issue in this case is whether a truck tractor used solely to spread liquid manure on a farm is exempt from the sales and use tax under s. 77.54 (3), Wis. Stats.

The taxpayers purchased a used truck tractor in May, 1981 and did not pay any use tax at the time they filed a Form ST-10 with the Division of Motor Vehicles in conjunction with the registration of the vehicle. The Department of Revenue subsequently assessed $300 in use tax against the Hamlands.

Richard Hamland and his brother Alvin were engaged in a dairy farm partnership at the time the vehicle was purchased. He and his brother purchased the vehicle for the sole purpose of spreading liquid manure over their 500 tillable acres. Hamland purchased a 4500-gallon liquid manure tank from Mr. Friedenfeld at the same time he purchased the tractor. Mr. Friedenfeld installed a power take-off on the truck tractor and extended its frame so that the liquid manure tank could be mounted on it. Mr. Hamland stated that he gave Friedenfeld one check for $13,000 for the truck tractor, liquid manure tank, and customizing work. Taxpayer testified that he took possession of the truck tractor only after it had been so customized. Mr. Hamland further testified that the truck tractor was not fit for highway use in that it needed many repairs and neither the odometer nor speedometer were in working condition.

The taxpayer further indicated that the liquid manure tank has never been removed from the truck tractor and that the vehicle is used solely to spread liquid manure over the fields. The vehicle is used occasionally to cross the highway as the farm is divided by a highway. The truck tractor had considerably less traction than a farm tractor, but had considerably more speed than a farm tractor. Hamland stated that he purchased the truck tractor rather than a farm tractor because the cost of the truck tractor was only $7,500 and the cost of a farm tractor to pull a 4500-gallon liquid manure tank would be $20,000.

The Commission ruled that the purchase of this truck tractor was exempt from the use tax under s. 77.54 (3), Wis. Stats., which provides an exemption for farm tractors and machines. Although the statute states that the farm exemption shall not apply to automobiles, trucks, and other motor vehicles for highway use, the Commission found that the particular customizing of the truck tractor changed it into a vehicle not designed primarily for highway use and that the vehicle was in fact not used on the highway. The Commission also found that the truck tractor was used for the same purpose as a farm tractor, and therefore the farm exemption applied.

The department has not appealed this decision.

Hunter Heating and Air Conditioning, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 20, 1982). The issue in this case relates to appealing an assessment after an additional field audit assessment has been paid by the taxpayer. The Department of Revenue, by notice dated March 27, 1981, issued a field audit assessment of sales and use tax against the taxpayer in the amount of $2,834.14, including interest and penalty. On April 22, 1981, the taxpayer paid the total amount of the assessment, and on May 28, 1981 it filed a petition for redetermination with the department. On June 23, the department denied the petition for redetermination on the basis that the assessment was already paid. The taxpayer then appealed to the Tax Appeals Commission on August 13, 1981.

The Commission indicated that pursuant to s. 77.59 (6) (c), Wis. Stats., payment shall be considered an admission of the validity of that portion of the deficiency determination and may not be recovered in an appeal or in any other action or proceeding. Section 77.59 (6) (c), Wis. Stats., also limits the time that one may make a deposit from the filing of the petition for redetermination to any time the department makes its redetermination. The taxpayer's check was mailed to the department and there was nothing on the face of the check to indicate that it was to be made as a deposit, and the check was not accompanied by any cover letter with any instructions to the department.

The Commission held that it does not have any jurisdiction in this matter and for that reason, the department's motion to dismiss the appeal is granted.

Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 10, 1982). During the pe-

riod April 1, 1975 through March 31, 1976 taxpayer, Edward Kraemer & Sons, Inc., was a Wisconsin corporation, engaged in producing rock-based products. The sole issue for the Commission to determine was whether the taxpayer's purchases of the equipment and machinery, including repair parts and replacements thereof, used in its plant production of rock-based products are exempt from the use tax under the terms of the manufacturing exemption provided in s. 77.54 (6) (a), Wis. Stats.

During the period under review the taxpayer was engaged in the processing of granite and limestone materials into commercial products. Taxpayer's product production operations involve plants which convert raw, unprocessed "shot rock" (rock rubble resulting from the drilling and blasting of raw stone from quarries and/or sand and gravel pits) into twenty-nine commercially salable products. A plant is composed of various pieces of equipment, including a primary crusher, one or more intermediate crushers, a roll crusher, screening and washing units, surge bins and conveyors. Each plant is self-contained and independently capable of transforming raw material (stone) into final products meeting defined specifications imposed by the taxpayer's customers. During the production process raw material is reduced in size, graded to various size specifications, blended where necessary with additive materials (such as sand, clay, black dirt or paper mill waste), washed and prepared as a finished product. The plant production process also eliminates various deleterious substances (such as clay, friable sandstone, chert (silica dioxide), or other materials with chemical compositions of sulphates, carbonates or phosphates) in accordance with defined product specifications. Taxpayer's plants are both fixed and mobile. Both types of plant are completely self-contained and capable of producing a multiplicity of separate and identifiable finished products.

Each plant, and the purchased components, including repair parts and replacements thereof, are used exclusively and directly in the rock product production operations of the taxpayer. Each of the finished products produced by the taxpayer's rock processing is a new article, with a different form, use and name from the raw materials. Each of the finished products has a different form, in terms of shape, dimension and content, than the preprocessed raw material. The preprocessed stone selected as the taxpayer's raw material has no commercial use as a product meeting applicable product specifications. As a result of the taxpayer's processing, twenty-nine separate products, each with a specific and different use from the existing raw material, are produced by the taxpayer. The raw material prior to processing is commonly called "stone". Each of the twenty-nine finished products produced by the taxpayer is tangible personal property possessing its own and different commonly used name, such as "bituminous road mix", "granular subbase", "sealcote", and "agricultural lime", which name identifies a product with known characteristics meeting defined product specifications.

The Commission held that during the period involved taxpayer did produce, by the use of machinery, a new article with a different form, use and name, from existing materials by a process popularly regarded as manufacturing. Taxpayer's rock processing operation constitutes "manufacturing" within the meaning of that term under s. 77.51 (27), Wis. Stats. The taxpayer's purchase and use of equipment and machinery in the processing activities of its rock processing operations are exempt from the tax under s. 77.54 (6) (a), Wis. Stats.

The department has appealed this decision to the Circuit Court.

Rause Enterprises, et. al. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 29, 1982). On January 11, 1980 the department issued six assessments to six business enterprises in which Thomas W. Rause had an ownership interest. Each assessment covered the period October 1, 1975 through June 30, 1979, some time during which each business enterprise operated a McDonald's restaurant franchise and held seller's permits in Wisconsin.

The issues involved in this case are as follows:

1. Are the department's sales or use tax assessments against the taxpayers barred by the doctrine of equitable estoppel?
2. Were the taxpayers' purchases of disposable plastic eating utensils, napkins, straws, bag liners, and disposable placemats subject to use tax under s. 77.53 (1), Wis. Stats., or exempt as purchases for resale under s. 77.51 (4) (intro.), Wis. Stats.?

For use in and by the McDonald's restaurants, taxpayers purchased various items of tangible personal property, without paying either sales or use tax on these purchases, from sellers located both in and outside of Wisconsin. The vast majority of these purchases were from sellers located outside of Wisconsin. The tangible personal property so purchased includes disposable plastic eating utensils, paper products, styrofoam containers, food stuffs, cleaning supplies and office and restaurant equipment. In 1976, covering the 1975 calendar year, Thomas W. Rause (part-owner of "Rause Enterprises") reported and self-assessed use tax attributable to the restaurant in Stevens Point. Mr. Rause testified that this use tax was paid in connection with the purchase of kitchen equipment for the restaurant, and that the contract with the supplier called for payment of equipment by check to the supplier and payment of the tax by separate check to the department which he reported as use tax.

Taxpayers conceded that tangible personal property which they purchased was subject to the tax, but that use tax was not paid because of reliance upon the department's printed instructions for sales and use tax Form ST-12 (July 1979 revision). Taxpayers asserted that the department's misleading instructions upon which they relied should preclude the department from collecting the use tax in dispute under the doctrine of equitable estoppel. Mr. Rause testified that he relied upon the following portion of the instructions for line 7 (labeled "Use Tax") of the form: "The use tax, which is 4% of the purchase price, must be paid when property used in Wisconsin is purchased from an out-of-state *retailer* who did not impose at least a 4% tax on the sale." (emphasis added). Mr. Rause also testified that he did not include his out-of-state purchases in the measure of the use tax because he made these purchases at whole-

sale, not at retail; that the taxpayers made purchases from out-of-state wholesalers, not out-of-state *retailers,* referred to in the instructions; and that while he recognized that s. 77.51 (7) (d) and (9), Wis. Stats., included certain wholesalers in the definition of "retailer", he believed that the statutory language did not apply to his purchases.

The Commission held that the department's assessments against the taxpayer are not barred by the doctrine of equitable estoppel.

In regard to the second issue, the Commission held that the taxpayers' purchases of disposable plastic eating utensils, napkins, straws, bag liners and disposable placemats were not subject to the use tax imposed by s. 77.53 (1), Wis. Stats., but rather are exempt as purchases for resale under s. 77.51 (4) (intro.), Wis. Stats.

The department requested a rehearing on the matter of the bag liners. The Commission granted the department's request for a rehearing. However, prior to the rehearing the parties stipulated that the bag liners are subject to use tax.

Neither the department nor the taxpayer have appealed to the Circuit Court.

Eric F. Tamm vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 23, 1982). The sole issue in this case is whether Eric F. Tamm, an officer and employe of Avant Supply, Inc., who had control, supervision or responsibility for filing sales tax returns and making payment of the amount of tax imposed under the sales tax law, willfully failed to comply with s. 77.60 (9), Wis. Stats. If he did he is personally liable for such sales tax.

The Tax Appeals Commission held that during the period under review, the taxpayer was an officer and an employe of Avant Supply, Inc., he had control, supervision and responsibility and was required by s. 77.50 (9), Wis. Stats., to file the proper sales tax returns and make payments of the amount of tax imposed under the sales tax law. He willfully failed to make such payments to the department within the intent and meaning of s. 77.60 (9), Wis. Stats. Therefore, he is personally liable to the department for such taxes, interest and penalties thereon.

The taxpayer has not appealed this decision.

HOMESTEAD

Helen M. Raschick vs. Wisconsin Department of Revenue (Circuit Court of Burnett County, May 24, 1982). Helen M. Raschick appealed the Wisconsin Tax Appeals Commission's decision of October 9, 1981 to the Circuit Court of Burnett County (see WTB #26). The Circuit Court granted the department's motion and dismissed the action.

The taxpayer has appealed the Circuit Court's action to the Court of Appeals.

GIFT TAX

Carolyn Hribar vs. Wisconsin Department of Revenue (Circuit Court of Racine County, May 27, 1982). Taxpayer, Carolyn Hribar, and the department entered into a Stipulation dated January 5, 1982, which provided that this case be held in abeyance pending the determination of the Circuit Court and any subsequent court of appeals in the matters of Anna Gerovac v. Wisconsin Department of Revenue and Peter Gerovac v. Wisconsin Department of Revenue (See Wisconsin Tax Bulletin #29).

Judgment was entered on March 18, 1982 by the Circuit Court granting the petitions of Anna Gerovac and Peter Gerovac to set aside the decision of the Wisconsin Tax Appeals Commission and to vacate the gift tax assessments against the Gerovacs. The Circuit Court held that Peter Gerovac had no beneficial interest in the property which he is alleged to have made gifts of to Carolyn Hribar, and that the gift tax assessments against Peter Gerovac, as donor, and Carolyn Hribar, as donee, should be vacated.

The Circuit Court held that the order of the Wisconsin Tax Appeals Commission entered on July 22, 1981, dismissing Carolyn Hribar's petition for review be set aside, and the assessments against Carolyn Hribar be vacated in all respects.

Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue (Circuit Court of Dane County, May 24, 1982). Warren Gilson conveyed a parcel of land by deed to Gilson Medical Electronics, Inc. There was no condition on the face of the deed nor on any other document expressing any intent other than a simple conveyance. There was no consideration for the deed.

The department assessed gift tax on the transfer to the corporation pursuant to Subchapter IV of Chapter 72 of the 1975 Wisconsin Statutes. Taxpayers contended that it was the intention of Warren Gilson to in effect make a gift to his children who are holders of all the common stock of the corporation. The Tax Appeals Commission held that the conveyance was a taxable transfer to the corporation, and not to the common stockholders of the corporation as individuals.

The Circuit Court upheld the Commission's decision. The property of the corporation is not that of its stockholders and they have no interest in the corporate property (Estate of Shepard, 184 Wis. 88, 197 NW 344 (1924)). The conveyance of land was a taxable transfer to the corporation.

The taxpayers have appealed this decision to the Court of Appeals.

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

1. Addition Modification For Moving Expenses Incurred to Move From Wisconsin

Facts and Question: The starting point for computing Wisconsin taxable income for individuals is federal adjusted gross income as determined under the Internal Revenue Code as of a specific date. Individuals may be required to make certain modifications to federal adjusted gross income to arrive at Wisconsin adjusted gross income. One of the addition modifications is for "moving expenses incurred to move from this state" (s. 71.05 (1) (a) 7, Wis. Stats.). This addition modification is required if such moving expenses were deducted in computing federal adjusted gross income on a Wisconsin income tax return.

If a taxpayer is domiciled in Wisconsin while living in Wisconsin and is still a Wisconsin domiciliary after moving to another state, is the taxpayer required to make an addition modification under s. 71.05 (1) (a) 7, Wis. Stats. (assuming such moving expenses were deducted in computing federal adjusted gross income on his or her Wisconsin return) ?

Answer: No. This addition modification for moving expenses is not required when the taxpayer retains his or her Wisconsin domicile after moving to another state and continues to be subject to Wisconsin's taxing jurisdiction. However, this addition modification would apply when the taxpayer becomes domiciled in another state (a nonresident for Wisconsin tax purposes) on the day he or she moved to another state and is no longer subject to Wisconsin's taxing jurisdiction.

2. Change of Accounting Period - Short Period Returns

A. Federal

The Internal Revenue Service has adopted temporary regulations and procedures for individual taxpayers to change from a fiscal year to a calendar year to take full advantage of the tax rate reductions in the Economic Recovery Tax Act (ERTA) of 1981. Part A of this Tax Release explains the federal treatment and Part B describes the Wisconsin treatment and procedures.

The general federal rules for changing an accounting period are found in section 442 of the Internal Revenue Code and section 1.442-1 of the Income Tax Regulations, and provide that in order to change an annual accounting period for federal income tax purposes, the taxpayer must obtain the approval of the Commissioner. To obtain approval, the taxpayer must file an application on federal Form 1128, Application for Change in Accounting Period, on or before the 15th day of the second calendar month following the close of the short period. In general, approval will be granted where the taxpayer has established a substantial business purpose for making the change.

Section 5c.442-1 of the Temporary Regulations and Rev. Proc. 82-25 have been adopted federally to provide a procedure for fiscal year taxpayers to change their accounting period to a calendar year basis to obtain the full benefits of the federal tax rate reductions.

The federal rules in section 5c.442-1 apply to federal returns if:

(1) The taxpayer requesting the change in accounting period is an individual;

(2) The purpose of the change in accounting period is to benefit as of the first day of the calendar year from changes in the individual income tax rates;

(3) The change is from a fiscal year to a calendar year;

(4) For a principal partner in a partnership formed after April 1, 1954 whose principal partners all change to a calendar year, the partnership changes to a calendar year;

(5) In the case of a shareholder in an electing small business corporation whose shareholders all change to a calendar year, the small business corporation changes to a calender year; and

(6) The short period involved in the change ends on December 31, 1981 or December 31, 1982.

The following special federal rules also apply to federal returns in the case of a request for change in accounting period under section 5c.442-1 of the Temporary Regulations:

(1) The substantial business purpose requirement will not be applied.

(2) Approval of the change in accounting period will be granted regardless of the number of years that have elapsed since the previous change of accounting period.

(3) A net operating loss will be treated according to the rules set forth in Rev. Proc. 82-25.

(4) No subsequent change in accounting period will be approved if the short period involved in the subsequent change would end fewer than five calendar years after the last day of the short period involved in the change of accounting period under the temporary regulations.

The procedures to be followed by an individual taxpayer requesting a change of accounting period from the Internal Revenue Service under the temporary regulations are:

(1) The taxpayer must file a current Form 1128, Application for Change in Accounting Period, with the federal income tax return for the short period ending December 31, 1981 or December 31, 1982.

(2) For the short period ending December 31, 1981, the Form 1128 and federal tax return must be filed no later than June 15, 1982.

(3) For the short period ending December 31, 1982, the Form 1128 and federal income tax return must be filed no later than April 15, 1983.

(4) Reference to the revenue procedure must be made by typing or legibly printing at the top of page 1 of the federal income tax return and Form 1128: "FILED UNDER REV. PROC. 82-25."

(5) If an individual taxpayer with a fiscal year ending after December 31, 1981, files a federal income tax return prior to June 15, 1982 and wishes to use the change in accounting period provisions, the previously filed federal income tax return may be amended. The federal income tax return for the short period ending December 31, 1981 and the Form 1128 must be filed no later than June 15, 1982.

(6) The taxpayer must disclose on the Form 1128 any partnership formed after April 1, 1954 in which the taxpayer is a principal partner or any electing small business corporation in which the taxpayer is a shareholder.

(7) All other requirements of Rev. Proc. 82-25 must also be complied with.

B. Wisconsin

Section 71.02 (2) (k), Wis. Stats., provides that a person other than a corporation (e.g., an individual) is required to adopt the same taxable year for Wisconsin income tax purposes as was used for federal income tax purposes. Where an individual files a federal income tax return for a fractional part of the year, s. 71.10 (16) (a), Wis. Stats., requires the individual to file a Wisconsin income tax return for such fractional year.

The procedure for changing the accounting period is explained in Wisconsin Administrative Code section Tax 2.165. A change in accounting period is effected by attaching a copy of federal Form 1128 and the federal approval (in cases where the individual is required to obtain approval from the Internal Revenue Service) to the Wisconsin return.

The computation of Wisconsin taxable income and the Wisconsin tax due on a short period return is provided in s. 71.10 (16) (b), Wis. Stats. and section Tax 2.165 of the Wisconsin Administrative Code.

NOTE: Section 71.05 (3) (d) 3 of the Wisconsin Statutes provides that the standard deduction or low-income allowance cannot be claimed on a short period return. Itemized deductions must be used to compute Wisconsin taxable income.

3. Taxability of Gain on Installment Sale of Residence

Facts And Question: In August, 1978 a residence located in Wisconsin which is jointly owned by husband and wife is sold at a gain of $30,000. The home is sold on a 5-year land contract and the taxpayers receive equal payments (20% of the selling price) in each of the years 1978, 1979, 1980, 1981 and 1982. The sale qualifies and is reported as an installment sale for Wisconsin purposes.

Husband and wife are both age 55 before the date of sale. They qualify for the "age 55 exclusion" provisions under Section 121 of the Internal Revenue Code enacted in 1978. They elect the one-time exclusion of gain from the sale of a principal residence under Section 121 and, therefore, no gain is reported for federal tax purposes. Wisconsin did not adopt the $100,000 exclusion on the gain on the sale of a principal residence for qualified individuals age 55 and over until 1979 when the reference to the Internal Revenue Code was updated to December 31, 1978. Must the "gain" portion of installment payments received in the years 1978 through 1982 be reported as taxable income or do they qualify for the "age 55 exclusion" for Wisconsin purposes?

Answer: The gain on the installment payments received in 1978 are taxable for Wisconsin because the Wisconsin provision permitting the one-time exclusion of gain was not adopted until 1979. The gains on installment payments received in 1979 and subsequent years could, at the election of the taxpayer, be excluded from Wisconsin taxable income because the gains are realized and reportable in years when Wisconsin adopted the provisions of Section 121 of the Internal Revenue Code (as of December 31, 1978) which provides that such gains may be excluded from gross income for sales occurring after July 26, 1978.

CORPORATION FRANCHISE/INCOME TAX

1. Election to Expense Section 179 Property

Section 202 of the Federal Economic Recovery Tax Act of 1981 amended Section 179 of the Internal Revenue Code to permit taxpayers (other than trusts, estates and certain noncorporate lessors) the election to expense certain property, called Section 179 property, rather than depreciate it. Qualifying taxpayers may elect for federal purposes to expense amounts ranging from a maximum of $5,000 in 1982 and 1983 to $10,000 in 1986 and thereafter.

Question: How does this code Section 179 expense provision apply for Wisconsin individual income tax purposes and corporate franchise/income tax purposes for the 1982 taxable year?

Answer: The election to claim an expense under Section 179 of the Internal Revenue Code is available to individual taxpayers and to regulated investment companies and real estate investment trusts, because Wisconsin law provides that such taxpayers shall compute their income (with some exceptions) for the taxable year 1982 under the Internal Revenue Code in effect on December 31, 1981. Since the amendment to code Section 179 in ERTA of 1981 was enacted in 1981, this election is available to such taxpayers for Wisconsin purposes.

However, a corporation (other than a real estate investment trust or regulated investment company) may not elect to claim the expense under Section 179 of the Internal Revenue Code for Wisconsin purposes. Although s. 71.04 (15), Wis. Stats., permits corporations to claim depreciation or amortization under the Internal Revenue Code in effect for the current year, the deduction under code Section 179 is an *expense*; not depreciation or amortization. There is no provision in Wisconsin law authorizing the expense under Section 179 of the Internal Revenue Code.

For corporations which elect to claim the expense under Section 179 of the Internal Revenue Code for federal purposes, the depreciation may differ on their Wisconsin and federal returns. For example, a corporation purchased Section 179 property costing $6,000 which was placed in service in 1982. It elected for federal purposes to claim

the $5,000 expense under Section 179, therefore only $1,000 was deductible under ACRS (Accelerated Cost Recovery System) for the 3 year property. Under ACRS, the recovery percentage for 1982 (1st year) is 25%, therefore the ACRS deduction for 1982 is $250 ($1,000 X 25%). For Wisconsin purposes the full $6,000 is the basis for ACRS. The deduction under ACRS on the Wisconsin return for 1982 would be $1,500 (25% of $6,000).

NOTE: If the taxpayer disposes of the asset in the above example, the net basis of the asset for computing gain or loss on the corporation's federal return may be different than the basis for computing gain or loss on the Wisconsin return.

2. Foreign Tax Deduction Related to Deductible Dividends

Facts and Questions: Section 71.04 (4) (b), Wis. Stats., reads: "Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions: Fifty percent of the amount of cash dividends received during the year from a corporation with respect to its common stock if the corporation receiving the dividends owned directly or indirectly during the entire income year at least 80% of the total combined voting stock of the payor corporation." (Effective for taxable year 1980 and thereafter.)

Many corporations operating in foreign countries are required by the laws of the foreign country to withhold and pay a tax from the amount of any dividends paid to domestic shareholders.

Example: A subsidiary corporation doing business in a foreign country pays a gross dividend of $6,000,000 to its domestic parent corporation, less $700,000 of foreign income tax withheld and paid, for a net cash dividend of $5,300,000. The parent corporation owns 100% of the total combined voting stock of the subsidiary.

Question #1: Does the wording of s. 71.04 (4) (b), Wis. Stats., which refers to "cash dividends received" mean dividends less any directly related foreign income taxes withheld, for the purposes of determining the deductible portion of the dividend received? In the above example, is the deductible dividend 50% of $6,000,000 (i.e. $3,000,000), or 50% of the actual amount received of $5,300,000 (i.e. $2,650,000)?

Question #2: In the above example, what is the amount of deductible tax under s. 71.04 (3), Wis. Stats.? Is it (a) the total foreign income tax withheld and paid of $700,000, or (b) 50% of the applicable foreign tax withheld and paid, i.e. $350,000, or (c) zero?

Answer to Question #1: The words "cash dividend received" do not mean cash dividends received less directly related foreign income taxes. Fifty percent of the gross dividend constructively received is deductible under s. 71.04 (4) (b), Wis. Stats. In the example, gross dividends of $6,000,000 must be reported, of which 50% or $3,000,000 is the deductible portion under s. 71.04 (4) (b), Wis. Stats. The remaining $3,000,000 is includible in taxable income.

Answer to Question #2: The entire amount of income tax withheld and paid (including a tax paid to a foreign country, measured by net income, gross income, gross receipts or capital stock) is deductible under s. 71.04 (3), Wis. Stats., regardless of whether the income on which the tax is imposed is taxed for Wisconsin franchise/income tax purposes. In the example, the deductible tax under s. 71.04 (3), Wis. Stats. is $700,000.

SALES/USE TAXES

1. Plastic and Styrofoam Cups Purchased by a Tavern

Facts and Questions: A tavern uses 9 oz. and 10 oz. clear plastic cups and 32 oz. styrofoam containers to transfer beer to customers. The tavern's supplier asks if the purchase of these containers by the tavern is subject to the 5% sales tax.

Answer: The sale of these containers to a tavern is exempt under s. 77.54 (6) (b), Wis. Stats., which provides an exemption for containers used to transfer merchandise to customers.

2. Restaurants' Purchases of Disposable Items

Facts and Question: The January 29, 1982 Wisconsin Tax Appeals Commission decision in Rause Enterprises, et. al. held that a fast food restaurant operator can purchase disposable plastic eating utensils, napkins, straws and disposable place mats without tax for resale. This decision is final as the Department of Revenue did not appeal the decision. On the basis of this decision, which items may be purchased from suppliers by restaurants without tax and how does a restaurant claim an exemption from the 5% tax?

Answer: A restaurant may issue a resale certificate to its supplier (s) for purchases of paper and plastic disposable items which are transferred to customers in conjunction with providing meals, food, food products and beverages to its customers.

3. Do Tree Nursery Operators Qualify for Farming Exemption?

Facts and Question: A nursery operator purchased shrubs, trees and evergreens which are either planted in a nursery growing area or are placed in inventory for sale. The shrubs, trees and evergreens placed in the growing area are sometimes used for budding and grafting, and ultimately will be sold.

Section 77.54 (3), Wis. Stats., provides an exemption for tractors and machines, including accessories, attachments, fuel and parts therefor, used directly in farming. Section 77.54 (3m), Wis. Stats., provides an exemption for seeds, plants, feeds, fertilizers and certain other items which are used exclusively in farming. Both of these sections specify that farming includes "horticulture".

Is the operation of a growing area by the nursery operator considered "horticulture" for purposes of s. 77.54 (3) and (3m), Wis. Stats?

Answer: The operation of a growing area where trees, shrubs, and evergreens are raised for sale is considered "horticulture" for purposes of s. 77.54 (3) and (3m), Wis. Stats., and under subsection (2) (b) of rule Tax 11.12 titled "Farming, agriculture, horticulture and floriculture". Therefore, a person engaged in horticulture is entitled to purchase the various items listed under s.

77.54 (3) and (3m), Wis. Stats., if the items are used as provided in these statutes.

CORRECTION NOTICE: Wisconsin Tax Bulletin #29, pages 18 and 19, contained a tax release on converting initial farmland preservation agreements to long-term agreements. The tax release referred to Wisconsin statute section 71.09 (11) (a) 3.cm as the section which allows claimants to apply for conversion to long-term agreements. Section 71.09 (11) (b) 3.cm (rather than s. 71.09 (11) (a) 3.cm) is the correct statutory reference.