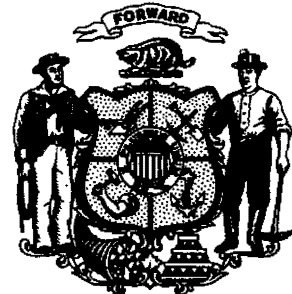


WISCONSIN TAX BULLETIN

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Wisconsin Department of
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P.O. Box 8910
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EXTENSION OF TIME TO FILE INCREASED TO 4 MONTHS

Beginning with 1982 returns, individuals can receive from the IRS a 4-month extension of time to file their federal individual income tax return, Form 1040, by filing federal Form 4868 ("Application for Automatic Extension of Time to File U.S. Individual Income Tax Return"). This will mean that calendar year taxpayers can get an automatic extension until August 15, 1983 to file their 1982 federal Form 1040.

Wisconsin law provides that any extension of time granted by the IRS for filing a corresponding individual return will also extend the time for filing the Wisconsin return. Therefore, persons allowed a 4-month extension by the IRS will also be allowed a 4-month extension to file their Wisconsin returns (Form 1 and Form 1A).

MAJOR CHANGES FOR 1982 FORM 1

The 1982 Form 1 is similar in basic design to the 1981 Form 1 except for the following major changes:

Line 9 Refunds of state and local income taxes - Column B (Single Person or Husband) and Column C (Wife) have been shaded to indicate no entry should be made in these columns. A subtraction modification is not needed to remove refunds of state and local income taxes from federal income.

Line 14 Unemployment compensation - Taxable unemployment compensation will be entered as determined in the schedule on page 3 of the Form 1 instructions. This amount

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will not always be the same as reported on the federal return.

Line 23 Married couple deduction - Column B (Single Person or Husband) and Column C (Wife) have been shaded to indicate no entry should be made in these columns. The federal deduction for a married couple when both work is not allowed on the Wisconsin return.

Lines 40-43 Computation of Wisconsin itemized deductions - These

lines have been rearranged to reduce errors in completing line 44 (total Wisconsin itemized deductions).

Line 65 Combined refund for married persons - This new line 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.

Line 67 Refund you want applied to your 1983 Wisconsin declaration of estimated tax - To reduce errors in the refund/tax due computation area, this line has been relocated to the last line of Form 1.

REMINDER OF MAJOR LAW CHANGES FOR 1982

Individual Income Tax Changes

1. Update Internal Revenue Code reference to December 31, 1981. For taxable year 1982 and thereafter, individuals, estates and trusts must use the Internal Revenue Code (IRC) in effect on December 31, 1981. However, the following provisions of federal law may not be used for Wisconsin purposes, even though they are part of the December 31, 1981 IRC:

- (a) Deduction allowed married couples when both spouses work.
- (b) Exclusion for stock dividends from a dividend reinvestment plan of a public utility.
- (c) Charitable contribution deduction for persons who do not itemize deductions.

- (d) Exclusion for interest from "All-Saver" certificates.
- (e) Incentive stock option provisions.

In addition, Wisconsin law continues to provide:

- (a) An itemized deduction for child-care expenses.
- (b) An itemized deduction for political contributions.
- (c) An exclusion for foreign earned income (based on the provisions of the December 31, 1977 IRC).

2. Capital gain exclusion allowed beginning in 1982. For Wisconsin purposes, a long-term capital gain will be taxable as follows: 80% in 1982, 60% in 1983 and 40% in the taxable year 1984 and thereafter.

3. Gain on sale of residence allowed to be deferred even if replacement residence is located outside Wisconsin. Beginning with the taxable year 1982, a gain on the sale of a personal residence which may be deferred under Internal Revenue Code section 1034 (a) may also be deferred for Wisconsin, even though the replacement residence may be located outside of Wisconsin.

4. Capital gain exclusion is subject to the Wisconsin minimum tax. The portion of a long-term capital gain which is excludable from the Wisconsin taxable income of an individual, estate or trust is treated as a tax preference item for purposes of computing the Wisconsin minimum tax.

Farmland Preservation Credit Changes

1. Depreciation expense in excess of \$25,000 may not be deducted. For purposes of computing household income on a 1982 farmland credit claim, a claimant is limited to a maximum depreciation expense deduction of \$25,000. Each member of a claimant's household is individually subject to this limitation. (Note: For 1981 the limitation was \$20,000.)

Corporation Franchise/Income Tax Changes

1. 10% surtax for 1982 and 1983. For the taxable years 1982 and 1983, a surtax of 10% will be added to the franchise/income tax

payable by corporations. The surtax must be computed on the basis of gross tax (i.e., tax before subtracting credits allowable for sales tax paid on fuel and electricity and farmland preservation credit).

2. Federal safe-harbor provisions may not be used. Corporations are not permitted to use the special safe-harbor leasing provisions of federal law for Wisconsin purposes. (Note: This change was also retroactive to 1981.)

3. Business income follows situs of business. For taxable years 1982 and thereafter, only nonbusiness income or loss derived from rentals and royalties from real estate or tangible personal property or from the sale of real property or tangible personal property follows the situs of the property. All other income or loss, including income or loss from the sale or exchange of petroleum at the well-head, follows the situs of the business.

Sales Tax Changes

1. Retailer's Discount Changed. On sales and use tax returns filed for taxable years beginning on or after January 1, 1983, retailers will receive the following levels of discount:

- (a) 2% discount on the first \$10,000 of sales and use tax payable during the taxable year.
- (b) 1% discount on the second \$10,000 of sales and use tax payable during the taxable year.
- (c) .5% discount on sales and use tax payable which exceeds \$20,000 during the taxable year.

No discount is allowable with respect to any amount of sales and use tax which is delinquent.

Other Changes

1. Nonresident entertainers required to file a bond or cash deposit. Effective January 1, 1983 nonresident entertainers and public speakers who perform in Wisconsin and their employers are subject to the following new requirements:

- (a) The entertainers and public speakers must file a surety bond or place a cash deposit with the Department of Revenue equal to 6% of the total

performance contract price if the performance contract price exceeds \$3,200. This must be done at least two days prior to the date of a performance.

- (b) Employers of such nonresidents must verify that the employee has filed the bond or placed the security deposit with the Department of Revenue. If that has not been done, the employer must withhold an amount from the payment to the entertainer.
- (c) Employers must furnish an informational return (Wisconsin Form 9C) to the Department of Revenue within 90 days of the performance if the contract price exceeds \$3,200.

For more information about this new law regarding nonresident entertainers, obtain Publication 508, Wisconsin Tax Requirements Relating to Nonresident Entertainers, from any Department of Revenue office.

CORPORATION DECLARATION VOUCHERS FOR 1983 MUST BE FILED ONLY IF PAYMENT IS DUE

Question #1: A corporation completes Schedule C of the 1983 Form 4-ES instructions and determines that no installment payment is required until the 3rd quarter of the corporation's taxable year. Is this corporation required to file declaration vouchers for the first and second quarter of the taxable year even though no payment will be made?

Answer: No. Declaration vouchers should be filed only for purposes of making payments.

Question #2: A corporation files its 1982 corporate franchise tax return and computes an overpayment. The corporation elects on the 1982 return to have the overpayment applied to its 1983 estimated taxes. As a result, no first quarter installment payment is due for 1983. Is this corporation required to file a declaration voucher for the 1st quarter of 1983?

Answer: No. The Department of Revenue will automatically apply the 1982 overpayment to the corporation's 1983 estimated taxes, even though a declaration voucher is not filed.

MAILING OF 1982 CORPORATE TAX FORMS

Corporations with taxable years ending July, 1982 through January, 1983 were mailed 1982 corporate franchise/income tax booklets during 1982. Corporations with fiscal years ending February, 1983 through June, 1983 will be mailed 1982 booklets in early 1983.

Three types of corporation franchise/income tax booklets are available for 1982 - Form 4, Form 5 and Form 5A. The Form 4 booklet contains a Form 4 and supporting schedules, Form 4S (relating to Subchapter S), Form 4U ("Underpayment of Estimated Tax by Corporations") and instructions for these forms. Form 4 is the corporate "long form" and can be used by any corporate taxpayer. Corporations reporting under the separate accounting method *must* use Form 4. Generally only multi-state corporations who filed a 1981 Form 4 will be mailed the Form 4 booklet.

The Form 5 booklet contains a Form 5, Form 4S, Form 4U and instructions. Form 5 (the corporate "short form") can be used by all corporate taxpayers except those that determine their Wisconsin net income by the separate accounting method. The Form 5 booklet does not contain the apportionment Schedule 4B. Corporations operating 100% in Wisconsin will be mailed the Form 5 booklet.

The Form 5A booklet contains a Form 5, Form 4B, Form 4S, Form 4U and instructions. Multi-state corporations that filed a 1981 Form 5 will be mailed this booklet.

NOTE: Form 4-ES for 1983 is not included in the 1982 corporate booklets. Declaration forms will automatically be mailed to all corporations that filed a Form 4-ES and made declaration payments for 1982. A single mailing will provide all 1983 declaration forms (including 4 pre-addressed payment vouchers) and instructions. The 1983 declaration forms will be mailed at least 4 weeks before the due date of the corporation's first installment payment.

IRA TREATMENT FOR NON-WORKING SPOUSES - CHANGES IN 1982

1977-1981 Taxable Years: WTB #7 (January, 1978) stated that a work-

ing spouse who contributes to both his or her own IRA plan and to a non-working spouse's plan is not required to allocate the allowable deduction between spouses on a 1977 Wisconsin income tax return. This applies for Wisconsin purposes only for taxable years 1977 through 1981.

For example, a working spouse contributed \$1,500 to his own plan and \$250 to his non-working spouse's plan during 1981. The working spouse may deduct the entire \$1,750 of contributions from his income on the 1981 Wisconsin return (assuming this amount did not exceed limitations provided under the Internal Revenue Code).

1982 and Thereafter: The federal Internal Revenue Code relating to IRAs was revised effective with the 1982 taxable year. In WTB #30 it was indicated that for 1982 one spouse may *not* claim an IRA deduction for contributing to the other spouse's IRA account.

As part of the federal Economic Recovery Tax Act of 1981, changes were made to the eligibility standards for individual retirement accounts. As a result of these changes for 1982 and thereafter, one spouse may not deduct from his or her Wisconsin income, contributions made to the other spouse's IRA account.

For example, during 1982 a taxpayer earned \$25,000 and contributed \$2,000 to her IRA account and \$250 to her non-working spouse's IRA. This taxpayer may only claim a \$2,000 IRA deduction and her spouse may claim a \$250 IRA deduction on their 1982 Wisconsin return.

PERSONS CONVICTED FOR FAILURE TO FILE

Arnold L. Lawrence, from Alma, Wisconsin, has been ordered to serve probation and pay \$400 in fines for criminal violations of the Wisconsin state income tax laws. Arnold Lawrence was convicted in Dane County Circuit Court after he entered guilty pleas to two counts of failing to file state income tax returns. Circuit Judge Michael B. Torphy withheld sentence and ordered Lawrence to serve probation for one year on each count concurrently. Under the conditions of probation, Lawrence must pay a \$200 fine on each count and file all income tax re-

turns required to be filed by the Wisconsin Department of Revenue.

Criminal charges were filed against Lawrence by the Dane County District Attorney's Office after an investigation by the Intelligence Section of the Wisconsin Department of Revenue.

Also, a Milwaukee accountant has been convicted in Dane County Circuit Court and ordered to pay a \$500 fine or serve 30 days in jail for criminal violation of the state income tax law. Phillip L. Sedgwick, 3890 South Massachusetts Avenue, Milwaukee, a certified public accountant, was sentenced in Dane County Circuit Court, after entering a guilty plea to one count of failing to file a state income tax return. The criminal charges were filed against Sedgwick and Lawrence by the Dane County District Attorney's Office after an investigation 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 tax liability. Assessment and collection of the additional taxes, penalties and interest due follows conviction of a criminal violation.

PROPERTY TAX DEFERRAL PROGRAM WILL NOT BE IMPLEMENTED IN 1983

Under the Property Tax Deferral Program as enacted by the Legislature, homeowners aged 65 and older with incomes of \$20,000 or less who meet certain requirements could qualify for low interest rate loans of up to \$1,800 annually to pay their property taxes. The loan, plus interest, would generally be paid after the home has been sold. Participation would have been voluntary and would not affect the eligibility for homestead or other forms of property tax relief.

This program will not be implemented in 1983. Mark E. Musolf, Secretary of Revenue in 1982, indicated in November, 1982 that the problem is with high interest rates and the funding mechanism. Mr. Musolf said "after a careful review of the law by bond council and finan-

cial experts, it appears that conventional bond financing cannot be arranged at acceptable interest rates. Moreover, the U.S. Treasury Department has indicated that interest earned on bonds issued by the state to finance the program will probably be subject to federal taxation, thereby pushing interest rates still higher. For these reasons, the Property Tax Deferral Program cannot be implemented in the manner envisioned by the Governor and Legislature."

It is not known at this time what action, if any, the Legislature will take regarding this program during the 1983-85 legislative session or when the program will be operative.

IRS STANDARD MILEAGE RATE APPLIES FOR WISCONSIN

The optional standard mileage rate specified by IRS for computing business automobile expenses for 1982 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 1982.

INFORMATIONAL PUBLICATIONS AVAILABLE

The Department publishes informational material called "publications". These are small pamphlets which provide detailed information about specific areas of Wisconsin tax laws. They are intended to aid the public in understanding certain aspects of the Wisconsin tax laws.

For 1982, the following publications may be obtained at each of the Division's offices located throughout Wisconsin:

Publication Number	Publication Title
100	1982 Wisconsin Tax Requirements For Nonresidents
101	1982 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 Corporations' Incomes
200	How Electrical Contractors Determine Their Wisconsin Sales And Use Tax
201	Wisconsin Sales and Use Tax Information
300	Alcoholic Beverage Laws Relating To Minors
500	Tax Guide For Wisconsin Political Organizations And Candidates
501	Field Audit Of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Tax Credit For 1982
504	Directory For Wisconsin Department Of Revenue
508	Wisconsin Tax Requirements Relating to Nonresident Entertainers

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

NEW ISI & 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 December 15, 1982. Part D lists new rules and amendments which have been adopted in 1982.

A. Rules at Legislative Council Rules Clearinghouse

2.39	Apportionment method - amendment
2.40	Nonapportionable income - repealed and recreated
2.82	Nexus - amendment
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

11.10 Occasional sales
- amendment

11.14 Exemption certificates (including resale certificates)
- amendment

11.15 Containers and other packaging and shipping materials
- amendment

11.16 Common or contract carriers
- amendment

11.19 Printed material exemptions
- amendment

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

11.32 (3) "Gross receipts" and "sales price"
- amendment

11.48 Landlords, hotels and motels
- amendment

11.49 Service station and fuel oil dealers
- amendment

11.50 Auctions
- amendment

11.51 Grocers' guidelist
- amendment

11.52 Coin-operated vending machines and amusement devices
- amendment

11.57 Public utilities
- amendment

11.67 Service enterprises
- amendment

11.68 Construction contractors
- amendment

11.71 Automatic data processing
- new rule

11.84 Aircraft
- amendment

11.87 Meals, food, food products and beverages
- amendment

11.96 Interest rates
- amendment

11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats.

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

11.03 Elementary and secondary schools and related organizations
- amendment

11.05 (3) Governmental units
- amendment

11.56 Printing industry
- new rule

11.65 Admissions
- amendment

C. Rules Approved By Legislature But Not Effective

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

2.945 Spousal individual retirement contributions
- new rule

11.001 Definitions and use of terms
- amendment

11.01 Sales and use tax return forms
- amendment

11.05 (2) Governmental units and (3)
- 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

11.32 (4) "Gross receipts" and (5) "sales price"
- amendment

11.38 Fabricating and processing
- amendment

11.49 Service station and fuel oil dealers
- amendment

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

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)
- repealed

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

11.11 Waste treatment facilities
- amendment

11.12 Farming, agriculture, horticulture and floriculture (1/1/82)
- amendment

11.16	Common or contract carriers (1/1/82) - amendment	11.53	Temporary events (2/1/82) - new rule	NOTE: The proposed amendment to rule Tax 2.165 involving changing a corporation's taxable year has been withdrawn and will not be adopted.
11.40	Exemption of machines and processing equipment (1/1/82) - amendment			

TAXPAYER ASSISTANCE AVAILABLE

During the 1983 filing season (January through April 15th), the department's auditors and tax representatives are available to answer questions of taxpayers and tax practitioners.

In the department's larger offices, assistance is provided on a daily basis (Monday through Friday). Assistance in other offices generally is available on Mondays only, although there are exceptions as noted below.

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
* Appleton	265 W. Northland	(414) 735-5001	7:45-4:30
* Eau Claire	718 W. Clairemont	(715) 836-2811	7:45-4:30
La Crosse	620 Main	(608) 785-9721	7:45-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
Madison	212 East Washington Ave.	NONE	8:00-4:15
* Milwaukee	819 N. Sixth St.	(414) 224-4000	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Ashland	Courthouse	NONE	11:00-3:00 (a)
Baraboo	1007 Washington	(608) 356-8973	7:45-4:30
Barron	Courthouse	(715) 537-3621	7:45-4:00
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Cedarburg/Grafton	220 Oak Street	(414) 377-6700	7:45-4:30
Elkhorn	300 S. Lincoln St.	(414) 723-4098	7:45-4:30
Fond du Lac	160 S. Macy St.	(414) 929-3985	7:45-4:30
* Green Bay	1600 W. Shawano	(414) 497-4230	7:45-4:30 (b)
Hayward	221 Kansas Ave.	(715) 634-8478	8:00-12:00
Hudson	759 Sommer St. No.	(715) 386-8225	7:45-4:30
Janesville	115 S. Franklin	(608) 755-2750	7:45-4:30
* Kenosha	5500 - 8th Ave.	(414) 656-7100	7:45-4:30 (c)
Lancaster	237 W. Hickory St.	(608) 723-2641	7:45-4:30
Manitowoc	1314 Memorial Dr.	(414) 684-1909	7:45-4:30
Marinette	Courthouse	(715) 735-5498	9:00-12:00
Marshfield	630 S. Central Ave.	(715) 387-6346	7:45-4:30
Monroe	1220 - 16th Ave.	(608) 325-3013	7:45-4:30
Oshkosh	Courthouse	(414) 424-2100	7:45-4:30
Park Falls	1114 S. 4th Ave.	(715) 762-2160	7:45-11:45
* Racine	616 Lake Ave.	(414) 636-3711	7:45-4:30 (c)
Rhineland	Sunrise Plaza	(715) 362-6749	7:45-4:30
Shawano	1456 E. Green Bay St.	(715) 526-5647	7:45-4:30
Sheboygan	504 S. 14th St.	(414) 459-3101	7:45-4:30
Superior	Courthouse	(715) 394-0204	8:00-4:30
Tomah	City Hall	(608) 372-3256	8:30-12:00
Watertown	415 E. Main St.	(414) 261-7700	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 544-8690	7:45-4:30 (b)
Waupaca	201½ S. Main St.	(715) 258-9564	7:45-11:45
Wausau	Courthouse Annex	(715) 847-5380	7:45-4:30
West Bend	429 Walnut St.	(414) 338-4730	7:45-4:30
Wisconsin Rapids	1681 Second Ave. S.	(715) 421-0500	7:45-4:30

(a) Tuesdays only (c) Monday and Tuesday
 (b) Monday through Wednesday *Open during noon hour

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:

Individual Income Taxes

Floyd J. Manthey vs. Wisconsin Department of Revenue
 Patrick J. Piper vs. Wisconsin Department of Revenue
 Anna K. Rees vs. the Tax Appeals Commission, the Department of Revenue
 Ralph H. Schulz vs. Wisconsin Department of Revenue

Sales/Use Taxes

Stanley A. Anderson, Inc. vs. Wisconsin Department of Revenue
 Badger Electric Construction Co., Inc. vs. Wisconsin Department of Revenue
 Brantwood Publications, Inc. and R.W. Morey Company, Inc. vs. Wisconsin Department of Revenue
 City of Racine vs. Wisconsin Department of Revenue
 Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue
 Wisconsin Department of Revenue vs. Gene E. Greiling
 Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club
 Wisconsin Department of Revenue vs. Mining Equipment Mfg. Corp.
 Wisconsin Department of Revenue vs. J.C. Penny Co., Inc.
 Rice Insulation, Inc. vs. Wisconsin Department of Revenue
 Eugene F. Rock and Eugene F. Rock d/b/a Rock's Round Barn vs. Wisconsin Department of Revenue

Homestead Credit

Mary M. Flanders vs. Wisconsin Department of Revenue

INDIVIDUAL INCOME TAXES

Floyd J. Manthey vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 16, 1982). The department's office audit of Manthey's 1976 through 1979 income tax returns resulted in disallowing certain travel expenses as non-deductible commuting expenses. Manthey's home is located approximately 18-20 miles from Waukesha and 25 miles from Milwaukee. During the years involved Manthey was an electrician. Manthey was registered for employment at the business office of this union in Milwaukee and received his job assignments from the business office of the union.

During 1976 Manthey worked at temporary job sites in Milwaukee, Waukesha and South Milwaukee; in 1977, at job sites in Milwaukee, Cudahy, Oak Creek, South Milwaukee and Waukesha; in 1978, at job sites in Milwaukee, Oak Creek, Cudahy, Waukesha and Hales Corners; and in 1979, at job sites in Milwaukee, Hartford, Cudahy, Oak Creek, South Milwaukee, Waukesha and Menomonee Falls. Manthey commuted on a daily basis from his home at Route 3, Mukwonago, to his various job sites. Manthey claimed a deduction on his Wisconsin income tax return for employee business travel expenses for each of the years 1976 through 1979. The deductions were computed on a mileage basis from taxpayer's home to his various job sites and back home.

When Manthey accepted a job assigned to him through his union, he did not know how long it would last. During the four year period involved, none of the taxpayer's job assignments exceeded one year. Manthey was not an independent contractor, but was an electrician employee of the electrical contractor in charge of the job site at which the taxpayer was employed.

The Commission held that the taxpayer's travel expenses were non-deductible personal expenses incurred in commuting from his home to his place of employment and back home. Commuting expenses

are not allowable as deductions under the provisions of Sec. 212 IRC (1954) as interpreted by IRC Regulation 1.212-1 (f).

The taxpayer has not appealed this decision.

Patrick J. Piper vs. Wisconsin Department of Revenue (Court of Appeals, District II, June 11, 1982). Taxpayer, Patrick J. Piper, did not file a Wisconsin individual income tax return for the year 1977. Pursuant to s. 71.11 (4), Wis. Stats., the department estimated the taxpayer's income tax for 1977 as \$1,780. The department denied the taxpayer's petition for redetermination of the tax. Piper appealed to the Tax Appeals Commission. At the hearing before the Commission, Piper claimed that he had made an independent determination that he was not required to file a return for 1977 but refused to present any testimony or evidence in support of his position. He stated that he was not a Wisconsin resident during all of 1977, that he had filed a return in 1976 and that he had received a request to file a return for 1977 but determined that he was not required to file. He refused to answer questions regarding his income, sources of income, his Wisconsin employment and ownership of Wisconsin real estate based on the fifth amendment privilege of the United States Constitution against self-incrimination. The Tax Appeals Commission affirmed the department's determination holding that Piper had failed to meet his burden of proof to show that the assessment was incorrect.

The taxpayer petitioned for review in the Circuit Court pursuant to Chapter 227, Wis. Stats., and demanded a jury trial. There was no jury trial and the Circuit Court affirmed the Commission and the taxpayer appealed.

The taxpayer contended that the department lacked authority to make the assessment and in addition, he argued that he was not required to present evidence after he had asserted his fifth amendment privilege and that he was entitled to a jury trial.

The Court of Appeals held in favor of the department.

The taxpayer has not appealed this decision.

Anna K. Rees vs. The Tax Appeals Commission, The Department of Revenue (Court of Appeals, District II, November 18, 1981). Taxpayer appealed the Circuit Court decision which held that the entire amount of the lump sum distribution made to the taxpayer under Western Electric Co., Inc.'s profit sharing and savings plan should have been included in her 1977 Wisconsin taxable income (see WTB 22).

The Court of Appeals affirmed the Circuit Court decision. The Court of Appeals held that Rees elected to use the ten-year income averaging method and that once the election is made, the ordinary income portion, by definition, becomes equal to the entire lump sum distribution and is taxable under s. 71.05 (1) (a) 8, Wis. Stats. (1977).

The taxpayer has not appealed this decision.

Ralph H. Schulz vs. Wisconsin Department of Revenue (Circuit Court of Dane County, July 21, 1982). Ralph Schulz paid more in estimated taxes and taxes withheld in 1968 than was necessary to pay his state income tax liability for 1968. He claimed the full amount paid as a deduction in his 1968 tax. The excess over what was necessary to pay the 1968 tax he elected to have applied as a credit to the 1969 tax, but he did not report that excess as income for the year 1969. The same occurred in 1970 and 1971. The question in this case is whether the amounts credited against the 1969 through 1971 taxes are income.

The taxpayer contended that nowhere in the tax law, state or federal, does it specifically say that one year's excess payment credited to the next year's tax is income. Section 71.02 (2), Wis. Stats., defines Wisconsin adjusted gross income as federal adjusted gross income. Federal law recognizes that when a deduction results in a tax benefit one year, recovery of the loss in a succeeding year is income.

The Circuit Court held that there was no difference between this case and the situation where a taxpayer opted for a cash refund and then applied the cash toward his tax and the refunds were taxable income in the year received.

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

SALES/USE TAXES

Stanley A. Anderson, Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, August 19, 1982). Anderson is a plastering and lathing contractor who purchased certain metal products from the U.S. Gypsum Company for use in its business. The purchases were made in Wisconsin. Gypsum did not charge Anderson any Wisconsin sales tax on these purchases, and no such tax was ever reported or paid with respect to the transactions. Following an audit of both Gypsum and Anderson, the department assessed a use tax against Anderson (as opposed to a sales tax against Gypsum). The issue in this case is the Tax Appeals Commission's determination (see WTB 28) that the department may assess a Wisconsin use tax against Anderson on Anderson's purchase of goods in Wisconsin from a Wisconsin seller, where the seller collected no sales tax.

The Court indicated that the Wisconsin Supreme Court has never addressed the issue of whether the department may freely choose between assessing a sales tax against the seller or a use tax against the purchaser. However, the Illinois Supreme Court did address the issue in Klein Town Builders, Inc. v. Department of Revenue, 36 Ill. 2d 301, 222 N.E. 2d 482 (1966). In a very similar situation the Illinois Supreme Court held that the seller's failure to collect tax does not discharge the purchaser's liability for the use tax. Given the similarities between the Wisconsin and Illinois statutes in this area the Circuit Court held that the department may collect either tax from either party.

Anderson also claimed that the assessment of interest in this case is inequitable since the assessment could have been made against Gypsum. The Court indicated that the imposition of interest is mandatory under the statutes and the Court has not been provided with authority to waive interest.

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

Badger Electric Construction Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 30, 1982). On March 12, 1980 the department denied the taxpayer's claim for re-

fund involving a use tax paid on materials used in the construction of school additions to the McFarland Elementary and High Schools. During the period involved, Badger Electric Construction Co., Inc. was engaged in business as an electrical contractor.

The McFarland School District is a tax-exempt organization. The McFarland School District commissioned Brust-Zimmerman, Inc. architects and engineers to design the additions to said schools. Brust-Zimmerman produced, for the project, a set of plans and specifications, and also bidding documents. The bidding documents were broken down into 16 different categories, with each category including labor and materials. The McFarland School District acted as its own prime contractor in this project, and Vogel Bros. Building Co. acted as construction manager. Badger Electrical Construction submitted a successful bid proposal for all of the electrical work required in said building project, which included both labor and materials.

The taxpayer entered into electrical contracts with the McFarland School District for labor and certain materials for remodeling and adding on to the elementary and high schools in question. The school district submitted purchase orders to the taxpayer for the remaining materials included in the bid proposal for the purpose of acquiring those items ex-tax. The school district also submitted said purchase orders to the taxpayer rather than directly to the suppliers, because it did not have the necessary expertise. The materials at issue were purchased by the taxpayer ex-tax by use of the tax exempt number of the school district.

The materials were delivered to the work site by the suppliers and were used by the taxpayer to make real estate improvements for the school district. Payment requests for the materials were submitted by the taxpayer to the school district after the materials were delivered by the suppliers.

The McFarland School District had no employees on the job site, performing physical or supervisory functions. The taxpayer and the McFarland School District did not enter into a formal agency agreement. The taxpayer and the School District had an agreement that any tax as-

sessed against the taxpayer, as a result of the transactions would be reimbursed to the taxpayer by the school district.

The issue in this case is whether a contractor engaged primarily in real property construction activities, is entitled to a refund of use taxes paid on materials it purchased and used for real property construction activities on behalf of a tax-exempt entity.

The Commission held that the taxpayer, under the provisions of s. 77.51 (18), Wis. Stats., was a contractor who purchased and consumed the tangible personal property it used in the real property construction activities involved herein, and the use tax applies to the sale of materials to it. Under the provisions of s. 77.53 (1), Wis. Stats., the taxpayer is liable for use taxes on its purchase of materials which it sold to and installed for the real estate improvement of a tax-exempt school district.

The taxpayer has appealed this decision to the Circuit Court.

Brantwood Publications, Inc. and R. W. Morey Company, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 30, 1981). The issue in this case is whether the taxpayer's publishing process is popularly regarded as manufacturing and therefore qualifies for the manufacturing exemption. Since April 1, 1972, R. W. Morey Co., Inc. was engaged in publishing five horticultural magazines and had its principal offices in Wisconsin. On September 30, 1974, Brantwood Publications, Inc. was incorporated by the shareholders of R. W. Morey Co., Inc. to continue publishing said magazines, while the latter held title and ownership of the publishing rights and equipment used by Brantwood Publications, Inc.

In the conduct of their business of publishing magazines, the taxpayers perform, in house, the initial prepwork, including the writing and editing of articles, photographic layout, format design, advertisement solicitation and, in general, create the images and content that appear in the final publication. The publication process begins with the composing operation and concludes with the printing and binding of the finished product, five magazines, which are distributed to subscribers

throughout the United States and Canada. During the period involved, April 1, 1972 to March 31, 1976, the taxpayers contracted out the final stages of the publication of their magazines, namely the actual printing and binding process. The large majority of the taxpayers' advertisers and subscribers are located outside of Wisconsin. The taxpayers purchased materials and supplies used in the preparation work of the original pages of the magazines, such as paper, ink, paste, etc. The taxpayers leased a composer or typesetter machine, which it used in the operation of its business. The materials and supplies involved in this proceeding relate to the preparatory or "prep-work" stage, which precedes the actual printing of the magazines and includes the initial typesetting, assembling, designing, pasting-up, combining with words and creation of the page "make-up", all of which was done "in-house" by the taxpayers. All of the materials and supplies were cut, cropped, pasted, taped, partially deleted, marked up, written upon, etc., and had no further use or function once they had been processed.

The Commission held that the taxpayers were not engaged in "manufacturing" as that term is defined in s. 77.51 (27), Wis. Stats. The taxpayers' composer or typesetting machine and computer were not used by a manufacturer in manufacturing and, therefore, such machines are not exempt from the sales and use tax under s. 77.54 (6) (a), Wis. Stats. The taxpayers' supplies used in its "prep-work" were not used in manufacturing a product for sale and, therefore, are not exempt from the use tax under s. 77.54 (2), Wis. Stats. Also, the taxpayers' purchases of such machines and supplies are not the sale or use of printed advertising material and, therefore, are not exempt from the sales and use tax under ss. 77.52 (2) (a) 11 and 77.54 (25), Wis. Stats.

In March, 1982 taxpayers appealed the Wisconsin Tax Appeal's decision to the Circuit Court.

Taxpayers withdrew their appeal to the Circuit Court and on September 27, 1982 the Court issued an order dismissing the appeal.

City of Racine vs. Wisconsin Department of Revenue (Circuit Court of Dane County, June 19, 1982).

The issue in this case is whether sales and use tax under s. 77.52 (2) (a) 2, Wis. Stats., is due on fees charged to individuals and teams in city sponsored athletic activities conducted on City of Racine recreational areas. The Tax Appeals Commission held that the fees are taxable (see WTB #23). The tax imposed under s. 77.52 (2) (a) 2, Wis. Stats., covers "2. The sale of admissions to amusement, entertainment or recreational events or places. . . or the privilege of access to or use of amusement, entertainment, athletic or recreational devices or facilities."

The City contended that the fees were charged to participants in various games sponsored by the City and the charge was solely to defray the cost of the events for which the charges were made. There was no profit and no intent to make any. The City did on occasion rent picnic areas and baseball diamonds and acknowledges that such rentals are taxable. The issue in this case does not relate to such rentals, but to charges made and used to defer cost of organizing leagues and supervision of the leagues and the play on the city grounds as well as the use of the physical facilities. The charge was to the players, not to spectators. The City contends that the statute does not cover the charges in question.

The Circuit Court held in favor of the department. The statute includes the "sales of admissions to recreational. . . places. . .". Also, "the privilege of access or use of athletic or recreational. . . facilities." The playing fields are clearly "recreational places" and "athletic recreational facilities" and the amount of the charge is related to the cost the City incurs in operation. The amount of the charge made is the prerogative of the City. But, whatever the amount of the charge, what the payor gets is admission to the place of the contest and the use of athletic or recreational facilities, which is what the statute taxes. The tax is imposed expressly on the charges made for the privilege of access to or the use of the facilities. The charges were made as a condition of such access or use and are therefore taxable under the statute. An exemption under s. 77.54 (9) (a), Wis. Stats., does not apply since the exemption covers sales and services made to the City, not by it.

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

CUNA Mutual Insurance Society vs. Wisconsin Department of Revenue (Circuit Court of Dane County, October 28, 1982). The issue in this case is whether the publication, *Dimensions*, distributed by the taxpayer to credit unions qualifies for the exemption in s. 77.54 (25), Wis. Stats., as "printed material which is designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms. . .". The Wisconsin Tax Appeals Commission held that *Dimensions* did not qualify for this exemption. (See Wisconsin Tax Bulletin #26 for a summary of the Commission's decision.) The Circuit Court reversed the Tax Appeals Commission's decision. The Circuit Court found this publication is designed for the purpose of advertising the taxpayer and credit unions and it does qualify for the exemption in s. 77.54 (25), Wis. Stats.

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

Wisconsin Department of Revenue vs. Gene E. Greiling (Court of Appeals District IV, September 10, 1982). Greiling operated a wholesale bedding and potted plant business. He purchased pre-cut, pre-drilled and shaped metal tubing and polyethylene film from out-of-state retailers. The materials were used to construct a protective plant enclosure to facilitate early season plant sales. He added watering, shading and ventilating systems to control the environment within the enclosure. The issue in this case is whether the enclosures are exempted from use tax by s. 77.54 (3), Wis. Stats., because they are parts of a "machine".

Section 77.54 (3), Wis. Stats., exempts the following items from the use tax: "The gross receipts from the sales of and the storage, use or other consumption of tractors and *machines*, including accessories, attachments, fuel and *parts therefor*, used directly in farming, including dairy farming, agriculture, horticulture or floriculture. . .". (Emphasis supplied.)

The department issued a use tax assessment against Greiling for the purchase of these materials. The Circuit Court reversed the Tax Appeals Commission and held that the

enclosures were not a part of an exempt "machine" (see WTB #28).

The Court concluded that Greiling did not clearly establish that the farm machine exemption applies to his purchases since the statute can be reasonably construed to exclude these purchases from its coverage. Accordingly, a use tax must be paid on the materials purchased by Greiling to construct plant enclosures.

The taxpayer has appealed this decision to the Supreme Court.

Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club (Court of Appeals, District IV, June 24, 1982). 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 Circuit Court held that the taxpayer's purchases of tickets were not taxable, but purchases of promotional items were taxable (see WTB #26).

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 Court of Appeals held that the club's purchase and use of the tickets is subject to the use tax. Under s. 77.51 (24), Wis. Stats., the tickets are transferred for use or consumption but not for resale and the cost of the ticket is not included in the admission price charged customers.

The Court of Appeals also held that the promotional items are not part of a "sale of admissions". The club's purchases of 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 taxpayer has appealed this decision to the Supreme Court.

Wisconsin Department of Revenue vs. Mining Equipment Mfg. Corp. (Circuit Court of Dane County, October 26, 1982). In Wisconsin Tax Bulletin #29 it was indicated that the department had appealed the Tax Appeals Commission's decision of February 26, 1982. The Commission held that the taxpayer's good faith acceptance of exemption certificates for its sale of its equipment to 1) construction contractors claiming such equipment would be left in the ground and become a structural part of the real estate and 2) construction contractors alleging that such equipment was purchased for waste treatment or pollution abatement plant and equipment purposes, relieved it from payment of sales tax.

On October 26, 1982 the Circuit Court issued a default judgement against the taxpayer corporation which was limited to a holding that the department was not deemed to have acquiesced in the construction of s. 77.52 (14), Wis. Stats., given by the Commission in its February 26, 1982 decision.

Wisconsin Department of Revenue vs. J. C. Penney Company, Inc. (Court of Appeals District IV, July 27, 1982). The issues in this case involve (1) the department's assessment of use tax on J. C. Penney catalogs printed in Indiana and mailed to Wisconsin residents and (2) the department's assessment of use tax on newspaper supplements purchased by the taxpayer from an out-of-state printer and distributed with Wisconsin newspapers. The Circuit Court held that both the catalogs and the newspaper supplements were exempt from the use tax (see WTB #25).

The statutory definition of use includes two elements: (1) the taxpayer must own, possess, or enjoy the property in Wisconsin; and (2) the taxpayer must exercise some right or power over the tangible personal property in Wisconsin. The Court of Appeals held that J. C. Penney did not possess the catalogs in Wisconsin and therefore that the second element of the "use" test was not met. Because the catalogs moved by mail or common car-

rier from Minnesota to Wisconsin, they remained the property of the printer until they were delivered. After delivery, the recipients assumed ownership of the catalogs, and were free to read, store, or destroy them.

The department contended that since J. C. Penney maintains a copyright interest in its catalogs, J. C. Penney has a right or power over the catalogs. The Court of Appeals held that the taxpayer exercises a right only over the intangible property protected by the copyright, which is distinct from the tangible personal property on which the use tax is levied.

The Court further held that the taxpayer did not store or otherwise consume the catalogs in Wisconsin. The catalogs were in the custody of the printer through its agents while the catalogs were in transit. Ownership passed to the recipients upon delivery to them. J. C. Penney's actions in arranging for the transfer of the catalogs from the printer to the recipients did not constitute "keeping or retention" of the catalogs in Wisconsin. J. C. Penney did not exercise a consumptive right or power over the catalogs in Wisconsin.

The second issue involves the taxpayer's purchase of advertising supplements known as "preprints" from a printer in Minnesota. The Court of Appeals held that the preprints are subject to the use tax. The preprints contain only advertising for J. C. Penney products. Standing alone, they do not fit the definition of "newspaper". The second distinction between a preprint and a newspaper concerns the contribution the section makes to the character of the paper, and the frequency with which the section appears. Because there may be fewer preprints printed than there are newspapers to carry them, some buyers of a day's newspaper may not receive a preprint. If a newspaper edition failed to carry a particular preprint, few readers would notice.

Neither the department nor the taxpayer have appealed this decision.

Rice Insulation, Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, Branch 5, September 21, 1982). The issue in this case is whether Rice Insulation is liable for use tax under s. 77.53 (1), Wis. Stats., on the sales

price of materials purchased by it without paying a tax, which materials it installed in an exempt hospital. The charitable hospital engaged in building activities on its premises. It contracted with a general contractor to do the work. As permitted in its contract with the general contractor, the hospital purchased insulation material from the taxpayer and the general contractor engaged the taxpayer as a subcontractor to install the insulation. The issue for determination by the court was whether Rice Insulation had "sound reason to believe he will sell to customers for whom he will not perform real property construction activities involving the use of such property." s. 77.51 (18), Wis. Stats. The Tax Appeals Commission concluded that the taxpayer "... had sound reason to believe it would sell the materials to customers for whom it would perform real property construction activities involving the use of the materials."

The general contract was dated December 15, 1971 and the original purchase order for the insulation material was dated November 22, 1972. The taxpayer's sub-contract with the general contractor is also dated November 22, 1972, and the subcontract is for "materials and equipment to be furnished and work to be done by the Subcontractor". The fact that the purchase order for the material and the subcontract have the same date leads one to the conclusion that the taxpayer knew that its sale of the material and the labor were both related to the work at the hospital. And this is made clear by the fact that the bills for material indicated it was delivered as the work progressed.

Rice insulation performed the work that the general contractor was contractually obligated to do; it did the work for the hospital under its contractual obligation to the general contractor. The installation of the materials was for the hospital, regardless of the contractual relations of the several parties involved.

The Circuit Court affirmed the Commission which found the taxpayer was a subcontractor who purchased and was the consumer of tangible personal property used by it in real property construction activities and use tax applies to the sale of the materials used by it. It also found under s. 77.51 (18), Wis. Stats., the con-

tractor did not issue proper resale certificates because it had sound reason to believe it would sell the materials to customers for whom it would perform real property construction activities involving the use of the materials.

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

Eugene F. Rock and Eugene F. Rock d/b/a Rock's Round Barn vs. Wisconsin Department of Revenue (Circuit Court of Sauk County, August 27, 1982). This is an appeal of the department's assessment of additional income tax of \$48,805.13 for 1966 through 1972. (See WTB #28 for summary of Wisconsin Tax Appeals Commission's decision.) During the seven year audit period, taxpayer reported \$13,572 as taxable income. The department, through the use of income reconstruction, determined that the taxpayer had an actual income of \$253,744. The department assessed additional income tax under s. 71.11 (21) (c), Wis. Stats., and assessed the civil fraud penalty under ss. 71.11 (6) (a) and (b), Wis. Stats. The taxpayer pled no contest to a criminal charge which was related to this assessment. The taxpayer set forth several reasons why the department's assessment of additional taxes is invalid. Those reasons are as follows:

1. Notice of the assessment was defective;
2. The hearing before the Commission denied the taxpayer due process of law;
3. The department has not met its burden on the issue of taxpayer's fraudulent intent;
4. The field audit is inadequate; and
5. The taxpayer has been placed in double jeopardy.

The Circuit Court held in favor of the department.

The taxpayer has not appealed this decision.

HOMESTEAD CREDIT

Mary M. Flanders vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 15, 1982). On April 12, 1979 Mary Flanders and her then-husband were granted a divorce. Under the divorce judgment, taxpayer was granted custody and control of the couple's minor child. Under the

judgment, Mr. Flanders was ordered to pay to Mary \$400.00 per month "toward the support of the minor child of the parties" until the child is 18 years old or is sooner emancipated. These payments were to be made to the Portage County Clerk of Courts who would pay the amounts to the taxpayer. During 1979 Mary Flanders received \$4,800.00 in child support payments from her former husband, through the Portage County Clerk of

Courts. The checks were payable to Mary Flanders individually.

The issue in this case is whether or not child support payments received by Mary Flanders from her former husband under a divorce judgment, to be used to support the couple's minor child in taxpayer's custody, should be included in "household income" for purposes of calculating taxpayer's 1979 Wisconsin Home-

stead Credit. The Commission held that the \$4,800.00 Mary Flanders received in 1979 from her former husband under the terms of a divorce judgment as child support is properly includable in "household income" for purposes of calculating taxpayer's 1979 Wisconsin Homestead Credit Claim.

The taxpayer has not appealed this decision.

TAX RELEASES

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

INDIVIDUAL INCOME TAXES

1. Subchapter S Corporation's Capital Gain Income

For federal purposes, a Subchapter S corporation's net capital gain is an exception to the federal no-conduit rule which provides that the characteristics of individual items of income and expense do not pass through to shareholders. Since net capital gain retains its character as capital gain when passed through to shareholders, such income is given long-term capital gain treatment on the shareholder's individual federal returns.

For Wisconsin purposes, *all* income from a Subchapter S corporation is treated as ordinary income on an individual's Wisconsin income tax return. Wisconsin corporation franchise/income tax law does not distinguish income or loss from the sale of business capital assets from ordinary business income.

Because of this difference in the manner in which Wisconsin and federal law treat capital gains received from a Subchapter S corporation, a shareholder who has reported a long-term capital gain on line 15 of federal Schedule D (the line for reporting Subchapter S gains) must make an adjustment (an add modification on line 30, Form 1) on his or her Wisconsin income tax return to account for the difference in the Wisconsin and federal treatment of gains received from a Subchapter S corporation. To figure the amount of the add modification, a shareholder must determine (on a separate worksheet) the amount which would be reportable on line 28 of Wisconsin Form 1 if the Subchapter S gain is treated as ordinary income rather than capital gain income. This amount should then be compared to the amount which has been reported on line 28 and the difference between these amounts, if any, is the amount of the addition modification which must be made on line 30, Form 1.

Example: A person receives a \$10,000 long-term capital gain from a Subchapter S corporation. Assume no other income is received.

	Gain Treated as Capital Gain	Gain Treated as Ordinary Income	Difference
Federal AGI	\$4,000	\$10,000	\$6,000
Line 27, Wis. Form 1	<u>4,000</u>	<u>-0-</u>	<u>(4,000)</u>
Line 28, Wis. Form 1	<u>\$8,000</u>	<u>\$10,000</u>	<u>\$2,000</u>

The addition to federal income which would be required to be made on line 30, Form 1 is \$2,000.

2. Taxing Unemployment Compensation - Wisconsin Different Than Federal

Beginning with 1982, the base amounts for determining taxable unemployment compensation (UC) for federal purposes has been lowered to \$12,000 for single persons and \$18,000 for married persons filing a joint federal income tax return. However, for Wisconsin taxable UC must be determined under the base amounts in the Internal Revenue Code in effect as of December 31, 1981, which are \$20,000 for single taxpayers and \$25,000 for married persons. This difference between the federal and Wisconsin base amounts means that some taxpayers may have taxable UC for federal but not for Wisconsin. The instructions for the 1982 Form 1 and Form 1A explain how to compute taxable UC for Wisconsin.

Full Year Residents of Wisconsin: Full year residents must determine taxable UC using the \$20,000 and \$25,000 base amounts mentioned above. A schedule for computing taxable UC for Wisconsin is found on page 3 of the 1982 Form 1 and Form 1A instructions.

Part-Year Residents: UC received while a person is a resident of Wisconsin may be taxable for Wisconsin purposes, regardless of whether the payments relate to personal services performed in Wisconsin or another state. Part-year residents must determine taxable UC as follows:

1. All UC Received While a Resident of Another State

If all UC is received while a person is a resident of another state, none of the UC is taxable for Wisconsin purposes, regardless of whether the payments relate to services performed in Wisconsin or another state.

Example: A person is a resident of Wisconsin through July 20, 1982. During 1982 the individual received \$5,200 of unemployment compensation. This entire amount is received after July 20, 1982. None of the UC received during 1982 is taxable for Wisconsin purposes.

2. All UC Received While a Resident of Wisconsin

If all UC is received while a person is a resident of Wisconsin, the entire amount computed on line 6 of the Wisconsin Unemployment Compensation Schedule (see page 3 of the Form 1 (or Form 1A) instructions) is taxable for Wisconsin purposes.

Example: An individual terminated Wisconsin residency and became a resident of Minnesota on October 5, 1982. Prior to October 5, 1982, the individual received \$7,600 of UC. No UC is received after this date. \$650 is entered on line 6 of the Wisconsin Unemployment Compensation Schedule. This entire amount is taxable for Wisconsin purposes.

3. Part of UC Received While a Resident of Wisconsin and Part Received While a Resident of Another State

If only part of 1982 UC is received while a resident of Wisconsin, two computations must be made to determine the net taxable UC for Wisconsin. First, the Wisconsin Unemployment Compensation Schedule (see page 3 of the Form 1 (or Form 1A) instructions) must be completed. Taxpayers filing on Form 1 must enter the amount from line 6 of this schedule on line 14 of Form 1.

Next, compute the net taxable UC as follows:

UC Entered on Line 6 of Wis. UC Schedule	X	UC Received While a Resident of Wis. Total UC Received	= Net Taxable UC
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If a person is filing on Form 1A, net taxable UC is entered on line 6 of Form 1A.

If a person is filing on Form 1, the following amount must be entered as a subtraction from federal income on line 36, Form 1:

UC entered on line 14, Form 1	X
Less: Net taxable UC	X
Subtraction for UC not taxable by Wis.	X

Example: An individual became a resident of Wisconsin on May 4, 1982. This person received \$1,300 of UC prior to becoming a Wisconsin resident and \$1,560 after becoming a Wisconsin resident. Taxpayer entered \$920 on line 6 of the Wisconsin Unemployment Compensation Schedule. Net taxable UC is computed as follows:

\$920	X	\$1,560	= \$502 net taxable UC
		\$2,860 (Total UC)	

If the taxpayer is filing on Form 1A for 1982, \$502 must be entered on line 6 of Form 1A.

If the taxpayer is filing on Form 1 for 1982, \$920 must be entered on line 14 of Form 1. \$418 is included as a subtraction from federal income on line 36. This amount is computed as follows:

\$920	UC entered on line 14, Form 1
502	Less: Net taxable UC
\$418	Subtraction for UC not taxable by Wis.

Nonresidents of Wisconsin: Unemployment compensation received by a nonresident is not taxable for Wisconsin purposes, regardless of whether the payments relate to personal services performed in Wisconsin or another state.

CORPORATION FRANCHISE/INCOME TAXES

1. Postponing the Gain on Property Involuntarily Converted

Facts and Question: Corporation X had a warehouse located in Wisconsin which, during the 1982 taxable year, was completely destroyed by fire. Insurance proceeds totaling \$1,000,000 were received and a gain on the involuntary conversion of \$350,000 was realized. Approximately six months after the fire, Corporation X purchased a similar warehouse for \$750,000. Is Corporation X entitled to postpone any of the gain realized pursuant to section 71.03 (1) (g) 3 of the Wisconsin Statutes?

Answer: Yes. Corporation X has a recognized gain of \$250,000. \$350,000 is realized gain but \$250,000 is recognized (taxable) gain because \$250,000 is the amount of proceeds that were not reinvested. Corporation X may therefore postpone \$100,000 of the realized gain.

(Note: The Form 4 1982 Wisconsin Corporation Tax Forms and Instructions (9th paragraph of the instructions for line 5 of Form 4) state that gain must be recognized to the extent that any gain realized exceeds the amount of proceeds not reinvested. This instruction for line 5 should state that any gain realized is recognized to the extent that any proceeds are not reinvested in property which is similar or related in service or use to the property involuntarily converted.)

2. Inventories - How Thor Power Tool Co. Case Applies for Wisconsin

Facts and Questions: The Thor Power Tool Co. case was decided by the U.S. Supreme Court in 1979. The taxpayer took a writedown of the parts and accessories inventory for tools out of production on the basis that this inventory was in excess of anticipated demand. Thor valued its inventories at lower of cost or market and failed to show that the market value had decreased below the price for which they were still selling the parts. Thor also failed to demonstrate that the spare parts were excessive since Thor had not scrapped any of these parts.

The Supreme Court stated that Section 471 of the Internal Revenue Code gave the Commissioner wide discretion in the area of inventory accounting and accounting methods. In making its ruling the Supreme Court further stated that the Internal Revenue Service had the authority to restore writedowns of "excess" inventories (both prior and current) to book income.

To implement this decision the Internal Revenue Service released Rev. Proc. 80-5 which was mandatory for the first taxable year ending on or after December 25, 1979. It provided a procedure for taxpayers to change their method of accounting for "excess" inventory. The automatic election provided for the taxpayer to correct closing inventory and to include the adjustment for the restoration of the "excess writedown" in opening inventory over a period of years.

How does the Thor Power Tool Co. case and the subsequent issuance of Rev. Rul. 80-60 and Rev. Proc. 80-5 apply for Wisconsin corporate franchise/income tax purposes?

Answer: Sections 71.11 (8) (a) and (9), Wis. Stats., are comparable to Sections 446 and 471 of the Internal Revenue Code. Therefore, the department has authority to require adjustments to inventory similar to that required by the Thor Power Tool Co. case and Rev. Rul. 80-60 and Rev. Proc. 80-5. However, Wisconsin law provides that the entire amount of a change in method of accounting must be included in income in the year of change. Therefore, the only adjustments necessary to make the change for Wisconsin are to correct the computation of the ending inventory in the year of change, and to reverse the federal return adjustments relative to opening inventory and any Section 481 (a) adjustment made for federal purposes.

SALES/USE TAXES

1. Dental Laboratory's Purchases

Facts and Questions: A dental laboratory is primarily engaged in making dentures and artificial teeth to order for members of the dental profession. Paragraph (4) (d) of rule Tax 11.39, titled "Manufacturing", provides that dental labs are non-manufacturers. Are the materials the laboratory purchases (teeth, bonding agents, etc.) to make plates, dentures and bridges which are sold to dentists subject to the sales tax?

Answer: A dental laboratory may purchase without tax for resale any tangible personal property, including teeth and bonding agents, which are resold and physically transferred in the form of dentures and artificial teeth to persons in the dental profession. This is based on the Wisconsin Supreme Court's decision of October 7, 1977 in Milwaukee Refining Corp., 80 Wis. 2d 44.

2. Gift Wrapping

Facts and Question: A person purchases wrapping paper, decorative ribbon and tape and uses these items to wrap packages for customers who are charged for the wrapping materials and wrapping service. Retailers who previously have sold the gift to a customer provide gift wrapping. Other persons who have not sold the item also provide gift wrapping. Are the gross receipts from providing gift wrapping whether done by the gift seller or others subject to sales tax, and is a person providing gift wrapping able to purchase the wrapping materials used without tax?

Answer: The gross receipts from providing gift wrapping are subject to the sales tax, whether provided by the seller of the gift or by other persons who have not sold the gift to the customer. Persons engaged in this business may purchase the wrapping materials used in the business without tax for resale to customers.

3. Landscape Planning and Development Services

Facts and Question: A planning and development consultant provides on site and land use planning services to

clients. This consultant provides a variety of services to clients including the following:

1. He is requested by a client to inspect a landscape planting project to affirm that the contractor has installed the trees, lawns, shrubs, walls, walks and grading in accord with the contract specifications.
2. He is requested by a client or the client's architect/engineer/attorney to inspect plants installed a year or two earlier to see if they should be replaced, under the terms of a contract between the client and the contractor, because of death or poor condition of the plants.
3. He is requested to inspect a tree damaged by storm or construction to determine if it needs trimming or removal and replacement and to place a cost estimate on such needed work. The inspection could also be of a lawn area damaged by construction equipment or errant/vandalistic driving.
4. As part of site analysis services, he makes recommendations to trim trees or to plant or remove hedges for purposes of enhancing customer exposure, or the opposite, of screening objectionable views.
5. He is requested to be an "expert" witness in civil litigation on any of the above matters if there is a dispute.

Are any of the five services described above considered landscape planning and counseling services which are subject to the sales tax under s. 77.52 (2) (a) 20, Wis. Stats.?

Answer: The first 4 services are taxable landscape planning and counseling services which are subject to sales tax under s. 77.52 (2) (a) 20, Wis. Stats. However, item no. 5 is not considered a taxable landscape planning and counseling service.

4. Renting Seating Affixed to Realty

Facts and Question: A coliseum is rented to promoters who sell tickets to recreational events which take place in the coliseum. The total rental charge provides the promoter with the use of the entire facility, including permanent seating which is securely attached to the realty. Is a portion of the total rental subject to the sales tax because it represents coliseum seating, which is generally considered to be personal property for sales tax purposes?

Answer: The definition of personal property in s. 77.51 (5), Wis. Stats., excludes personal property which is affixed to real property, if the same person (lessor) rents both the affixed personal property and the realty to which it is affixed. Therefore, the sales tax does not apply to any of this rental charge.

HOMESTEAD CREDIT

1. Surviving Spouse's Property Taxes Accrued

Facts and Question: The homestead was owned solely by the husband who resided in it with his spouse, who filed a 1980 Homestead Credit claim. The husband died in December, 1980 and his estate was closed in June, 1981. The surviving spouse paid all of the 1980 property taxes in 1981, and continued to occupy the homestead after his death.

Since the husband was the sole owner of the property, do the taxes paid by the wife come within the meaning of "property taxes accrued" or in the alternative, "rent constituting property taxes accrued" for purposes of her 1980 Homestead Credit claim?

Answer: In order to use property taxes as "property taxes accrued" for homestead credit purposes, the claimant must have been an owner of the homestead during the year for which the claim is made. Payment of taxes by a non-owner on his or her homestead may be considered as "rent constituting property taxes accrued" if such payments are made within the calendar year for which the claim is filed.

The 1980 property taxes were not paid until 1981, therefore the surviving spouse may not use the taxes paid as "rent constituting property taxes accrued" on her 1980 homestead claim. Since she did not own the property in 1980, she may not claim the taxes paid in 1981 as property taxes accrued on her 1980 claim.

2. Inclusion of a Portion of Business Mileage Expense as Depreciation for Homestead Purposes

Facts and Question: Business related automobile expenses may be deducted on an individual's income tax

return. If the actual expense method is used, any depreciation deducted must be added back to household income for homestead credit purposes, per section 71.09 (7) (a) 1, Wis. Stats.

If the standard mileage rate is used, the rate is 20¢ per mile for the first 15,000 miles per year and 11¢ per mile thereafter. The mileage rate is also 11¢ per mile for each mile after the car is fully depreciated. A car used by a taxpayer who claims the standard mileage rate is considered fully depreciated after 60,000 miles at the maximum standard mileage rate.

Does any part of the car expenses have to be added back to household income as depreciation if the standard mileage rate is used?

Answer: Yes. The expenses covered by the standard mileage rate include depreciation on the car. Federal Revenue Procedure 82-61 provides that if the standard mileage rate is claimed for 1982, 7.5¢ per mile for the first 15,000 miles of business use during 1982 will be considered to be depreciation. Therefore, 7.5¢ per mile (up to 15,000 miles) must be added to household income per s. 71.09 (7) (a) 1, Wis. Stats. However, the total amount of depreciation added back cannot exceed the cost of the car.