

WISCONSIN TAX BULLETIN

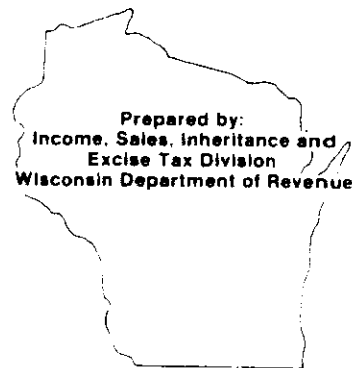
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Excise Tax Division
Wisconsin Department of Revenue



NEW TAX LAWS

The Wisconsin Legislature has enacted changes to the Wisconsin tax laws. Attached to this issue of the Wisconsin Tax Bulletin is a supplement containing brief descriptions of the new income, corporation, inheritance, excise and sales and use tax provisions.

QUESTIONS CONCERNING REFUNDS

Persons who wish to inquire about their income tax or Homestead Credit refund should wait at least 10 weeks after the filing of their 1983 return. Questions about refunds for Schedule H, Form 1 and Form 1A may be directed to: Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708, (608) 266-8100.

REMINDER — DEPENDENTS WITH \$1,000 OR MORE OF UNEARNED INCOME

Beginning with the filing of 1983 Wisconsin income tax returns, persons who are claimed as a dependent by another person and have unearned income (e.g., interest or dividends) of \$1,000 or more are required to file a Wisconsin income tax return.

Prior to 1983, Wisconsin had no special filing requirement for dependents with unearned income. The dependent was subject to the same filing requirements as other persons. For example, if the dependent was single and under age 65 he or she was required to file a 1982 return if his or her gross income was \$3,200 or more.

If a dependent with unearned income elects to use the standard de-

IN THIS ISSUE

| | Page |
|--|------|
| New Wisconsin Tax Laws | 1 |
| Questions Concerning Refunds | 1 |
| Reminder: Dependents With \$1,000, or More of Unearned Income | 1 |
| Filing Deadlines for 1983 Homestead and Farmland Preservation Credit Claims | 1 |
| Due Dates of 1984 Estimated Tax Payments of Individuals | 1 |
| Corporation Estimated Tax Requirements Changed | 1 |
| Jail Sentence and/or Fines for Income Tax and Tobacco Tax Evasion | 2 |
| Reminder! Taxpayers Must Notify Department of Revenue of Federal Adjustments and Amended Returns | 2 |
| Don't Overlook Gift Tax Returns | 2 |
| Do you have Suggestions for 1984 Tax Forms? | 3 |
| New I.S.I.&E. Division Rules and Rule Amendments in Process | 3 |
| Report on Litigation | 4 |
| Tax Releases | 14 |
| Income and Franchise Taxes | |
| Sales/Use Taxes | |
| Withholding Taxes | |
| Tax Report | 19 |
| New Wisconsin Tax Laws | 21 |

duction on the Wisconsin return, the amount of deduction is limited to the lesser of the total earned income or the standard deduction. For example, if the dependent had total income of \$1,700 consisting of wages of \$500 and interest of \$1,200, his or her standard deduction from the standard deductions table would be \$2600. However, in this case the standard deduction is limited to the earned income of \$500.

FILING DEADLINES FOR 1983 HOMESTEAD AND FARMLAND PRESERVATION CREDIT CLAIMS

December 31, 1984 is the deadline for filing a 1983 Wisconsin Homestead Credit claim. Farmland Preservation Credit claims for 1983 must be filed no later than 12 months after the farmland owner's 1983 taxable year ends (e.g., December 31, 1984 for calendar year taxpayers).

No extensions of time are available for filing claims for these two credits.

DUE DATES OF 1984 ESTIMATED TAX PAYMENTS OF INDIVIDUALS

Every individual, whether or not a resident of Wisconsin, is required to file a 1984 declaration of Wisconsin estimated tax (Form 1-ES) if the individual expects his or her Wisconsin income tax liability to exceed withholding upon wages, if any, by \$100 or more.

Individuals required to file a 1984 declaration during the first quarter of 1984 must do so on or before April 16, 1984. Installment payments are also due on June 15, 1984, September 17, 1984, and January 15, 1985 for calendar year taxpayers.

A trust or estate is not required to file a declaration.

CORPORATION ESTIMATED TAX REQUIREMENTS CHANGED

Beginning with the tax year 1984, a corporation must make installment payments of estimated tax if it can expect to have a tax liability for the year of over \$500 (formerly over \$2,000). The percentage of tax which is required to be prepaid is increased from 80% to 90% for purposes of

computing the amount of underpayment in s. 71.22(9).

Installment payments are due on the fifteenth day of the third month, sixth month, and ninth month of the taxable year and the fifteenth day of the first month after the close of the taxable year.

As a result of amendments to ss. 71.22(10)(a) and (b), the following changes have been made regarding corporations which use exception 1 (preceding year's tax) or exception 2 (recomputing prior year's tax using current year rates) to avoid an addition to the tax penalty:

1. Corporations that have a Wisconsin taxable income of less than \$250,000:

For the 1983 tax year and thereafter, they are no longer subject to the 60% of current year tax minimum payment requirement when exception 1 or 2 is being used to avoid the addition to penalty.

2. Corporations with Wisconsin taxable income of \$250,000 or more:

For the tax year 1984 and thereafter, the minimum payment requirement in ss. 71.22(10)(a) and (b) for exceptions 1 and 2, is increased for such corporations from 60% to 90% of the current year's tax.

JAIL SENTENCE AND/OR FINES FOR INCOME TAX AND TOBACCO TAX EVASION

Three Persons Convicted For Failure To File

Martin J. Seibert, Jr., 2560 Anita Drive, Brookfield, Wisconsin, a certified public accountant, was convicted December 29, 1983 in Waukesha County Circuit Court to two counts of failing to file state corporation franchise tax returns for Martin J. Seibert, Jr., Accounting and Management, Inc. Circuit Judge Mark S. Gempeler ordered Seibert to pay a \$300 fine on each count by February 29, 1984 or serve 65 days in the Waukesha County Jail.

Seibert was charged with failing to file state corporation franchise tax returns on gross receipts of more than \$36,000 for fiscal year 1980 and \$33,000 for fiscal year 1981.

Vernon F. Stibb, Route 2, Neshkoro, Wisconsin, was convicted in Dane County Circuit Court, Branch 7, on three counts of failing to file state income tax returns. Circuit Judge Moria Krueger withheld sentencing and ordered Stibb to serve two years probation on each of the three counts to run concurrently. Under the conditions of probation, Stibb must pay a \$500 fine on each count and serve 30 days in jail with work release privileges. He must also file valid Wisconsin income tax returns for 1979, 1980, 1981 and 1982, pay the back taxes, penalties and interest as determined by the Wisconsin Department of Revenue, file timely tax returns when due during the probationary period and file valid withholding exemption certificates with his employer. The jail sentence is to begin January 30, 1984 unless Stibb files an appeal.

Stibb was charged with failing to file state income tax returns on gross income of more than \$17,000 for 1979, \$18,000 for 1980 and \$20,000 for 1981.

Lawrence J. Cieslinski, Sr., Route 3, Highway 13, Friendship, Wisconsin, was convicted in Dane County Circuit Court, Branch 12, on two counts of failing to file state income tax returns. Cieslinski was ordered to serve two years probation on each of the two counts to run concurrently. Under the conditions of probation, Cieslinski must pay a \$250 fine on each count and serve 30 days in jail during nonworking hours. He must also file Wisconsin income tax returns for 1979, 1980, 1981 and 1982, pay the back taxes and interest as determined by the Wisconsin Department of Revenue and file timely returns when due during the probationary period.

Cieslinski was charged with failing to file state income tax returns on gross income of more than \$12,000 for 1979 and \$28,000 for 1980.

Conviction For Tobacco Products Tax Evasion

Judge P. Charles Jones, Branch 3, Dane County Circuit Court, sentenced Vic's Wholesale Tobacco, Inc., Milwaukee, to pay a fine of \$4,000 plus \$600 in penalty assessment for four counts of tobacco products tax evasion. Jones also sentenced the company's executive vice-president, Raymond Jazwiecki

of Greenfield, to pay a fine of \$870 plus \$150 in penalty assessment, for one count of operating as a tobacco products distributor without a permit. Jazwiecki, acting on behalf of the corporation, brought untaxed tobacco products into the state from October, 1981 through October, 1982.

The charges were the result of a two month investigation conducted by agents of the Alcohol and Tobacco Enforcement Section of the Department of Revenue.

REMINDER! NOTIFY DEPARTMENT OF FEDERAL ADJUSTMENTS AND AMENDED RETURNS

If a taxpayer's federal income tax return is adjusted by the Internal Revenue Service (IRS), and the adjustments affect the amount of Wisconsin income reportable or tax payable, such adjustments must be reported to the Wisconsin Department of Revenue within 90 days after they become final.

In addition, taxpayers filing an amended return with the IRS or another state must also notify the department within 90 days of filing if information in the amended return affects the amount of Wisconsin income reportable or tax payable.

Administrative Rule Tax 2.105 provides additional information regarding this reporting requirement and indicates when adjustments made by the IRS are considered final.

An amended Wisconsin return or copy of the federal audit report should be sent to: Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, Wisconsin 53708.

GIFT TAX RETURNS DUE APRIL 16

With the exception of gifts of real estate and tangible personal property located outside of Wisconsin, all gifts made by Wisconsin residents are taxable. It does not matter whether the donee lives in Wisconsin or in another state; a gift received from a Wisconsin resident is still taxable.

Also taxable are gifts made by non-residents of Wisconsin of property (both real estate and tangible personal property) located in Wisconsin.

sin. Such gifts are taxable regardless of where the donee resides.

Wisconsin gift tax reports must be filed for any calendar year in which the total value of taxable gifts made by one donor (person giving the gift) to one donee (person receiving the gift) in that year exceeds \$3,000. Gift tax reports of the donee and donor for 1983 must be filed by April 16, 1984.

The donor reports gifts made on Form 7. On this form the donor enters the description and value of the gifts made to each donee.

The donee reports the gifts he or she received on Form 6, and includes the description and value of the gifts received from one donor. If the donee received gifts from more than one donor during that year, the donee must file a separate report of gifts received from each donor.

The computation of the gift tax due must be made on Form 6. In determining the gift tax due, an annual exemption of \$3,000 is allowed for all gifts made during a calendar year by one donor to one donee. Until June 30, 1982 there was a lifetime exemption of \$100,000 for gifts between spouses. Gifts made between spouses on or after July 1, 1982 are completely exempt from Wisconsin gift tax. A lifetime personal exemption of \$10,000 is allowed for gifts between donors and their lineal issue (children, grandchildren), lineal ancestors (parents, grandparents), wife or widow of a son, husband or widower of a daughter, adopted or mutually acknowledged child, and mutually acknowledged parent. There is no lifetime exemption allowed to other donees.

DO YOU HAVE SUGGESTIONS FOR 1984 TAX FORMS?

Each year the department receives helpful suggestions from the public regarding improvements to the Wisconsin income tax forms.

You may wish to let us know of your suggestions for improving Forms 1

(individual long form) and 1A (individual short form), Forms 4 and 5 (corporation franchise/ income tax returns) and Schedule H (Homestead). Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. 8910, Madison, WI 53708. Please submit your suggestions by July 2, 1984.

NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A and B, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of February 10, 1984. Part C lists new rules and amendments which have been adopted in 1984.

("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

A. Rules at Legislative Council Rules Clearinghouse

- 11.03 Elementary and secondary schools-A
- 11.05 Governmental units-A
- 11.12 Farming, agriculture, horticulture and floriculture-A
- 11.51 Grocer's guidelist-A
- 11.65 Admissions-A
- 11.71 Automatic data processing-N
- 11.95 Retailer's discount-A

B. Rules at Legislative Standing Committees

- 11.05 Governmental Units-A
- 11.08 Medical appliances, prosthetic devices and aids-A
- 11.09 Medicines-A
- 11.10 Occasional sales-A
- 11.11 Waste treatment facilities-A
- 11.13 Sale of a business or business assets-A
- 11.15 Containers and other packaging and shipping materials-A

- 11.17 Hospitals, clinics and medical professions-A
- 11.19 Printed material exemptions-A
- 11.27 Warranties-A
- 11.30 Credit sale, bad debt and repossessions-A
- 11.39 Manufacturing-A
- 11.45 Sales by pharmacies and drug stores-A
- 11.56 Printing industry-A
- 11.65 Admissions-A
- 11.67 Service enterprises-A
- 11.72 Laundries, dry cleaners and linen and clothing suppliers-A
- 11.83 Motor vehicles-A
- 11.85 Boats, vessels and barges-A
- 11.86 Utility transmission and distribution lines-A
- 11.87 Meals, food, food products and beverages-A
- 11.94 Wisconsin sales and taxable transportation charges-A

C. Rules Adopted in 1984 (in parentheses is the date the rule was adopted)

- 9.01 Definitions pertaining to cigarette tax-N (4/1/84)
- 9.08 Cig. tax refunds to Indian tribes-N (4/1/84)
- 9.09 Cig. sales to and by Indians-N (4/1/84)
- 11.15 Containers and other packaging and shipping materials-A, (1/1/84)
- 11.16 Common or contract carriers-A, (1/1/84)
- 11.19 Printed material exemptions-A, (1/1/84)
- 11.26 Other taxes in taxable gross receipts and sales price-A, (1/1/84)
- 11.32(3) "Gross receipts" and "sales price"-A, (1/1/84)
- 11.48 Landlords, hotels and motels-A, (1/1/84)
- 11.50 Auctions-A, (1/1/84)
- 11.52 Coin-operated vending machines and amusement devices-A, (1/1/84)
- 11.68 Construction contractors-A, (1/1/84)

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

- Daniel T. Betow vs. Wisconsin Department of Revenue
- Falls Communication, Inc. vs. Wisconsin Department of Revenue
- John W. Nelson vs. Wisconsin Department of Revenue
- Lake Wisconsin Country Club vs. Wisconsin Department of Revenue
- Midland Financial Corp. vs. Wisconsin Department of Revenue
- NCR Corporation vs. Wisconsin Department of Revenue
- Pabst Brewing Co. vs. Wisconsin Department of Revenue
- Southgate Mall, Inc. vs. Wisconsin Department of Revenue
- Theodore A. Gernaey vs. Wisconsin Department of Revenue
- Transam Warehouses of Illinois, Inc. vs. Wisconsin Department of Revenue
- Uniroyal, Inc. vs. Wisconsin Department of Revenue
- Warren's Turf Nursery, Inc. vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Advance Pipe & Supply Co., Inc. and Milwaukee Sewer Pipe & Manhole Co., Inc. vs. Wisconsin Department of Revenue
- City of Racine vs. Wisconsin Department of Revenue
- Johnson and Johnson, A partnership (D/B/A Asphalt Products Co.), and Asphalt Products Co., Inc. vs. Wisconsin Department of Revenue

Wisconsin Telephone Company, ET AL. vs. Wisconsin Department of Revenue

Cigarette Tax

George R. Elliott vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Daniel T. Betow vs. Wisconsin Department Of Revenue (Court of Appeals, District IV, November 22, 1983). The taxpayer, a Wisconsin resident, asserts that income he received from wages is not subject to the Wisconsin income tax. There is no question that the taxpayer received wages during the year 1980 since he reported the same on his Wisconsin tax return under "Non Taxable Receipts" and requested a full refund of all Wisconsin income taxes withheld by his employer. The department, as a result of the taxpayer's actions, issued an assessment on May 18, 1981, covering the amount received by taxpayer from wages plus an additional \$2,000 estimated income. The taxpayer filed a petition for redetermination which included among his objections the claim that his wages were not subject to tax because: (a) the wages and salaries which his corporate employer gave him in exchange for his labor amounted to an equal exchange, and not to any profit or gain upon which he is taxable; (b) Article I, Section 10 of the U.S. Constitution provides that no state "make anything but gold and silver coin as tender in payment of debts", even if the taxpayer's wages were subject to Wisconsin's individual income tax, the Constitution prohibits him from paying Wisconsin in greenbacks or by check to extinguish the debt, as the department wishes; and (c) "wages" are not subject to federal or Wisconsin income tax because that word is not included in the alleged imprecise definition of "income" in section 61 of the Internal Revenue Code.

The department contended that the taxpayer failed in his petition for review to state any error in the assessment; that the taxpayer did not raise any dispute on the facts, but merely contended that he should prevail as a matter of law; and that the taxpayer's legal arguments are incorrect and have been decided often enough by state and federal tribu-

nals against persons advancing them to render them meritless and of no substance.

The Commission granted the department's motion to dismiss on the grounds that the taxpayer's legal arguments had been decided previously by other legal tribunals and determined to be without merit. The Court of Appeals upheld the decision of the Circuit Court to support the dismissal by the Commission.

The taxpayer has not appealed this decision.

Falls Communications, Inc. vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, November 1, 1983). The issue in this case is whether there was a disposition of an installment obligation owned by Falls Communications, Inc., within the meaning of Chapter 71 and Wis. Adm. Code s. Tax 2.19, when the installment agreement becomes the asset of a surviving corporation in a statutory merger authorized and completed pursuant to Chapter 180, Wis. Stats., the incidents of taxation of which merger are statutorily governed by ss. 71.354, 71.361 and 71.368, Wis. Stats.

Falls Communications, Inc., a Wisconsin corporation, was formed on May 17, 1961, by its two shareholders, Mary Ann McDonald and John R. McDonald. Upon incorporation, the taxpayer acquired a radio station in Black River Falls. Subsequently, the radio station was sold and a Country Kitchen Restaurant in Sparta was acquired. In August 31, 1977, Falls Communications, Inc. agreed to sell the restaurant; however, the sale was consummated on October 31, 1978. The taxpayer received an installment obligation pursuant to the contract for the unpaid balance of the purchase price.

On March 27, 1973, Mary Ann McDonald and John R. McDonald had formed a Tennessee corporation, C.K. of Tennessee, Inc., for the purpose of owning, operating and franchising Country Kitchen Restaurants in Tennessee. After selling its restaurant in Sparta, Falls Communications, Inc. was unable to acquire additional Country Kitchen Restaurants or a suitable general restaurant business in Wisconsin. It was the consensus that a business combination of Falls Communications, Inc. and C.K. of Tennessee, Inc. would better be able to continue the restau-

rant business. All of the assets and liabilities of Falls Communications, Inc., including the installment obligation, were distributed to C.K. of Tennessee in exchange for stock in C.K. of Tennessee on April 1, 1979.

The Commission ruled that the unreported balance on gain of the installment sale must be recognized in the year the assets were distributed. The department's assessment was proper in accordance with s. 71.11(8), Wis. Stats., and s. Tax 2.19, Wis. Adm. Code.

The taxpayer has appealed this decision to the Circuit Court.

John W. Nelson vs. Wisconsin Department Of Revenue (Circuit Court of Racine County, August 23, 1983). The taxpayer filed a 1979 Wisconsin income tax Form 1A with the word "object" written on almost every answer line. The Wisconsin form was accompanied by a 1979 federal Form 1040 which was completed in the same manner. Attached to the forms were a memorandum to the Commissioner of Internal Revenue and copies of several newspaper articles. The department sent letters to Mr. Nelson requesting that he file a completed 1979 Wisconsin income tax return. He failed to obey the department's directive and was assessed a tax of \$2,000.04. He sought a redetermination of this assessment, but refused to disclose the amount of his 1979 income. His petition was denied by the department. The taxpayer appealed this denial to the Wisconsin Tax Appeals Commission but again refused to disclose his income. The department moved for and received a dismissal of the petition. The taxpayer's petition for rehearing filed with the Tax Appeals Commission was denied.

The Court found the assessment levied by the department to be neither arbitrary nor capricious, but to be an assessment made within the department's best judgment. The taxpayer is not entitled to a rehearing with the Wisconsin Tax Appeals Commission as none of the three conditions imposed by s. 227.12(3), Wis. Stats., has been met. Lastly, the Court found that the taxpayer's constitutional rights have not been violated, but have been maintained throughout all proceedings related to this dispute. The taxpayer's request for a rehearing with the Wisconsin Tax Appeals Commission regarding a redetermination of a tax assessment

levied against him is denied. The Commission's decision to dismiss his petition for review dated 16 December 1982 is affirmed.

The taxpayer has not appealed this decision.

Wisconsin Department Of Revenue vs. Lake Wisconsin Country Club (Circuit Court of Dane County, November 11, 1983). The issue in this case is whether fees and annual special assessments charged to members of the Lake Wisconsin Country Club are ordinary income to the club, as the department determined, or contributions to the club's capital and, as such, not taxable under Wisconsin's franchise tax on corporations, s. 71.01(2), Wis. Stats. The club contended that the fees and assessments are not includable in the club's gross income because contributions to capital are excludable from gross income under section 118 of the Internal Revenue Code.

Section 71.03, Wis. Stats., which defines gross income, predates its federal counterpart, IRC section 61, by five years and was not copied from the federal statute. Section 71.03, Wis. Stats., does not contain an exclusion from gross income for contributions to capital similar to that found in IRC section 118. "Gross income" is defined in s. 71.03(1), Wis. Stats., to include all fees derived from services, all profits derived from the transaction of business and all other gains, profits, or income or any kind derived from any source whatever.

The Circuit Court reversed the Tax Appeals Commission's decision because it was erroneously based on an application of federal tax law to a question solely answerable by Wisconsin tax law. Under ss. 71.01(2) and 71.03, Wis. Stats., the fees and assessments collected by the Club were correctly determined by the department to be includable in the club's gross income.

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

Midland Financial Corporation vs. Wisconsin Department Of Revenue (Wisconsin Supreme Court, December 29, 1983). This is a review by the Supreme Court of a Court of Appeals decision affirming the judgement of the Circuit Court of Milwaukee County. The Circuit Court reversed a decision of the Wisconsin Tax Appeals Commission, which upheld the department's assessment of addi-

tional franchise taxes for 1972 (see WTB #22 and #28 for summaries of the prior decisions).

For 1971 and 1972 Midland Financial Corporation, a Wisconsin corporation, operated as a bank holding company. Midland owned a controlling interest in several banks as well as two corporations which performed leasing and consulting services and two office buildings. In 1971 Midland received \$112,633 of dividend income from its subsidiary corporations which it deducted from gross income on its Wisconsin income tax return pursuant to s. 71.04(4), Wis. Stats. As a result, Midland reported a net loss of \$156,534 in 1971. This amount was carried forward as a loss and used as a deduction on its 1972 corporate tax return. The department offset the \$112,633 of dividend income against the taxpayer's 1971 loss of \$156,534 thus reducing the carry forward to 1972 to \$43,901. In January of 1978 Midland was liquidated and dissolved.

There were three questions on this review. The first question is whether the dividends received by Midland in 1971 must be subtracted from its net business loss in calculating the business loss carry forward to 1972 under s. 71.06, Wis. Stats. (1971). The pertinent portion of s. 71.06 of the 1971 Wis. Statutes, provides that "if a corporation in any year sustains a net business loss, such loss, to the extent not offset by other items of income of the same year, may be offset against the net business income of the subsequent year." Neither "net business loss" nor "other items of income" is defined in the statute. Midland argues that "other items of income" used to offset a loss must be understood to mean income that is not business income, and that since dividend income received by a bank holding company is business income, the dividend income need not be used to offset the net business loss. The department reads "other items of income" to mean all income which was not included in the calculation of net business loss, including the dividend income in question. Alternatively, the department seeks to have the business loss carry forward reduced by disallowing the deduction for dividends in the calculation of the corporation's "net business loss".

The Supreme Court concluded that s. 71.06 of the 1971 Wis. Statutes is

ambiguous and must be construed in accordance with legislative intent. The Court further decided that in order to give effect to the purpose of the loss carry forward provisions under s. 71.06, Wis. Stats., and to allow the taxpayer the full benefit of the dividend deduction permitted under s. 71.04(4) Wis. Stats., dividends should not be subtracted from the net business loss to reduce the amount of the loss carry forward.

The second and third questions have to do with whether Midland lacked capacity to sue under Wisconsin Statutes. The second question was whether Midland, a dissolved corporation, had commenced action or other proceeding within two years after the date of its dissolution. The Court found that the two year requirement was satisfied by Midland's filing its petition with the Tax Appeals Commission. The third question, whether Midland was an "aggrieved person" entitled to seek judicial review was also resolved by the Court in favor of Midland.

NCR Corporation vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, February 15, 1984). The issue for the Commission to determine is the deductibility by the taxpayer of federal income taxes under s. 71.04(3), Wis. Stats., in the years 1975, 1976, 1977, 1978 and 1980.

Effective for calendar years prior to 1975 or corresponding fiscal years, corporations required to file Wisconsin franchise tax returns were permitted a deduction for federal income taxes paid within the year covered by the income tax return, limited to a total amount not in excess of 10 per cent of the taxpayer's net income of the calendar or fiscal year. The statutes relating to this deduction were:

71.02 Definitions. "(1) Definitions applicable to Corporations. As used in this chapter: (c) 'Paid' or 'actually paid' are to be construed in each instance in the light of the method used in computing taxable income whether on the accrual or receipt basis; but the deduction for federal income and excess profits taxes shall be confined to cash payments made within the year covered by the income tax return."

71.04 Income and Franchise Taxes. "(3) Taxes other than special improvement taxes paid during the year upon the business or property

from which the income taxes is derived, including therein taxes imposed by the state of Wisconsin and the government of the United States as income, excess or war profits and capital stock taxes, including taxes on all real property which is owned and held for business purposes whether income producing or not, provided that such portion of the deduction for federal income and excess profits taxes as may be allowable shall be confined to cash payments made within the year covered by the income tax return, and provided further that deductions for income taxes paid to the United States government shall be limited to taxes paid on net income which is taxable under this chapter; provided further that income taxes imposed by the state of Wisconsin shall accrue for the purpose of this subsection only in the year in which such taxes are assessed. (3a) The deduction for all United States income, excess or war profits and defense taxes shall be limited to a total amount not in excess of 10 per cent of the taxpayer's net income of the calendar or fiscal year as computed without the benefit of the deduction for said United States income, excess or war profits and defense taxes, and before the deductions of amounts permitted by subsection (5) of this section. In no event shall any taxpayer be permitted hereunder a total deduction in excess of the actual amount of United States income, excess or war profits and defense taxes paid, and otherwise deductible."

By section 471d of Chapter 39, Laws of 1975, the Wisconsin Legislature amended s. 71.04(3), Wis. Stats., effective for calendar year 1975 or corresponding fiscal year and thereafter, as follows:

71.04 "(3) Taxes other than special improvement taxes paid during the year upon the business or property from which the income taxed is derived, including therein taxes imposed by the state of Wisconsin as income taxes, and taxes on all real property which is owned and held for business purposes whether income producing or not. Income taxes imposed by the state of Wisconsin shall accrue for the purpose of this subsection only in the year in which such taxes are assessed."

By section 471f of Chapter 39, Laws of 1975, the Wisconsin Legislature repealed s. 71.04(3a), Wis. Stats. The 1975 Legislature made no changes to s. 71.02(1)(c), Wis. Stats.

On January 8, 1974, the Department of Revenue submitted to the Budget Director for the State of Wisconsin proposed tax law changes that would produce additional revenue for the state. Such proposals were to be included in the 1975-77 budget bill. One of the proposed items was the elimination of the deduction for federal income taxes by corporations. It was estimated that the repeal of the deduction then allowed corporations for federal income taxes paid would raise approximately \$36,000,000 in additional revenue during the 1975-77 biennium. A department draft of legislation to repeal the corporation deduction for federal income taxes was attached to legislation proposed by the Department of Revenue for inclusion in the budget bill. By memorandum dated May 2, 1975, the Wisconsin Legislative Fiscal Bureau submitted to members of the Joint Committee on Finance a number of potential revenue sources to balance the 1975-77 biennial budget, including the repeal of the deduction allowed corporations for federal income tax paid. The draft of legislation to repeal the deduction for federal income tax was included in Assembly Substitute Amendment 1 to Assembly Bill 222, the Governor's budget bill. The Senate and Assembly disagreed on certain provisions of the budget, so a Committee of Conference was appointed. The Committee of Conference offered Conference Substitute Amendment 1 to 1975 Assembly Bill 222. The document entitled "1975-77 Biennial State Budget, Comparative Summary of Governor's, Joint Finance, Assembly, Senate and Conference Committee Budgetary Provisions, Assembly Bill 222," is a document prepared by the Legislative Fiscal Bureau after the budget has gone all the way through the legislative process, from the Governor's recommendations through the Joint Committee on Finance, the Assembly, the Senate and the Committee of Conference. That document includes provisions relating to the Department of Revenue and the identification of the \$38,000,000 as the amount that would be generated as additional revenue to the state treasury with the repeal of the law which allowed corporations to de-

duct federal income taxes. The document indicates that this provision was added by the Joint Committee on Finance and stayed in the budget bill all the way through the process. The language of the department's original draft remained unchanged throughout the legislative process and is the same language as was finally enacted into law as section 471d of Chapter 39, Laws of 1975.

Following the amendments to s. 71.04(3), Wis. Stats., and the repeal of s. 71.04(3a), Wis. Stats., by the 1975 legislature, the department disseminated information concerning these changes and other changes in the Budget Bill in the form of news releases such as articles in the Wisconsin CPA, the Milwaukee Journal, The Milwaukee Sentinel, and Wisconsin State Journal to the effect that the legislature had repealed the federal income tax deduction formerly allowed to corporations and that such change would generate additional revenue for the state. Commerce Clearing House, State Tax Review, December 23, 1975, Vol. 36, No. 51, listed Wisconsin as a state not allowing deductions for federal income tax for corporate income taxes as did the CCH, State Tax Handbook, as of October 1, 1976. The taxpayer does not contest the fact that there was an objective on the part of the 1975 legislature to remove the entire federal income tax deduction and not merely to remove the 10% limitation. On the 1974 Wisconsin Corporate Franchise or Income Tax Return, Form 4, printed by the department, line 24 provided for a deduction for "U.S. income taxes (not in excess of 10% of line 23) (Schedule X)." On the 1975 Form 4, the line for deduction of U.S. income taxes was eliminated.

As of February 13, 1981, 4,692 corporations had either filed claims for refunds, executed extensions of time in which to file refunds or were otherwise involved in the federal tax deduction issue. At the time of the hearing in this matter there were approximately 6,000 corporations which had filed claims, or extension agreements or returns with the department asserting their claim of deduction for federal income taxes.

In 1981 the department sponsored legislation to amend s. 71.04(3), Wis. Stats. A number of events occurred between 1979 and 1981 which convinced the department to propose

such legislation. Corporations began filing returns claiming the deduction for federal taxes paid and computing estimated taxes using said deduction in the computation. In 1979 there had been no estimate of the fiscal impact of the claimed deduction but by 1981, Michael Vlaisavljevich, Administrator, Division of Research and Analysis, Department of Revenue, had estimated the revenue loss for the period beginning with the 1975-76 fiscal year through the 1980-81 fiscal year if the taxpayer is successful with the litigation herein to be \$566 million. The department in proposing such legislation intended to make it clear that federal taxes are not deductible. Senator Gerald D. Kleczka, sponsor of said amendment, stated in a letter dated July 7, 1981 to the Director of the Legislative Reference Bureau that "My intention is to clarify only a 1975 law amendment which eliminated a deduction for federal income taxes paid."

By section 1090c of Chapter 20, Laws of 1981, s. 71.04(3), Wis. Stats. was amended to read as follows:

"Taxes other than special improvement taxes paid during the year upon the business or property from which the income taxed is derived, including therein taxes imposed by this state as income taxes, and taxes on all real property which is owned and held for business purposes whether income producing or not. Income taxes imposed by this state shall accrue for the purpose of this subsection only in the year in which such taxes are assessed. Sales and use taxes paid during the taxable year which under s. 71.043(2) and from gross income. Income, excess profits, war profits and capital stock taxes imposed by the federal government are not deductible from gross income. For taxable year 1981 and thereafter real property taxes that are related to a definite period of time may be accrued ratably over that period by accrual basis taxpayers, and the windfall profit tax under section 4986 of the Internal Revenue Code is not deductible from gross income. For the taxable year 1981 and thereafter, taxes imposed by this or any other state, the District of Columbia or measured by net income, gross income, gross receipts or capital stock are not deductible. However, gross re-

ceipts taxes assessed in lieu of property taxes are deductible from gross income."

By sections 1809wm and 1101a of Chapter 20, Laws of 1981, ss. 71.02(1)(c) and 71.11(8)(b) were amended to delete the references to federal income taxes contained therein.

The Commission held:

CONCLUSIONS OF LAW

"1. Sec. 71.04(3), Wis. Stats. (1975), is ambiguous on its face, and therefore, it is permissible for the Commission to look to the legislative intent of said statute.

"face, adopting petitioner's interpretation of said statute would work an absurd and unreasonable result. In such a case, it is permissible for the Commission to resort to construction of the statute for the purpose of determining the real legislative intent.

"3. The record herein establishes by clear and satisfactory evidence that the legislative objective in its 1975 amendment to sec. 71.04(3) and repeal of sec. 71.04(3a), was to eliminate entirely the deduction formerly allowed to corporations for federal income taxes paid, and, thereby, to generate additional revenue of \$38 million for the 1975-1977 biennium.

"4. Under petitioner's construction of sec. 71.04(3) Wis. Stats. (1975), instead of generating additional revenue, the state would have an actual revenue loss of at least \$100 million and possibly up to \$500 million. Such a result would be absurd and unreasonable.

"5. Adoption of the literal interpretation of sec. 71.04(3), Wis. Stats. (1975) proposed by petitioner would require the Commission to disregard the legislature's intended purpose.

"6. Deductions are matters of legislative grace and tax statutes are to be strictly construed against the granting of the same. Therefore, the petitioner must bring itself clearly within the terms of sec. 71.04(3) Wis. Stats. (1975). Petitioner has failed to do so.

"7. During the years at issue, petitioner was not entitled to a deduction under sec. 71.04(3), Wis. Stats., for federal income taxes paid.

"8. The Commission does not reach the issue of the applicability of sec. 71.04(3), Wis. Stats. (1981) to petitioner for the years at issue herein.

"Therefore,

IT IS ORDERED

That respondent's actions, as to the sole issue presented herein, on petitioner's petitions for redetermination are hereby affirmed."

The taxpayer has appealed this decision to the Circuit Court.

Pabst Brewing Co. vs. Wisconsin Department Of Revenue (Circuit Court of Dane County, January 31, 1984). Pabst Brewing is a Delaware corporation with a principle place of business in Milwaukee, Wisconsin. It manufactures beer and other fermented beverages which it sells to wholesalers both within and beyond Wisconsin. Some of these sales are known as "dock" sales because the wholesalers come to Pabst in Milwaukee in trucks owned or rented by these buyers to pick up their purchases. Other sales are shipped via common or contract carriers from Pabst to the wholesaler. Because Pabst derives income from sales in several states, it must apportion that income under s. 71.07, Wis. Stats., to determine its Wisconsin franchise tax liabilities. One factor in that determination deals with sales and is in the form of a fraction. The numerator consists of total corporate sales in Wisconsin for the tax period. The denominator contains the total corporate sales everywhere for that same period.

From 1973 through 1977, Pabst did not include dock sales to out-of-state wholesalers in the numerator of the sales factor. In 1979, the Department of Revenue audited Pabst and on December 4th of that year, assessed an additional \$707,729.71 in franchise taxes citing the omitted dock sales. The issue is whether dock sales to out-of-state wholesalers are in-state sales under s. 71.07(2)(c), Wis. Stats. The Tax Appeals Commission held that they were. (See WTB #35 for a summary of the Tax Appeals Commission's decision.)

This case revolves around s. 71.07(2)(c)(2), Wis. Stats., which in relevant part reads: "Sales . . . are in this State if: the property is delivered or shipped to a purchaser . . . within this State regardless of the f.o.b. point or other conditions of sale . . .".

The Circuit Court reversed the Tax Appeals Commission's decision and

ruled that dock sales to out-of-state wholesalers are not in-state sales.

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

Wisconsin Department Of Revenue vs. Southgate Mall, Inc. (Circuit Court of Milwaukee, January 18, 1984). The department appealed a June 10, 1983 determination of the Wisconsin Tax Appeals Commission which permitted the taxpayer to deduct certain estimated real estate taxes from its 1978 corporate tax return.

On June 28, 1978 Southgate Mall, Inc. sold its shopping center. Thereafter the corporation liquidated and distributed its assets to its shareholders. As a result of the liquidation, the taxpayer's 1978 tax year ran from March 1, 1978 to October 19, 1978. Southgate Mall, Inc. deducted \$127,986 for estimated 1978 real estate taxes on its final corporate tax return. This amount reflects a daily proration of estimated 1978 real estate taxes based on the 1977 real estate taxes for the property.

In order for an item to be deductible in a particular tax year, the party's liability must have become fixed during that tax year. The department disallowed the deduction for real estate taxes contending that the real estate taxes were not levied until November 30, 1978 when the tax roll was delivered to the local treasurer with a warrant for collection pursuant to s. 70.01, Wis. Stats. Since this date was after the end of the corporation's tax year, the deduction was improper. The taxpayer conceded that the taxes were not levied until November 30, 1978, but argued that since the tax became a lien on the property as of May 1, 1978, also per s. 70.01, Wis. Stats., the real estate tax was properly deductible for the 1978 tax year.

The Circuit Court held that the assessment date for the property and the effective date of the lien for the real estate taxes was May 1, 1978. Accordingly, the taxpayer's liability for real estate taxes was absolutely fixed during its 1978 tax year irrespective of the fact that the exact amount of liability might not have been known. Since all events necessary to fix liability for real estate taxes on the property occurred during the taxpayer's year, real estate taxes which became a lien on the property

as of May 1, 1978 are deductible on the 1978 tax year return.

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

Wisconsin Department of Revenue vs. Theodore A. Gernaey (Circuit Court of Oconto County, December 13, 1983). The issue in this case is one of domicile and whether or not the taxpayer was required to report and pay income taxes during the years 1974 through 1976. The Tax Appeals Commission found for the years in question the taxpayer had abandoned his Wisconsin domicile and acquired a new domicile in Alaska (see WTB #18).

The department claims that the Commission's decision is based on an erroneous interpretation of ss. 71.01(1) and 71.07(1), Wis. Stats., and relies on facts not supported by substantial evidence. The taxpayer and his wife had become residents of Wisconsin when they purchased and moved to an eighty-acre farm south of Suring, Wisconsin during the summer of 1972. In May, 1974 the taxpayer took employment with Michael Baker Jr. Company as an assistant coordinator surveyor for the Alaskan Pipeline. His presence in Alaska was (almost entirely) at isolated camps, accessible only by airplane, at facilities provided rent-free by his employer. During the period in question he testified he worked seven days for ten weeks and then received two weeks off. Every ten weeks he flew back to his farm in Suring, Wisconsin at the expense of his employer. In February, 1975 the taxpayer did rent a private cabin for his family, but his wife testified that she only stayed two months because they knew at that time that they would be returning permanently to Wisconsin.

The department claims that there were specific errors in the Commission's Findings of Fact.

The Circuit Court disagreed with the department's position, holding that the facts are clear. What these facts signify as to the taxpayer's intents is what is open to different interpretation. The acts of the taxpayer indicate an interest to become "a pioneer to that last frontier", an interest later changed but still sufficient to establish by his many overt acts, the prerequisite domicile for the years in question. The Court held that there was no reason to disturb the finding

of the Commission that the taxpayer had established a domicile in Alaska.

The department has not appealed this decision.

Transam Warehouses Of Illinois, Inc. vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, October 31, 1983). During the period under review, the fiscal year ending September 30, 1980, the taxpayer operated a warehousing business in Wisconsin and other states. In 1980, the taxpayer was a general partner and had a 50% interest in 7110 Santa Fe Associates, an Illinois partnership. In 1980, Santa Fe Associates constructed and sold a warehouse and office complex located in Illinois. The gain on the sale of this facility was reported on the partnership's federal tax return, Form 1065, for the year ended October 30, 1980 as a gain on a capital asset. In computing that portion of its income derived within Wisconsin, the taxpayer used the apportionment factors found in s. 71.07, Wis. Stats., but did not include in the formula for Wisconsin tax the construction and sale of the Illinois warehouse and office facility.

The taxpayer contends that its activity as general contractor and seller for the partnership was an occasional situation and not part of its normal business activities of warehousing, and therefore was reported in its federal income tax return as a gain. For Wisconsin, it should be treated the same way and should not be part of the apportionment formula. The department contends that the construction and sale was part of the taxpayer's corporation business; therefore, the gross receipts received from the construction and sale should be part of the apportionment formula for the Wisconsin corporate franchise and income tax.

The Commission held that the taxpayer's sale of real estate, which was business assets of the corporation, is taxable under s. 71.07(1m), Wis. Stats. Therefore, the gain on the sale of business assets is apportionable in Wisconsin and should have been included in the taxpayer's corporate franchise income tax return for the year under review.

The taxpayer has not appealed this decision.

Uniroyal, Inc. vs. Wisconsin Department Of Revenue (Wisconsin Tax

Appeals Commission, November 1, 1983). Under date of November 16, 1981, the department issued a notice of assessment of additional income taxes against the taxpayer for the tax years ending December 31, 1973 through December 31, 1976. The taxpayer did not object to the additional taxes, but objected to the calculation of the interest charges. Interest was computed at the rate of 12% per year from the due date of the returns to the payment date set forth in the assessment notice. The taxpayer contends that the 12% interest rate should not apply for the period prior to August 1, 1981, but that the 6% per year interest rate should be applied to the period prior to October 31, 1975 and the 9% per year rate should be applied for the period November 1, 1975 through July 31, 1981.

Chapter 20, section 1090n, 1981 Laws of Wisconsin, amended s. 71.09(5)(a), Wis. Stats., by increasing the interest due on assessments from 9% per year to 12% per year. Chapter 20, section 2203(45)(g), 1981 Laws of Wisconsin, provided that the treatment of section 71.09(5)(a) "of the statutes by this act first applies to all determinations, assessments or other actions made by the department of revenue on August 1, 1981, regardless of the taxable period to which they pertain."

The Commission held that the Wisconsin legislature expressly applied the increase in interest contained in s. 71.09(5)(a) to "assessments," made by the department of revenue on August 1, 1981, "regardless of the taxable period to which they pertain." The department's action in applying the 12% per year interest rate to all taxable periods included in the assessment was correct.

The taxpayer has not appealed this decision.

Warren's Turf Nursery, Inc. vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, December 29, 1983). The issue in this case is the propriety of the department's tax treatment of the taxpayer's capital gain from the sale of real estate it owned in Illinois in the fiscal year ending November 30, 1977. The taxpayer reported the gain as nonapportionable income with situs in Illinois and, hence, not taxable in Wisconsin. The department treated the gain as apportionable taxable income under s. 71.07(1m), Wis. Stats., 1977.

The taxpayer is an Illinois corporation in the business of raising and selling sod. The taxpayer has been doing business in six states including Wisconsin. Since 1971, the taxpayer has filed annual corporate franchise or income tax returns in Wisconsin reporting its income under the apportionment method. The corporation has, for tax purposes, used the cash receipts and disbursements method of accounting and reports its income on a fiscal year basis.

Among land owned by the corporation was a 673 acre parcel in Illinois on which was located a barn and a shed. One of the taxpayer's incorporators had acquired the property in 1960 and, upon incorporation in 1967, transferred it together with other property to the corporation, in exchange for corporate stock. The buildings were fully depreciated for tax purposes no later than 1969. The land's sole use was in the growing of sod. In 1975, the taxpayers determined that the land had been exhausted for sod growing purposes. The situation was complicated by drainage problems with the land. Based on these factors, the corporation discontinued the use of the land for the growing of sod and put it up for sale. The land remained idle until January 11, 1977 when it was sold. The proceeds of the sale were utilized in the operation of the taxpayer's business.

The Commission ruled that the gain arising from the taxpayer's January 11, 1977 sale of real property located in Illinois which had been used in the corporation's unitary business of growing sod, after which time it was idle, was apportionable income under s. 71.07(1m), Wis. Stats., 1977. The real property sold by the taxpayer was "used in the production of business income" as that phrase is used in s. 71.07(1m), Wis. Stats., 1977.

The taxpayer has not appealed this decision.

SALES/USE TAXES

Advance Pipe & Supply Co. Inc. And Milwaukee Sewer Pipe & Manhole Co., Inc. vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, November 1, 1983). The issue in this case is whether the taxpayers are retailers when they sell

and deliver manholes to the job site or construction contractors engaged in real property construction activities. The taxpayers contend that they make unique custom-designed manholes and are engaged in real property construction activities. The department contends that they are retailers rather than contractors. During this period the taxpayers, Milwaukee Sewer Pipe & Manhole Co., Inc. and Advance Pipe & Supply Co., Inc., were both Wisconsin corporations located in the County of Milwaukee, Wisconsin. The taxpayers and the department stipulated to the consolidation of the cases for the purpose of the hearing before the Commission.

Advance Pipe & Supply Co., Inc. is engaged in the business of constructing concrete manholes. The manholes are fabricated in component parts at Advance Pipe's plant in Pewaukee, Wisconsin, and later delivered to the job site. Advance Pipe sold approximately 50% of its manholes to sewer contractors and 50% to Milwaukee Sewer Pipe. Milwaukee Sewer Pipe sold the manholes built for it to its specifications to plumbing contractors, municipalities, and utilities.

The manholes are designed and constructed by Advance Pipe, either for its own account or that of Milwaukee Sewer Pipe, based upon the specific real property improvement being constructed. The manholes so designed and constructed are unique to the location for which they are designed and are not ordinarily usable at any other location.

A manhole consists of three large components plus three to eight adjusting rings. All these components, with the exception of some bases, are standardized according to code specifications and interchangeable. The bases were not interchangeable at that time because some of the steps were of different materials. The foundation of a manhole is standard, a precast concrete base set in the sand. Many of the components of a manhole are kept in inventory. A contractor is able to erect the manhole by using these precast components.

Advance Pipe delivers the component parts of the manhole it has fabricated off-site to the specific job site for which it was constructed with its own crane-mounted trucks and drivers. Milwaukee Sewer Pipe sales

of manholes are delivered in an identical fashion by virtue of its subcontracts with Advance Pipe for delivery services. In most cases, Advance Pipe unloads the component parts at the manhole next to the pit itself in the appropriate sequence for installation. Advance Pipe's drivers are experienced in the installation of manholes and remain available to provide on-site assistance in assembling the manholes. Assembly of the manhole, however, is handled by the builder.

The customers of the taxpayers, Advance Pipe & Supply Co., Inc. and Milwaukee Sewer Pipe & Manhole Co., Inc., are either sewer contractors, plumbers, or municipalities, and the employees of the sewer or plumbing contractors that erect the delivered components as manholes are not associated with the taxpayers.

Advance Pipe and Milwaukee Sewer Pipe retain responsibility for a watertight manhole and must take whatever action is necessary to repair any defects in the manhole after installation, including patching, repairs to steps, sealing off pipes, removing and recasting the base, etc. Functioning of the manhole is a completed real property improvement.

In approximately 5% of the deliveries for Advance Pipe, the employees of Advance Pipe erected the components in place in the sewer. In other cases, the components are not attached but set next to trench. If the components are erected as a manhole by Advance Pipe, there is an additional charge. If the employee of Advance Pipe does not erect the manhole, the employee does not stay during the period of digging the hole or the actual erection of the manhole. Only about 25% of the components of the manhole are delivered after the ground level is prepared.

Advance Pipe delivers the building materials that Milwaukee Sewer Pipe sells to plumbing contractors. Approximately 25% of the dollar value of the component parts of manholes sold by Milwaukee Sewer Pipe are set in the hole by Advance Pipe. The remainder are placed next to the hole. The driver does not usually stay on the job site until the manhole is completed. Most of Milwaukee Sewer Pipe's materials were delivered after the ground level was prepared. The components may be selected from a

stockpile of previously manufactured components.

The Commission ruled that Advance Pipe & Supply Co., Inc. and Milwaukee Sewer Pipe & Manhole Co., Inc. are not real property construction contractors engaged in construction activities while engaged in the business of designing and fabricating real property improvements, namely manholes, within the meaning of s. 77.51(4)(i) and s. 77.51(18), Wis. Stats. The Commission also found that the taxpayers' sales and deliveries of building materials to the job site were retail sales subject to the Wisconsin sales tax.

The taxpayers have appealed this decision to the Circuit Court.

City Of Racine vs. Wisconsin Department Of Revenue (Court of Appeals, District IV, October 4, 1983). The issue in this case is whether sales and use tax is due on fees charged by the city to individuals and teams for participation in city-sponsored athletic activities (see WTB #23 for a summary of the Wisconsin Tax Appeals Commission decision and WTB #31 for the Circuit Court decision).

The city administered leagues for sports activities. The facilities used by the leagues were mainly city-owned, although facilities such as gymnasiums and ball diamonds were sometimes rented from the local school district. To participate in league play, players and teams were required to pay fees to the city's Parks and Recreation Department. The income from the fees was used both for the rental of facilities and to defray administrative expenses. The city concedes liability for the tax on the portion of the fees used to rent facilities, but denies that the tax is applicable to the portion of the fees used to defray administrative expenses. It argues that s. 77.52(2)(a)2, Wis. Stats., which taxes amounts paid for "the privilege of having access to or the use of . . . athletic or recreational devices or facilities," imposes a tax only on the amount charged for the actual use of physical facilities.

The city's argument ignores the fact that sales taxation is not dependent on the seller's use of its gross receipts, but rather on whether a participant is required to pay to gain access to or use of the facility. The city's "no pay—no play" policy

clearly imposes a fee for "access to or the use of" recreational facilities.

The Court of Appeals affirmed the judgment of the Circuit Court that the fees charged by the city for participation in athletic activities were subject to the sales and use tax.

The taxpayer has not appealed this decision.

Johnson And Johnson, A Partnership (d/b/a Asphalt Products Co.), And Asphalt Products Co., Inc. vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, December 1, 1983). The issue in this case is whether the taxpayers are retailers making exempt sales of asphalt to governmental units or are contractors subject to the use tax on asphalt sprayed on roadways. The issues on appeal by each taxpayer were so similar that the two cases were consolidated.

The taxpayer, Asphalt Products Co., was engaged in the business of selling and/or applying emulsified asphalt products to various businesses and government entities. The taxpayer bought raw materials without tax, mixed the materials, and sold and/or applied the products to meet purchaser specifications and requirements. It sold emulsified asphalt products in two ways: (1) by sales delivered to the place specified by the purchaser, and pumped into the purchaser's holding tank or truck, or (2) by sales delivered to the place specified by the purchaser and sprayed onto the road or ground surface. There is no dispute over type (1) sales. However, the taxpayer did not pay sales tax on materials sprayed on roads by its trucks for exempt entities, and the department assessed tax on these purchases.

The taxpayer contends that its purchase of materials is exempt from sales tax by virtue of its resale exemption and the sale to the exempt entity is not subject to sales tax by virtue of the general exemption available to exempt entities. Accordingly, it contends that it is not a contractor or subcontractor engaged in real property construction activities when it delivers or applies emulsified asphalt products onto the road surface for an exempt entity at the supervision of the state inspector or county blacktop foreman.

The department's position is that a use tax is applicable with respect to raw materials purchased by the tax-

payer and used in the emulsified asphalt products sprayed onto the road surface, and that such activity constitutes a real property construction activity by a contractor or subcontractor.

The asphalt emulsion is highly unstable, and will break down if it is too hot or too cold, or if it is contaminated with any substance or impurities with a different PH. Because they are unstable, the taxpayer offers to apply the emulsified asphalt with its equipment and operators. One of the most important pieces of equipment used is the asphalt distributor. Its function is to apply uniformly the asphalt emulsion over a surface at a specified rate.

The activities performed by the exempt entity and the taxpayer in conjunction with the application of its emulsified products to roads are described as follows:

1. Patching the potholes and repairing damaged areas in existing pavements.
2. Cleaning the surface to be covered with a rotary broom or by other approved means.
3. Spraying the asphalt emulsion binder at a specified rate.
4. Spreading cover aggregate (gravel or chips) at specified rates immediately behind the asphalt spray application while the emulsion is still brown in color, to achieve the maximum possible chip wetting.
5. Rolling the aggregate cover to seal particles in asphalt membranes. This is done with a large metal water-filled roller.
6. Brushing the excess aggregate off the road after approximately 48 hours have passed.

The exempt entity is responsible for all of the above steps except number 3. The exempt entity sets the time, rate and amount of emulsified asphalt to be applied by taxpayer's equipment and operators. Some of the applications of emulsified products are slightly different, but are so similar that they are not described in this case summary.

The exempt entity has complete responsibility for the direction and rerouting of the traffic on the road, having other components of the job on the work site and ready to go, and for employing the necessary personnel to complete the numerous steps. The exempt entity is responsible for

any risk or loss as a result of delays or if rain washes the asphalt product off the road. The taxpayer did not own any equipment or machinery to do any of the numerous steps required in the seal coating process, except using its asphalt delivery truck with distributor. The State of Wisconsin requires the taxpayer to use pre-printed contracts which consistently refer to the taxpayer as a "vendor" and do not mention "contractor" or "subcontractor".

In competitive bidding, the taxpayer submitted bids to the exempt entity, that included, at option of the entity, application or non-application. It had no way of knowing at that time whether it would be requested to deliver the product and pump it into a holding tank or government truck, or whether it would be requested to deliver the product and pump it onto the road surface. The "pumped onto the road" price was approximately two cents higher due to the fact that the truck which made the delivery must have a spray mechanism attached to the back of the truck.

The Commission ruled that the taxpayer was not a contractor or subcontractor within the intent and meaning of s. 77.51(18), Wis. Stats. In addition, the Commission found that a person who holds a seller's permit and is in the business of selling tangible personal property may use a resale certificate to purchase property which is resold in the ordinary course of business, including the materials used to make emulsified asphalt products which it later sold (sprayed on roads) to tax exempt municipalities.

The department has appealed this decision to the Circuit Court.

Wisconsin Telephone Company, Et. Al. vs. Wisconsin Department Of Revenue (Circuit Court of Dane County, December 30, 1983). The plaintiffs asked the court by motion for summary judgment to find that the imposition of the sales tax on the sale or use of interstate telephone services which originate from and are charged to telephones located in the State of Wisconsin violates the Commerce Clause of the United States Constitution. The Department of Revenue opposed plaintiffs' motion and moved for summary judgment in its own behalf declaring the sales tax imposed by s. 77.52(2)(a)4, Wis. Stats., to be valid.

Interstate telephone services are provided by means of an integrated nationwide network owned and operated by American Telephone and Telegraph Company ("AT&T"), the AT&T Long Lines Departments, its twenty-two operating telephone companies, and by over 1400 independent telephone companies. The Bell System owns and operates the largest portion of this network. The network consists of telephones (terminal equipment) located on customer premises, connections (local loops) to local switching machines (central offices), connections between local switching machines, connections between local switching machines and toll (long distance) switching machines and circuits connecting the toll switching machines.

A typical interstate telephone call made by a customer of Wisconsin Telephone will usually utilize plant and facilities of three or more different companies: Wisconsin Telephone, AT&T's Long Lines Department, and the telephone company which provides service to the person receiving the call. The charges for such telephone calls are computed and billed in a variety of ways.

Although interstate long distance telephone service generally requires the use of telephone plants of at least three companies located in two or more states, the entire cost of each call is billed by only one telephone company to one customer. A system exists for sharing the billed revenues with the companies providing telephone plants used in the completion of the call. Such telephone plant is not utilized exclusively for interstate long distance service, and the operating expenses incurred by each telephone company in the course of providing interstate services cannot be directly identified, because each telephone company also provides intrastate toll and local telecommunications services interchangeably with interstate services.

Each member of the Bell System providing toll services participates in a monthly pooling and division of revenue from toll services. On the basis of studies made periodically, each company determines the interstate portion of its total investment in plant and its total operating expenses. From this monthly "pool" of revenues, each telephone company recovers its interstate operating ex-

penses, and any excess of revenue over expenses is allocated among the telephone companies. The expenses and revenues recovered by the members of the Bell System also include expenses and revenues which are to be settled with the independent telephone companies. This "division of revenues" determines each company's "booked revenues." There is no necessary relationship between the "billed revenues" and the "booked revenues" of a particular telephone company.

On April 29, 1982, the Wisconsin Legislature enacted chapter 317, Laws of 1981, effective May 1, 1982. Section 62 of the chapter amended section 77.52(2)(a)(4), Stats., to impose a retail sales tax on interstate phone calls originating in Wisconsin and billed to Wisconsin telephones.

In addition to the above sales tax on certain interstate telephone service, Wisconsin Telephone and each of the Independent Companies are subject to an annual license fee (i.e., gross receipts tax) based upon gross revenues derived from toll services which are attributable to equipment located in Wisconsin. Section 76.38(5), Stats. Wisconsin Telephone utilizes the Division of Revenues to determine its gross revenues subject to the license fee.

Court's Decision Summarized

Complete Auto Transit v. Brady, 430 U.S. 274, 97 S. Ct. 1076 (1977), sets forth a four-factor test that a state tax must meet in order to withstand a challenge under the Commerce Clause. Under this test, a state tax is valid if it (1) is applied to an activity with a substantial nexus within the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to services provided by the State.

A statute is presumed constitutional unless proven otherwise beyond a reasonable doubt by the party attacking the statute. Since the court in *Complete Auto Transit* does not hold that the burden of proof falls on the defender of the statute, the Court concluded that the burden remains on the challenger to show beyond a reasonable doubt that the four-factor test has not been met. This interpretation is consistent with the rules of statutory construction.

A. Substantial Nexus With Wisconsin

The sales tax in question is imposed only on sales of calls originating in Wisconsin and billed to Wisconsin telephones. Although included in these sales are services provided outside the state, the transactions have more contacts with Wisconsin than with any other state. "The fact that a tax is contingent upon events brought to pass without a state does not destroy the nexus between such a tax and transactions within a state for which the tax is an exaction." Therefore, there is sufficient nexus in this case between Wisconsin and the interstate telephone service originating from and charged to Wisconsin telephones.

B. Fair Apportionment and Risk of Multiple Taxation

While the sales tax challenged herein is not apportioned, there appears to be no risk of multiple taxation. Plaintiffs maintain that when a Wisconsin customer originates a long distance call to a person residing in a state which imposes a gross receipts tax, the measure of which includes interstate revenues, the revenues generated by that call are subject to at least three separate taxes. First, a license fee (i.e., gross receipts tax) imposed by s. 76.38(5), Stats., on the revenues of Wisconsin Telephone and AT&T's Long Lines Department which are attributable to equipment located in Wisconsin. Second, the revenues of the local telephone company on the receiving end of the call which are attributable to the receiving state will be subject to such state's gross receipts tax. And third, the entire unapportioned revenues which are billed to the customer of Wisconsin Telephone are subject to the 5% sales tax at issue herein.

However, the three taxes cited by plaintiffs are not in fact cumulative, inasmuch as they are imposed on different privileges or transactions. Clearly, the sales and gross receipt taxes are imposed upon different "levels" of taxpayers. The distinguishing characteristic of a retail sales tax is that it is triggered by the ultimate consumption of the goods or services and is not imposed on an intermediary who resells the goods or processes the goods for resale—such as the local company servicing the receiving telephone. In contrast, the gross receipts tax is not limited to retail sales and is imposed on the

company, not the consumer. While the burden on plaintiffs herein is only to show a constitutionally significant risk of multiple taxation, plaintiffs have made no such showing on this record.

C. Discrimination Against Interstate Commerce

A sales tax does not discriminate against interstate commerce if it places intrastate and interstate telephone calls on equal footing. Plaintiffs assert that Wisconsin's sales tax discriminates against interstate commerce by exposing the out-of-state portion of the taxed phone call to the risk of multiple taxation in a manner that local commerce is not exposed. However, the Wisconsin retail sales tax, confined to long distance phone calls originating in Wisconsin and billed to a Wisconsin phone, does not expose interstate commerce to such a burden.

D. Fair Relationship to Services Provided by the State

This final prong of the Complete Auto Transit test requires that the measure of the tax be reasonably related to the extent of the taxpayer's contact with the state, since it is the activities or presence of the taxpayers in the state that may properly be made to bear a just share of the state tax burden.

The taxpayers in question originate and bill the long distance calls to Wisconsin phones. This presence and activity in the state means that each taxpayer enjoys "the only benefit to which the taxpayer is constitutionally entitled. . . that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes." In exchange, Wisconsin is entitled to tax the long distance calls in question.

The Court ruled that based on the entire record in the case, section

77.52(2)(a)4, Wis. Stats., which imposes the sales tax on interstate telephone service, is constitutional and does not violate the Commerce Clause of the United States Constitution.

The taxpayers have appealed this decision.

CIGARETTE TAX

George R. Elliott vs. Wisconsin Department Of Revenue (Wisconsin Tax Appeals Commission, January 27, 1984). The issue in this case is whether or not the department under s. 139.33(3), Wis. Stats., properly assessed a penalty and interest against the taxpayer for his failure to timely declare and pay the cigarette use tax imposed.

On July 2, 1981, the taxpayer purchased and requested shipment of 63 cartons of cigarettes from a company known as Tobacco Land USA, Inc. of Four Oaks, North Carolina. The 63 cartons of cigarettes requested were received by George R. Elliott on July 7, 1981. The cigarettes did not bear the proper withholding tax stamp of the State of Wisconsin. The taxpayer relied on the purchase of the cigarettes from an ad that he had found in a newspaper, the National Enquirer, dated October 13, 1981 as follows:

"CIGARETTES \$5.35 per CARTON And the price includes UPS delivery and state tobacco tax. Order direct from the North Carolina tobacco wholesaler. For Consumer Savings membership, volume prices and order form, send \$2.00 to Dept. NE, TOBACCO LAND, USA, INC., P.O. Box 758, Four Oaks, NC 27524. Satisfaction Guaranteed or Money Back."

The occupational tax under s. 139.31, Wis. Stats., had not been imposed upon the seller of these ciga-

rettes. Under federal law, Tobacco Land USA, Inc., notified the Wisconsin Department of Revenue of this shipment of tax free cigarettes on August 10, 1981. On August 14, 1981, the department requested additional information from the taxpayer. Upon receipt of this request, the taxpayer promptly contacted the Department of Revenue and learned of the tax liability. On August 27, 1981, the taxpayer remitted \$100.80 to the department regarding the cigarette use tax. Under date of August 28, 1981, the taxpayer was assessed by the department the amount of \$1,649.65 as follows:

"Accordingly the use tax of \$1.60 per carton became delinquent on July 22 and a penalty of \$25 per carton is due for failure to file the declaration. Interest on the delinquent tax and penalty accrues at the rate of 1.5% per month or each fraction of a month until paid as shown on the attached schedule."

The taxpayer does not dispute the fact that the tax was properly assessed. He does dispute that the delinquent interest and penalty of \$25 per carton assessed was not proper. He contends, based on the newspaper ad in the National Enquirer, that all state taxes were paid by Tobacco Land USA, Inc.

The Commission held that the department under s. 139.33(3), properly imposed the cigarette tax penalty and interest against the taxpayer for his failure to timely declare and remit the use tax. If the use tax imposed is not declared or remitted to the department within 15 days, the penalty section becomes applicable and the Commission has no discretion but to affirm the penalty imposed by s. 139.33(3).

The taxpayer has appealed this decision to the Circuit Court.

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 and Franchise Taxes

1. Credit for Minimum Tax Paid to Other States
2. Crime Victims Compensation Awards
3. Deductibility of Gift Stock to the Community Development Finance Authority
4. Taxability of Foreign Interstate Common Carriers
5. Wisconsin Corporate Tax Treatment of Franchise Companies
6. Wisconsin Relocation Payments

Sales/Use Taxes

1. Governmental Unit's Gross Receipts from Damage Repair and Weed Cutting
2. Providing Package Sound Services for Live Music Performances
3. Telephone Circuits Used for Data Transmission

Withholding Taxes

1. Employer Contributions to Section 401(k) Plans Not Subject to Wisconsin Withholding
2. Withholding for Contributions to Tax-Deferred Annuities

INCOME AND FRANCHISE TAXES

1. Credit for Minimum Tax Paid to Other States

Facts and Questions: Section 71.09(8)(c), Wis. Stats., provides for a credit against Wisconsin net income taxes for income taxes paid to other states.

If the taxpayer pays a minimum tax to another state based on tax preference items enumerated in section 57(a)(2) (accelerated depreciation on real property), (3) (accelerated depreciation on leased personal property), (6) (circulation and research and experimental expenditures), (8) (depletion), (11) (intangible drilling costs) and (12) (accelerated cost recovery deduction) of the internal revenue code, may the payment of a minimum tax on any of these items be claimed as a credit against Wisconsin income taxes under s. 71.09(8)(c)?

Answer: No, a minimum tax based on those tax preference items stated above does not meet the requirements of s. 71.09(8)(c). The conditions for claiming the credit include (1) the tax paid to the other state is a net income tax upon income taxable by such state and (2) the income taxed by the other state is also considered income for Wisconsin tax purposes. The tax preference items mentioned above do not meet these two conditions.

2. Crime Victim Compensation Awards

Facts and Question: For the tax year 1977 and thereafter, victims of crime (and/or their dependents), who suffer fi-

nanacial hardship may qualify for compensation under the Crime Victim Compensation program. The program is administered by the Crime Victim Compensation Bureau of the Wisconsin Department of Justice and is governed by Chapter 949 of the Wisconsin Statutes. If a Wisconsin resident suffers injury or death in a situation which occurred outside the state, the resident may qualify for compensation provided the state in which the act occurred does not have a compensation of victims of crime law which covers the injury or death. Nonresident victims receive compensation only if the crime occurs in Wisconsin.

Compensation includes reimbursements for loss of wages, medical, dental and surgical expenses, and funeral and burial expenses. All compensation is subject to certain limits, ranging from \$200 to \$10,000.

Example: A Wisconsin resident was granted \$1,157 in 1983 by the Crime Victim Compensation Bureau. The reimbursement covered the following expenses and loss of wages which resulted from attempting to prevent a crime in 1983:

| | |
|---------|---------------------|
| \$ 747 | medical expenses |
| 225 | dental expenses |
| 185 | loss of wages |
| \$1,157 | Total reimbursement |

What is the Wisconsin tax treatment of payments received from the Crime Victim Compensation program?

Answer:

Wisconsin Treatment: Section 71.01(3)(g), Wis. Stats., provides that awards received under the Crime Victim Compensation program are exempt from Wisconsin income taxation. However, any medical expenses which are compensated for by such an award are not deductible on the Wisconsin return.

3. Deductibility of Gift of Stock to the Community Development Finance Authority

Facts and Question: The Wisconsin Community Development Finance Authority is a newly authorized nonprofit public corporation which was created by the Wisconsin legislature in 1982 (Chapter 371, Laws of 1981) to develop or redevelop blighted or impoverished areas in Wisconsin. The Authority is required by law to establish a for-profit venture capital fund (called the Community Development Finance Company) and to purchase a majority of the stock of the Finance Company. Individuals and corporations who make a contribution to the Finance Authority and in the same year purchase stock in the Finance Company, at a price equal to their contribution to the Finance Authority, are allowed to claim a credit against their Wisconsin income/franchise taxes due. The allowable credit is 75% of the purchase price of the stock in the Finance Company (s. 71.09)(12m), Wis. Stats.). In addition, a deduction is allowed for contributions made to the Finance Authority. The deduction is an itemized deduction for individuals (s. 71.02(2)(f), Wis. Stats.) and a deduction from gross income for corporations (s. 71.04(5m), Wis. Stats.). The amount of the deduction must be reduced by any tax credit claimed under s. 71.09(12m), Wis. Stats.

If an individual or corporation then makes a gift of the stock of the Community Development Finance Company to the Wisconsin Community Development Finance Au-

thority, is this a deductible contribution under the provisions of s. 71.02(2)(f) and 71.04(5m), Wis. Stats.?

Answer: Yes, the gift of the Finance Company stock would be a deductible contribution under s. 71.02(2)(f) and 71.04(5m), Wis. Stats. The amount of the deduction is the fair market value of the stock at the time of the contribution. The fair market value may differ from the original purchase price of the stock.

Example: Assume a corporation makes a \$1,000 contribution to the Finance Authority and also purchases stock in the Finance Company for \$1,000. The corporation would receive a \$750 tax credit for the purchase of the stock (75% of the purchase price of the stock). The corporation would also receive a contribution deduction for \$250 under s. 71.04(5m) (\$1,000 contribution to the Finance Authority minus \$750 tax credit). If the corporation then donates the Finance Company stock to the Finance Authority, the corporation would receive an additional \$1,000 contribution deduction, assuming the fair market value of the stock equalled the purchase price. Thus, the corporation would receive a total tax credit of \$750 under s. 71.09(12m) and a total deduction of \$1,250 under s. 71.04(5m) for contributions to the Finance Authority.

4. Taxability Of Foreign Interstate Common Carriers

Facts and Questions: Corporation X, a federally licensed interstate common carrier, was incorporated outside of Wisconsin. No office is maintained in Wisconsin. The only property, real or personal, owned or used in Wisconsin are vehicles performing the described activities below. No other activity is performed in Wisconsin. What is the taxability of Corporation X for each of the following situations:

1. Corporation X frequently drives into Wisconsin with a load of goods from out-of-state, delivers them at one in-state location, and immediately leaves Wisconsin. There is no "backhaul", i.e., there are no goods loaded onto Corporation X's truck in Wisconsin for delivery outside of or to another point within Wisconsin.
2. Corporation X frequently drives into Wisconsin from out-of-state, picks up goods at one location, and immediately leaves Wisconsin. The goods picked up are for delivery outside of Wisconsin. There is no other pick up or delivery in Wisconsin.
3. Corporation X frequently drives into Wisconsin with a load of goods from out-of-state, delivers them at a location within Wisconsin, travels to another nearby location in Wisconsin, where goods are picked up for delivery outside of Wisconsin and immediately leaves Wisconsin. There are no other deliveries or pickups within Wisconsin.
4. Corporation X frequently drives through Wisconsin either carrying a load of goods for delivery in another state or traveling to another state to pick up goods for delivery outside of Wisconsin. There are no pick-ups or deliveries made in Wisconsin by Corporation X.

Answer: Each of the four transactions described above would subject Corporation X to Wisconsin taxation. Any foreign corporation owning or renting property in Wisconsin or transacting business in this state is required to file a Wisconsin franchise or income tax return if its business operations exceed the minimum standards established by Public Law 86-272. Since this law does not provide immunity from state franchise or income tax to a foreign corpo-

ration deriving income from transportation services performed by corporate employees in Wisconsin, Corporation X would be required to file Wisconsin corporation tax returns.

Corporation X, in accordance with Wisconsin Administrative Code section Tax 2.47, would apportion its income to Wisconsin based on the arithmetical average of the following two ratios:

1. The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere, and
2. The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

When originating revenue data is not available, originating tonnage data may be substituted, and when ton mileage data is not available, revenue mileage data may be substituted.

5. Wisconsin Corporate Tax Treatment Of Franchise Companies

Background:

Franchise companies (fast food restaurants, hotels, temporary help companies, etc.) derive their income from one or both of two sources: (1) from the sale of initial franchises and related assets or services ("the initial franchise fee") and (2) from continuing fees based on the operations of franchises ("franchise royalties"). In return for this income the franchisor (the party who grants business rights under the franchise) normally provides the franchisee (the party who operates the franchised business) with various services. Initially the franchisor may assist in site selection and in evaluation of potential income. During building stages the franchisor may supervise construction activity and assist in the acquisition of signs, fixtures and equipment. The franchisor may then provide a wide range of services to assist the franchisee in its operations including bookkeeping and advisory services, employee and management control, quality control and advertising and promotion.

Question 1: Are initial franchise fees and franchise royalties considered business income to the franchisor for Wisconsin tax purposes?

Answer: Yes. Initial franchise fees and franchise royalties constitute business income to the franchisor pursuant to s. 71.07(1m) and (2), Wis. Stats. (Union Prescription Centers, Inc. vs. Wisconsin Department of Revenue (WTAC 9/8/80)).

Question 2: Are initial franchise fees and franchise royalties paid by franchisees to franchisors deductible for Wisconsin tax purposes?

Answer: For Wisconsin tax purposes, treatment of the initial franchise fee paid by the franchisee depends on the terms of the actual franchise agreement. The cost of a franchise which is limited in duration and where renewal is uncertain is amortizable over the useful life of the franchise by the franchisee (s. 71.04(2)(a) and s. 71.04(15), Wis. Stats.). Amounts paid for franchises of unlimited duration, or for perpetual franchises, are not amortizable or depreciable for Wisconsin tax purposes.

Examples: (a) An agreement is entered into to construct motels under a franchise name. The franchise terms are limited to a 10 year life with no renewal clauses. Because the franchise is limited in duration, the cost of the franchise is amortizable by the franchisee over its 10 year life.

(b) A fast food restaurant franchise agreement provides for a 5 year term after which it may be automatically extended in 5 year intervals for a maximum of 20 additional years. Since the franchise is not perpetual, its cost is amortizable over the extended 25 year franchise period. If it is decided not to extend the franchise at some time during this period, the remaining amortizable cost would be written off in the last year of the franchise agreement.

(c) A franchise contract to operate an automobile dealership provides for an indefinite succession of automatic renewals. There is no set limited term provided for. Such an agreement is for an indefinite and unlimited period and is not amortizable by the franchisee.

Franchise royalties paid by franchisees are ordinary business expenses deductible under s. 71.04(2), Wis. Stats. These operating expenses should be deducted in the period in which they are incurred.

Question 3: How are initial franchise fees and franchise royalties received treated for Wisconsin tax purposes by corporate franchisors (a) doing 100 percent of their business in Wisconsin, (b) headquartered in Wisconsin and engaged in business both within and outside Wisconsin, and (c) headquartered outside Wisconsin and engaged in business in Wisconsin and other states?

Answer: (a) Initial franchise fees and franchise royalties are includable in full in Wisconsin income by franchisors transacting all their business in Wisconsin.

(b) For franchisors headquartered in Wisconsin and engaged in business both within and outside Wisconsin and reporting income under the apportionment method, initial franchise fees and royalties received from franchisees located in Wisconsin are includable in full in apportionable business income and in the numerator of the sales factor (s. 71.07(2)(c), Wis. Stats. and s. Tax 2.39(5) (f)2, Wis. Adm. Code).

Initial franchise fees and franchise royalties received from franchisees located outside Wisconsin are also fully includable in apportionable business income. However, the amount includable in the sales factor numerator is based on a cost of performance allocation as provided in s. Tax 2.39(5)(f)5.b.(iii). The denominator of the sales factor would include initial franchise fees and franchise royalties received from all franchisees wherever located.

Example: Corporation B is a multistate franchisor headquartered in Wisconsin. The corporation maintains a staff of employees in Wisconsin who service franchisees either from their home office or through direct contact at individual franchise locations both within and outside Wisconsin. For the 1981 tax year the corporation determined that 10 percent of the total compensation of these employees, along with other direct franchise servicing costs, was incurred in Wisconsin servicing Wisconsin franchisees. The remaining 90 percent was incurred servicing non-Wisconsin franchisees of which two-thirds was incurred in Wisconsin and one-third outside Wisconsin. During the year, the corporation received \$1,000,000 of initial franchise

fees and franchise royalties from Wisconsin franchisees and \$6,000,000 from non-Wisconsin franchisees, all of which were located in states having jurisdiction to tax the franchisor.

For Wisconsin tax purposes, total initial franchise fees and franchise royalties of \$7,000,000 are includable in apportionable business income. The entire \$1,000,000 of initial franchise fees and franchise royalties received from Wisconsin franchisees is includable in the numerator of the sales factor. The numerator would also include \$4,000,000 of franchise fees and royalties received from its non-Wisconsin franchisees (two-thirds of the \$6,000,000.) The sales factor denominator would include the entire \$7,000,000 franchise fees and royalties.

(c) For corporate franchisors headquartered outside Wisconsin and filing Wisconsin income/franchise tax returns under the apportionment method, initial franchise fees and franchise royalties are fully includable in apportionable business income (s. 71.07(1m), Wis. Stats.). The numerator of the sales factor would include franchise fees and royalties received from franchisees located in Wisconsin based on a cost of performance allocation (Tax 2.39(5)(f)5.b.(iii)). The sales factor denominator would include total company franchise fees and royalties.

Example: Corporation C, headquartered outside Wisconsin, is a multi-state franchisor. It has no offices or staff located in Wisconsin. During its 1981 tax year the corporation received \$500,000 of initial franchise fees and franchise royalties from Wisconsin franchisees and \$3,000,000 from non-Wisconsin franchisees. Twenty percent of compensation and direct costs attributable to producing income from Wisconsin franchisees was incurred in Wisconsin.

For Wisconsin franchise tax purposes, the entire \$3,500,000 franchise fees and royalties are includable in apportionable business income. Of the \$500,000 received from Wisconsin franchisees 20 percent, or \$100,000, would be includable in the sales factor numerator. None of the \$3,000,000 earned from non-Wisconsin franchisees is includable in the numerator because none of the compensation and other direct costs attributable to earning these fees was incurred within Wisconsin. The denominator would include the total \$3,500,000.

Note: While the cost of performance factor computed in Examples B and C above is the same for both franchise fees and franchise royalties, the franchisor may compute two different cost of performance factors for franchise fees and for franchise royalties based on different amounts of time and costs incurred in earning these types of income.

Question 4: Do the Wisconsin Statutes contain any special provisions regarding the property or payroll factors of franchise companies reporting income under the apportionment method?

Answer: No. The property and payroll factors of franchisors and franchisees reporting income under the apportionment method are computed in accordance with ss. 71.07(2)(a) and (b) of the Wisconsin Statutes.

6. Wisconsin Relocation Payments - Income and Franchise Tax Treatment

Facts: Sections 32.185-32.27, Wis. Stats., provide that a property owner, tenant, farm operation, business or non-

profit organization displaced by any public project is to be compensated at specified rates for the property acquired and other losses suffered.

Example: A displaced tenant-occupant business receives a relocation payment of \$24,000 as provided under ss. 32.185-32.27, Wis. Stats. The lump sum payment is made at the time of displacement although intended to cover increased rent for a period of 4 years following displacement. The business, which had paid \$2,500 rent per month before displacement, incurred a monthly rental increase of \$500 after renting a comparable building for \$3,000 per month (\$500 increase per month \times 48 months = \$24,000).

Question 1: Is the lump sum payment covering increased rental costs over a 4 year period taxable?

Answer 1: No, the \$24,000 lump sum payment is not taxable. Section 32.19 (4)(c), Wis. Stats., states: "Relocation payments not taxable. No payments received under this section shall be considered as income for the purposes of ch. 71"

Question 2: For the replacement rental property, how much of the monthly \$3,000 cost is deductible as a business expense?

Answer 2: Of the \$3,000 rental cost, \$2,500 may be deducted as a business expense. Since \$500 per month has been reimbursed, that portion of the rental expense may not be claimed as a deduction.

SALES/USE TAXES

1. Governmental Unit's Gross Receipts from Damage Repair and Weed Cutting

Facts and Questions: Operators of motor vehicles damage or destroy lawns, trees and shrubs in the boulevard strip and in the area between the sidewalk and the city street. The City's Forestry Department repairs the damage, and then based on Police Accident Reports, bills the party who caused the damage. If the person doesn't pay, the city sues under common law for damages caused to another's property.

The city also has a weed control ordinance which provides that the landowner must cut the weeds. When it isn't done properly, the city does the weed cutting and bills the property owner for the work. Are a city's gross receipts from repairing damages to lawns, trees or shrubs taxable? Also, are a city's charges for weed cutting or weed removal taxable?

Answers: The department's position is set forth in par. (3)(c) of rule Tax 11.05, titled "Governmental units", which provides that a governmental unit's gross receipts for "claims assessed against persons for damaging government property" are not taxable. This would apply to the city's billings to persons who caused lawn, tree and shrub damage in the boulevard or between the sidewalk and street.

The sales tax imposed on landscaping and lawn maintenance services under s. 77.52(2)(a)20, Wis. Stats., effective May 1, 1982, results in certain weed cutting services being taxable. Thus, when a city provides weed cutting services in lawn or garden areas, including residential, business,

commercial, industrial or other developed areas, the city has taxable receipts from such services.

2. Providing Package Sound Services for Live Music Performances

Facts and Question: A professional sound company provides a "package" of sound services and equipment for live music performances. This package includes the rental of sound equipment, transporting the equipment, setting it up and checking it out, providing a technician and crew during the live performance, dismantling and supervising its loading into trucks, and transporting it from the site. For providing these services and equipment, the company charges a flat rate, which varies according to the amount of equipment and crew provided, distance traveled and number of performances.

Are the gross receipts from providing this sound package, including equipment and technicians, subject to sales tax? May the company accept a properly completed "Resale Certificate" in good faith when selling this sound package to a promoter who is charging sales tax on the receipts from providing a recreational event?

Answers: The sound company's gross receipts for providing this sound package, including equipment and technicians, is subject to the sales tax. Rentals of equipment are taxable under s. 77.52(1), Wis. Stats., and the services provided in connection with the rentals are taxable under s. 77.51(11)(c)2, Wis. Stats. A Resale Certificate can not be taken in good faith by this company from the promoter, because the promoter is not renting the equipment pursuant to s. 77.51(24), Wis. Stats.

3. Telephone Circuits Used For Data Transmission

Facts and Question: A Wisconsin service bureau provides automatic data processing service to its Wisconsin customers by use of a telephone company's circuits. It provides customers with remote access to its computers, which is commonly referred to as "time-sharing services". The gross receipts from providing time-sharing services to customers are not subject to the sales tax. Are the service bureau's purchases of telephone services from a telephone company subject to sales tax?

Answer: Section 77.52(2)(a)4, Wis. Stats., imposes a sales tax on the sale of telephone services of whatever nature, including in addition to services connected with voice communication, any services connected with the transmission of sound, vision, information and data. Therefore, the sales tax applies to the service bureau's purchase of telephone services used in providing time-sharing data processing services to its customers.

WITHHOLDING TAXES

1. Employer Contributions to Section 401(k) Plans Not Subject to Wisconsin Withholding

Facts and Question: Section 401(k) of the December 31, 1982 Internal Revenue Code (IRC) provides that a profit sharing plan of an employer will meet the requirements of section 401(a) of the IRC and be treated as a "qualified" plan, even though employees may elect to have the employer make the profit sharing payments directly to them in cash rather than as a contribution to a trust under the

plan. In the absence of the section 401(k) provision, employees participating in a plan offering the immediate cash payment option would be regarded as having constructively received employer payments, even when the employer payment was made to the trust. As a result of the 401(k) provision, an employee electing to have his or her employer pay profit sharing amounts into the trust will not be required to include such amounts in his or her federal taxable income until the amount is withdrawn from the plan.

Under the federal withholding tax law (section 3401(a)(12) of the IRC) payments which employers make on behalf of employees to section 401(a) trusts are exempt from withholding. A trust meeting the requirements of section 401(k) fulfills the requirements of section 401(a) and employer payments to the 401(k) trust are not subject to withholding.

Section 401(k) of the December 31, 1982 IRC applies in the same manner for both Wisconsin and federal purposes for the 1983 tax year and thereafter.

Are payments which an employer makes on behalf of an employee to a profit sharing plan, which meets the requirements of section 401(k) of the December 31, 1982 IRC, subject to withholding of Wisconsin income taxes?

Answer: Such employer payments are not subject to withholding of Wisconsin income tax.

2. Withholding for Contributions to Tax-Deferred Annuities

Facts and Question: Under section 403(b) of the Internal Revenue Code, when certain types of employers purchase a retirement annuity contract for their employees, the employees may exclude from federal adjusted gross income the amount of the employer's contribution, subject to an annual limitation. Since employees are not currently taxed on the amount of money used to purchase these tax-deferred annuities, the amount of federal tax withheld is computed on employees' gross earnings exclusive of the contributions made by their employers. How is the amount of Wisconsin tax withheld computed when contributions are made for employees' tax-deferred annuities?

Answer: Amounts contributed by employers to purchase tax-deferred annuities for employees are not taxable to the employees for both federal and Wisconsin purposes at the time the annuities are purchased. The withholding for Wisconsin purposes, therefore, is computed on the same gross income on which the federal withholding is based. The amount of Wisconsin income tax to be withheld is computed on the employees' gross earnings exclusive of amounts used to purchase tax-deferred annuities under the provisions of section 403(b) of the Internal Revenue Code.

NEW WISCONSIN TAX LAWS ENACTED IN 1984

In the 1984 legislative session which ended April 6, 1984 a number of new laws were passed which affect Wisconsin taxes. Listed below is an index of the major income, corporation/franchise, homestead credit, farmland credit, sales/use, inheritance and gift tax provisions enacted in that 1984 session. Descriptions of each of the provisions are found on pages 23-34. Listed in parenthesis after each subject title are the sections of the Wisconsin Statutes which are affected and the effective date of the new law.

| <u>A. INCOME TAXES</u> | <u>Effective Date</u> | <u>Page Number</u> |
|---|--|--------------------|
| 1. 10% Surtax Eliminated for 1984 | 1984 tax year | 23 |
| 2. Update Internal Revenue Code Reference for 1984 Tax Year for Individuals, Estates and Trusts | 1984 tax year | 23 |
| 3. Social Security Repayments Not Included in Itemized Deductions | 1984 tax year | 24 |
| 4. Child and Dependent Care Credit - Update Reference to Internal Revenue Code to December 31, 1983 | 1984 tax year | 24 |
| 5. Earned Income Credit - Update Reference to Internal Revenue Code to December 31, 1983 | 1984 tax year | 24 |
| 6. Minimum Tax - Update Reference to Internal Revenue Code to December 31, 1983 | 1984 tax year | 25 |
| 7. Repeal Health Care Insurance Provisions | January 1, 1984 | 25 |
| 8. Renewable Energy Resource System Refunds - Interest and Penalties | 1982 tax year and prior | 25 |
| 9. Determining Wisconsin Residency - Contributions to Wisconsin Charitable Organizations Not Relevant | 1984 tax year | 25 |
| 10. Marital Property Law Affects Income Taxes | 1986 tax year | 25 |
| 11. Compensation for Well Contamination Nontaxable | 1985 tax year | 27 |
| <u>B. CORPORATION FRANCHISE/INCOME TAXES</u> | | |
| 1. 10% Surtax Eliminated for 1984 | 1984 tax year | 27 |
| 2. Tax-Option (S) Corporation--Reference to Internal Revenue Code Updated to December 31, 1983 | 1984 tax year | 27 |
| 3. Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts - Update Reference to Internal Revenue Code to December 31, 1983 | 1984 tax year | 27 |
| 4. Clarify Deductibility of Cash Dividends Received in 1983 From 80% Owned Subsidiaries | April 26, 1984 | 27 |
| 5. Repeal Health Care Insurance Provisions | January 1, 1984 | 28 |
| 6. Insurance Companies - Loss Carrybacks | April 26, 1984 | 28 |
| 7. Insurance Companies - Elections Under Internal Revenue Code | 1984 tax year | 28 |
| 8. Deducting Payments to Deferred Payment Plans Made by Due Date of Tax Return | Plan years beginning after September 2, 1974 | 28 |
| 9. Tax-Free Exchange of Property | 1984 tax year | 28 |
| 10. Credit Unions - Only Income from Public Deposits is Taxable | 1984 tax year | 29 |

| <u>C. HOMESTEAD CREDIT</u> | <u>Effective Date</u> | <u>Page Number</u> |
|---|--------------------------|--------------------|
| 1. Retroactive 25% Increase in Homestead Credit for 1983 | 1983 claims | 29 |
| 2. Household Income Limit Increased to \$16,500 | 1984 claims | 29 |
| 3. "Rent Constituting Property Taxes Accrued" Percentage Changed From 20% to 25% | 1984 claims | 30 |
| 4. Acreage Limitation Increased to 120 Acres When Homestead Part of a Farm | 1984 claims | 30 |
| 5. Property Taxes Limit Increased to \$1,200 | 1984 claims | 30 |
| 6. Homestead Credit Formula Changed | 1984 claims | 30 |
| <u>D. FARMLAND CREDIT</u> | | |
| 1. Eliminate Requirement That Claimant be Owner of Land at End of Year | April 27, 1984 | 30 |
| <u>E. SALES/USE TAXES</u> | | |
| 1. Exempt Sales of Raffle Contest Tickets | September 1, 1983 | 31 |
| 2. Exempt Charges for Copying Public Records | April 27, 1984 | 31 |
| 3. Exempt Periodicals Which are Distributed Without Charge | September 1, 1983 | 32 |
| 4. Exempt Certain Vehicles, Machinery and Equipment Used in Waste Reduction or Recycling | July 1, 1984 | 32 |
| 5. Increase Dollar Amounts Used to Establish Filing Frequency | January 1, 1985 | 32 |
| 6. Property Purchased Without Tax Subject to Sales Tax if Used in Nonexempt Manner | May 10, 1984 | 33 |
| <u>F. INHERITANCE AND GIFT TAXES</u> | | |
| 1. Increase Inheritance and Gift Tax Exemptions | Various (see page 33) | 33 |
| 2. Security for Installment Payments of Inheritance Tax | April 27, 1984 | 33 |
| 3. Update Reference to Internal Revenue Code to December 31, 1983 for Qualified Retirement Plans, Installment Payments and Power of Appointment | May 1, 1984 | 34 |
| <u>G. OTHER</u> | | |
| 1. Eliminate Form 9C Filing Requirement Regarding Compensation Paid to Nonresident Entertainers | May 10, 1984 | 34 |
| 2. Increase Income Limitation for Filing Information Return | April 27, 1984 | 34 |
| 3. Penumbra Definitions in Statutes | April 10, 1984 | 34 |
| 4. Miscellaneous Changes Made to Statutes | April 10, 1984 | 34 |

EXPLANATIONS OF TAX PROVISIONS ENACTED IN 1984

A. INCOME TAXES

1. 10% Surtax Eliminated for 1984 (1983 Wis. Act 212, Amend s. 71.014, effective for 1984 tax year.)

The 10% surtax to the Wisconsin income tax and minimum tax rates has been eliminated for the entire 1984 tax year.

2. Update Internal Revenue Code Reference for 1984 Tax Year for Individuals, Estates and Trusts (1983 Wis. Act 212, Amend s. 71.02 (2)(b)9, create s. 71.02 (2)(b)10 and 71.05(1)(b)8, 9 and 10, effective for 1984 tax year and thereafter.)

For the 1984 tax year and thereafter, individuals, estates and trusts will use the Internal Revenue Code in effect on December 31, 1983 with the following exceptions:

- (a) The following Internal Revenue Code provisions which were in effect on December 31, 1983 will not apply for Wisconsin purposes:
 - (1) Including a portion of social security and railroad retirement benefits in taxable income as required under Sections 86 and 72(r) of the Internal Revenue Code. These benefits will continue to be nontaxable for Wisconsin. (Up to one-half of social security and Tier 1 railroad retirement benefits received after December 31, 1983 may be includable in federal taxable income. Tier 2 railroad retirement benefits received after December 31, 1983 are also subject to federal income tax.)
 - (2) Including sick pay benefits paid under the Railroad Unemployment Insurance Act in taxable income as required by Section 105(i) of the Internal Revenue Code. These benefits continue to be nontaxable for Wisconsin. (Sick pay benefits received under the Railroad Unemployment Insurance Act after December 31, 1983, except for sickness as a result of on-the-job injury, must be included in federal gross income.)
 - (3) The deduction from gross income allowed two-earner married couples. (For federal purposes this deduction is equal to 10% of the lower-earning spouse's income, with a maximum of \$30,000 of earned income allowed to be used to compute the deduction.) This deduction is allowed under Section 221 of the Internal Revenue Code.
 - (4) The exclusion from income allowed for public utility dividends which are reinvested in the common stock of the utility as provided under Section 305(e) of the Internal Revenue Code.
 - (5) Charitable contribution deductions allowed to persons who do not claim itemized deductions. This deduction is allowed under Section 170(i) of the Internal Revenue Code.
 - (6) The incentive stock option provisions as provided under Section 422A of the Internal Revenue Code.
 - (7) The partial exclusion of interest income which will be allowed for federal purposes beginning in tax year 1985 under Section 128 of the Internal Revenue Code, as amended by Section 302(a) and (c) of Public Law 97-34.

(b) In addition to the above differences, Wisconsin and federal law for 1984 and thereafter will also differ with respect to the following items:

- (1) Political contributions continue to be allowed as an itemized deduction for Wisconsin purposes.
- (2) The foreign earned income exclusion which was allowed to persons who worked abroad, as provided by the Internal Revenue Code as of December 31, 1977, continues to apply for Wisconsin purposes. (The new foreign earned income exclusion limits and deduction provisions enacted in Sections 111 and 113 of Public Law 97-34 may not be used for Wisconsin purposes.)
- (3) The disability income exclusion of up to \$5,200 which was allowed to persons under age 65 who retired on disability and received disability income while permanently and totally disabled, under Section 105(d) of the Internal Revenue Code immediately prior to the repeal in 1983 by Public Law 98-21, continues to apply for Wisconsin. (For federal purposes, this exclusion has been replaced by a nonrefundable federal income tax credit for tax years beginning after December 31, 1983, pursuant to Section 122 of Public Law 98-21.)

3. Social Security Repayments Not Included in Itemized Deductions (1983 Wis. Act 212, Amend s. 71.02(2)(f), effective for 1984 tax year and thereafter.)

Repayments of social security benefits may not be claimed as itemized deductions for Wisconsin. (For federal purposes, an itemized deduction may be claimed under Section 165 of the Internal Revenue Code for repayments of social security benefits which had been included in gross income in a previous year.)

4. Child and Dependent Care Credit - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.09(12c)(a) and (b), effective for 1984 tax year and thereafter.)

As reported in Wisconsin Tax Bulletin #33, beginning with the 1984 tax year individuals may claim a nonrefundable Wisconsin child and dependent care credit equal to 30% of their federal child dependent care credit. The credit may only be claimed by full-year residents and part-year residents. Part-year residents must prorate their credit. Nonresidents are not eligible for this credit.

The term "Internal Revenue Code", as used in s. 71.09(12c) relating to the Wisconsin child and dependent care credit, will mean the Code in effect on December 31, 1983.

5. Earned Income Credit - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.09(12t)(a) and (b), effective for 1984 tax year and thereafter.)

As reported in Wisconsin Tax Bulletin #33, beginning with the 1984 tax year individuals may claim as a credit against Wisconsin income taxes due an amount equal to 30% of the federal earned income credit for which they are eligible. Only full-year residents may claim this credit. Part-year residents and non-residents are not eligible for this credit.

The term "Internal Revenue Code", as used in s. 71.09(12t) relating to the Wisconsin earned income credit, will mean the Code in effect on December 31, 1983.

6. Minimum Tax - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.60(1)(c), effective for 1984 tax year and thereafter.)

For the 1984 tax year and thereafter, the term "Internal Revenue Code" as used in the Wisconsin minimum tax provisions in s. 71.60 will mean the Code in effect on December 31, 1983.

7. Repeal Health Care Insurance Provisions (1983 Wis. Act 212, Repeal s. 71.05 (1)(a)21 and 24, effective January 1, 1984.)

Under prior law enacted as part of 1983 Wisconsin Act 27, an employer would have been required to make addition modifications on a 1984 Wisconsin income tax return to include in Wisconsin taxable income certain amounts deducted as health care costs. Wisconsin Tax Bulletin #33 contained a description of those health care provisions enacted in 1983 Wisconsin Act 27.

The new law enacted in 1983 Wisconsin Act 212 repeals these health care provisions in 1983 Wisconsin Act 27.

8. Renewable Energy Resource System Refunds - Interest and Penalties (1983 Wis. Act 530, Nonstatutory provision, effective for 1982 and prior tax years.)

Notwithstanding sections 71.09(5)(a) relating to interest on assessments and 71.13(1) relating to interest on delinquent taxes, the Department of Revenue may not assess interest on income taxes due solely because of a failure to include renewable energy resource system refunds in income on returns filed for tax year 1982 and for any prior tax years. Also, the Department may not assess penalties in respect to income taxes due solely because of a failure to include renewable energy resource system refunds in income on returns filed for the tax year 1982 or any prior tax year.

9. Determining Wisconsin Residency - Contributions to Wisconsin Charitable Organizations Not Relevant (1983 Wis. Act 305, Amend s. 71.01(1), effective for 1984 tax year and thereafter.)

This amendment to s. 71.01(1) provides that contributions made to charitable organizations in Wisconsin are not relevant in determining whether or not an individual resides within Wisconsin for purposes of s. 71.01(1). (Note: s. 71.01(1) provides for the imposition of an income tax upon every natural person residing within Wisconsin.)

10. Marital Property Law Affects Income Taxes (1983 Wis. Act 186, Amend s. 71.02 (2)(f) and (gp)6, 71.05(1)(g), 71.05 (1)(k), 71.08(1), 71.09(1b)(intro.), (4)(a) and (6p)(d)2, 71.20(2m), 71.53(1)(c), create s. 71.03(7), 71.05(1)(a)25 and (b)8, 71.09(1c), (1d), (2c) and (7m), 71.10(19), 71.11(2), 71.21(20), 71.65(1)(fm), effective for 1986 tax year and thereafter).

Beginning with the 1986 tax year, joint income tax returns may be filed if certain conditions are met, a married persons' credit may be claimed and different income brackets and tax rates will apply to (a) single persons (b) married persons filing joint returns and (c) married persons filing separate returns. These provisions and some of the other major income tax changes in the marital property law (1983 Wisconsin Act 186) are described below.

(a) Joint income tax returns (s. 71.10(19)).

- (1) Who may file joint returns? Only those married persons who file a joint federal income tax return under section 6013 of the Internal Revenue Code may file a joint Wisconsin income tax return.

(b) Married persons' credit (s. 71.09(7m)).

- (1) Who may claim the credit? Only married persons who file a joint Wisconsin income tax return may claim this credit.
- (2) How is the credit determined? The credit is 1.5% of the "earned income" of the spouse with the lower earned income. The credit may not exceed \$450. "Earned income" for purposes of this credit means wages, salaries, tips, other employee compensation and net earnings from self employment. Earned income is reduced by any amount of net loss from self employment. Earned income is computed without regard to the fact that each spouse owns an undivided one-half interest in the whole of the marital property. Earned income does not include amounts received as a pension or annuity, or income to which section 871(a) (relating to the taxation of social security benefits received by nonresident aliens) of the Internal Revenue Code applies.

(c) Income brackets and tax rates (s. 71.08(1), s. 71.09(1b)(intro), s. 71.09(1c) and (1d)).

There will be different income brackets and tax rates for (1) single persons (2) married persons filing joint Wisconsin income tax returns and (3) married persons filing separate Wisconsin returns.

(d) Joint liability for penalties (s. 71.11(2)).

Married persons who file a joint Wisconsin income tax return will be jointly and severally liable for any penalties under s. 71.11 which are applicable to an income tax return. However, a person may be relieved of any liability in regard to a joint Wisconsin return in the manner specified in section 6013(e) of the federal Internal Revenue Code.

(e) Joint declarations of estimated tax (s. 71.21(20)).

Married persons may file a joint declaration of estimated tax, regardless of whether or not they file a joint Wisconsin income tax return. If they file a joint declaration of estimated tax, the declaration of estimated tax provisions in s. 71.21 that apply to individuals will apply to the married persons jointly.

If married persons file separate Wisconsin returns for a taxable year but they file a joint declaration of estimated tax, they may allocate their payments of estimated tax between themselves in any manner they choose.

(f) Conversions of marital and individual property (s. 71.03(7)).

Capital gain or loss shall not be recognized solely by reason of converting individual property to marital property or marital property to individual property. However, there is an exception in that if a gain or loss is recognized for federal income tax purposes because of an unequal division of marital property upon divorce, that amount of gain or loss shall be recognized for Wisconsin.

If a gain is not recognized upon a transfer under this provision (s. 71.03(7)), the basis of the property immediately before the transfer is the basis of the property immediately after the transfer.

If a capital gain or loss is recognized for federal income tax purposes because of the conversion of individual property of a spouse to marital property or because of the conversion of marital property to individual property, and such gain or loss is not recognized under s. 71.03(7), the person will be required to make an addition or subtraction modification on his or her Wisconsin return, as appropriate, to remove such capital gain or loss.

11. Compensation for Well Contamination Nontaxable (1983 Wis. Act 410, Create s. 71.03(2)(g), effective for 1985 tax year and thereafter.)

Under Wisconsin's new groundwater management law, awards of up to \$9,600 may be made by the Department of Natural Resources to persons who have a contaminated well. The purpose of the award is to enable the claimant to obtain an alternate water supply. The amount of any award received in accordance with s. 144.027 of this program will be excludable from the recipient's Wisconsin taxable income.

B. CORPORATION FRANCHISE/INCOME TAXES

1. 10% Surtax Eliminated for 1984 (1983 Wis. Act 212, Amend s. 71.013, effective for 1984 tax year.)

The 10% surtax to Wisconsin franchise/income tax rates has been eliminated for the entire 1984 tax year. Therefore, the surtax applies to corporations only for the 1982 and 1983 tax years.

2. Tax-Option (S) Corporation--Reference to Internal Revenue Code Updated to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.02(2)(b)9, create s. 71.02(2)(b)10, effective for 1984 tax year and thereafter.)

For the 1984 tax year and thereafter, the term "Internal Revenue Code", as used in s. 71.02(1)(f) and s. 71.042(1) relating to tax-option corporations, will mean the Internal Revenue Code in effect on December 31, 1983.

3. Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.01(4)(g)7 and 71.02(1)(a)8, create s. 71.01(4)(g)8 and 71.02(1)(a)9, effective for 1984 tax year and thereafter.)

Insurance companies, regulated investment companies and real estate investment trusts will compute their taxable income for the 1984 tax year and thereafter under the Internal Revenue Code in effect on December 31, 1983, with certain exceptions. The special rules for safe harbor leases provided by Section 168(f)(8) of the Internal Revenue Code may not be used for Wisconsin purposes and depreciation of out-of-state property placed in service on or after January 1, 1983 must be computed under the Internal Revenue Code as of December 31, 1980.

4. Clarify Deductibility of Cash Dividends Received in 1983 From 80% Owned Subsidiaries (1983 Wis. Act 212, Amend s. 71.04(4)(b), effective April 26, 1984.)

Under prior law, s. 71.04(4)(b) provided that 50% of cash dividends received from a corporation with respect to its common stock were deductible from gross income if the corporation receiving the dividends owned directly or indirectly during

the entire tax year at least 10% of the total combined voting stock of the payer corporation. 1983 Wisconsin Act 27 (the 1983-85 budget bill) amended this section to provide that 75% of such dividends are deductible for the 1984 tax year and 100% are deductible for 1985 and thereafter while deleting any reference to amounts deductible for years prior to 1984.

The amendment to s. 71.04(4)(b) in 1983 Wisconsin Act 212 merely clarifies that for the 1983 tax year 50% of such cash dividends are deductible for Wisconsin franchise/income tax purposes.

5. Repeal Health Care Insurance Provisions (1983 Wis. Act 212, Renumber s. 71.01(3)(a)1 to 71.01(3)(a), and 71.01(2)(c)1 to 71.01(3)(c), repeal s. 71.01(3)(a)2 and 3, 71.01(3)(c)2 and 3, and 71.04(2)(b)7 and 10, effective January 1, 1984.)

This Act repeals the provisions created by 1983 Wisconsin Act 27 which provided that employers would lose their tax-exempt status or deductions for health care costs if they failed to provide certain health care plans to employees. The health care provisions in 1983 Wisconsin Act 27 were explained in Wisconsin Tax Bulletin #33. This repeal is retroactive to January 1, 1984, when these provisions were to have become effective.

6. Insurance Companies - Loss Carrybacks (1983 Wis. Act 212, Amend s. 71.01(4)(a)1, effective April 26, 1984.)

The amendment to s. 71.01(4)(a)1 clarifies that insurance companies are treated the same as all other corporations and may not carry back losses for purposes of the Wisconsin franchise/income tax.

7. Insurance Companies - Elections Under Internal Revenue Code (1983 Wis. Act 212, Amend s. 71.01(4) (f), effective for 1984 tax year and thereafter.)

Insurance companies making an election under the Internal Revenue Code for federal tax purposes to claim a credit against federal tax liability, rather than a deduction from income, will not be deemed to have made the same election for Wisconsin, and thereby lose the deduction.

Example: On the federal tax return an insurance company electing to claim the Targeted Jobs Tax Credit is required to reduce its deduction for wages paid by the amount of the credit. On its Wisconsin franchise/income tax returns for 1984 and thereafter, a deduction may be claimed for total wages (no reduction is required for the Targeted Jobs Tax Credit claimed on the federal return), as if the credit had not been claimed on its federal tax return.

8. Deducting Payments to Deferred Payment Plans Made by Due Date of Tax Return (1983 Wis. Act 405, Create s. 71.041, effective for plan years beginning after September 2, 1974.)

Subject to the limitations of Section 404 of the Internal Revenue Code, contributions to deferred payment plans (e.g., pension, profit-sharing and stock bonus plans) which meet the requirements of Section 401 of the Code and that are made on or before the date on which a corporation is required to file its Wisconsin franchise/income tax return (including extensions) are deemed to have been made on the last day of the tax year for which that return is filed. Although this new law in s. 71.041 applies to plan years beginning after September 2, 1974, no adjustments may be made for this item unless the claim for refund or assessments are filed or made within the time periods specified in s. 71.10(10) and s. 71.11(21), Wis. Stats.

9. Tax-Free Exchange of Property (1983 Wis. Act 405, Amend s. 71.03(5)(a) and (L), effective for 1984 tax year and thereafter.)

No gain or loss will be recognized for Wisconsin franchise/income tax purposes if a corporation exchanges certain business or investment property held for productive use before and after the exchange for property of a like kind, regardless of the situs of the properties.

10. Credit Unions - Only Income from Public Deposits is Taxable (1983 Wis. Act 368, Amend s. 71.01(3)(a)1, effective for 1984 tax year and thereafter.)

Effective with the 1984 taxable year, the limited exemption previously provided credit unions (membership limited to groups having a common bond of occupation, or association, or to groups within a well defined neighborhood, community or rural district) has been expanded to exempt all credit unions.

However, all credit unions are now taxable on income derived from public funds held on deposit for any taxable year in which the credit union is approved as a public depository under ch. 34 and acts as a depository of state or local funds under s. 186.113(20), Stats. The law defines such income as the product of the credit union's gross annual income (before deductions) for the taxable year multiplied by a fraction, the numerator of which is the average monthly balance of public deposits in the credit union during the taxable year, and the denominator of which is the average monthly balance of all deposits in the credit union during the taxable year.

C. HOMESTEAD CREDIT

1. Retroactive 25% Increase in Homestead Credit for 1983 (1983 Wis. Act 212, Create 71.09(7)(gs), effective for 1983 claims filed in 1984.)

Each person who files a 1983 homestead claim by the December 31, 1984 deadline will automatically receive a 25% increase in their credit. The increased amount of credit will be paid in a separate check. It will be equal to 25% of the credit computed using the computation tables appearing in the instructions for the 1983 Schedule H. The maximum increase will be \$220 (\$880 x .25). If the amount of credit a person claims on his or her Schedule H is adjusted by the Department of Revenue, the 25% increase will be based on the adjusted credit.

No additional form or filing is necessary to receive this additional credit. For persons whose 1983 homestead credit was paid or credited by the Department before June 2, 1984 the separate check for the 25% increase in credit is expected to be mailed by the Department in late August, 1984. Persons whose 1983 homestead credit is paid or credited on or after June 2, 1984 will receive their separate check within 90 days after their initial claim was paid or credited.

Example: A person filed a 1983 Schedule H in February, 1984 claiming a credit of \$280. A check for that amount was mailed to the person during March, 1984. During late August, 1984 this person will automatically receive a separate check for \$70 (\$280 credit x 25% increase = \$70).

Regardless of whether a 1983 homestead claim is filed before or after the enactment of this new law, the credit entered on line 19 of the Schedule H claim form must be based on the computation tables provided in the 1983 instructions. The additional credit of 25% will be computed automatically by the Department of Revenue and a separate check will be issued.

2. Household Income Limit Increased to \$16,500 (1983 Wis. Act 212, Amend s. 71.09(7)(gr)(intro.) and create s. 71.09(7)(grm)3, effective for 1984 homestead claims (filed in 1985) and subsequent years' claims.)

Beginning with claims filed for the year 1984, no homestead credit will be allowed if a claimant's household income exceeds \$16,500. For 1983 claims, the limit was \$15,500.

3. "Rent Constituting Property Taxes Accrued" Percentage Changed From 20% to 25% (1983 Wis. Act 212, Amend s. 71.09(7)(a)6, effective for 1984 claims (filed in 1985) and subsequent years' claims.)

In computing homestead credit for claims filed for the year 1984 and thereafter, claimants will be allowed one-fourth (25%) of rent paid for occupancy as "rent constituting property taxes accrued". For 1983 claims the percentage was 20%.

4. Acreage Limitation Increased to 120 Acres When Homestead Part of a Farm (1983 Wis. Act 212, Amend s. 71.09(7)(a)8, effective for 1984 claims (filed in 1985) and subsequent years' claims.)

Beginning with claims filed for the year 1984, claimants who have a homestead which is part of a farm will be allowed to claim property taxes on up to 120 acres of land adjoining their residence, including all improvements (e.g., buildings) on this same 120 acres. For 1983 claims, claimants with farms were allowed to claim property taxes on only the first 35 acres adjoining their residence.

5. Property Taxes Limit Increased to \$1,200 (1983 Wis. Act 212, Amend s. 71.09(7)(h)4 and create s. 71.09(7)(h)5, effective for 1984 claims (filed in 1985) and subsequent years' claims.)

The amount of property taxes or rent constituting property taxes which may be used in computing a homestead credit for claims filed for the year 1984 and thereafter will be limited to \$1,200. For 1983 claims the limit was \$1,100.

6. Homestead Credit Formula Changed (1983 Wis. Act 212, Amend s. 71.09(7)(gr) (intro.) and create s. 71.09(7)(grm)1 and 2, effective for 1984 claims (filed in 1985) and subsequent years' claims.)

Claimants with household income of \$7,400 (prior law was \$7,000) or less will receive a credit equal to 80% of their property taxes accrued and/or rent constituting property taxes accrued. If household income is more than \$7,400, the credit will be 80% of the amount by which property taxes and/or rent constituting property taxes accrued exceed 13.187% (prior law was 12.94%) of household income exceeding \$7,400.

D. FARMLAND CREDIT

1. Eliminate Requirement That Claimant be Owner of Land at End of Year (1983 Wis. Act 311, Amend 71.09(11)(a)3, effective April 27, 1984.)

A farmland preservation credit claimant will no longer be required to be the owner at the close of the tax year of the farmland on which a credit is claimed. Thus, assuming both meet the required qualifications, when farmland is sold both the buyer and the seller will be eligible to file for farmland credit on the basis of the portion of the total property taxes each paid. Under prior law, only the buyer (owner at the end of the year) was eligible to file a farmland credit claim. (Note: 1983 Wis. Act 311 also made changes in the Chapter 91 provisions of the Wisconsin Statutes which relate to the farmland credit program. The Chapter 91 provisions pertain to the portion of the farmland program which is administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection.)

E. SALES/USE TAXES

1. Exempt Sales of Raffle Contest Tickets (1983 Wis. Act 510, Amend s. 77.51(10)(a), 77.52(2)(a)2, 77.54(7) and create nonstatutory provision, effective September 1, 1983.)

Under prior law enacted on July 1, 1983 in 1983 Wisconsin Act 27, the sale of raffle contest tickets became subject to sales tax on September 1, 1983. Also, the occasional sales exemption in s. 77.51(10)(a) and s. 77.54(7) did not apply to the sale of raffle contest tickets.

The new law enacted in 1983 Wisconsin Act 510 provides that, effective September 1, 1983, the sale of raffle contest tickets is exempt from sales tax. The new law also eliminates the occasional sale exception in s. 77.51(10)(a) and s. 77.54(7) for the sale of raffle contest tickets.

The nonstatutory provision provides that within 45 days after May 18, 1984, the Department of Revenue shall mail a notice to every person who has applied for a raffle license between September 1, 1982, and May 19, 1984. The notice shall specify that any person who has paid a sales tax on the receipts of a raffle may apply for a refund of that sales tax and shall specify the method of applying for such refund. The notice shall also specify that any person who has applied for and been granted a seller's permit for the sole purpose of conducting a raffle shall have the permit canceled by the Department of Revenue by simply requesting that cancellation. (Note: The notice will likely be mailed by the Department in June, 1984.)

Also, the Department of Revenue may not impose interest or a penalty on any person who failed to apply for a seller's permit from September 1, 1983, to May 19, 1984 if the sole requirement for that application was to sell raffle contest tickets.

2. Exempt Charges for Copying Public Records (1983 Wis. Act 287, Create s. 77.54(32) and nonstatutory provision, effective April 27, 1984.)

Charges by an "authority" defined in s. 19.32(1) for copying a public record under s. 16.61(12) or 19.35(1) are exempt from the sales/use tax. Charges for the search of such records are also exempt.

"Authority" in s. 19.32(1) means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001(3), and which provides services related to public health or safety to the county or municipality; or a formally constituted subunit of any of the foregoing.

The nonstatutory provision provides that any person, including an "authority" who, on April 27, 1984 has a liability for sales taxes for charges for copying records under s. 19.35(1) is absolved of that liability. However, no refunds may be made of sales taxes paid before April 27, 1984 in respect to such charges.

3. Exempt Periodicals Which are Distributed Without Charge (1983 Wis. Act 496, Amend s. 77.54(15), effective September 1, 1983).

Periodicals (e.g., magazines such as controlled circulation publications) sold to publishers for distribution without charge or regularly distributed by or on behalf of publishers without charge to the recipient are exempt from the sales/use tax.

4. Exempt Certain Vehicles, Machinery and Equipment Used in Waste Reduction or Recycling (1983 Wis. Act 426, Create s. 77.54(5)(c) and (26m), effective July 1, 1984.)

Section 77.54(5)(c) provides a sales/use tax exemption for motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. For the purposes of s. 77.54(5)(c), "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

Section 77.54(26m) provides a sales/use tax exemption for the gross receipts from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For purposes of s. 77.54(26m), "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

5. Increase Dollar Amounts Used to Establish Filing Frequency (1983 Wis. Act 405, Amend s. 77.58(1)(a) and (b), effective for tax years beginning on or after January 1, 1985.)

For tax years beginning on or after January 1, 1985 a retailer's reporting period for sales and use tax purposes will be monthly if the amount of tax due in any one calendar quarter is more than \$600 (prior law was \$500). If a retailer's sales and use tax liability for any calendar quarter exceeds \$3600 (prior law was \$3000), returns will be due by the 20th of the month following the end of the monthly reporting period.

6. Property Purchased Without Tax Subject to Sales Tax if Used in Nonexempt Manner (1983 Wis. Act 405, Amend s. 77.54(3) and s. 77.57, effective May 10, 1984.)

If a purchaser issues an exemption or resale certificate to a seller and then uses the property for a taxable purpose, the purchaser will be liable for payment of the sales tax, rather than a use tax.

Example: A purchaser provides the seller with a resale certificate and therefore buys the desk without payment of any sales or use tax. Rather than reselling the desk, the purchaser ships the desk to its office in Illinois where the desk will be used by the purchaser's employees. Under 1983 Wisconsin Act 405, the purchaser will be liable for payment of Wisconsin sales tax on this desk. Under prior law, the desk would have been subject to use tax except that s. 77.51(16) provided no use tax is owing because the desk was subsequently shipped outside of Wisconsin.

F. INHERITANCE TAXES

1. Increase Inheritance and Gift Tax Exemptions (1983 Wis. Act 194, Amend s. 72.17(1), 72.81, 72.82(1)(b) and 72.85(2), effective dates are indicated below.)

(a) Inheritance Tax: The inheritance tax exemption for property transferred to class A distributees other than spouses (e.g., son, daughter, grandchildren, grandparents, son-in-law, daughter-in-law) is increased from \$10,000 to \$25,000 for transfers because of death occurring on April 13, 1984 and thereafter to June 30, 1985 and to \$50,000 for transfers because of deaths occurring on July 1, 1985 and thereafter.

(b) Gift: The lifetime gift tax exemption for property transferred to class A donees other than spouses (e.g., son, daughter, grandchildren, grandparents, son-in-law, daughter-in-law) is increased from \$10,000 to \$25,000 for transfer occurring during January 1, 1985 to December 31, 1985 and to \$50,000 for transfers occurring on January 1, 1986 and thereafter.

The annual gift tax exemption for all donees is increased from \$3,000 to \$10,000, effective for the 1985 calendar year and thereafter. Also, gift tax returns do not have to be filed for the 1985 calendar year and thereafter unless the total value of all gifts during the year from a donor to a donee exceeded \$10,000.

2. Security for Installment Payments of Inheritance Tax (1983 Wis. Act 248, Amend s. 72.22(4)(d) and 72.25(1), effective April 27, 1984.)

Under prior law, persons who inherited property of a closely held business could, upon fulfilling certain requirements, pay the inheritance taxes on their property in installments over a period not to exceed 15 years. One of those requirements was that the taxpayer provide as security a lien on real property or a bond to cover the taxes due on personal property.

The amendments to s. 72.22(4)(d) and 72.25(1) allow liens on personal property also to be used as security.

34.

3. Update Reference to Internal Revenue Code to December 31, 1983 for Qualified Retirement Plans, Installment Payments and Power of Appointment (1983 Wis. Act 212, Amend s. 72.01(17), 72.12(4)(c)1 and 72.22(4)(a), effective for transfers because of deaths on and after May 1, 1984.)

The reference to the Internal Revenue Code relating to power of appointment in s. 72.01(17), qualified retirement plans in s. 72.12(4)(c)1 and installment payments in s. 72.22(4)(a) is updated to December 31, 1983.

G. OTHER

1. Eliminate Form 9C Filing Requirement Regarding Compensation Paid to Nonresident Entertainers (1983 Wis. Act 405, Repeal s. 71.10(18)(a) and (c), effective May 10, 1984.)

Wisconsin persons employing nonresident entertainers in Wisconsin will no longer be required to file the information return, Wisconsin Form 9C. (Note: Wisconsin law continues to require nonresident entertainers to file a surety bond or cash deposit with the Department if the contract price for a performance exceeds \$3,200. If such bond or deposit is not filed, the employer continues to be required to withhold payment from the entertainer in an amount for which a bond or deposit should have been filed.)

2. Increase Income Limitation for Filing Information Return (1983 Wis. Act 259, Amend s. 71.10(8n), effective April 27, 1984.)

Information returns (Wisconsin Form 9b or federal Form 1099-MISC) will be required for payments for services of \$600 or more made in the course of operating a business to persons who are not treated as employees of the business. An example of such payments are fees paid to corporate directors. Prior law required information returns when such payments exceeded \$500.

3. Renumber Definitions in Statutes (1983 Wis. Act 189, Amends various sections in Chapters 71, 72, 77 and 139 of the Wisconsin Statutes, effective April 10, 1984. A complete listing of the statutes which have been renumbered by 1983 Wis. Act 189 appears on pages 35 through 37.)

Various statutes in Chapters 71, 72, 77 and 139 have been renumbered. The statutes affected are those which contain lists of definitions. The purpose of the renumbering is to rearrange listings of several words or terms defined under a single statute section so that they appear in alphabetical sequence. For example, sections 71.09(7)(a)1 through 8 of the Wisconsin Statutes containing definitions for eight items pertaining to the Homestead program have been renumbered so that the items being defined will appear in alphabetical sequence. An example of the result is the definition of "income" which was previously identified as s. 71.09(7)(a)1 but now is numbered s. 71.09(7)(a)6.

4. Miscellaneous Changes Made to Statutes (1983 Wisconsin Act 192, Amend s. 71.03(1)(g)2, 71.312(8), 71.346(3), 71.355(1)(a)3, 71.357(2)(a), 71.358(2)(b), 71.358(3), 71.362(1), 77.54(20)(a), 77.54(20)(b)4, 125.32(4)(b)3, create s. 71.09(12r)(title), 71.09(12rf)(title), 125.33(2m)(title), s. 125.33(1)(cm) is renumbered 125.33(2m) and is amended, effective April 10, 1984.)

A number of changes were made to amend and revise various provisions of the statutes for the purpose of removing unnecessary words, clarifying language and references and changing punctuation.

STATUTES RENUMBERED BY 1983 WISCONSIN ACT 189

The following is a listing of the various sections in Chapters 71, 72, 77 and 139 of the Statutes which have been renumbered by 1983 Wisconsin Act 189, effective April 10, 1984.

| <u>Definition</u> | <u>Old Reference</u> | <u>New Reference Per 1983 Wis. Act 189</u> |
|---|----------------------|--|
| I. INCOME AND FRANCHISE TAXES | | |
| A. Corporations | | |
| Net income | 71.02(1)(a) | 71.02(1)(c) |
| Person | 71.02(1)(b) | 71.02(1)(f) |
| Paid | 71.02(1)(c) | 71.02(1)(e) |
| Fiscal year | 71.02(1)(d) | 71.02(1)(b) |
| Entertainment corporation | 71.02(1)(e) | 71.02(1)(a) |
| Tax-Option corporation | 71.02(1)(f) | 71.02(1)(g) |
| Net income or loss of S Corp. | 71.02(1)(g) | 71.02(1)(d) |
| Federal taxable income | 71.02(2)(a) | 71.02(2)(c) |
| B. Individuals, Estates and Trusts | | |
| Internal Revenue Code | 71.02(2)(b) | 71.02(2)(d) |
| Wisconsin taxable income - estates & trusts | 71.02(2)(c) | 71.02(2)(L) |
| Wisconsin taxable income - natural persons | 71.02(2)(d) | 71.02(2)(m) |
| Wisconsin adjusted gross income | 71.02(2)(e) | 71.02(2)(i) |
| Itemized deductions | 71.02(2)(f) | 71.02(2)(e) |
| Wisconsin standard deduction - 1970 | 71.02(2)(g) | 71.02(2)(k) |
| Wisconsin standard deduction - 1971 | 71.02(2)(gh) | 71.02(2)(kb) |
| Wisconsin standard deduction - 1972 | 71.02(2)(gn) | 71.02(2)(kd) |
| Wisconsin standard deduction - 1973-76 | 71.02(2)(gp) | 71.02(2)(kf) |
| Wisconsin standard deduction - 1977-78 | 71.02(2)(gq) | 71.02(2)(kh) |
| Indexing standard deduction | 71.02(2)(gr) | 71.02(2)(ki) |
| Taxable income | 71.02(2)(h) | 71.02(2)(gm) |
| Person, fiduciary, income | 71.02(2)(i) | 71.02(2)(f) |
| Person | 71.02(2)(j) | 71.02(2)(g) |
| Taxable year | 71.02(2)(k) | 71.02(2)(h) |
| Federal net operating loss | 71.02(2)(L) | 71.02(2)(b) |
| Wisconsin net operating loss | 71.02(2)(m) | 71.02(2)(j) |
| Entertainer | 71.02(2)(p) | 71.02(2)(a) |
| Transitional date | 71.05(2)(a)1 | 71.05(2)(a)6 |
| Federal adjusted basis | 71.05(2)(a)2 | 71.05(2)(a)4 |
| Wisconsin adjusted basis | 71.05(2)(a)3 | 71.05(2)(a)7 |
| Adjusted basis | 71.05(2)(a)4 | 71.05(2)(a)1 |
| Constant basis assets | 71.05(2)(a)5 | 71.05(2)(a)3 |
| Changing basis assets | 71.05(2)(a)6 | 71.05(2)(a)2 |
| Owner | 71.05(2)(a)7 | 71.05(2)(a)5 |
| II. HOMESTEAD CREDIT | | |
| Income | 71.09(7)(a)1 | 71.09(7)(a)6 |
| Rent constituting property taxes accrued | 71.09(7)(a)6 | 71.09(7)(a)8 |
| Property taxes accrued | 71.09(7)(a)8 | 71.09(7)(a)7 |
| Household | 71.09(7)(a)2 | 71.09(7)(a)4 |
| Household income | 71.09(7)(a)3 | 71.09(7)(a)5 |
| Homestead | 71.09(7)(a)4 | 71.09(7)(a)3 |
| Claimant | 71.09(7)(a)5 | 71.09(7)(a)1 |
| Gross rent | 71.09(7)(a)7 | 71.09(7)(a)2 |

| Definition | Old Reference | New Reference Fm. 1983 Wis. Act 189 |
|--|---------------|---|
| III. WITHHOLDING TAX | | |
| Wages | 71.19(1) | 71.19(5) |
| Payroll period | 71.19(2) | 71.19(4) |
| Employee | 71.19(3) | 71.19(6) |
| Employer | 71.19(4) | 71.19(7) |
| Department | 71.19(5) | 71.19(8) |
| IV. INHERITANCE TAX | | |
| District Attorney | 72.01(5) | 72.01(9m) |
| V. SALES AND USE TAX | | |
| Sales tax | 77.51(1) | 77.51(16) |
| Use tax | 77.51(2) | 77.51(23) |
| Person | 77.51(3) | 77.51(10) |
| Sale | 77.51(4) | 77.51(14) |
| Sale - does not include | 77.51(4g) | 77.51(14g) |
| Time of sale | 77.51(4r) | 77.51(14r) |
| Tangible personal property | 77.51(5) | 77.51(20) |
| Retailer | 77.51(7) | 77.51(13) |
| Retailer - doing business in Wisconsin | 77.51(7g) | 77.51(13g) |
| Consumer | 77.51(7m) | 77.51(13r) |
| Business | 77.51(8) | 77.51(1) |
| Seller | 77.51(9) | 77.51(17) |
| Occasional sale | 77.51(10) | 77.51(9) |
| Gross receipts | 77.51(11) | 77.51(4) |
| Sales price | 77.51(12) | 77.51(15) |
| Purchase | 77.51(13) | 77.51(12) |
| Storage | 77.51(14) | 77.51(18) |
| Use | 77.51(15) | 77.51(22) |
| Storage and use | 77.51(16) | 77.51(19) |
| Vending machine receipts | 77.51(17) | 77.52(1m) |
| Contractors, construction activities | 77.51(18) | 77.51(2) |
| Department | 77.51(19) | 77.51(3) |
| Taxpayer | 77.51(20) | 77.51(21) |
| Medicines | 77.51(21) | 77.54(14g) |
| Insulin and equipment | 77.51(22) | 77.54(14m) |
| Hospital | 77.51(22m) | 77.54(14r) |
| Lease | 77.51(23) | 77.51(7) |
| Service provider resale | 77.51(24) | 77.52(2m) |
| Printing | 77.51(25) | 77.51(11) |
| Tax paid to governmental unit | 77.51(1) | 77.51(4)(a) & and 77.51(15)(a) & |
| Manufacturing | 77.51(2) | 77.54(6m) |
| Cable television | 77.51(28) | 77.52(2)(a) & |
| Incidental | 77.51(29) | 77.51(5) |
| Newspaper | 77.51(30) | 77.51(8) |

| <u>Definition</u> | <u>Old Reference</u> | <u>New Reference Per 1983 Wis. Act 189</u> |
|--------------------------|----------------------|--|
| VI. EXCISE TAXES | | |
| A. Beverage Taxes | | |
| Brewer | 139.01(1) | 139.01(2) |
| Bottler | 139.01(2) | 139.01(1) |
| License | 139.01(3) | 139.01(4) |
| Intoxicating liquors | 139.01(4) | 139.01(3) |
| Wholesaler | 139.01(7) | 139.01(10) |
| Retailer | 139.01(8) | 139.01(7) |
| Secretary | 139.01(10) | 139.01(8) |
| B. Cigarette Taxes | | |
| Secretary | 139.30(3) | 139.30(11) |
| Sell or sale | 139.30(4) | 139.30(12) |
| Vending machine | 139.30(5) | 139.30(14) |
| Manufacturer | 139.30(6) | 139.30(7) |
| Distributor | 139.30(7) | 139.30(3) |
| Jobber | 139.30(8) | 139.30(6) |
| Vending machine operator | 139.30(9) | 139.30(15) |
| Multiple retailer | 139.30(10) | 139.30(8) |
| Retailer | 139.30(11) | 139.30(10) |
| Warehouse | 139.30(12) | 139.30(16) |
| Indian tribe | 139.30(14) | 139.30(5) |
| Reservation | 139.30(15) | 139.30(9) |
| Enrolled member | 139.30(16) | 139.30(4) |