

WISCONSIN TAX BULLETIN

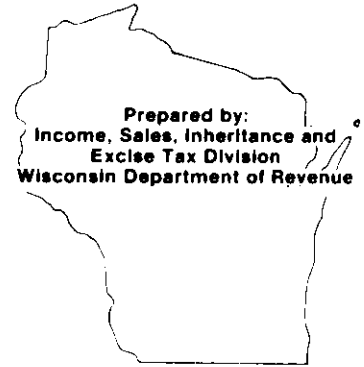
Subscriptions available from:

Wisconsin Department of Revenue Administration Document Sales

P.O. Box 7840
Madison, WI 53707
Annual cost - \$5.25

OCTOBER 1984
NUMBER 39

Prepared by:
Income, Sales, Inheritance and
Excise Tax Division
Wisconsin Department of Revenue



CHANGES IN FORMS FOR 1984

Included in the last six pages of this issue are preliminary proof copies of the 1984 Wisconsin Form 1, 1A and Schedule H. Although the forms are still subject to change before being printed, these preliminary proofs will give you an idea of how the 1984 version will look.

The major changes made to the forms for 1984 include the following:

Income Tax Forms (Form 1 and 1A)

- Minnesota income question which appeared on the 1983 Form 1 and 1A has been removed. This information is not needed for 1984.
- Individual Retirement Account (IRA) deductions will be permitted on the Form 1A. (Line 9, Form 1A)
- Line for adding back portion of federal long-term capital gain deduction removed from Form 1. (Wisconsin long-term capital gain deduction is the same as federal in 1984.)
- Lines for entering subtractions from federal income on Form 1 have been relocated from the top of page 2 to the bottom of page 1.
- Line for claiming an itemized deduction on Form 1 for child and dependent care expenses removed. (This deduction is replaced by a credit in 1984, see next item.)
- New entry lines are provided for the child and dependent care credit and earned income credit which may be claimed on 1984. (Lines 17 and 18, Form 1A; lines 48 and 49, Form 1)
- A separate entry line is provided on Form 1 for IRA penalties. (Line 55, Form 1)

IN THIS ISSUE

	Page
Changes in Forms for 1984.....	1
Wisconsin Tax Brackets Will Not be Indexed in 1984.....	1
Taxpayers to Receive Forms 1099-G in January, 1985.....	2
Joint Returns Not Effective Until 1986.....	2
Processing of 25% Increase in 1983 Homestead Benefits Continues.....	2
Tax Return Statistics for 1983.....	3
Taxpayer Convicted of Filing Fraudulent Returns.....	3
Place for Conducting Field Audits.....	3
Administrative Rules.....	3
1984 Income Tax and Corporate Forms.....	4
Bulk Orders of Tax Forms.....	4
Report on Litigation.....	4
Tax Releases	
Income and Franchise.....	11
Sales/Use.....	12
Index to Wisconsin Tax Bulletins, Issues 1 to 39.....	13
Proofs of 1984 Forms 1, 1A, and HC.....	31
Tax Report.....	37
Camera Copy Order Blank.....	39

- A new entry line is provided for research credits which may be claimed for 1984 (Line 57, Form 1)
- A signature area for use by tax practitioners has been added to Form 1A (See page 2, Form 1A)

Homestead (Schedule H)

- The format of the qualification questions area has been changed from two-column to sin-

gle column. (Lines 1 through 6, Schedule H)

- Persons residing in nursing homes will be required to indicate the name of the municipality in which it is located. (Line 4c, Schedule H)
- A new question has been added relative to persons with homes located on more than one acre of land. (Line 5, Schedule H)
- Persons who became married in 1984 are required to indicate the date of their marriage. (Line 7b, Schedule H)
- Persons filing claims based on rent will be required to indicate the full amount of rent they paid for occupancy during the year. (Line 14, Schedule H)
- Schedules 1 through 4 have been added to page 2 of Schedule H. These schedules are to be used by certain persons (see title of each schedule) to compute their income and allowable property taxes and rent.

In addition to the changes to existing forms described above, there will also be two new forms for 1984. Wisconsin Schedule R will be used to compute credits based on (1) increases in research expenses incurred for research conducted in Wisconsin and (2) expenditures for new or expanded research facilities located in Wisconsin. Wisconsin Schedule 2440W (Disability Income Exclusion) will be used by disabled retirees under age 65 to compute the amount of disability income which may be excluded from Wisconsin taxable income.

WISCONSIN TAX BRACKETS WILL NOT BE INDEXED FOR 1984

As a result of 1983 Wisconsin Act 27 (the 1983-85 budget bill), the Wisconsin income tax brackets were not

indexed in 1983 and will not be indexed for the 1984 tax year. A person's Wisconsin income tax will be computed for 1984 using the same brackets that were in effect for the 1982 tax year. The 1982 brackets and rates (which will also be used for 1984) were as follows:

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

TAXPAYERS TO RECEIVE FORMS 1099-G IN JANUARY, 1985

Taxpayers who received a Wisconsin income tax refund in 1984 will be mailed an information return, Form 1099-G, in January, 1985. The Internal Revenue Code in Section 6050E requires the Department of Revenue to send this 1984 information return to taxpayers.

As a result of a recent ruling from the Internal Revenue Service, there will be two significant changes for married persons regarding the amount of refund entered on Form 1099-G for refunds issued in 1984.

The first difference involves situations where a husband and wife offset the refund and tax due amounts on their Wisconsin income tax return. For example, on their 1983 return, spouse A had a refund of \$300 which was applied against \$100 of tax due of spouse B, and a refund check of \$200 (\$300 - \$100 = \$200) was issued to spouse A in 1984. IRS has now ruled that the gross amount of refund (\$300 in this example) must be reported on the 1984 Form 1099-G prepared for spouse A, rather than the net amount of refund (\$200 in this example). (Note: When the department prepared Form 1099-G's in early 1984 to report refunds issued in 1983, the net amount rather than gross amount of refund was reported in situations such as this. Reporting of the net amount for refunds issued in 1983 was based on advice received from IRS at that time. However, the ruling which has now been issued by IRS specifies that the gross amount of refund is to be reported on Form 1099-G for refunds issued in 1984.)

The second difference between 1983 and 1984 involves situations where both a husband and wife receive a refund when filing on the same Wisconsin income tax return (i.e., filing a combined return). For example, on their 1983 return, spouse A showed a refund of \$150 and spouse B a refund of \$75. One refund check of \$225 was sent to them in 1984. The IRS ruling states that a separate 1984 Form 1099-G must be prepared for each spouse showing that spouse's refund. In this example, the Form 1099-G prepared for spouse A would show a refund of \$150 and the Form 1099-G for spouse B would show a \$75 refund. (Note: For refunds issued in 1983, the informal advice provided by IRS indicated one 1983 Form 1099-G should be prepared showing the total of both spouses' refunds. However, the ruling now issued by IRS specifies that a separate Form 1099-G must be prepared for each spouse for 1984 in situations such as this.)

The January, 1985 Wisconsin Tax Bulletin will include additional information about Forms 1099-G which will be mailed in January, 1985.

REMINDER — JOINT RETURNS NOT EFFECTIVE UNTIL 1986

As reported in issue number 37 of the WTB, 1983 Wisconsin Act 186 created a marital property system for Wisconsin. As part of the new marital property system, married couples will be permitted to file joint Wisconsin income tax returns, beginning with the 1986 tax year.

Until the joint return provision becomes effective in 1986, married persons will continue to be treated as separate taxpayers. For tax years 1984 and 1985 the incomes of a husband and wife will continue to be reportable in separate columns on Wisconsin long-form and short-form income tax returns.

PROCESSING OF 25% INCREASE IN 1983 HOMESTEAD BENEFITS CONTINUES

1983 Wisconsin Act 212 provides a retroactive 25% increase in Homestead Credit benefits for 1983 claims. Every claimant who files a 1983 Homestead claim by the December

31, 1984 deadline is to receive a 25% increase in the amount of their allowable credit. No additional form is required to be filed by a claimant to receive the additional benefit. It will automatically be paid by the department.

Additional details concerning this provision of 1983 Wisconsin Act 212, can be found in issues number 37 and 38 of the WTB.

Payments for the 25% increase in Homestead are being processed in batches. The first and largest batch consisted of the approximately 250,000 claimants whose 1983 Homestead claims were completely processed by the department by July 31, 1984. Mailing of the checks for the additional benefit to those persons took place in late August, 1984. Processing of subsequent batches is tentatively scheduled as follows:

Processing of 1983 Schedule H Completed	Check for In- crease In Benefit Will be Issued
August 1 through September 30, 1984	Late October, 1984
October 1 through November 30, 1984	Late December, 1984
December 1, 1984 and later	Within 90 days after processing is completed

An informational notice accompanies each check for the 25% increase in Homestead. The notice provides information as to what the check is for and how the amount was computed. It directs claimants who have questions about their check to contact the nearest Department of Revenue office.

Homestead claimants who owe delinquent taxes, or a debt to another state agency which has been certified to the department, may not receive a check for the 25% increase in their 1983 Homestead benefit. The amount of their 25% increase will first be applied against the delinquencies they owe. The claimant will receive a check only if the 25% increase in Homestead exceeds the amount of his or her delinquencies. For example, if the 25% increase in Homestead amounted to \$120 and a claimant had a \$100 income tax delinquency he or she would only receive a check for \$20 (\$120 increase - \$100 delinquency = \$20).

A flyer is provided to claimants subject to delinquency offsets explaining how much of their 25% increase in Homestead has been applied to a delinquency.

Claimants who file amended 1983 Homestead claims which reflect a greater benefit than their original 1983 claim may receive more than one check for the 25% increase in their Homestead benefit. This will occur when the original and amended claims are processed as part of different batches. For example, if a claimant's original 1983 Homestead claim was processed before July 31, 1984 and an amended 1983 claim filed by the claimant was processed during October, 1984, the claimant would receive two checks for the 25% increase in Homestead. The first check (based on the original claim) would have been sent in August, 1984 and the second check (based on the additional benefit claimed on the amended claim) would be sent in December, 1984.

TAX RETURN STATISTICS FOR 1983

During the first six months of 1984, 2,060,000 Wisconsin income tax returns were filed for 1983. Homestead Credit claims for 1983 totaling 255,000 and 13,000 Farmland Preservation Credit claims were also filed during the period January - June, 1984.

The 2,060,000 income tax returns for 1983 were filed by 2,900,000 individuals. (The combined return of a husband and wife is considered one return.) Itemized deductions were claimed by 24% of the individuals, and the standard deduction was claimed by 76%.

A total of 1,500,000 income tax refunds were issued to taxpayers for 1983 returns, which averaged \$216 each. The average refund for 1982 returns was \$222.

Homestead Credit refunds averaged \$325 per claimant, an increase from the average refund of \$310 issued last year. Over 40% of the claimants were age 65 or older. Of the individuals claiming Homestead Credit, 40% were renters and 60% were homeowners.

An average payment of \$1,575 was issued to each Farmland Preservation claimant. The average payment for 1982 claims was \$1,525. As a re-

sult of Wisconsin's 5% minimum tax, 9,400 persons made an average payment of \$1,200 each.

TAXPAYER CONVICTED OF FILING FRAUDULENT RETURNS

Roger A. Isaac of Fox Point, Wisconsin has been ordered by Dane County Circuit Judge William F. Eich to serve five years probation, pay a \$500 fine and serve thirty days in jail for a criminal violation of Wisconsin's state income tax law. He must also make restitution of state income taxes, penalties and interest due for the years 1977, 1978 and 1979 in the amount of \$12,617.87 within eighteen months.

The Attorney General's office filed criminal charges against Isaac after an investigation by the Intelligence Section of the Wisconsin Department of Revenue. Isaac was charged with three counts of filing false and fraudulent Wisconsin income tax returns for 1977, 1978 and 1979. He was charged with failing to report income in excess of \$69,000 and evading more than \$7,000 in state income taxes for those years. He pled no contest to the charge of filing a false and fraudulent 1979 income tax return on March 1, 1984. The charges for 1977 and 1978 were dismissed after his no contest plea was entered.

Filing a false or fraudulent Wisconsin state income tax return is a felony punishable by a maximum fine of \$10,000 or imprisonment for five years or both. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the additional taxes, penalties and interest follows conviction for criminal violations.

PLACE FOR CONDUCTING FIELD AUDITS

Field audits by auditors of the Department of Revenue will usually be conducted at the taxpayer's place of business. If there is a lack of space at the taxpayer's location, the records may be transported to the office of the taxpayer's representative or to the auditor's office.

If all of the taxpayer's books, records and supporting data are located at the representative's office, the audit may be conducted there if it is con-

venient for all parties involved. However, if the audit is going to be conducted at the representative's office and the taxpayer is not present at all times, a power of attorney must be obtained from the representative. Wisconsin Administrative Code section Tax 1.13 gives further information about the power of attorney procedures.

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 October 1, 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

11.71 Automatic data processing-N

B. Rules at Legislative Standing Committees

11.03 Elementary and secondary schools-A
11.05 Governmental units-A
11.65 Admissions-A

C. Rules Adopted in 1984 (in parentheses is the date the rule became effective)

9.01 Definitions pertaining to cigarette tax-N (4/1/84)
9.08 Cigarette tax refunds to Indian tribes-N (4/1/84)
9.09 Cigarette sales to and by Indians-N (4/1/84)
11.05 Government units-A (10/1/84)
11.08 Medical appliances, prosthetic devices and aids-A (10/1/84)
11.09 Medicines-A (10/1/84)
11.10 Occasional sales-A (10/1/84)
11.11 Waste treatment facilities-A (10/1/84)
11.12(4) Farming, agriculture, horticulture and floriculture-A (10/1/84)

- 11.12(5) Farming, agriculture, horticulture and floriculture-A (10/1/84)
- 11.13 Sale of a business or business assets-A (10/1/84)
- 11.15 Containers and other packaging and shipping materials-A (1/1/84, 10/1/84)
- 11.16 Common or contract carriers-A (1/1/84)
- 11.17 Hospitals, clinics and medical professions-A (10/1/84)
- 11.19 Printed material exemptions-A (1/1/84, 10/1/84)
- 11.26 Other taxes in taxable gross receipts and sales price-A (1/1/84)
- 11.27 Warranties-A (10/1/84)
- 11.30 Credit sale, bad debt and repossessions-A (10/1/84)
- 11.32(3) "Gross receipts" and "sales price"-A (1/1/84)
- 11.39 Manufacturing-A (10/1/84)
- 11.45 Sales by pharmacies and drug stores-A (10/1/84)
- 11.48 Landlords, hotels and motels-A (1/1/84)
- 11.50 Auctions-A (1/1/84)
- 11.51 Grocer's guidelist-A (10/1/84)
- 11.52 Coin-operated vending machines and amusement devices-A (1/1/84)
- 11.56 Printing industry-A (10/1/84)
- 11.65 Admissions-A (10/1/84)
- 11.67 Service enterprises-A (10/1/84)
- 11.68 Construction contractors-A (1/1/84)
- 11.72 Laundries, dry cleaners and linen and clothing suppliers-A (10/1/84)
- 11.79 Leases of highway vehicles and equipment-A (10/1/84)
- 11.83 Motor vehicles-A (10/1/84)
- 11.85 Boats, vessels and barges-A (10/1/84)
- 11.86 Utility transmission and distribution lines-A (10/1/84)
- 11.87 Meals, food, food products and beverages-A (10/1/84)
- 11.94 Wisconsin sales and taxable transportation charges-A (10/1/84)
- 11.95 Retailer's discount-A (10/1/84)

1984 INCOME TAX AND CORPORATE FORMS

For tax practitioners and others who wish to print their own supplies of Wisconsin tax forms, camera copy of the 1984 Wisconsin income and franchise tax forms and the 1985 declaration of estimated tax forms is

available for purchase from the WISCOMP Center. The cost is \$10.50 per page which includes the 5% Wisconsin sales tax, handling and shipping. The camera copy for 1984 corporation forms is available immediately. Camera copy for most of the other tax forms is expected to be available about November 1, 1984. A clip out order form is located on the last page of this bulletin. Address orders to WISCOMP, One West Wilson Street, Room B345, Madison, WI 53702. Make remittance payable to WISCOMP. Remittance must accompany order. Orders are processed on a 24 hour basis.

BULK ORDERS OF TAX FORMS

In October, the department will mail out the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1984 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a handling charge on their orders. No charge is made for forms used for distribution to the general public (for example, in a bank, library or post office).

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

This year's mailing list for bulk order blanks contains the names of all persons and organizations who placed orders for 1983 forms. If you are not on this mailing list and do not receive a Form P-744, you may request the bulk order blank by contacting any department office or by writing to the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, WI 53708.

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

Leroy W. Knies

Constitutionality of taxes

Thomas R. Krueger

Property transferred pursuant to divorce

Larry Roe

Negligence penalty - late filing

WOKY, Inc., c/o The Charter Company,

Allocation of income between affiliates

Sales/Use Taxes

Advance Pipe & Supply Co., Inc. and Milwaukee Sewer Pipe & Manhole Co., Inc.

Construction contractors

Cuna Mutual Insurance Society

Advertising material used out-of-state

Edward Kraemer & Sons, Inc.

Claims for refund

Frisch, Dudek and Slattey, Ltd.

Retailer - who must register

Hein/Bakers Equipment Corporation

Manufacturing exemption

Oscar Mayer & Co., Inc.

Manufacturing - cleaning supplies

Valley Microforms, Inc.

Manufacturing exemption

Young Women's Christian Association of Madison, Wisconsin Inc.

Admissions

INCOME AND FRANCHISE TAXES

Leroy W. Knies vs. Wisconsin Department of Revenue (Circuit Court of Waukesha County, March 22, 1984). The issue before the court is whether or not the decision of the Wisconsin Tax Appeals Commission dismissing the taxpayer's appeal should be affirmed or reversed solely on the record.

The taxpayer and his wife, Nancy L. Knies, filed with the department a form which purports to be a 1978 Wisconsin Income Tax form in which the taxpayer and his wife refused to answer any questions relative to the income they earned and received for the year 1978, by writing on the tax

form "Objected-self-incrim" The taxpayer and his wife did fill out line 13 on the front page of the income tax form, stating that \$1,445.63 was withheld on the earnings of Mr. Knies, and \$197 was withheld from the earnings of Mrs. Knies. Each of them signed the form on the back, although it was not dated. No employer was listed on the return, nor were there any W-2 forms attached. A tax assessment was made by the department against the taxpayer in the sum of \$5,085.00, payable on May 9, 1980.

At the Tax Appeals Commission hearing, the taxpayer refused to be sworn in to give any testimony until the Commission proved to him that it had jurisdiction over his case. The taxpayer further stated that all things must stop at any alleged hearing until jurisdiction is established by the Commission.

The Court found that the Commission did have proper jurisdiction and authority to proceed with the hearing. The law is clear pursuant to ss. 71.11(1)(4) and 71.12(3), Wis. Stats., that where the taxpayer fails to comply with the statute listing any income that he earned or received during the taxable year, or reports no income when in fact he did have income from which taxes were withheld, and later received an assessment of income taxes by the Department of Revenue, then the burden of proof shifts to the taxpayer to prove otherwise because he has not complied with the law relating to reporting his earned income. In this case both Mr. Knies and Mrs. Knies obviously had some earned income from some sources because they themselves listed the amount of tax withheld by some employer.

The Circuit Court affirmed the decision of the Wisconsin Tax Appeals Commission and dismissed the taxpayer's appeal from that decision.

The taxpayer appealed this decision to the Court of Appeals, which dismissed his appeal for noncompliance with the Rules of Appellate Procedure.

Thomas R. Krueger vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 10, 1984). The issues in this case are whether the taxpayer may be taxed on the January, 1980 transfer of his individual interest in appreciated real and personal property to his wife

as part of a stipulated divorce property division, and the amount of additional income that may be taxable.

The divorce property division disposed of all of the property acquired by the taxpayer and his wife during their marriage. The net fair market value of the property received by the taxpayer in the divorce property division was approximately equal to the net fair market value of the property received by his wife in the divorce property division. The farm real property which was transferred by the taxpayer to his wife had been originally purchased by them under a land contract as tenants in common, each having an undivided one-half interest. The taxpayer's undivided one-half interest in farm real property transferred by him to his wife had a fair market value of \$125,000 and an adjusted basis of \$41,815.40. The farm real estate was subject to their joint indebtedness in the full amount of \$136,162. The taxpayer's farm machinery and equipment transferred by him to his wife had a fair market value of \$32,000 and an adjusted basis of \$26,205.82. The machinery and equipment was subject to their joint indebtedness in the full amount of \$4,188. In accordance with the terms of the divorce judgment, the taxpayer's wife gave him her promissory note in the amount of \$60,000, the same being a lien against the farm real property until paid in full.

The Commission held that the taxpayer's January, 1980 transfer to his former wife of his undivided interest as a tenant in common in appreciated farm real property under a divorce decree dated January 10, 1980 is a taxable transfer resulting in \$83,185 additional income to him. His January, 1980 transfer to his former wife of his sole interest in farm machinery and equipment under a divorce decree dated January 10, 1980 is a taxable transfer resulting in \$5,794.18 additional income to him.

The taxpayer has appealed this decision to the Circuit Court.

Larry Roe vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 15, 1984) During 1980, the taxpayer worked at the powerhouse in Kenosha, Wisconsin. He had been advised to go tax exempt and no federal or state withholding was taken out. In 1980, he earned more income than in previous years, and in addition

he had a capital gain on the sale of a house. Therefore, he had a substantial Wisconsin tax liability for 1980.

On April 14, 1981, on the advice of his preparer, the taxpayer filed for an extension of time in which to file his 1980 return. Extensions were subsequently filed and granted through September 30, 1981. The taxpayer's 1980 return was filed on March 26, 1982 without payment of taxes due. In 1981 Mr. Roe went into business for himself and lost money. In 1982 he was employed but went on strike, medical leave and then got laid off. He could not afford to pay the taxes due when the 1980 return was filed on March 26, 1982. The department assessed Mr. Roe \$4,424.71 including taxes, interest, penalty and late filing fee. The taxpayer does not contest the assessed tax. His only objection is to the department's imposition on a negligence penalty for late filing.

Mr. Roe claimed that his accountant did not inform him that he could be subject to such a big penalty for not filing his 1980 return on time. He stated that had he been aware of the possibility of this penalty, he most certainly would have filed his return on time. He was ignorant of the filing requirements and penalties, and due to his financial situation he could not pay the taxes due.

The Commission ruled that the burden of proof was upon the taxpayer to establish that his failure to file his 1980 Wisconsin income tax return by September 30, 1981 (the filing date pursuant to three extensions granted by the Internal Revenue Service) was due to reasonable cause and not due to willful neglect. Ignorance of the law is not reasonable cause for failure to timely file. Since the taxpayer did not establish that the failure to file his 1980 Wisconsin income tax return within the time provided by law was due to reasonable cause and such failure was not due to willful neglect, the department's action was proper in imposing upon the taxpayer the 25 percent penalty provided in s. 71.11(46), Wis. Stats., for the year 1980.

The taxpayer has not appealed this decision.

WOKY, Inc., c/o The Charter Company, vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 5, 1984). The issue

for the Commission to determine is whether the department may allocate gross income, and thus, impute interest income between entities controlled by the same interests for almost \$2 million on inter-company receivables and loans to stockholders loaned by the taxpayer to its parent for which the taxpayer was never paid interest.

WOKY, Inc. was engaged in the business of radio broadcasting and advertising in the State of Wisconsin. During the period 1975 through April of 1978, WOKY, Inc. was owned by Bartell Media, Inc., whose parent was Downe Communications, Inc. During this period there were various inter-company loans made primarily from WOKY, Inc. to Downe. These loans were carried on the books and tax returns of WOKY, Inc. as "inter-company receivables" or inter-company advances. These amounts were carried on Downe's books and tax returns as inter-company payables. These amounts were neither declared as dividends by WOKY, Inc. nor reported as dividend income by the parent.

In April of 1978, the Charter Group acquired Downe, and Downe was merged into Chartcom, Inc., a Charter subsidiary. The same pattern of inter-company loans continued from WOKY, Inc. to the parent. However, the terminology was changed and the loans were carried on the books and tax returns as "loans to stockholders" Chartcom, Inc. was the sole shareholder of WOKY, Inc.

In 1982, WOKY, Inc. was sold to Surrey Broadcasting Co. Pursuant to the Board of Director's Resolution of April 1, 1983, all inter-company receivables owed WOKY, Inc. by The Charter Company, Chartcom, or any other subsidiary were declared dividends as of the closing of the sale. The loans to shareholders were never declared as dividend income by the parent in any year during the audit period.

The department maintains that the loans were not dividends prior to the April 1, 1983 declaration date, and thus, has imputed interest income to the taxpayer on the loans to stockholders during the audit period pursuant to s. 71.11(7m), Wis. Stats.

The taxpayer maintains that the inter-company transactions are not in fact loans. They are, if anything, constructive dividends. For the taxable

years 1975 through 1979, its balance sheets did indicate an inter-company receivable from the parent, Downe Communications, Inc. (DCI), which ranged from \$1.75 to \$2.05 million. No written instrument was ever executed with respect to the inter-company "debt" and no interest was paid to the taxpayer. Additionally, the "debt", which originated in 1973 has, to this day, never been repaid.

The Commission concluded that during the period under review, the department properly imputed interest to the \$2 million in loans to shareholders pursuant to the authority of s. 71.11(7m), Wis. Stats., to allocate income between and among related entities.

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 (Circuit Court of Dane County, June 25, 1984). The first issue in this case was whether the taxpayers are retailers when they sell and deliver manholes to the job site, or construction contractors engaged in real property construction activities. (See WTB #37 for a summary of the Wisconsin Tax Appeals Commission's decision.) An additional issue of estoppel was raised by the taxpayers before the Circuit Court.

The taxpayers contend that the Department of Revenue is equitably estopped from collecting the sales tax based on a letter written by the department to Advance Pipe on April 13, 1972. The letter states that Advance Pipe is being refunded overpayments on its sales tax remittances. Attachments to the letter state that the taxpayer's principal business activity "includes contracting and/or subcontracting for real property construction as well as the manufacturing of materials consumed therein." The attachment, a tax return filed by Advance Pipe, stated that its sales "are generated primarily from real construction activity and are not subject to sales tax."

Equitable estoppel is a defense which prevents a party from claiming a right when its action induces reliance by another when that other's

reliance is to its detriment. However, the reliance on the words or conduct by the other party must be reasonable and justifiable. Equitable estoppel may be applied against governmental agencies, but courts will do so with utmost caution and restraint to avoid tying the government's hands by the acts and conduct of its officials. Moreover, when asserting estoppel against a government agency, the injured party must prove that he acted honestly and in good faith reliance on the conduct of the government department.

In the present case, the taxpayers assert that estoppel should be applied because the department refunded sales taxes in 1972 based on the representations of the taxpayers. The Court cannot accept such a theory. The taxpayers were not relying upon the statements made by the department. Indeed, the department was relying upon statements made by Advance Pipe. Therefore, the Court ruled that the department is not estopped from collecting the tax involved because it previously issued a refund to Advance Pipe.

The Court also agreed with the Commission's findings and conclusions that the taxpayers' activities constituted retail sales within the meaning of ss. 77.51(4)(i) and 77.52(1), Wis. Stats., and are therefore subject to the sales tax.

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

Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue (Court of Appeals, District IV, August 9, 1984). The issue in this case is whether *Dimensions*, a publication of the society, is printed advertising material exempt from the sales/use tax under s. 77.54(25), Wis. Stats.

The Department of Revenue determined that Cuna Mutual Insurance Society's publication *Dimensions* is subject to sales and use tax, and the Tax Appeals Commission affirmed the deficiency determination. (See WTB #26 for a summary of the Tax Appeals Commission's decision.) The Circuit Court reversed the Tax Appeals Commission's order and that decision was appealed. (See WTB #31 for a summary of the Circuit Court's decision.)

Cuna Mutual Insurance Society (CUNA) is a life insurance company whose business is to provide insurance for credit unions and their

members. CUNA and its subsidiaries, known collectively as the CUNA Mutual Group, sell their products and services only to credit unions and credit union members. The publication *Dimensions* is produced and paid for by the CUNA Mutual Group and is sent monthly, free of charge, to all credit unions in the United States and 59 countries where companies within the Group do business; 94.3% of the copies are distributed outside Wisconsin. *Dimensions* is a 16 page magazine containing a variety of articles relating to CUNA's products and services, CUNA's relationship to the credit union movement, and CUNA's commitment of selling to and servicing only credit unions and their members. Each issue of *Dimensions* is labeled a CUNA Group publication. CUNA considers *Dimensions* to be part of its advertising program.

The Tax Appeals Commission's finding of fact #15 stated:

"[Cuna's] publication, *Dimensions*, while including what could be characterized as advertising to promote [Cuna's] services and products, does not when taken as a whole constitute advertising or institutional advertising so as to qualify for the exemption under section 77.54(25), Stats."

The Court of Appeals found that this was a conclusion of law rather than a finding of fact. The court has the authority to set aside or modify an agency's action if it finds that the agency has "erroneously interpreted a provision of law".

The Court of Appeals found that the Commission's conclusion (Finding #15) that *Dimensions* is not advertising, and so does not fall within s. 77.54(25), Wis. Stats. (1977), is contradicted by its own findings (Findings #12 and #14). These findings are supported by substantial evidence in the record. Copies of the publication were made part of the record and CUNA's agents testified at the hearing, explaining their companies' use of *Dimensions* to sell products and services. In addition, the Commission made no finding that *Dimensions* had any purpose other than to advertise CUNA's companies.

The Court of Appeals ruled that because the Commission's decision of September 8, 1981 is an erroneous interpretation of the law, and be-

cause it is not supported by the evidence in the record, the Commission's decision must be set aside. The Circuit Court's decision of October 28, 1982 is affirmed.

The department has not appealed this decision.

Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue

(Wisconsin Tax Appeals Commission, May 30, 1984). The sole issue for the determination of the Commission is whether the taxpayer is a person who may file a claim for refund of sales taxes within the meaning of s. 77.59(4), Wis. Stats. 1975-1977.

The department has moved the Commission for an order dismissing the petition for review of the department's denial of the taxpayer's claims for refund, for the reason that Edward Kraemer & Sons, Inc. is not the "person" who paid taxes within the intent and meaning of s. 77.59(4), Wis. Stats.; and, thus, is not entitled to claim any refund thereunder or under any of the other provisions of the General Sales and Use Tax Law. Therefore, the Tax Appeals Commission lacks jurisdiction to review the alleged grievance of the taxpayer.

Edward Kraemer & Sons, Inc. is a Wisconsin corporation engaged in the business of operating quarries, and sand and gravel pits, and in bridge, highway and building construction, and has its principal offices at Plain, Wisconsin. During the period involved, 1971-1982, the taxpayer purchased large amounts of manufacturing and processing equipment and paid sales taxes on it to approximately 150 retailers who in turn reported and remitted the taxes paid to the Wisconsin Department of Revenue.

On February 19, 1976, the taxpayer filed its first claim for refund of such sales taxes, contending that the crushing and loading equipment was exempt from sales tax, as manufacturing machinery. Other claims were subsequently filed covering other portions of the years 1971-1982. On March 17, 1983, the Circuit Court of Dane County affirmed the Commission's earlier decision in an appeal by the taxpayer of a use tax assessment against it wherein the Commission concluded that crushing and loading equipment was exempt from Wisconsin sales and use tax.

The Commission found that the taxpayer was not the "person" required to file, with the department, a sales tax return, reporting the sales tax in question. The taxpayer was not the "person" who paid the sales tax involved to the department within the intent and meaning of s. 77.59(4), Wis. Stats. Thus, the taxpayer has no legal standing to make a claim for refund of sales taxes paid, either on its own behalf or the behalf of the some 150 retailers involved with it. The Commission lacks the authority to act on the claims for refund in question when the legislature has made no provision which grants the taxpayer legal standing to proceed in the matters involved herein.

The taxpayer has appealed this decision to the Circuit Court.

Frisch, Dudek and Slattery, Ltd. vs. Wisconsin Department of Revenue

(Wisconsin Tax Appeals Commission, May 25, 1984). The sole issue in this case is whether or not the taxpayer's charges to its clients for photocopies are subject to sales tax.

During the period under review, January 1, 1975 to October 31, 1979, the taxpayer was a Wisconsin corporation engaged solely in the business of providing legal services. Its common practice was to charge its clients separately for legal services and for disbursements on the same billing document. Examples of disbursements which were listed separately on a bill included photocopies, court reporter fees, airline or other travel charges, transcript costs and corporate minute books. Not every photocopy prepared in connection with performing legal services for a client was billed to that client. The attorney involved in the matter exercised a judgment on whether or not to bill photocopies. As a general guideline, if a copy was made for the benefit of a client, the client was billed for it; if a copy was made for the benefit of the attorney or office, the client was not billed for it. About 50% of photocopies were billed to clients and about 50% were absorbed by the law firm as a cost of doing business.

The cost of billed disbursements for photocopying has ranged from about \$.25 to about \$650. The fee per photocopy during the period under review was \$.20 per copy until 1977, then \$.25 per copy, with some exceptions. For example, if there was a large amount of photocopying for a particular client, occasionally the

rate was reduced or the work was "farmed out" to a less expensive photocopy business. In the latter instances, the taxpayer paid sales tax on the copying charges and passed on the full cost (copying plus sales tax) to the client.

The actual cost per billable copy was determined by a variety of cost elements. These included the cost of purchasing or renting photocopying machines; the rental of the space for the area in which the equipment was housed (2 separate rooms); the cost of equipment maintenance; the salary of an operator who did most of the copying (one person devoted about 80% of her time to copying) and for other people who do copying; and the cost of paper, toner and developing. The law firm paid sales tax when it purchased paper, toner, a copy machine and when it made lease payments on 2 additional copy machines. The taxpayer's financial administrator testified that each billable copy cost the law firm \$.23 for the fiscal year ending October, 1982 and that this figure "is probably reflective of ... (the cost) in the past", i.e., for the period under review.

The taxpayer's financial administrator testified that photocopying was a business cost which the law firm could have recouped in one of 2 ways: structuring it into the fees for legal services or itemizing it as a cost or disbursement. In an effort to be fair with its clients, the law firm chose to bill separately for photocopies to avoid charging someone unfairly for copies which were not made on account of that particular client.

During the period under review, the taxpayer did not charge sales tax on its itemized disbursements charged for photocopying nor did it receive exemption certificates from its clients.

The Commission held that during the period under review, the taxpayer's furnishing its clients with photocopies for a charge constituted the "sale of tangible personal property" within the intent and meaning of s. 77.51(4)(h), Wis. Stats., and is subject to sales tax under s. 77.52, Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Hein/Bakers Equipment Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 5, 1984). The sole issue in this case is whether or not

sinks and pot and pan washers that the taxpayer sold to bakeries engaged in manufacturing are exempt from sales and use tax under s. 77.54(6)(a), Wis. Stats. During the period under review, the taxpayer sold these items without collecting sales tax on their sales. Nor did the taxpayer file use tax returns covering these items.

During the period under review (1977-1980), the taxpayer was a Wisconsin corporation engaged primarily in sales of bakery machinery and equipment to bakers. The taxpayer was not a manufacturer of the items it sold its customers. Rather, it purchased products from manufacturers and resold them to bakeries. Among the items which the corporation sells to bakeries are sinks and pot and pan washers.

A bakery sink is generally a stainless steel receptacle consisting of 2 or 3 oversized compartments, usually large enough to allow a bun pan, which is 18" by 26" in size, to be laid flat in the sink. Commonly pots and pans which have been used in a bakery's operations are put into the sink filled with water.

A pot and pan washer is a stainless steel machine with a high pressure pump, moveable spray arms and a door. Under extreme pressure, heat and water flowage, usually with a special soap chemical, it cleans and sanitizes pots and pans and other items used in the bakery's production processes. It also washes display pans.

The sinks and pot and pan washers cleaned debris off pots and pans after these have been used in the manufacturing process. This occurred both during and after bakeries' manufacturing processes, but not when the baking product was in the pots and pans. A baker's production by machinery of baked products generally begins with the mixing of the ingredients and ends with the removal of the baked products from pots, pans or other similar receptacle and either bagging them or placing them for display. Clean pots and pans and similar items used in manufacturing by a bakery are essential to produce safe, edible, saleable products for human consumption.

The Commission ruled that the bakery sinks and pot and pan washers sold by the taxpayer primarily to bakeries were not used "directly" in

manufacturing by bakeries for the exemption in s. 77.54(6)(a), Wis. Stats. The department's assessment of use tax on the gross receipts from the taxpayer's sales of bakery sinks and pot and pan washers was correct.

The taxpayer has not appealed this decision.

Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 30, 1984). One issue in this case is whether cleaning supplies used during the hours the meat packing plant is not in operation are exempt under s. 77.54(2), Wis. Stats. The second issue is whether cleaning supplies used to clean the floors, walls and ceilings of the manufacturing facilities are exempt under s. 77.54(2), as being consumed or destroyed in the manufacture of tangible personal property in any form destined for sale. The third issue is whether chemicals used in a research department are taxable.

The taxpayer is engaged in the manufacture of meat products at its plant in Madison, Wisconsin. The plant operates 24 hours each day, on three 8-hour shifts. During the audit period, the taxpayer purchased a variety of chemicals and cleaners to clean and sanitize its manufacturing machinery and equipment and the environment of this equipment, including floors, walls and ceilings of production areas. The use of these chemicals to sanitize and maintain clean equipment and areas is required by the U.S. Department of Agriculture (USDA) and is indispensable and essential to the taxpayer's manufacturing operation. Cleaning operations of one type or another were performed at the plant all 24 hours of each working day. None of these chemicals ever touched the meat being processed, as this would have made the meat defective and unmarketable.

The cleaning supplies which were purchased by the company without tax which are at issue in this case are as follows:

- a. "Caustic soda beads", "caustic soda" and "anhydrous beads" were used to sanitize and clean meat deposits from ham and loaf forms. Raw meat which had been cured and processed was stuffed into forms and cooked within those forms to give it shape. The meat was then knocked out of

the forms and sliced to be packaged. Some forms were being used while others were being cleaned 24 hours each day. The forms were washed in a separate room from where the meat was processed. Loading cranes lifted heavy steel baskets full of these forms into tanks with cleaners.

- b. The "heavy duty cleaner" cleaned the form equipment (e.g., the interiors of large mixers, meat holding hoppers and meat curing bins and vats) after the shaping process had been completed, usually between 11:00 p.m. and 6:00 a.m. It was used in raw material areas, near uncooked meat. At the end of a day, a sanitation worker would first use hot water to rinse away the majority of the meat which clings to the equipment's sides. He would then mix the heavy duty cleaner with water in a barrel with a pump attached to a hose, and turn on the pump and use the hose to spray the cleaner over the surfaces to be cleaned. The cleaner was left on a while, then rinsed away.
- c. "General purpose", "experimental 4234 cleaners", and "utility cleaner" were not as harsh as heavy duty cleaner so they were used to clean process equipment with aluminum or other light metals in them. These were also used to clean walls and floors. These cleaners were used, for example, in a processing room where sliced meat was packaged to clean the equipment, walls and floors to keep them clean as part of the USDA requirements of sanitary conditions. These cleaners were used primarily, but not exclusively, between 11:00 p.m. and 6:00 a.m.
- d. "Smokehouse detergents" were used to clean and sanitize stationary smokehouses. Sausage was put into a smokehouse after it had been stuffed into casings or forms. Sawdust was burned and introduced into the room with heat to give the sausages their flavor and appearance and to cook them. In generating smoke and during processing, grease fell to the floor and creosote and tars were produced which accumulated within the smokehouses. These were cleaned on a daily basis generally between 11:00 p.m. and 6:00 a.m. The smokehouses have a

"clean-in-place system" with built in spray.

- e. The "shark cleaner" was used similarly to smokehouse detergents. This cleaner was specifically developed as a low foaming, strong cleanser for recirculating clean-in-place systems. It was sprayed on equipment, eventually ran down a drain, and ran back to a tank where it was recirculated.
- f. "Dry acid cleaner" and "acid salt cleaner" were used to remove mineral deposits from production equipment which was not operating.
- g. "Flo-Mo" and "sterox" were used along with caustic soda as described in "a" above. Caustic soda was a very strong alkali and sterox and flo-mo were wetting agents and detergents added to them. They were used away from the manufacturing area in a separate cleaning area for ham and loaf forms.

None of the chemicals described above were used to clean storage areas, visitor areas (ex., restrooms), offices, the yards or trucks. These chemicals were not used in the research labs, with one exception. In the research department, there is a pilot plant, or miniature meat plant, in which the chemicals are used.

The Commission found that the chemicals and cleaners used in the taxpayer's pilot plant within the research department are subject to the sales/use tax because they do not qualify for exemption under s. 77.54(2), Wis. Stats., as consumed or destroyed or losing its identity in the manufacture of tangible personal property destined for sale.

The Commission also found that the balance of the chemicals and cleaners used in the taxpayer's manufacturing plant are exempt from the tax under s. 77.54(2), Wis. Stats., whether used on the floor, walls or ceilings in the manufacturing area or used to clean the manufacturing machinery or equipment. These chemicals and cleaners also qualify for exemption whether used during the hours the manufacturing takes place or at a time after production has ended.

Neither the department nor the taxpayer has appealed this decision.

Valley Microforms, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 30, 1984). Valley Microforms, Inc.

is a Wisconsin corporation with its principal office located in Green Bay, Wisconsin. During the period involved, the taxpayer was engaged in the business of source document microfilming. Source document microfilming is the creation of an image on reduced film that is processed or changed by changing sequences, index-identified so it can be found at a later time and put into forms that have specific uses in relationship to the requirements of individual customers. The advantages that the corporation's services and product offers to its customers are a secure storage, accessible method of storing and retrieving records and other documents in a greatly reduced area. During the period involved, the corporation's customers included banks, governmental agencies, hospitals and anyone else who had a need for its microfilming services.

The taxpayer's end products are

Aperture Cards: A card with a rectangular opening, specifically prepared for the mounting of insection of microfilm.

Microfilm Jackets: A flat, transparent, plastic carrier with single or multiple film channels made to hold single or multiple microfilm images.

Microfiche: A transparent sheet of film with microimages, arranged in a grid pattern. a heading or number large enough to be read without magnification normally appears at the top of the microfiche in a space reserved for this purpose.

Roll Film: Primarily used to store information on a space-saving basis.

There are seven steps in the taxpayer's source document microfilming operation:

1. Preliminary conference with customer as to goals.
2. Pick up and planning session which includes a detailed control effort to ensure accuracy and verify content, and to repair torn documents.
3. Camera session in which 5 or 6 different cameras and various other apparatuses in each of the taxpayer's plants are used that will respond to the size needs and the ultimate film form required by customer.
4. Quality and accuracy control review.
5. Indexing either by typewriter, keypunch or computer application.

6. Insertion of film into the end product, principally aperture cards and microfilm jackets.
7. Delivery to customer.

The taxpayer used its machines and equipment to record images on film, to process the film, to cut the film, to sort the image frames and to assemble its end product.

During the period September 30, 1976 through September 30, 1979, the taxpayer purchased ex-tax various items of equipment. The taxpayer also purchased ex-tax, during this period, supplies and materials, equipment repair and other items for use in its microfilming operation. Under date of September 10, 1980, the department issued a \$6,494.40 Notice of Sales and Use Tax Deficiency Determination against Valley Microforms, Inc., covering the period September 30, 1976 through September 30, 1979. This assessment levied a sales and use tax on the equipment, materials and supplies purchased by the corporation, ex-tax during the period under review. The issue before the Commission is whether the taxpayer is entitled to the manufacturing exemption from sales and use tax contained in s. 77.54(6)(a), Wis. Stats.

The Commission held that during the period involved, the taxpayer was engaged in manufacturing as that term is defined in s. 77.51(27), Wis. Stats. The taxpayer is entitled to the manufacturing exemption provided for in s. 77.54(6)(a), Wis. Stats., for both the machinery and materials and supplies it purchased during the period hereunder review.

The department has not appealed this decision.

Young Women's Christian Association of Madison, Wisconsin Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 4, 1984). The primary issue in this case is whether or not fees charged to the public for admission to a YWCA swimming pool are taxable as fees for the privilege of having access to or the use of an entertainment or recreational facility. Under date of December 16, 1981, the department sent the taxpayer an assessment of sales and use tax to-

talling \$1,772.94. The primary item to which the department applied the tax in the assessment was gross receipts from admissions to the YWCA's swimming pool facility. The assessment also applied the tax to "unreported merchandise sales" and "capital asset sales".

In 1977, the taxpayer applied for and obtained a Wisconsin sales and use tax seller's permit. On its permit application, the YWCA stated that "Swim Wear" was the merchandise it intended to sell. The YWCA held this seller's permit during the period under review.

The taxpayer is a nonprofit, charitable organization incorporated under the laws of the State of Wisconsin. It conducts a program of activities and services of a spiritual, intellectual and physical character intended and designed to improve, advance and develop the physical, mental and spiritual well-being of all youth and adults desiring to participate in such a program. It is partially supported by gifts, endowments, fund raising events, proceeds and like contributions which are not taxed. In addition, it sells certain goods and services, and any profits are used for charitable purposes.

During the period under review, the YWCA provided regular access to its swimming pool to the members of the public, during periods designated as "open swim", for the payment of a fee which varied between \$1 to \$2. The pool was thus used by members of the public for recreational and athletic purposes, as people could practice swimming or swim for health enrichment. The pool was commonly open for 1 1/2 hours during the noon hour, about the same time in early morning (ex., 6:00 to 7:30 a.m.), and occasionally in the evening. Groups commonly using the pool included downtown public employees (commonly over the noon hour), low income people and children in day care centers (on a contractual basis). Most commonly, about 10 or so people used the pool at one time. If a person came to the pool but was unable to pay the admission fee, the person was allowed to use the facility. Transfers from a scholarship fund were made on the

books of the taxpayer to allow any such person admission to and instruction at the pool. Lifeguards were on duty during these open swim periods. The YWCA also used the pool to provide swimming instructions. A fee was charged for these instructions.

The gross receipts from the public for admission to the swimming pool were insufficient to meet the costs of maintaining the pool and related services. Income sources other than open swim fees were used to maintain the pool.

Employees of the taxpayer who work around the pool include lifeguards, swimming instructors and maintenance personnel. None of these are engaged in a religious vocation. During open swim periods, the staff conversed with swimmers and may have discussed the purposes of the YWCA. However, the staff did not discuss religion with swimmers and there was no direct attempt to involve swimmers in religious discussion. Persons of all religious persuasions were permitted to use the YWCA's swimming facilities.

The YWCA did not collect or remit to the department any sales tax on the gross receipts from public admissions to the pool neither for open swim nor for swimming instructions. The department's assessment does not assert that sales tax should have been collected on gross receipts from swimming instructions.

The Commission held that the fees collected by the YWCA for public access to its swimming pool during open swim periods were admissions paid for the privilege of access to and use of "athletic . . . or recreational . . . places" under s. 77.52(2)(a)2, Wis. Stats., and thus, were subject to sales tax under that statute. The taxpayer has not presented clear and satisfactory evidence to overcome the presumptive correctness of the portions of the department's assessment relating to "unreported merchandise sales" or "capital asset sales".

The taxpayer has not appealed this decision.

TAX RELEASES

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

Income and Franchise Taxes

1. Farmland Preservation Credit - Depreciation Addback for Rented Property
2. Insurance Companies - Amortization of Premiums Paid on Purchase of Municipal Bonds
3. Nonresident Air Carrier Employees' Wages May Be Exempt from Tax

Sales/Use Taxes

1. Interstate Telephone Services Provided by a Telegraph Company
2. Well Drillers' Receipts

INCOME AND FRANCHISE TAXES

1. Farmland Preservation Credit - Depreciation Addback for Rented Property

Background: A person (lessor) who owns and rents out farmland may qualify for the farmland preservation credit if the tenant farms the property and the farmland meets the gross farm profits and other qualifications. The lessor may rent farm buildings, a farm house and farm equipment along with the farmland. Depreciation on the rented farm buildings, farm house and farm equipment will be deducted from the lessor's total rent to compute the farm rental profit or loss. Farm rental profit or loss is reported in one of two ways. If the rent charged is based on crops or livestock produced by the tenant, the income and expenses are reported on federal Form 4835, "Farm Rental Income and Expenses", and the net farm rental profit or loss is carried to federal Schedule E, "Supplemental Income Schedule". If the rent is a flat charge the net profit or loss is computed directly on federal Schedule E.

Section 71.09(11)(a)6, Wis. Stats., allows farmland preservation claimants to deduct "the first \$25,000 of depreciation expenses in respect to the farm" (emphasis added) when computing an individual's or a corporation's farmland household income.

Question: When a person (lessor) rents out a farm that qualifies for farmland preservation credit, is the depreciation on the rented farm buildings, farm house and farm equipment considered depreciation "in respect to the farm" for purposes of computing household income for the farmland preservation credit?

Answer: Yes. The first \$25,000 of depreciation for farm equipment and for improvements located on the farmland, including farm buildings and a farm house, is considered depreciation "in respect to the farm" and allowed as a deduction in computing household income.

2. Insurance Companies - Amortization of Premiums Paid on Purchase of Municipal Bonds

Facts & Questions: Section 71.01(4)(a)4, Wis. Stats. provides that an insurance company must add back to its federal taxable income an amount equal to interest received or accrued during the taxable year to the extent such interest income was used as a deduction in determining the company's federal taxable income (e.g., interest income on municipal bonds).

Wisconsin treats premiums on bonds as part of the purchase price which is recoverable at the time the bonds are redeemed or sold. Such premiums are to be amortized over the life of the bonds for federal tax purposes. An example of the Wisconsin and federal treatment is as follows:

Face Value of 10 Year Municipal Bond \$10,000
Purchase Price (1/83) \$10,500
Selling Price (7/84) \$10,400
Interest Rate 8%

	Wisconsin	Federal
1983 Gross Interest Income	\$ 800	\$ 800
Amortization of Premium		(50)
Net Interest	\$ 800	\$ 750
Schedule M-1 Modification	---	(750)
Net Income Per Return	<u>\$ 800</u>	\$ 0
1984 Gross Interest Income	\$ 400	\$ 400
Amortization of Premium		(25)
Net Interest	\$ 400	\$ 375
Schedule M-1 Modification	---	(370)
Net Income Per Return	<u>\$ 400</u>	\$ 0
Loss on Sale of Bond	\$(100)	\$(25)
Schedule M-1 Modification	---	25
Taxable Gain (Loss)	<u>\$(100)</u>	<u>\$ 0</u>

The decision of the Wisconsin Tax Appeals Commission in American Family Mutual Insurance Co. vs. Department (2/1/84) held that the addback of interest income provided for in s. 71.04(4)(a)4 is to be net of the amortization of premium as provided for in Section 822 of the Internal Revenue Code. (As in the example above, the required modification from federal net income is \$750 for 1983 and \$375 for 1984 to arrive at Wisconsin net income.)

In light of the American Family Mutual Insurance Co. case, will the Department permit amortization of premiums paid on purchase of municipal bonds for all insurance companies or will this decision apply only to mutual insurance companies?

Answer: Section 822 of the Internal Revenue Code provides in part that mutual insurance company taxable income means the gross investment income minus the deductions provided in s. 822(c). This section is unique to mutual insurance companies and does not apply to life insurance companies nor stock companies. Therefore, the American Family Mutual Insurance Co. decision will affect premiums amortized only by mutual insurance companies.

Life insurance companies and stock companies must continue to add to federal taxable income the gross interest income received on municipal bonds. Premiums will continue to be considered as a cost of the bond and recoverable only at the time of sale or redemption.

3. Nonresident Air Carrier Employees' Wages May Be Exempt from Tax

Facts and Question: In the Federal Aviation Safety and Noise Abatement Act of 1979 (P.L. 96-193) Sec. 1112, states that "(a) No part of the compensation paid by an air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State, shall be subject to the income tax laws of any State or subdivision thereof other than the State or subdivision thereof of such employee's residence and the State or subdivision thereof in which such employee earns more than 50 per centum of the compensation paid by the carrier to such employee."

"(b) For the purposes of subsection (a), an employee shall be deemed to have earned 50 per centum of his compensation in any State or subdivision in which his scheduled flight time in such State or subdivision is more than 50 per centum of his total scheduled flight time in the calendar year while so employed."

Under what conditions would an air carrier employee's wages be subject to Wisconsin income tax?

Answer: An air carrier employee would be subject to Wisconsin income tax on the wages earned from an air carrier if:

1. The employee is a Wisconsin resident, or
2. While a nonresident of Wisconsin, more than 50% of the employee's total air carrier wages during the taxable year are earned in Wisconsin.

SALES/USE TAXES

1. Interstate Telephone Services Provided by a Telegraph Company

Facts and Question: Effective May 1, 1982, Chapter 317, Laws of 1981, amended s. 77.52(2)(a)3, Stats., to impose the sales tax on interstate telegraph services by eliminating the word "intrastate" in the imposition language. At the same time a phrase was added to s. 77.52(2)(a)4, the telephone service imposition language, which provides that interstate telephone service is taxable if "that interstate service originates from and is charged to a telephone located in this state".

Most or all of the services provided by a telegraph company are also defined as telephone services in s. 77.52(2)(a)4, Stats., because telephone services now include many types of services other than voice communication.

Are interstate telephone services provided by a telegraph company subject to the sales tax, if these interstate services originate in Wisconsin but are not charged to a telephone located in this state?

Answer: Because telephone services provided by telegraph companies are also included within the definition of telephone services in s. 77.52(2)(a)4, Stats., these interstate services are not taxable unless they originate from and are charged to a telephone located in Wisconsin. This requirement (originating from and charged to a telephone in Wisconsin) also applies to receipts from transmitting in-

terstate messages by wire or satellite which are received in a written or picture form, such as facsimile transmission service, which is another type of taxable telephone service.

The term "telegraph services" in s. 77.52(2)(a)3 refers to "telegraph services" in the traditional sense of that term. Whenever a telegraph company is providing "telephone services" by selling services connected with the transmission of sound, information, data and material, these services are taxable under s. 77.52(2)(a)4. Accordingly, only interstate telephone services originating from and charged to a telephone located in Wisconsin are subject to sales tax. The taxability of a sale depends upon the nature of the transaction and not on the identity of the person rendering the service. To the extent a telegraph company is conducting a telephone service it would be taxed as any other person selling the same service.

2. Well Drillers' Receipts

Facts and Question: Transaction 1 - A well driller enters into a well drilling contract with Person A for \$10,000. The contract includes drilling a well and installing well casing, pipe, fittings and a pump.

Transaction 2 - A well driller replaces a pump for \$500 for Person B.

Transaction 3 - A well driller performs repair service and maintenance work on the water pump in the well for \$100 for Person C.

What is the sales tax status of the well driller's receipts from each of these 3 transactions?

Answer: Transaction 1 - According to s. 77.51(4)(i) and (18), 1983 Wis. Stats., contractors are the consumers of tangible personal property used by them in real property construction activities and the sales/use tax applies on the sale of tangible personal property to them. The well driller is engaged in a real property construction activity when performing this well drilling contract for Person A. The well driller is therefore required to pay sales/use tax on his or her purchases of pumps, well casing, pipes and fittings used to perform the contract. The sale of these items by the supplier to the well driller is considered a retail sale.

There is no sales tax on the \$10,000 paid by Person A to the well driller since there was no retail sale of taxable property or services to Person A.

Transaction 2 - The replacement of a pump in an existing system is a real property construction activity. The well driller should pay sales/use tax on his purchase of the pump because the seller of the pump is considered making a retail sale to the well driller. The \$500 payment by Person B to the well driller is not subject to the sales/use tax because that transaction is not a retail sale of taxable property or services.

Transaction 3 - The \$100 received by the well driller from Person C for the repair, service and maintenance of a water pump is a taxable service under s. 77.52(2)(a)10, 1983 Wis. Stats. Therefore, the \$100 is subject to the sales/use tax as the well driller is making a retail sale of taxable services to Person C in this transaction.