WISCONSIN TAX BULLETIN

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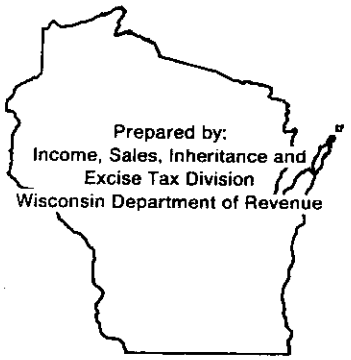

REFUND QUESTIONS

Do you have a question about your income tax or homestead credit refund check? First, wait at least 10 weeks after filing your Form 1, Form 1A or Schedule H. Then, call or write to: Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708, (608) 266-8100.

In your inquiry be sure to include your name and social security number, the name and social security number of your spouse if you are married, your address, the approximate date you filed your return, and your phone number where you can be reached during the day.

EXTENSIONS TO FILE TAX RETURNS FOR INDIVIDUALS

Forms 1 and 1A

Any extension of time granted by the Internal Revenue Service for filing federal returns also extends the time for filing the corresponding Wisconsin individual income tax returns. A copy of the federal extension (Form 4868 for a 4-month extension, or Form 2688 for an additional extension) must be filed with the Wisconsin return. If the Internal Revenue Service for any reason refuses to grant an extension or terminates one previously granted, the Wisconsin income tax return is due on the same date as the federal return.

If you are not applying for a federal extension, but need extra time for a Wisconsin return, a 30-day extension of time to file may be requested on Wisconsin Form I-101, "Application for Extension of Time to File Wisconsin Individual Income Tax Return". The application for extension must be submitted on or before April 15, 1985.

If an individual who has been granted an extension files a return and has a tax due, the amount due is subject to interest at the rate of 12% per year for the extension period (s. 71.10(5)(b), Stats.). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return. A Wisconsin "Declaration Voucher", 1984 Form 1-ES, should be submitted with any payment made. This will ensure that the payment is properly credited to the individual's account. Individuals using a federal extension can obtain a 1984 Form 1-ES from any Department of Revenue office. Individuals applying for a Wisconsin extension may use the 1984 Form 1-ES that is attached to the bottom of the application for the Wisconsin extension.

U.S. citizens who are not in the United States or Puerto Rico on April 15, 1985 are allowed an automatic extension until June 17 to file their returns. These persons do not have to request an extension, but should attach a statement to their returns indicating that they were out of the United States and Puerto Rico on April 15.

Applications for extensions and related correspondence should be sent to:

Wisconsin Department of Revenue
P.O. Box 8903
Madison, Wisconsin 53708

Schedules H (Homestead) and FC (Farmland Preservation Credit)

No extensions of time are available for filing claims for the above credits.

1984 Homestead claims must be filed no later than December 31, 1985. Farmland preservation credit claims for 1984 must be filed no later than 12 months after the farmland owner's 1984 taxable year ends (e.g., December 31, 1985 for calendar year taxpayers).

IN THIS ISSUE

DUE DATES OF INDIVIDUALS' 1985 ESTIMATED TAX PAYMENTS

Estimated income tax payments are tax deposits made during the year to prepay the tax that will be due when the individual's income tax return is filed. If the individual does not make the estimated tax payments when required, a penalty may be assessed.

Every individual, whether a resident of Wisconsin or nonresident, is required to file a 1985 declaration of Wisconsin estimated tax (Form 1-ES)

if the individual expects to have a balance due of $100 or more with his or her 1985 income tax return.

The due date for individuals required to file a 1985 declaration during the first quarter of 1985 is April 15, 1985. Installment payments are also due on June 17, 1985, September 16, 1985 and January 15, 1986 for calendar year taxpayers.

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

CORPORATION 1985 ESTIMATED TAX REQUIREMENTS

A corporation must make installment payments of estimated tax if it can expect to have a tax liability for the year of over $500. 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.

If a required installment is not paid by its due date, an addition to the tax may be assessed on the amount of the underpayment for the period of the underpayment. In determining the underpayment for 1985, the percentage of tax that is required to be prepaid is 90% of the net tax liability shown on the return.

Corporations should keep in mind the change in Wisconsin law (1983 Wisconsin Act 27) concerning exceptions 1 and 2 (s. 71.22(10)(a) and (b), Stats.) to avoid the addition to the tax. Beginning with 1984 taxable years, corporations with Wisconsin net income of $250,000 or more are no longer eligible for these exceptions. These exceptions continue to apply to corporations with less than $250,000 of net income.

CRIMINAL VIOLATIONS OF STATE INCOME TAX LAWS

A Green Lake County man has been ordered to serve two consecutive six month jail terms in the Dane County Jail for criminal violations of the Wisconsin state income tax laws. Gregory J. Garro, of Princeton, Wisconsin, was sentenced on November 21, 1984 in Dane County Circuit Court by Circuit Judge James C. Boll on two counts of failing to file Wisconsin state income tax returns.

Criminal charges were filed against Garro by the Attorney General's office after an investigation by the Intelligence Section of the Wisconsin Department of Revenue. Garro was charged with failing to file state income tax returns for 1979 and 1980. He was found guilty on both counts after a jury trial.

An American Motors employe has been ordered to serve forty days in the Kenosha County Jail and three years probation for criminal violations of the Wisconsin state income tax laws. Dennis W. Harper, formerly of Kenosha, was sentenced on December 13, 1984 in Kenosha County Court by Circuit Judge Bruce Schroeder on three counts of failing to file Wisconsin state income tax returns for 1980, 1981 and 1982. Judge Schroeder sentenced Harper to forty days in jail with work release privileges on Count #1, then stayed execution of the sentence for thirty days pending filing of appeals. He also sentenced Harper to six months in jail with work release privileges on each of Counts #2 and #3, staying execution of the sentences on those counts and ordering Harper to serve three years probation. Under the conditions of probation, Harper must file and pay all income taxes when due and pay all back taxes.

Kenneth R. Edaburn, of Grantsburg, Wisconsin was sentenced on December 14, 1984 in Burnett County Circuit Court by Circuit Judge Warren Winton on three counts of failing to file Wisconsin state income tax returns. Judge Winton ordered Edaburn to pay a $500 fine on each of the three counts plus $539.28 court costs.

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

GIFT TAX RETURNS DUE APRIL 15

All gifts made by Wisconsin residents are taxable, except gifts given to a spouse and gifts of real estate and tangible personal property located outside of Wisconsin. All gifts made by nonresidents of Wisconsin of property (both real estate and tangible personal property) located in Wisconsin are taxable, except gifts given to a spouse.

1984 Wisconsin gift tax reports must be filed if the total value of taxable gifts given by one donor (person giving the gift) to one donee (person receiving the gift) exceeds $3,000. Gift tax reports of the donee and donor for 1984 must be filed by April 15, 1985.

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 gift tax due is figured on Form 6. In determining the 1984 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. Gifts to a spouse are completely exempt from Wisconsin gift tax. A lifetime personal exemption of $10,000 is allowed for gifts to lineal issue (children, grandchildren), lineal ancestors (parents, grandparents), the wife or widow of a son, the husband or widower of a daughter, an adopted or mutually acknowledged child, and a mutually acknowledged parent. There is no lifetime exemption allowed to other donees.

Beginning in 1985 the gift tax exemptions are increased. The annual gift tax exemption is increased from $3,000 to $10,000. The lifetime gift tax exemption for property transferred to lineal issue and lineal ancestors (children, grandchildren, parents, grandparents) etc., is increased from $10,000 to $25,000. For these transfers occurring on or after January 1, 1986, the lifetime exemption will increase to $50,000. Also, gift tax returns for 1985 will not have to be filed unless the total value of all gifts from one donor to one donee exceeds $10,000.

DUE DATES FOR 1984 HOMESTEAD AND FARMLAND PRESERVATION CREDIT CLAIMS

December 31, 1985 is the deadline for filing a 1984 Wisconsin homestead credit claim. December 31, 1985 is also the deadline for filing a 1984 Wisconsin farmland preservation credit claim for calendar year farmland owners. Claimants using other fiscal years must file their farmland preservation credit claim by 12 months after the farmland owner's 1984 taxable year ends.

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

REMINDER! DEPENDENTS WITH UNEARNED INCOME

There is a special filing requirement for dependents with unearned income. Persons who are claimed as a dependent by another taxpayer, and who have unearned income (for example, interest or dividends) of $1000 or more are required to file a Wisconsin income tax return.

If a dependent with unearned income elects to use the standard deduction 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 is limited to $500.

REMINDER! REPORT FEDERAL ADJUSTMENTS AND AMENDED RETURNS

A report must be filed with the Wisconsin Department of Revenue whenever a taxpayer's federal income tax return is adjusted by the Internal Revenue Service (IRS), and the adjustments affect the amount of Wisconsin tax payable. The report must be filed with the department within 90 days after the federal adjustments 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 the amended return, if information in the amended return affects the amount of Wisconsin income reportable or tax payable.

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.

DO YOU HAVE SUGGESTIONS FOR 1985 TAX FORMS?

Each year the department receives helpful suggestions from the public for improving the Wisconsin income tax forms.

Please let us know your ideas for improving Forms 1 (individual long form) and 1A (individual short form), Forms 4 and 5 (corporation franchise/income tax returns), Schedule H (Homestead) or other department forms. Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8910, Madison, WI 53708. Submit your suggestions by July 1, 1985.

EMPLOYERS MUST SUBMIT EXCESS WITHHOLDING EXEMPTION CERTIFICATES

Wisconsin law provides that when an employer is required to furnish a copy of an employe's exemption certificate (federal Form W-4) to the Internal Revenue Service, a copy must also be furnished to the Wisconsin Department of Revenue (s. 71.20(8)(f), Stats.). The copy must be submitted to the Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, Wisconsin 53708, within 15 days after it is filed with the IRS.

For both federal and Wisconsin purposes, employers are required to submit copies of any employe's withholding exemption certificate if:

1. The employe claims more than 14 withholding exemptions, or
2. The employe claims complete exemption from withholding and he or she earns more than $200 per week.

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 March 15, 1985.

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

A. Rules at Legislative Council Rules Clearinghouse

Note: Proposed rule Tax 11.71 regarding automatic data processing has been withdrawn.

B. Rules at Legislative Standing Committees

8.51	Labels-A
8.61	Advertising-A
8.76	Salesperson-A
8.81	Transfer of retail liquor stocks-A
11.002	Permits, application, department determination-NR
11.03	Elementary and secondary schools-A
11.05	Governmental units-A
11.10	Occasional sales-A
11.16	Common or contract carriers-A
11.17	Hospitals, clinics and medical professions-A
11.52	Coin-operated vending machines and amusement devices-A
11.53	Temporary events-A
11.54	Temporary amusement, entertainment, or recreational events or places-A
11.62	Barbers and beauty shop operators-A
11.65	Admissions-A
11.67	Service enterprises-A
11.68	Construction contractors-A
11.69	Financial institutions-A
11.97	"Engaged in business" in Wisconsin-A

C. Rules Approved by Legislative Standing Committees, Not Yet Effective

11.10	Occasional Sales-A

REPORT ON LITIGATION

This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.

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

The following decisions are included:

Individual Income Taxes

Sarah G. Barber
Child care expenses

Henry L. Eickelberg
Stock options

James L. and Gladys A. Landphier
Assignment of income

Thomas J. and Kathleen M. Meronek
Auto expenses

Corporation Franchise/Income Taxes

Jantzen, Inc.
Nexus

Kar Products, Inc.
Nexus

Payco Seeds, Inc.
Nexus

Regency Nursing Home, Inc.
Net business loss carryforward

W.R. Grace & Co.
Allocation of income — separate accounting
Allocation of income — nonapportionable income

Sales/Use Taxes

Adult Christian Education Foundation, Inc.
Retailer, definition

Johnson and Johnson and Asphalt Products Co., Inc.
Construction contractors

Joseph P. Jansen Co., Inc.
Purchases out-of-state

Shopper Advertiser, Inc. and Shopping News, Inc.
Shoppers' guides

Thumb Fun, Inc.
Resale. purchases for

Valley Ready Mixed Concrete Co., Inc.
Manufacturing exemption

Farmland Preservation Credit

Thomas M. Killoran
Income, definition

INDIVIDUAL INCOME TAXES

Sarah G. Barber vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 20, 1984). The sole issue for the Commission to determine is whether a custodial parent may claim an itemized deduction for child care expenses if the non-custodial parent is entitled to claim the child as a personal exemption on his or her income tax return, and if the non-custodial parent provided more than $600.00 per year in child support.

In January, 1977, the taxpayer was granted a judgment of divorce from her husband, Michael Barber, in which she was awarded physical custody of their infant daughter, Magdalene. The divorce judgment required Michael Barber to make child support payments to the taxpayer for his daughter and allowed him to claim her on his income tax return as a dependent child exemption.

During 1978, 1979 and 1980, Michael Barber was current in his child support payments which, each year, exceeded $600.00.

During 1978 through 1980, the taxpayer claimed an itemized deduction on her Wisconsin individual income tax return for child care expenses incurred in caring for Magdalene while she was employed. The taxpayer did not claim her child as a dependent personal exemption on her income tax returns for any of these years. The department disallowed the taxpayer's child care expense deduction for each of the years 1978, 1979 and 1980 since she was not entitled to the exemption for her child.

The Commission concluded that the taxpayer may not deduct child care expenses incurred during the years 1978, 1979 and 1980 when her exhusband, by divorce decree, is entitled to claim this child as a personal exemption and when he has provided at least $600.00 per year for the support of said child.

The taxpayer has appealed this decision to the Circuit Court.

Henry L. Eickelberg vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 19, 1984). The issues for the Commission to determine are (a) whether the taxpayer resided in Kansas from April 1, 1981 to August 15, 1981 and, therefore, did not reside in Wisconsin during that period within the meaning of s. 71.01(1), Wis. Stats.; (b) whether the excess of the fair market value of the stock the taxpayer received, over the amount he paid, upon his exercise of a "non-qualified" stock option on January 2, 1981, was income to him at that time within the meaning of Section 83(a), IRC; and (c) whether the Tax Appeals Commission has jurisdiction to consider the taxpayer's claim that he is entitled to the exception to the imposition of the penalty for the underpayment of estimated tax.

During the period 1964 to 1974, the taxpayer and his wife lived in their home near Watertown, Wisconsin. In 1974, the taxpayer took a position with Sauder Industries, Inc. in Emporia, Kansas, and established his residence there. His wife remained at their home near Watertown and worked in Milwaukee.

On August 31, 1979, the taxpayer relinquished his position as vice president and general manager at Sauder Industries, Inc. and moved back to Wisconsin. He continued to be employed by Sauder Industries, Inc. working out of his home.

On April 1, 1981, the taxpayer was temporarily called back to Emporia by Sauder due to the dismissal of his replacement as vice president and general manager. The taxpayer stayed in Kansas until August 15, 1981, when a new vice president and general manager took over the position. Before going to Kansas, the taxpayer had advised Sauder that he planned on retiring in September 1981. Sauder paid for the taxpayer's semi-furnished apartment in which he stayed while in Kansas. He retained his Wisconsin voting registration, and his Wisconsin driver's license and automobile license plates. After August 15, 1981, the taxpayer returned to his home near Watertown and continued working for

Sauder at least through the end of 1981.

Effective January 2, 1981, the taxpayer exercised his option under the terms of the Alaska Interstate Company Non-Qualified Stock Option to purchase 3,700 shares of Alaska Interstate's stock for $29,365.63. On that date, he received stock in Alaska Interstate with a fair market value of $117,365.63 or $88,000 in excess of the amount paid. At the time the options were granted to the taxpayer by Alaska Interstate, they did not have a readily ascertainable fair market value and he did not pay income tax on the value of the options.

On April 5, 1982, the taxpayer prepared a Wisconsin income tax return, which he subsequently filed with the department, in which he declared that in 1981 he was a full year resident of Wisconsin. He also reported as taxable income the $88,000 excess value of the stock he received over what he paid for it.

On May 18, 1982, the taxpayer was sent a notice of penalty for underpayment of estimated tax in the amount of $368.76. On June 2, 1982, he filed a petition for redetermination, which was denied by the department. The taxpayer did not file a petition for review with the Commission. While his challenge to the penalty was pending, the taxpayer filed an amended 1981 Wisconsin income tax return. In the amended return, he claimed that he was not a resident of Wisconsin from April 1, 1981 to August 15, 1981 and that he sold 1,700 shares of Alaska Interstate on April 13, 1981. He claimed that wages received while working in Kansas and other income received while a resident of Kansas, including the gain on the sale of Alaska Interstate stock sold on April 13, 1981, was not includable in Wisconsin taxable income in 1981.

The Commission held that during the period under review, the taxpayer was domiciled and resided at Rural Route 4, Watertown, Wisconsin. The excess of the fair market value of the stock he received, over the amount he paid, upon his exercise of a "non-qualified" stock option on January 2, 1981, was income to him at that time within the meaning of Section 83(a), IRC. The Tax Appeals Commission does not have jurisdiction to consider the taxpayer's claim that he is entitled to the exception to the imposition of the penalty for the underpayment of estimated tax.

The taxpayer has appealed this decision to the Circuit Court.

James L. and Gladys A. Landphier vs. Wisconsin Department of Revenue (Circuit Court of Dane County, December 13, 1984). The taxpayers petitioned the Court for review of a decision by the Wisconsin Tax Appeals Commission dated February 26, 1982. The Commission upheld a determination by the department that income from property and lifetime services assigned by the Landphiers to a family trust was taxable to them as individuals for the years 1974 through 1976.

James Landphier was employed as a truck driver for Motor Transport Company, while Gladys Landphier worked as a bookkeeper for Virchow Krause and Company and operated a freelance bookkeeping business. On October 31, 1972, James Landphier established a trust. The trust instrument designated Mr. Landphier as the grantor-creator and named Gladys Landphier and Hattie M. Derr (Mrs. Landphier's mother) as trustees and acceptors. Approximately two weeks later, Ms. Derr resigned her position as trustee, and was replaced by James Landphier.

Gladys Landphier conveyed to her husband certain of her real and personal properties, including the use of her lifetime services and all currently earned income. Mr. Landphier conveyed these properties, together with certain of his real and personal properties, the exclusive use of his lifetime services and all currently earned income, to the trust.

The trust instrument did not technically name any beneficiaries, but instead was divided into 100 units of "beneficial interest". The taxpayers' two children each held 35 units, Mr. Landphier held 10 units and Mrs. Landphier held 20 units. Despite this apportionment, the taxpayers exercised virtually unchecked power over the trust.

As executive manager and secretary of the trust, Mr. and Mrs. Landphier received various benefits from the trust in exchange for their administrative services. These benefits included the receipt of consultant's fees and the payment of costs associated with the taxpayers' housing, transportation, educational, travel, health care and insurance expenses. Only the taxpayers, in their capacities as trustees, were authorized to withdraw funds and write checks from the trust's bank account.

The Circuit Court ruled that because the Landphiers did not sufficiently relinquish control of the assets that they transferred to the trust, they are properly taxable for the income from those assets.

The issue of whether the taxpayers are now entitled to deductions on their individual returns for the years 1974 through 1976 and in what amounts is remanded to the Commission for further proceedings.

The taxpayers have not appealed this decision.

Thomas J. and Kathleen M. Meronek vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 19, 1984). The issue for the Commission to determine is whether or not the automobile travel expense by the taxpayer from her home to her place of employment was a proper deduction for Wisconsin income tax purposes.

Kathleen M. Meronek was employed by Reedsburg Memorial Hospital, Reedsburg, Wisconsin since 1976. As part of her employment contract, she was "on call" for emergency medical purposes, and she was subject to call any time of any day. She kept records of the travel expenses from her house to her place of employment at the hospital for "on call" trips only, which averaged three days a week. The taxpayer did not receive any reimbursement for the miles she drove from her home to her place of employment for her "on call" trips.

The taxpayers had an office audit regarding the years under review in 1982 at which they disclosed to the Wisconsin Department of Revenue how they took the travel expenses. The department, by letter dated November 30, 1982, stated: "On the basis of the information which you submitted, no adjustments will be made at this time."

On March 29, 1983, the taxpayers received a letter which requested them to substantiate their mileage deductions for work. This letter was the beginning of a field audit against them. Because of the field audit, Kathleen M. Meronek was denied her deduction for automobile travel expenses

that she claimed from her home to her place of employment for "on call" purposes.

The Commission concluded that Kathleen M. Meronek is not allowed to deduct automobile mileage from her home to her place of employment for "on call" requests by her employer. The department's prior office audit did not bar the department's subsequent field audit assessment.

The taxpayers have not appealed this decision.

CORPORATION FRANCHISE/INCOME TAXES

Jantzen, Inc. vs. Wisconsin Department of Revenue (Wisconsin Department of Revenue, October 19, 1984). During the period 1973 through 1978, Jantzen, Inc. was a Nevada corporation with its principal offices in Portland, Oregon. Jantzen manufactures sportswear and other wearing apparel and sells such apparel to retailers throughout the United States. The issue for the Commission to determine is whether the maintenance and operation of a sales office and showroom in Milwaukee, Wisconsin by the taxpayer or its sales representatives is doing business in Wisconsin within the meaning of s. 71.01(2), Wis. Stats., in excess of the solicitation of orders within the meaning of Section 381(a)(1), United States Code.

Jantzen, Inc. employed two resident sales representatives who had an office in Milwaukee from which they conducted business. The duties of the two sales representatives included calling on retail stores and preparing customer orders for the purchase of Jantzen's products. They had sales areas which included almost all of the State of Wisconsin and the Upper Peninsula of the State of Michigan. Jantzen, Inc. leaves it up to the sales representative whether or not he or she wants to lease an office, with the understanding that the sales representative must pay for the expenses of the office.

The taxpayer's sales representatives sent orders they obtained from retailers in Wisconsin and the Upper Peninsula of Michigan to Portland, Oregon for approval or rejection, and if approved by Jantzen, Inc., were filled by shipment or delivery from points outside Wisconsin.

During the period under review, Jantzen, Inc. employed Stanley Larsen and James G. MacDonald as sales representatives, who shared expenses of an office located at 161 West Wisconsin Avenue in Milwaukee, Wisconsin. Each of them had a showroom in which they displayed samples of sportswear and other wearing apparel sold by the taxpayer. They also employed a part-time secretary to answer the telephone and type orders. The taxpayer charged the cost of the samples against the sales representatives' commissions and the sales representatives sold the samples to customers to recoup the expense. In 1964 the office at 161 West Wisconsin Avenue was leased by "C. Stanley Larsen and Perry M. Bowerman d/b/a Jantzen, Inc." During the period from 1970 through 1978 seven extensions of the lease and two riders were executed by "C. Stanley Larsen d/b/a Jantzen, Inc."

During the period November 1973 through November 1977, the telephone directory for the Milwaukee area contained a listing for Jantzen, Inc., with one number for the Women's Division and one for the Men's Division, and with the 161 West Wisconsin Avenue street address. The name "Jantzen" is listed on the downstairs directory to the building and on the door to the leased office space. The name "Jantzen" appears in the office on one or two posters, on catalogs, and on sample merchandise. The letterhead used by Mr. Larsen and Mr. MacDonald contains Jantzen's registered trademark consisting of the name "Jantzen" and a small figure diving through the "n".

The Commission held that during the period under review, Jantzen, Inc.'s maintenance and operation of a sales office and showroom in Milwaukee, Wisconsin constitutes doing business in Wisconsin within the meaning of s. 71.01(2), Wis. Stats., in excess of the solicitation of orders within the meaning of Section 381(a)(1), United States Code. Therefore, the taxpayer is subject to Wisconsin's franchise tax.

The taxpayer has not appealed this decision.

Kar Products, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 27, 1984). During the period under review, Kar Products, Inc. was a Delaware corporation with principal offices in Des Plaines, Illinois. The taxpayer was in the business of selling maintenance repair items to such businesses as truck fleets, automotive companies, construction companies, and industrial plants. The taxpayer's two catalogues listed in excess of 30,000 separate items, ranging from nuts and bolts, to tools and brushes, to industrial solvents and cleaners, to machines and equipment.

The principal issue in this case is whether the activities of Kar Products' salesmen in Wisconsin constituted doing business within the State of Wisconsin for purposes of the corporate franchise and income tax, or whether they were activities that constituted exempt solicitation of sales under Public Law 86-272. The taxpayer also objects to the imposition of the negligence penalty, the addition to tax for underpayment of estimated tax, and the delinquent interest because Kar Products had reasonable cause not to file returns.

The taxpayer sold its products in approximately 45 of the 48 continental United States. The sales activity was generally carried out through independent contractors or salesmen, who were compensated by commission. Kar Products' Wisconsin sales averaged about three percent of its total sales volume for tax fiscal years ending November 30, 1973 through December 31, 1981.

The taxpayer's distribution network employed district sales managers, zone managers, and outside salesmen. The Wisconsin sales territory included one sales district. Each individual salesman was known as an "area manager" and had a particular sales territory assigned to him by contract. A senior salesman known as a "zone manager" was assigned to oversee several junior salesmen in addition to performing his own sales duties. A district manager was assigned to oversee the entire sales district. The district sales manager hired and fired as well as helped salesmen keep records on sales activity in the district.

During its tax years 1973 through 1981, Kar Products employed an average of nine Wisconsin salesmen. Orders received by the salesmen were shipped out of the Des Plaines,

Illinois headquarters. The salesmen's regular activities included delivering and setting up bins, stocking and labelling bins, picking up and returning merchandise, picking up payments, calling on and collecting delinquent accounts, and issuing credit memos to adjust accounts.

The Commission concluded that during the period under review, Kar Products, Inc. engaged in numerous business activities in the State of Wisconsin that exceeded the intent and meaning of the boundaries of solicitation as defined in Public Law 86-272. The taxpayer's business activities in the State of Wisconsin constituted doing business in Wisconsin within the meaning of s. 71.01(2), Wis. Stats., in excess of the solicitation of orders within the meaning of Section 381(a)(1), United States Code. Therefore, the taxpayer is subject to Wisconsin's franchise tax.

The Commission also concluded that the taxpayer failed to provide reasonable cause to abate the negligence penalty within the intent and meaning of s. 71.11(46), Wis. Stats. Kar Products, Inc. should have filed declarations of estimated franchise tax and proper Wisconsin franchise tax returns at the end of their business year; therefore, the Commission lacks jurisdiction to waive any delinquent interest or filing fees for the years under review.

The taxpayer has appealed this decision to the Circuit Court.

Payco Seeds, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 27, 1984). During the period 1973 through 1979, Payco Seeds, Inc. was a Minnesota corporation with its principal offices in Dassel, Minnesota, and was engaged in the raising and selling of hybrid seed corn. It neither owned any real property nor maintained an office in Wisconsin. The issue for the Commission to determine is whether the business activities of the taxpayer or its sales representatives constituted doing business in Wisconsin, within the meaning of s. 71.01(2), Wis. Stats., in excess of the solicitation of orders within the meaning of Section 381(a)(1), 15 United States Code.

Payco Seeds, Inc. employed two resident sales representatives who conducted business from their own offices in Wisconsin. The duties of the two sales representatives included calling on seed dealers and preparing orders for the purchase of the taxpayer's products. They were not independent contractors. They did not have written contracts of employment with Payco Seeds, Inc., but only oral agreements. They were paid a base salary, plus commissions on their sales and those of their dealers; and they paid their own business expenses (although the taxpayer made some reimbursement).

The sales representatives sent the orders they obtained from seed dealers in Wisconsin to Dassel, Minnesota, for approval or rejection. If approved by the taxpayer, they were filled by shipment or delivery from Dassel, Minnesota.

The sales representatives stocked and sometimes sold the taxpayer's seeds, but were not at risk for its spoilage or other loss. They delivered the taxpayer's seeds to dealers or dealers' customers, and transferred seeds between dealers. They picked up obsolete or damaged seeds for the taxpayer. They helped prepare dealers' "settlement sheets", obtained credit references for the taxpayer, accepted payments, and adjusted and collected accounts for the taxpayer.

The Commission concluded that during the period under review, Payco Seeds, Inc.'s sales of seeds to Wisconsin dealers through Wisconsin salesmen constituted doing business in Wisconsin within the meaning of s. 71.01(2), Wis. Stats., in excess of the solicitation of orders within the meaning of Section 381(a)(1), United States Code; and therefore, the taxpayer is subject to Wisconsin's franchise tax.

The taxpayer has appealed this decision to the Circuit Court.

Regency Nursing Home, Inc., d/b/a Riverside Hills Nursing Home vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 13, 1984). The issue for the Commission to determine is whether income from the taxpayer's sale of its nursing home facility and business is "income attributable to the operation of a trade or business regularly carried on by the taxpayer" within the meaning of s. 71.06, Wis. Stats. 1973.

Regency Nursing Home, Inc. was a Wisconsin corporation with its principal offices at 222 Erie Street, Milwaukee, Wisconsin. The taxpayer was incorporated in 1962, and from 1971 through November 27, 1974 was engaged solely in the business of operating a nursing home. As an integral part of this business, the taxpayer owned the land, building, and related personal property ("the nursing home facility") on and in which the nursing home business operated. The operation of the nursing home business consisted of using the nursing home facility for the care of its patients who lived there and were treated there and caring for and treating these patients.

Based on its lack of business experience in this area, the taxpayer and its affiliates felt that it was not suited to own such a business and operate it successfully. The nursing home facility and business were sold on November 27, 1974 (fiscal 1975) and the realized gain was $289,101.94.

The taxpayer was not in the business of buying and selling nursing home facilities and businesses or tangible personal property.

On its Wisconsin corporate income tax return for the fiscal year ending August 31, 1975, the taxpayer carried forward losses from the previous fiscal years, an aggregate of $193,701.25, and offset these losses (which are net business losses within the meaning of s. 71.06, Wis. Stats. 1974) against the gain realized on the sale of the nursing home facility and business.

After the sale, the taxpayer's assets were distributed to its shareholder between the date of the closing of the sale and May 21, 1976, at which time the taxpayer was dissolved.

The Commission concluded that the income Regency Nursing Home, Inc., d/b/a Riverside Hills Nursing Home, received from the gain on the sale of its nursing home facilities and business on November 27, 1974 was not income attributed to the operations of a trade or business regularly carried on by the taxpayer within the intent and meaning of s. 71.06, Wis. Stats. The taxpayer's gain on the sale of its business assets may not be reduced by the net business loss offset.

This Commission is without authority to review any matter not raised in the taxpayer's petition for redetermination under s. 71.12, Wis. Stats., and therefore lacks jurisdiction to decide the subsidiary issues raised by the

taxpayer in its amended petition for review.

The taxpayer has appealed this decision to the Circuit Court.

W.R. Grace & Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 12, 1985.) The taxpayer is a publicly-owned Connecticut corporation, with its corporate headquarters located in New York, New York. The taxpayer is a multi-national conglomerate with over 70,000 employes worldwide.

The issues raised by the taxpayer in this case are as follows:

A. Is the taxpayer entitled to use separate accounting in determining its Wisconsin taxable income for the year 1975 under the provisions of s. 71.07(2), Wis. Stats.?

B. If the Commission determines that the taxpayer is not entitled to report by the separate accounting method, did the department erroneously include the unrelated dividends and the unrelated Jacques Borel International gain in the taxpayer's apportionable income for the year 1975?

C. If the Commission determines that the taxpayer is subject to apportionment and that the department was correct in including the taxpayer's dividend and capital gain income in the taxpayer's apportionable base, should the taxpayer be allowed factor relief under s. 71.07(5), Wis. Stats., to partially minimize any distortion which may be the result of the department's method?

D. If the Commission determines that the department was correct in including the unrelated dividends and the unrelated foreign gain in the apportionable base, should gains realized before the July 31, 1975 effective date of the amendment to the statute and the pre-1975 earnings included in the dividend income be removed from the tax base to avoid impermissible retroactive taxation?

Grace conducts its domestic operations through 60 unincorporated, separate profit units. The company's domestic operations were merged into the company for convenience purposes, rather than having a lot of small subsidiaries. The company's foreign operations are conducted through foreign subsidiaries, incorporated in the countries in which they are located in order to ensure compliance with each country's laws, rules, customs and practices.

The taxpayer's business operations have developed primarily by acquisitions of companies. Since 1945, the taxpayer has acquired approximately 130 businesses. The taxpayer has sold approximately 60 of its businesses since 1960.

Grace's chemical operations are the mainstay of the company's business, with growing interests in natural resources and in consumer products and services. Its overall operations encompass many diverse fields, including chocolate, appliances, apparel, cattle, fertilizer, racing components, construction products, chemicals, rubber, fabrics, footwear, electric products and seafood. As a result of 25 years of deliberate emphasis upon what the taxpayer regards as its principal area of competence, 82% of its earnings came from chemical products and processes.

The taxpayer's profit units are integrated with other units, if they are related in function. For example, various chemical operations would be functionally organized into one division. The company's domestic operations are organized primarily into five major divisions, as follows: (1) Agricultural Chemicals (fertilizers, animal feed and artificial insemination); (2) Retail Goods (home improvements, sporting goods, western clothing and other clothing); (3) Restaurants; (4) Industrial Chemicals; and (5) Natural Resources.

Several units, such as Ambrosia Chocolate Company ("Ambrosia"), do not fit into one of these larger divisions. Ambrosia is organizationally placed with another chocolate company in the Netherlands, forming a cocoa division in New York.

Each division (or functionally integrated group of profit units) has a regional headquarters in one or more locations. For example, the agricultural chemicals group, consisting of several units, has its headquarters in Memphis, Tennessee. The manager of American Breeders Service ("ABS") reports to the head of the Memphis office. The manager of Ambrosia reports to the head of the cocoa division in New York. The heads of these divisions are responsible for the hiring and firing of the top management person at each profit unit within that division, but the New York office has the final say in the hiring of a top person in a profit unit. The top management person in each division reports to the company's New York home office.

Of the taxpayer's 60 profit units, 33 had some activity within Wisconsin during 1975. These 33 units had total Wisconsin sales of $41,573,000. The taxpayer's total sales in 1975 were $1,759,951,740.

The company has been headed by J. Peter Grace, Jr., grandson of the company's founder, since 1945. He has exercised a strong influence over the taxpayer's operations throughout his tenure.

The taxpayer's basic policy concerning acquisitions is to seek out, analyze and study businesses and their management, which in the opinion of the taxpayer's top management are the type of businesses that the company should be in. In looking at a company for acquisition, the taxpayer's top managers seek one with competent management because they want to bring the company in with its existing management to run its day to day operations. In keeping with this policy, the New York office does not tell the units how to run their business operations, provided the operations continue to run well and to provide a fair and reasonable return to the company's shareholders.

The principal function of the taxpayer's top corporate management is to decide which businesses the company should be in, to channel the shareholders' investment capital into these businesses, and to insure that the individual businesses selected are capably managed.

The managers of the profit units are responsible for the day to day operations of their businesses. Each unit operates independently, handling its own advertising, purchasing and public relations. Each unit is responsible for paying its own expenses and payroll and for keeping its own books and records.

The New York office employs 700 to 800 people. The operations of the New York office are divided into six groups: (1) Corporate Administrative Group which has responsibility for

the office staff, the running of the building and various functions of that kind; (2) Business Economics Group which has the responsibility for conducting studies of the economies of the U. S. and foreign countries, the monetary trends, foreign exchange exposure, and reporting to top management; (3) Office for Operations which has the responsibility of advising the President and the Chairman of how the operations of the various investments are going; (4) Corporate Planning and Development Group which has the responsibility to study and consider future plans for development and growth; (5) Chemical Development Group which is a separate group because the company's chemical interests are one of its largest mainstays; and (6) Financial Services Group which is made up of three units: the treasurer's office under which comes the management of corporate funds, the raising of long term debt for further expansion, the sale of additional securities and anything related to the corporate fund; the tax compliance unit; and the risk coverage or insurance unit. In addition, the taxpayer has a separate division handling its investment function in subsidiaries and noncontrolled companies.

The taxpayer has a number of research and development facilities, both on a company-wide level (the main center is located near Washington, D. C.) and on a division level. At the Washington, D. C. facility, research is conducted, looking towards development of new product lines for the expansion of the company, basically in the chemical field. Another facility near Cambridge, Massachusetts, is the location for research for the industrial chemical group. If research at the research and development facilities comes up with any new product, the taxpayer will take care of obtaining new patents to cover it.

The testing of new products is conducted by the individual units.

Annually, each unit prepares its business plans and budget for the coming year and a projection of where the unit is going over a five-year period. These plans are submitted to the New York office for approval. If approved, the plans become part of the overall program of the taxpayer for the coming year.

As part of the taxpayer's annual budget process, the local managers come to New York and personally present their budget plans to the Board of Directors. The operating unit managers meet regularly (once or twice a year) with the New York corporate staff at the New York office to discuss current problems.

The taxpayer's profit units are expanding all the time, and the New York office provides money for expansion. If any profit unit wants to expand or to go into a new venture, expending money in excess of its own cash generation, the unit manager must submit a "Request for Capital Expenditure" and obtain approval from the company's top management. If the expansion plan is justified and indicates a potential for a fair and expected return, the unit will receive financing.

The New York office receives a monthly report from each profit unit of its sales, net profits and losses, and financial results of its operation. Such reports are used by the taxpayer at its monthly Board of Directors meetings.

If a profit unit is off by 10% in its budget, it is flagged by the New York office immediately. The New York office might request a memorandum to explain why. The central management expects profit units to stay within their budgets, or do better.

If a profit unit is having financial problems, the New York office will analyze the unit and try to determine why it is not doing well. It will develop a course of action such as waiting out a temporary recession, not approving additional funds or selling the business.

The New York office provides services to the profit units by way of market letters relating to business matters, economic reports, bulletins, a quarterly magazine, and a company-wide Telex service.

The New York office administers company-wide health and pension plans; a stock option plan (for management level employes in a very confidential list which is handled solely by a committee of the Board of Directors); an incentive compensation plan for high level managers covering all employes earning over $35,000; and an executive development plan (a program to target top-notch employes for promotion within the taxpayer's organization, usually promotion within divisions). In addition, there is a savings plan for employes in the New York office.

The managers of the units may call upon the New York office for assistance with problems they cannot solve. The New York office has experts in the fields of law, tax, accounting, economics, industrial relations, wage and price controls, insurance, budgeting and finance available to provide such assistance.

The New York staff prepares all federal and state tax returns and other required reports (such as Security and Exchange Commission reports) on behalf of the individual units. Local returns are prepared by the individual units.

The taxpayer's New York office provides economic studies including studies of the market and product lines for the use of the profit units.

The entire operation of the taxpayer, including profit units and subsidiaries, is covered by umbrella insurance policies which are developed on a worldwide basis in order to get the best coverage for all the risks inherent in the businesses in which the taxpayer is engaged and to get the best rates.

On a division-wide basis, transportation systems are maintained for hauling the company's products, e.g. the South Carolina Distribution Center hauls the products of the chemical group throughout the United States.

The taxpayer's logo and the name "Grace" appears on its tank cars, truck cabs and trailers, as well as on some other facilities. The company has no uniform brand name used by its profit units. The taxpayer has no company-wide credit card system or credit program. It does not have uniform packaging.

The New York office handles short term investment of surplus funds. The company's vice president and treasurer have the duty to plan and see that the company has adequate funds; to evaluate financial markets; and, in long term borrowings, to borrow when the interest rates are advantageous. The treasurer has responsibility for borrowing funds for working capital and furnishing approved funds to the profit units.

After each profit unit collects its revenues and pays its expenses, its ex-

cess cash is channeled into the New York office. The funds so received are pooled into New York bank accounts. Each unit's surplus funds belong to the shareholders' funds and not the unit itself.

If a decision is made to sell a particular business, the proceeds from the sale are pooled with the company's other receipts.

The company's surplus funds are managed in New York and may be used at the discretion of the Board of Directors and top management for investment or other purposes.

The company has a uniform system of accounting throughout its operations.

The taxpayer does not have substantial intra-company sales. Its domestic intra-company sales are 2.03% of all sales. Its inter-company sales with foreign subsidiaries are 6.02% of its sales. All such sales are conducted on an arm's length basis.

The taxpayer attempts to integrate its new units into existing divisions based on functions. For example, it has purchased a producer of vinyl office supplies and a producer of vinyl handbags and footwear which use chemicals also produced by the company.

Grace regards its growing investment in the development of energy resources as a logical extension of its chemical activities. The petroleum and coal industries are closely related to the chemical industry as the sources of feedstocks for petrochemical manufacturing.

The company has an advantage in terms of raw materials required to produce both nitrogen and phosphate fertilizers. Grace owns sources of natural gas used to produce ammonia for nitrogen fertilizers, and its own sources of phosphate rock required for production of phosphoric acid. The taxpayer operates four major ammonia plants.

The taxpayer's vermiculite mining operations in Montana produce raw ore which is processed to produce five grades of vermiculite. Vermiculite is a mineral that is widely used as an insulating material. The company also manufactures and markets insulation materials, including vermiculite attic fill insulation.

The company's interests include major plants for the manufacture of polyvinyl chioride resin and phthalic anhydride. These chemicals are used in the production of the company's other chemical specialties.

To keep abreast of energy and feedstock development on a day to day basis, Grace has established a task force of operating and staff managements to gather and consolidate energy and feedstock data from all units of the company and to make specific recommendations for prudent conservation and efficient use of available supplies.

The company's foreign operations are conducted primarily through subsidiaries. Each subsidiary has its own Board of Directors, officers and management. Each subsidiary is responsible for its day to day operations. Each subsidiary is responsible for its entire production process, including (1) the quantity, size, style and esthetics of its own products; (2) marketing of its own products; (3) price setting for its own products; (4) preparation of its own books and records; (5) handling of its own tax reporting and filing of its own tax returns; (6) advertising; hiring, firing and setting wages for its own people; (7) pension plans; (8) obtaining local financing; and (9) development of its own customers and sales force. The foreign subsidiaries have their own physical facilities (plants, warehouses, distribution centers and offices).

The company's foreign subsidiaries submit their annual budgets to the home office, as well as monthly Telex reports, using the same procedures as the domestic profit units.

The company's foreign subsidiaries, as dividend payors, have no connection to the company's Wisconsin operations.

In 1975, Grace derived a capital gain of $34,629,666 on the sale of a foreign subsidiary, Jacques Borel International ("JBI"). The taxpayer owned a little over 60% of the JBI stock prior to the sale. Jacques Borel was the chief executive officer of JBI and its dominant leader. The company had a couple of people out of its Paris office serving on the JBI Board of Directors. JBI was required to inform the company of any major capital commitments contemplated and to submit a "Request for Capital Appropriation" as required of the 60 domestic profit centers.

At all times relevant, JBI shares were traded on the Paris Stock Exchange; its books and records were kept in Paris; and its business was a continually expanding restaurant, hotel, bar and institutional feeding operation. By 1967, JBI was overextended and in serious financial trouble. After discussions with Mr. Borel, Grace agreed to purchase a substantial block of newly issued JBI common stock so that JBI could have the resources to continue its expansion and avoid bankruptcy. Grace acquired 64.77% of JBI's common stock for an aggregate investment of $11,017,000. With these resources, JBI continued its expansion. In May 1975, Grace owned 620,516 common shares. Those shares were held at the Paris, France office of Morgan Guaranty Bank. JBI's business continued to expand during the period of the Grace investment. In May 1975, Grace reduced its equity in JBI so that JBI could broaden its French stockholder base to facilitate financing of a planned expansion of its hotel and food service businesses in Europe and elsewhere. At a closing on May 26 and 27, 1975 at Zurich, Switzerland, Grace sold 422,672 common shares of JBI to Fondation Jacques Borel for a $52,888,224 net amount realized.

The net amount realized by Grace on the sale of its JBI shares was reported to the U. S. Internal Revenue Service as follows:

Internal Revenue Code s. 1248 "dividends"	$ 8,983,829
Net Sales Price	43,804,395
Basis	9,174,729
Gain	$ 34,629,666
Capital Loss	(12,839,565)
Disputed Net Gain	$ 21,790,101

During 1975, JBI was a discrete business enterprise, not related to the taxpayer's activities in Wisconsin.

In 1975, Grace received $4,924,698 as a gain on the sale of stock in Tanara S.p.A., an Italian corporation which produced ice cream. This amount was reported as an Internal Revenue Code s. 1248 dividend. During 1975, Tanara was a discrete business enterprise, not related to the taxpayer's activities in Wisconsin.

In addition to dividends received by the taxpayer from its foreign subsidi-

aries and gains received for sales of subsidiaries, in 1975 Grace received dividend income from a number of corporations in which the taxpayer had less than a controlling interest. There was no relationship between the business activities of these dividend payors and the taxpayer's activities in Wisconsin.

In total, in 1975 Grace received dividend and gain income as follows:

JBI Net Gain	$21,790,101
Foreign Dividends	43,569,307
Domestic Dividends	23,774,332
	$89,133,740

The Commission concluded that the taxpayer's business within Wisconsin is an integral part of a unitary business. Therefore, pursuant to Wis. Stats., s. 71.07(2), the taxpayer must report for Wisconsin purposes its 1975 income by the apportionment method. The taxpayer is not entitled to report its 1975 Wisconsin income by the separate accounting method.

The foreign subsidiary dividend payors (including Tanara S.p.A. and Jacques Borel International) and the corporations, not controlled by the taxpayer, paying dividend income to the taxpayer were discrete business enterprises having nothing to do with the taxpayer's activities in Wisconsin, and there was no rational relationship between the dividends and gain attributed by the department to Wisconsin and the taxpayer's Wisconsin operations. Therefore, the department's inclusion of such income in the taxpayer's Wisconsin apportionable income for 1975 was improper and erroneous.

Because the Commission's determinations as to the first two issues raised by the taxpayer are dispositive of the appeal, the Commission does not reach the third and fourth issues.

The department has appealed this decision to Circuit Court. The taxpayer has also appealed this decision.

SALES/USE TAXES

Adult Christian Education Foundation, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 16, 1984). The issue for the Commission to determine is whether or not the sale of tangible personal property by the taxpayer to non-exempt groups and individuals is a taxable sale during the period under review.

The Adult Christian Education Foundation, Inc. is a non-profit Wisconsin corporation with the primary purpose of advancement of adult biblical study and other adult Christian education programs that will enhance the ministry of the local Christian congregations. The Yahara Center is the international headquarters of the Adult Christian Education Foundation. The purpose of the Center is to house programs which the Foundation sponsors.

The Center allows business and private groups to use its facilities when the facilities are not being used for Foundation purposes. Daily maid and meal services are provided to the guests for a fee. The Center holds a seller's permit, a motel license and restaurant license.

The Center staff does not take a vow of poverty nor are they bound by the rules of Saint Benedict or any similar religious rule. The ministers at the Center do not normally interact with the guests. The sale of tangible personal property to non-exempt groups and individuals is an integral part of the taxpayer's fundraising activities and is not a part of their ministry.

The Commission concluded that during the period under review, the taxpayer was a retailer as defined by s. 77.51(7), Wis. Stats., notwithstanding the decision of *Kollasch vs. Adamany*, 104 Wis. 2d 552, (1981). The taxpayer was a seller as defined by s. 77.51(9), Wis. Stats., notwithstanding the decision in *Kollasch vs. Adamany*, 104 Wis. 2d 552, (1981). The taxpayer's sale of tangible personal property to non-exempt groups and individuals was taxable under s. 77.52(1), Wis. Stats.

The taxpayer has not appealed this decision.

Wisconsin Department of Revenue vs. Johnson and Johnson, a partnership, (d/b/a Asphalt Products Co.) and Asphalt Products Co., Inc. (Circuit Court of Dane County, October 16, 1984). This is an action to review a Wisconsin Tax Appeals Commission decision of December 1, 1983, in which it was held that sales and use taxes would not be assessed against the Asphalt Co. when it sold and delivered emulsified asphalt products to various businesses and governmental entities.

The taxpayer operated an asphalt company in which it bought and prepared raw materials. The company 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.

The department does not allege any sales or use tax when the taxpayer merely pumped the product into the purchaser's tank or truck. Rather, the crux of this petition for judicial review is with the spraying and application of the product to the road surface. The department alleges that this service constituted an improvement to real property subjecting the taxpayer to liability for a sales and use tax.

The Circuit Court affirmed the Tax Appeals Commission's finding that the taxpayer is not a contractor under s. 77.51(18), Wis. Stats. The Court remanded the case to the Commission with directions to present evidence that the taxpayer's use of the asphalt distributor did not constitute a repair or improvement to real property.

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

Joseph P. Jansen Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 11, 1984). The only issue in this case is whether or not the department erred in assessing use tax on purchases of construction materials from out-of-state vendors where the vendor has a Wisconsin seller's permit or where the vendor has subjected itself or is subject to the jurisdiction of Wisconsin for sales tax purposes.

The department's audit method was to examine the taxpayer's invoices for purchases of construction materials. If the invoice had a separate designation for sales tax, the purchase was not subject to use tax. However, if there was no sales tax shown on the invoice, then the taxpayer was assessed use tax on the purchase.

The department's auditor made no further search to determine whether the transactions with no sales tax

shown were reported by the sellers on their sales tax returns. On sales tax returns sellers report a total sales figure, not detailing individual sales transactions. There is no way the department could determine whether sales tax was remitted on a particular sale.

The department routinely assesses use tax to the purchaser when purchases are made from out-of-state suppliers. No evidence was presented by the taxpayer showing that the taxpayer paid either sales or use tax on purchases made.

The Commission concluded that the taxpayer made purchases from retailers which were stored, used or consumed in this state and the taxpayer was subject to use tax on these purchases. The taxpayer presented no evidence that its use tax liability has been extinguished either by showing that the tax has already been paid to this state or by producing receipts with the tax separately stated from the vendors. The taxpayer presented no evidence to show that the department had an affirmative duty to collect the sales tax from the out-of-state vendors holding either a seller's permit or a Certificate of Authority in Wisconsin. The department acted properly under ss. 77.53(1) and (2), Wis. Stats., in assessing use tax against the taxpayer.

The taxpayer has not appealed this decision.

Shopper Advertiser, Inc., d/b/a Shopper Advertiser - Walworth County, and Shopping News, Inc., d/b/a Greater Beloit Shopping News vs. Wisconsin Department of Revenue (Court of Appeals, District IV, December 27, 1984). Shopper Advertiser, Inc. and Shopping News, Inc., which the Wisconsin Tax Appeals Commission found were properly assessed the sales and use tax under Chapter 77, Wis. Stats. (1975), appeal a Circuit Court judgment which affirmed the Commission's determination. They contend that they are exempt from the tax by statute, and that if not exempt they are denied equal protection under the U.S. Constitution. The Circuit Court concluded that they do not qualify for the statutory exemptions and that no constitutional violation exists. (See WTB #25 for a summary of the Circuit Court's decision.)

Shopper Advertiser prints and distributes a publication titled "Shopper Advertiser—Walworth County". Shopper Advertiser also prints "Greater Beloit Shopping News" but ships this publication to Shopping News in Beloit where Shopping News distributes it. A sales tax was assessed by the department against Shopper Advertiser for the transfer of the "Greater Beloit Shopping News" to Shopping News. A use tax was assessed against both Shopper Advertiser and Shopping News for the use of materials purchased and used in the process of publishing the publications.

Shopper Advertiser and Shopping News contend that they publish newspapers and periodicals. Section 77.54(15), Wis. Stats. (1975), exempts from the sales tax the gross receipts from the sale and storage, use or other consumption of newspapers and periodicals regularly issued at average intervals not exceeding three months. The Department of Revenue which enforces Chapter 77 has administratively defined "newspaper" and "periodical".

The Court of Appeals ruled that the Tax Appeals Commission could reasonably conclude that the publications are not newspapers or periodicals within the administrative definitions. The "Shopper Advertiser—Walworth County", consisting entirely of advertising, contains no news or information of literary character and is not a newspaper or periodical. The "Greater Beloit Shopping News" does publish some articles; but it is neither a newspaper, as it is distributed essentially for the dissemination of advertising and not news, nor a periodical, as it contains articles on topics which bear no relationship to prior or subsequent issues in continuity of literary character or in similarity of subject matter.

The Shopper Advertiser and Shopping News contend that their distribution without charge of the publications to the public is a "sale" which exempts them from the sales and use tax under the exemption provided by s. 77.54(2), Wis. Stats. (1975). The Court of Appeals concluded that the section does not exempt Shopper Advertiser and Shopping News from taxation. The sales tax is imposed on "gross receipts", which means the total amount of the sale valued in money whether received in money or otherwise. Because the distribution of the publications is free and therefore not for an amount "received" under s. 77.51(11)(a), no gross receipts exist. As a result, the property sold, used, or consumed in the production of the publications is not property "destined for sale" under s. 77.54(2), and the exemption under s. 77.54(2) is not applicable.

Shopper Advertiser and Shopping News contend that to tax them but not publishers of newspapers and periodicals under s. 77.54(15) denies them equal protection of the laws guaranteed by the 14th amendment of the U.S. Constitution. The Court of Appeals agreed with the Circuit Court that no constitutional violation exists.

The taxpayers have not appealed this decision.

Thumb Fun, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 31, 1984). The issues for the Commission to determine are as follows: (a) Is the taxpayer exempt from the sales and use taxes on its purchases of various amusement rides and their repair because they are purchased for resale under s. 77.51(4)(j), Wis. Stats.? (b) Is the taxpayer exempt from the sales and use taxes on its purchases of tickets for use with its skee ball machine because they are purchased for resale under s. 77.51(4)(j), Wis. Stats.? (c) Is the taxpayer exempt from the sales and use taxes on its purchases of tickets which customers purchase for admissions to rides because they are purchased for resale under s. 77.51(4)(j), Wis. Stats.?

In 1972 the taxpayer opened an amusement park which was permanently located in Door County, Wisconsin. Thumb Fun, Inc. leased the land for its amusement park. The amusement park had a haunted house, miniature golf course, go-karts, bumper cars, bumper boats, skee ball machines, a tilt-a-whirl, castle rides, kiddie car rides, a few skill game booths, a food stand, an antique carousel, and an arcade with electronic games. The taxpayer did not charge an admission to enter the amusement park, but rather charged an admission fee for each ride or event.

The taxpayer also operated a skee ball machine. This coin-operated machine dispensed tickets to the customer. The number of tickets dis-

pensed per game depended on the skill of the customer; however, at least one ticket was received by the customer per game. These tickets could be redeemed by the customer for a variety of prizes.

Thumb Fun, Inc. purchased the skee ball tickets, tickets for rides, costumes for the haunted house, skee ball machines, golf clubs and balls, castle ride, go-karts, and repairs for the various rides without paying any sales or use taxes.

The Commission concluded that the taxpayer is not exempt from the sales and use taxes on its purchases of various amusement machines and rides and their repair. The taxpayer is not exempt from the sales and use taxes on its purchases of tickets for use with its skee ball machine. The taxpayer is not exempt from the sales and use taxes on its purchases of tickets which customers purchase for admissions to rides. They were not purchased for resale under s. 77.51(4)(j), Wis. Stats.

The taxpayer has not appealed this decision.

Valley Ready Mixed Concrete Co., Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 13, 1984). This is a timely filed appeal protesting the imposition of a sales and use tax by the department on concrete mixing units, trucks and replacement parts purchased by Valley Ready Mixed Concrete Co., Inc. during the period from October 1, 1975 through September 30, 1979.

The taxpayer contends that the mobile equipment it purchased is exempt from sales and use tax under s. 77.54(6)(a), Wis. Stats., as manufacturing equipment. The department, while conceding that the making of concrete in a fixed location is an exempt manufacturing process, contends that the taxpayer's mobile concrete-making operation is not entitled to the same tax exempt status.

The taxpayer's concrete-making process begins at its plants in Appleton and Kimberly where water, sand, gravel and cement are transported or weighed out through bins directly into the taxpayer's ready mix trucks, standing beneath a hopper. The water, sand, gravel and cement are then mixed in the ready mix trucks until it becomes concrete.

After loading, each truck is checked for quality and then dispatched to the taxpayer's customer at the job site, where the concrete is used for sidewalks, driveways, foundations and floors. The taxpayer also maintains quality control by use of its own lab and lab technician.

After the concrete is made, the mixing unit is slowed to an agitator speed to preserve it in a usable, ready state until delivery, which in most instances occurs within one hour. The finished product (concrete) cannot be stored in the ready mix trucks, because it will ultimately harden and become unusable.

The ready mix trucks used by the taxpayer are purchased through dealers and are used only for making concrete. Both the mixing unit and the truck chassis are driven by the truck's engine.

The issue before the Commission is whether the concrete mixing units, trucks and replacement parts involved were exclusively and directly used by a manufacturer in manufacturing tangible personal property and, thus, exempt from sales and use tax under the provisions of s. 77.54(6)(a), Wis. Stats.

The Commission concluded that during the period involved, the taxpayer was engaged in the manufacture of concrete. The taxpayer, using the concrete mixing units, trucks and replacement parts, produced, by machinery, a new article from existing materials with a different form, use and name by a process popularly regarded as manufacturing. The taxpayer's purchases of concrete mixing units, trucks and replacement parts are exempt from sales and use tax within the intent and meaning of ss. 77.51(27) and 77.54(6)(a), Wis. Stats.

The department has appealed this decision to the Circuit Court.

FARMLAND PRESERVATION CREDIT

Thomas M. Killoran vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 19, 1984). The only issue before the Commission is whether or not the claimant is entitled to a reduction of his income, for purposes of the farmland preservation credit, of $7,500 in each year under review arising from the income earned by Mrs. Killoran in her tax preparation business. The reduction is claimed under s. 71.09(11)(a)6a, 1979-80 Wis. Stats., which provides that income for an individual means the same as it means under the homestead credit law, "less the first $7,500 of nonfarm wages, tips and salaries earned by the household".

The claimant's wife is an H&R Block franchisee and earned substantial income in this endeavor in 1980 and 1981. Her income exceeded $7,500 in each year.

During 1980 and 1981, the claimant worked in his wife's H&R Block tax office preparing tax returns, working beside other tax preparers doing the same type of work. In exchange for his work, the claimant did not receive wages and salaries which were subject to withholding as did other tax preparers. Instead, he received compensation in the form of checks from his wife's business account to pay such farm expenses as real estate taxes, co-op feed bills, and laborers' wages. These amounts were referred to as "commissions". They were not subject to withholding nor withheld upon. They exceeded $7,500 in each year. They did not relate in amount to the amount of tax preparation work he did, nor to the number of hours he worked. The claimant did not know the exact amount he received in either year. He did not receive a W-2 form covering this compensation nor did he consider them "wages as such".

The Commission held that the compensation which the claimant received for his labor in his wife's H&R Block tax business and which his wife received and reported on federal Schedule C are not "nonfarm wages, tips and salaries" under s. 71.09(11)(a)6a, 1979-80 Wis. Stats. The compensation does not qualify, therefore, for the $7,500 reduction in "income" in computing the claimant's 1980 and 1981 Wisconsin farmland preservation credit. The compensation the claimant received does not so qualify primarily because he and his wife's business did not have a standard or common employer-employe relationship and because the amount of compensation he received had no relationship to the amount or hours of work performed for the business.

The claimant has not appealed this decision.

TAX RELEASES

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

Individual Income Taxes

1. Taxation of Partnership Income for Wisconsin Income Tax Purposes

Corporation Franchise/Income Taxes

1. Deductibility of Annual License Fee Imposed on Light, Heat and Power Companies

Sales/Use Taxes

1. Sales of Photocopies by Lawyers
2. Optional Call Detail Charges by Telephone Companies

Homestead and Farmland Preservation Credits

1. Depreciation Add-Back for (S) Corporation Shareholders
2. Farmland Credit — Two Township Proration

INDIVIDUAL INCOME TAXES

1. Taxation of Partnership Income For Wisconsin Income Tax Purposes

Facts and Question: A partnership is an association of two or more persons to carry on as co-owners a business for profit. In a general partnership, all partners have equal rights in the management of the partnership business and may act on behalf of the partnership, and each partner can be held individually liable for obligations of the partnership. In a limited partnership, the activities of certain partners are limited, and the liabilities of these partners are limited to a stated amount. Wisconsin law requires one of the partners of a limited partnership to be a general partner with unlimited liability.

Under Internal Revenue Code Section 706(a), a partner must report his or her distributive share of partnership items or guaranteed payments in the partner's taxable year in which the partnership year ends.

How is partnership income taxed to residents and nonresidents of Wisconsin? (A Tax Release on how partnership income is taxed to part-year residents will be issued in a future Wisconsin Tax Bulletin.)

Answer:

A. Residents of Wisconsin

All partnership income of Wisconsin residents is taxable regardless of the situs of the partnership or the nature of the income from the partnership, such as business income, service income or professional income, unless otherwise exempt (such as U. S. government bond interest). This applies both to general partners and to limited partners. Section 71.07(1), Wis. Stats., provides that all income or loss of resident individuals follows the residence of the individual.

B. Nonresidents of Wisconsin

(1) General Partners

That portion of the partnership income attributable to a business located in Wisconsin, services performed in Wisconsin, or rental property located in Wisconsin is taxable to nonresidents of Wisconsin. The income to be reported is based on the activities of the partnership and is not dependent upon whether or not the individual partner conducts business or performs services in Wisconsin. Section 71.07(1), Wis. Stats., provides that income or loss of nonresident individuals follows the situs of the business from which derived. Income from personal services of nonresidents, including income from professions, follows the situs of the services.

Example 1. Two nonresident individuals are the general partners of a partnership whose entire income is attributable to a business located in Wisconsin. Both nonresidents are taxed on their entire share of the partnership income for Wisconsin income tax purposes.

Example 2. A nonresident is one of two equal general partners of a partnership whose income is attributable one-half to a business located in Wisconsin and one-half to a business located in Illinois. The Wisconsin resident partner operates the business located in Wisconsin. The nonresident partner operates the business located in Illinois. The Wisconsin resident is taxed on one-half of the total partnership income for Wisconsin income tax purposes. The nonresident is taxed on his or her one-half of the one-half of the partnership income attributable to the business located in Wisconsin.

Example 3. A nonresident is a general partner, with a one-third interest in partnership profits, of a Certified Public Accounting Firm whose income is attributable one-fourth to professional services performed in Wisconsin and three-fourths to professional services performed in other states. The nonresident partner does not personally perform any services in Wisconsin. The nonresident partner is taxed on his or her one-third of the one-fourth of the partnership income attributable to professional services performed in Wisconsin by the partnership.

(2) Limited Partners

A nonresident limited partner in a partnership engaged in business in Wisconsin is not taxed on any income distributable to the partner from the partnership, provided that the partner is precluded from taking any part in the management of the business or affairs of the partnership and is not authorized to act for or bind the partnership in any way. If the partner is limited in this manner, the distribution of income represents income which follows the residence of the individual. Section 71.07(1), Wis. Stats., provides that income or loss of nonresident individuals from intangible personal property follows the residence of the

individual. In the case *Sweitzer v. Revenue*, 65 Wis. 2d 235, 1974, the Wisconsin Supreme Court ruled that a limited partnership interest is analogous to the interest held by a corporate shareholder, resulting in intangible income which follows the residence of the recipient. Thus, a nonresident of Wisconsin is generally not taxed on income from a limited partnership.

However, even if an individual is defined as a "limited partner", if that individual may take part in any of the management of the business or affairs of the limited partnership, or is authorized to act for or bind the partnership in any way, the individual is treated the same as a nonresident general partner. The individual is taxed on his or her proportionate share of the partnership's Wisconsin income.

Example. A nonresident is a limited partner of a real estate partnership located in Wisconsin. Although the nonresident's liability is limited in the partnership agreement, the nonresident is authorized to participate in the buying and selling of real estate for the partnership. This individual is treated the same as a nonresident general partner and is taxed on his or her proportionate share of the partnership's Wisconsin income.

CORPORATION FRANCHISE/INCOME TAXES

1. Deductibility of Annual License Fee Imposed on Light, Heat and Power Companies

Facts: Section 76.28 of the Wisconsin Statutes (created by 1983 Wisconsin Act 27) imposes an annual license fee on light, heat and power companies. The Department of Revenue must assess this fee on or before May 1, 1985 and every May 1 thereafter. The fee is measured by the company's gross revenue of the preceding year. Payment of the May 1 assessment constitutes a license to carry on business for the 12-month period beginning on the preceding January 1.

On or before May 10, 1985, each light, heat and power company must pay a license fee for 1985 (s. 76.28(3)(a), Wis. Stats.). Beginning with the 1985 calendar year, a portion of the license fees must be paid on an estimated basis. Payment of 45% of the total estimated liability of the May 1, 1986 assessment is due May 10, 1985 (s. 76.28(3)(b), Wis. Stats.). Thereafter, payment of 45% of the estimated assessment for the succeeding calendar year is due on or before May 10 of the current year.

These estimated payments are considered a deposit. No liability for the license fee exists unless the company operates in the calendar year following the year in which the estimated payment is made. For example, if the company terminates operations on December 31, 1985, the estimated payment made May 10, 1985 is refundable. However, if the company terminates operations on January 1, 1986, a license fee based upon the total revenues for 1985 is due in 1986.

Question 1: Are the license fees deductible on a Wisconsin franchise/income tax return?

Answer 1: Yes, the license fees are deductible. Section 71.04(3), Wis. Stats., provides that the license fee imposed under s. 76.28, Wis. Stats., is deductible from gross income as "taxes".

Question 2: When is the license fee for 1985, which is due and paid by May 10, 1985, deductible?

Answer 2: The amount due and paid for 1985 is deductible on a 1985 Wisconsin franchise/income tax return.

Question 3: When is the estimated payment for 1986, which is due May 10, 1985, deductible?

Answer 3: Since there is no liability for the 1986 license fee unless the company operates in 1986, the estimated payment made in 1985 is *not* deductible on a 1985 Wisconsin franchise/income tax return. This applies to both cash basis and accrual basis taxpayers. The actual fee assessed and paid in 1986 (including the estimated payment made in 1985) is deductible on a 1986 Wisconsin franchise/income tax return.

SALES/USE TAXES

1. Sales of Photocopies by Lawyers

Facts and Questions: The gross receipts from providing legal services are not subject to the sales and use tax. However, a law firm may charge for legal services and then separately charge its clients for photocopies along with other itemized charges.

The *Frisch, Dudek and Slattery v. Wisconsin Department of Revenue* decision of the Wisconsin Tax Appeals Commission, dated May 25, 1984, describes how the attorney involved in the legal matter exercised a judgment as to whether or not to bill clients for photocopies. If a copy was made for the benefit of the 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. In its decision the Commission held that the law firm's charges for photocopies are sales of tangible personal property under s. 77.51(4)(h), Wisconsin Statutes, which were subject to the sales tax.

Effective September 1, 1983, 1983 Wis. Act 27 amended and created various sections in the sales tax law relating to tangible personal property purchased and provided by service providers in conjunction with selling, performing or furnishing services. Under the new law, if property is transferred by lawyers to their clients "incidental" to providing legal service, the lawyer is not the seller or reseller of such property and must pay a tax on its cost of the property.

Do the policies that apply to sales of photocopies under the prior law as reflected in the *Frisch, Dudek and Slattery* decision continue to apply under the incidental test now found in sales tax law, as incidental is defined in s. 77.51(29), Wisconsin Statutes, on and after September 1, 1983?

Answer: The *Frisch, Dudek and Slattery* decision no longer sets policy under the incidental test, effective September 1, 1983. The Department's position is that photocopies provided to a lawyer's client incidental to legal services provided, whether or not separately charged, are not taxable. A photocopy is incidental to the legal service when the copy is transferred in conjunction with providing the service and the number of copies transferred do not exceed the usual number normally transferred to clients in providing the legal service. Charges for other photocopies not incidental to providing a legal service are taxable.

Examples of photocopies provided "incidental" to providing the legal service:

a) A lawyer drafts a will and provides the principal and each of the beneficiaries a copy of the will.

b) A lawyer provides tax preparation services and provides a client with copies of returns to be filed and a copy of each return for the client.

c) A lawyer in litigating a case charges the client by the page for a photocopy of the brief provided to the client.

Examples of taxable sales of photocopies because they are not "incidental" to the legal service:

a) Copies of a transcript relating to a case, which upon request are provided to other law firms not involved in that litigation.

b) A client requests copies of prior years' tax returns prepared by the lawyer.

c) Any sale of photocopies not provided in conjunction with providing legal services.

2. Optional Call Detail Charges by Telephone Companies

Facts and Question: A person who is in the business of providing long distance telephone service, for an additional fee, will provide a customer with computer produced monthly reports showing how its telephones are being used. The report can define the customer's telephone facility usage, call detail charges and provide various other accounting details. The customer has the option to choose from a variety of types of reports depending on the type of call detail it desires. Are these charges by a telephone company for call detail information subject to the sales tax?

Answer: Yes. This computer provided service is a taxable telephone service under s. 77.52(2)(a)4, Wis. Stats., which imposes the tax on "the sale of telephone services of whatever nature..."

HOMESTEAD AND FARMLAND PRESERVATION CREDITS

1. Depreciation Add-Back for (S) Corporation Shareholders

Question: Must a shareholder of a tax-option (S) corporation add-back depreciation expense of the tax-option (S) corporation in determining household income for the homestead or farmland preservation credit?

Under s. 71.09(11)(a)6.a and s. 71.09(7)(a)1, Wis. Stats., "income" for homestead or farmland household income means the sum of adjusted gross income, plus various other items of income that are not includable in adjusted gross income, plus depreciation expense that was deducted in determining adjusted gross income. For farmland claimants, "income" does not include the first $25,000 of depreciation in respect to the farm, but does include any nonfarm business losses.

Beginning with the 1979 taxable year the net income of a tax-option (S) corporation may be deducted from the corporation's tax return if the income is reported by the shareholders of the corporation. When the income is reported by the shareholders, it retains its character as business income and is treated as ordinary income or loss on the shareholders' Wisconsin tax returns. Tax-option (S) corporation income or loss flows through to shareholders as a whole rather than as individual items of income and expense. Therefore, depreciation expense of a tax-option (S) corporation does not retain its character as depreciation when it flows through to the individual shareholders.

Answer: No, for purposes of determining household income for homestead or farmland preservation credit, a shareholder of a tax-option (S) corporation does not have to add back the depreciation expense of the tax-option (S) corporation. For a farmland credit claimant, the tax-option (S) corporation's depreciation is not used in determining the $25,000 of allowable exclusion, nor must depreciation of the tax-option (S) corporation in excess of $25,000 be added back for household income.

2. Farmland Credit — Two Township Proration

Background: Under s. 71.09(11)(b)3. Wis. Stats., farmland preservation credit claimants may be eligible for either 100% or 70% of the credit, depending on which of the following apply to the farmland on which the claim is based:

a) the qualified farmland is located in a county which has a certified agricultural preservation plan,

b) the qualified farmland is in an area zoned for exclusive agricultural use,

c) the qualified farmland is subject to a transition area agreement, or

d) the qualifed farmland is subject to a farmland preservation area agreement.

The instructions to the farmland preservation credit form, Schedule FC, explain in detail how the above factors qualify the claimant for either 100% or 70% of the farmland preservation credit.

In some instances a claimant can have qualified farmland that is located in different townships (or other geographic areas) so that part of the farmland is eligible for the 100% credit, and part of the farmland is eligible for the 70% credit.

Question: How is the farmland preservation credit computed when part of the claimant's farmland is eligible for 100% of the credit, and part is eligible for 70% of the credit?

Answer: The farmland claimant must first determine the portion of the real estate taxes levied for the taxable year on the farmland qualifying for 100% of the credit, and the taxes on the farmland qualifying for 70% of the credit. The farmland preservation credit is then computed by completing the following schedule:

Two Township Proration Schedule

		Col. a 100%	Col. b 70%
1.	Enter the real estate taxes levied during the 1984 taxable year on the farmland on which this claim is based.	$	$
2.	**Col. a** — Enter the smaller of the amount on line 1, Col. a or $6,000.		
3.	Subtract the amount on line 2, Col. a from $6,000 and enter here		
4.	**Col. b** — Enter the smaller of the amount on line 1, Col. b or the amount from line 3.		
5.	Enter your household income here		
6.	Using the amount on line 5, enter the appropriate figure from Table 1 of the 1984 farmland preservation credit instructions here		
7.	**Col. b** — Enter the smaller of the amount on line 4, Col. b or the amount on line 6.		
8.	**Col. a** — Subtract the amount on line 7, Col. b from the amount on line 6.		
9.	**Col. a** — Subtract the amount on line 8, Col. a from the amount on line 2, Col. a.		
	Col. b — Subtract the amount on line 7, Col. b from the amount on line 4, Col. b.		
10.	Add the amounts on line 9, Columns a and b and enter here		
11.	Using the amount on line 10, enter the appropriate figure from Table 2 of the 1984 farmland preservation instructions		
12.	**Col. a** — Using the amount on line 9, Col. a, enter the appropriate figure from Table 2 of the 1984 farmland preservation instructions.		
13.	**Col. b** — Subtract the amount on line 12, Col. a from the amount on line 11.		
		100%	70%
14.	Farmland preservation credit — Multiply the amounts on line 12, Col. a and line 13, Col. b by 100% or 70% as appropriate. Enter here and on lines 14a(1) and (2) of your 1984 Schedule FC. Attach this schedule to your 1984 Schedule FC.	$	$

Note: Although the above schedule is specifically for 1984 claims, the same method may be used for other years.

Example: Farmer B has farmland located in two counties. Real estate taxes levied on the farmland for 1984 are as follows:

Taxes qualifying for 100% of the credit — $3,035

Taxes qualifying for 70% of the credit — $2,000

Farmer B also has household income of $20,000.

Farmer B's 1984 farmland preservation credit is $2,846, which he determines by completing the Two Township Proration Schedule as follows:

Two Township Proration Schedule

		Col. a 100%	Col. b 70%
1.	Enter the real estate taxes levied during the 1984 taxable year on the farmland on which this claim is based.	$3,035	$2,000
2.	**Col. a** — Enter the smaller of the amount on line 1, Col. a or $6,000.	3,035	
3.	Subtract the amount on line 2, Col. a from $6,000 and enter here $2,965 .		
4.	**Col. b** — Enter the smaller of the amount on line 1, Col. b or the amount from line 3.		2,000
5.	Enter your household income here $20,000 .		
6.	Using the amount on line 5, enter the appropriate figure from Table 1 of the 1984 farmland preservation credit instructions here $1,345 .		
7.	**Col. b** — Enter the smaller of the amount on line 4, Col. b or the amount on line 6.		1,345
8.	**Col. a** — Subtract the amount on line 7, Col. b from the amount on line 6.	-0-	
9.	**Col. a** — Subtract the amount on line 8, Col. a from the amount on line 2, Col. a.		
	Col. b — Subtract the amount on line 7, Col. b from the amount on line 4, Col. b.	3,035	655
10.	Add the amounts on line 9, Columns a and b and enter here $3,690 .		
11.	Using the amount on line 10, enter the appropriate figure from Table 2 of the 1984 farmland preservation instructions $2,985 .		
12.	**Col. a** — Using the amount on line 9, Col. a, enter the appropriate figure from Table 2 of the 1984 farmland preservation instructions.	2,523	
13.	**Col. b** — Subtract the amount on line 12, Col. a from the amount on line 11.		462
		100%	70%
14.	Farmland preservation credit — Multiply the amounts on line 12, Col. a and line 13, Col. b by 100% or 70% as appropriate. Enter here and on lines 14a(1) and (2) of your 1984 Schedule FC. Attach this schedule to your 1984 Schedule FC.	$2,523	$ 323