

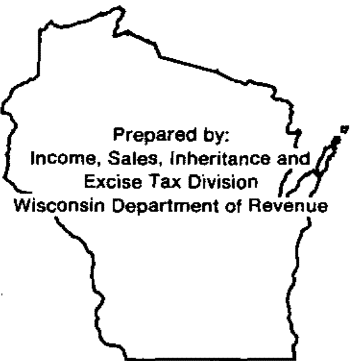
WISCONSIN TAX BULLETIN

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WITHHOLDING TABLES CHANGED JANUARY 1, 1986

Revised Wisconsin withholding tax tables were mailed to employers the week of November 25, 1985. The new tables are contained in a publication entitled "Wisconsin Employer's Withholding Tax Guide".

The new withholding tax tables are effective for payroll periods beginning on or after January 1, 1986. The new tables generally provide for a lower amount of Wisconsin income tax to be withheld from an employee's wages. For example, the new bi-weekly amount of tax withheld for a single person who earns \$25,000 annually and claims one withholding exemption is \$57.90 compared to \$60.00 under the prior withholding tables. A married person earning \$30,000 annually and claiming four withholding exemptions will have \$69.30 of Wisconsin income tax withheld from each biweekly paycheck rather than \$73.30.

COUNTY SALES TAX BEGINS APRIL 1, 1986 IN BARRON, BROWN AND DUNN COUNTIES

Beginning April 1, 1986, there will be a $\frac{1}{2}$ % county sales and use tax in three counties—Barron, Brown and Dunn. This new tax results from the county boards in these counties approving an ordinance to adopt the tax.

Be sure to read the Tax Report on page 21 which explains how this new county tax applies to retailers and other persons. This Tax Report was sent in late December 1985 to all retailers who have a sellers permit.

AMNESTY PROGRAM

The application period for Wisconsin's Tax Amnesty Program ended on November 22, 1985. The amnesty generally covered all State of Wis-

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consin general taxes and provided a waiver of penalties, delinquent interest and criminal prosecution if the equivalent of the tax due and normal interest (1% per month) was paid. The program was open for applica-

tion for a 10-week period beginning September 15.

Over 22,000 applications were tendered during the amnesty period with over 50% of those received in the last week. Some 8,000 applications, or about 37% of all the program activity, were received on November 22. The initial screening of these applications will likely be completed by mid-January 1986. Once that screening results in a grant of amnesty, applicants have 90 days to pay the amount due under amnesty. Thus, the final accounting will not be available until late April or early May. Based on early billings and some collections, however, it is estimated that the program will yield at least \$15 million.

CHANGES IN WISCONSIN FORMS

Very few changes have been made to the Wisconsin tax forms for 1985. Most are nearly identical to the 1984 forms. The only major changes are as follows:

Individual Income Tax Forms (Form 1 and 1A)

- School District Code, Line 1a—A space is provided for taxpayers to enter a four-digit code number which identifies the school district in which they resided in 1985. An alphabetical listing of the Wisconsin school districts and their code numbers is included in the instructions for Form 1 and 1A.
- Residency, Line 2 and Filing Status, Line 3—These lines have been rearranged to reduce errors.

Farmland Preservation Credit (Schedule FC)

- Regular Credit, Line 14a—A new entry line is provided for a 90% level of credit. Legislation enacted in 1985 provides that farmland covered under a certified county agricultural preservation

plan and located in an area zoned for exclusive agricultural use under a certified town ordinance is eligible for a 90% level of credit.

Homestead Credit (Schedule H)

- Line 5b—Persons whose home is located on more than one acre of land are required to indicate whether or not their homestead is part of a farm.

In addition to the changes to the 1985 forms described above, the 1986 Form 1-ES (declaration of estimated tax) is revised to allow married persons to file joint declaration of estimated tax vouchers. Beginning with the 1986 tax year, married persons will be permitted to file joint Wisconsin income tax returns.

SCHOOL DISTRICT NUMBER REQUIRED ON 1985 INCOME TAX RETURN

Don't forget to enter the code number of the Wisconsin school district in which you were living on December 31, 1985 on your 1985 income tax return. The entry space for this four-digit code number is located immediately under the name and address area on both the Wisconsin Form 1 and 1A returns and is numbered line "1a."

A listing of the code numbers for each of the Wisconsin school districts is included in the instructions for the Wisconsin income tax returns.

The requirement that individuals identify their Wisconsin school district on their income tax returns was enacted in 1985 Wisconsin Act 29.

SHORT-FORM SHOULD BE USED WHENEVER POSSIBLE

A review of income tax returns filed for the 1984 taxable year indicates that a number of individuals filed a long-form (Form 1) return when they could have filed a short-form (Form 1A) return. When mailing labels were produced for the 1985 forms, the department's computer identified these potential short-form filers and each has been mailed a short-form return package for 1985.

Individuals who qualify to file a short-form are encouraged to do so. Short-form returns are less costly to

both print and process. The department also has much lower storage costs for the 1A as the result of using a microfilming procedure. In addition, short-form returns generally contain fewer errors; therefore, individuals filing short-forms may receive refunds faster.

HOW TO GET WISCONSIN INCOME TAX FORMS

In December the Department placed nearly 2.3 million 1985 income tax and homestead credit forms in the mail to individuals who filed 1984 returns or claims.

Orders for bulk supplies of tax forms are now being shipped to tax practitioners and to organizations such as banks and libraries which distribute them to the public. These orders are expected to be filled by late January.

During the filing season, small supplies of forms can be obtained from any Wisconsin Department of Revenue office. However, requests will be limited to six copies of any single form. This is necessary to prevent the supply of forms at any office from being quickly depleted and then unavailable for other persons. Practitioners or other persons requiring larger supplies should write the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, WI 53708.

FORMS 1099-G BEING SENT FOR REFUNDS RECEIVED IN 1985

Federal law requires the Department of Revenue to provide information returns (Forms 1099-G) to individuals who received a Wisconsin income tax refund during 1985. The Department will mail approximately 780,000 Forms 1099-G reporting refunds received during 1985 from 1984 Wisconsin income tax returns to Wisconsin taxpayers later this month.

Only those taxpayers who claimed itemized deductions on their 1984 federal income tax returns should receive Forms 1099-G. If deductions were not itemized, a state income tax refund is not reportable as taxable income on a federal return. The Department is not required to issue a Form 1099-G to such persons.

An informational flyer explaining how the refund amount shown on the Form 1099-G was determined will be included with each Form 1099-G.

The Department will report refunds for married persons in the same manner as in 1984. If a married person had offset part or all of his or her refund against tax owed by his or her spouse on a combined return, the Department will report the full amount of the refund (amount before the offset) on Form 1099-G. For example, on their 1984 return spouse A had a refund of \$350 which was applied against spouse B's tax due of \$150. A refund check of \$200 (\$350 - \$150 = \$200) was issued to spouse A in 1985. The Department will report the full amount of the refund (\$350 in this example) on the 1985 Form 1099-G for spouse A.

If both a husband and wife receive a refund when filing a combined return, the Department will prepare a separate Form 1099-G for each spouse showing that spouse's refund. For example, on their 1984 combined return spouse A showed a refund of \$50 and spouse B showed a refund of \$125. One refund check of \$175 was sent to them in 1985. The Form 1099-G for spouse A will show a \$50 refund. The Form 1099-G for spouse B will show a \$125 refund.

WISCONSIN'S NEW PROPERTY TAX DEFERRAL LOAN PROGRAM STARTS JANUARY 1, 1986

The Wisconsin Legislature created a Property Tax Deferral Loan Program to help persons who have difficulty paying their property taxes. Persons 65 or older, who own a residence in Wisconsin, and meet certain other qualifications, may apply annually to the Wisconsin Department of Revenue to receive a loan of up to \$1,800 to pay their property taxes. The loan principal and interest do not have to be repaid until ownership in the property is transferred or the recipient of the loan no longer lives in the property.

The program first applies to property taxes which are assessed in 1985 (and payable in 1986). The interest rate on loans based on 1985 property taxes is fixed for the life of the loan at an 8% annual percentage rate of interest.

What are the qualifications to be met?

- applicant must be at least 65 years old when applying
- any co-owners and spouse, if applicant is married, must be at least 60 years old
- applicant's total household income for the preceding year must not exceed \$20,000 (Note: Household income is defined the same way that it is for the Homestead Credit Program; this includes social security benefits and the income of both spouses, if married.)
- outstanding liens, judgments, mortgages, delinquent property taxes, etc. on the applicant's property must not total more than \$5,000
- applicant's home must be a single family dwelling, a unit in a condominium or a cooperative, or a unit in a multi-unit dwelling with four or fewer units (Note: Mobile homes do not qualify.)
- applicant's home must be in Wisconsin and applicant must have lived in it more than six months during 1985 (Note: Temporary living in a health care facility qualifies as living in your home.)
- applicant must have a fire and extended casualty insurance policy covering the home

Are participants still eligible for homestead credit?

Yes, individuals may participate in either or both programs. The Property Tax Deferral Loan Program is available to persons who are at least 65 years old and provides a loan which must eventually be repaid. The Homestead Credit Program is available to persons who are at least 18 years old and provides a cash credit which is not repaid.

What is the deadline to apply for a loan?

An application form must be filed by June 30, 1986 to apply for a loan for 1985 property taxes. Application forms are available from any Wisconsin Department of Revenue office.

POWER OF ATTORNEY

When one individual wishes to have another individual represent himself or herself in a matter involving Wisconsin taxes, it is generally necessary to execute a power of attorney and furnish a copy to the Wisconsin Department of Revenue. Administrative rule Tax 1.13 explains when a

power of attorney is and is not required. The text of this rule is reproduced below.

As indicated in paragraph (4) of rule Tax 1.13, the department provides a form which may be used to prepare a power of attorney. A copy of this form appears on page 25 of this issue.

Tax 1.13 Power of attorney. (ss. 71.11 (44)(c)5 and 71.61 (5) (b)5a, 78.80 (3) and 139.38 (6), Stats.) (1) POWER OF ATTORNEY. (a) A power of attorney or other written authorization executed by the taxpayer shall be required by the Wisconsin department of revenue for the taxpayer's representative, on behalf of the taxpayer, to:

1. Inspect confidential information (e.g., tax returns and audit reports).
2. Receive notices, communications and correspondence containing confidential information.
3. Represent the taxpayer at conferences.
4. Execute a waiver to extend the statutory period for assessment or collection of a tax.
5. Execute any other waivers or agreements in behalf of the taxpayer.

(b) The power of attorney requirement applies to income, franchise, withholding, gift, sales and use, motor fuel, general aviation fuel, special fuel and cigarette tax matters of individuals, partnerships and corporations and homestead credit matters.

(2) EXCEPTIONS. (a) A power of attorney is not required for a taxpayer's representative to inspect confidential information or to represent the taxpayer at conferences, if the representative is accompanied by the taxpayer or, if a corporation, by an officer or authorized employee of the corporation.

(b) Generally a power of attorney is not required in the case of a trustee, receiver, guardian, personal representative or special administrator of an estate, or a representative appointed by a court.

(3) FILING OF POWER OF ATTORNEY. (a) One power of attorney form shall be filed with the Wisconsin department of revenue, with one additional copy for each additional tax matter. For example, if a power of attorney covers 2 tax matters, (e.g., income tax and sales tax), 2 power of attorney forms shall be filed.

(b) One power of attorney form shall be filed in each office of the department in which the taxpayer's representative, in connection with the matter under consideration, intends performing one or more of the acts enumerated in sub. (1).

(4) FORM OF POWER OF ATTORNEY. (a) Power of attorney forms are available from any Wisconsin department of revenue office. The Wisconsin form (Form A-222) is similar to the federal power of attorney form (Form 2848).

(b) Use of the Wisconsin power of attorney form is not mandatory. However, the department prefers that this form or another similar form be used. The form shall clearly express the scope of the authority granted the taxpayer's representative, the Wisconsin tax matters (e.g., income, sales, or gift tax) covered and the tax year or period to which it relates.

Note: A supply of forms may be obtained from the department at 4638 University Avenue, Madison, Wisconsin 53708 or by mail request to P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (b), Register, September, 1983, No. 333, eff. 10-1-83.

INCREASE IN IRS STANDARD MILEAGE RATE ALSO APPLIES FOR WISCONSIN FOR 1985

The optional standard mileage rate specified by the IRS for computing business automobile expenses for 1985 also applies for Wisconsin. The IRS increased the rate from 20.5¢ to 21¢ for the first 15,000 business miles driven in an automobile that is not fully depreciated. After 15,000 miles of business use in one year and for all mileage on a fully depreciated automobile, the rate remains at 11¢ per mile.

The mileage rate used to calculate automobile expenses for charitable deduction purposes, which was increased from 9¢ to 12¢ per mile for 1985, also applies for Wisconsin. For both federal and Wisconsin purposes, a rate of 9¢ per mile is used to calculate automobile expenses for medical and moving expense deductions.

PRISON TERMS FOR CRIMINAL VIOLATIONS OF STATE INCOME TAX LAWS

A Janesville businessman was ordered to serve a prison term for state income tax evasion and theft. Alfred J. Mohring, formerly employed at Nutrena Feeds, Janesville, was sentenced in Rock County Circuit Court, Branch 1, on one count of state income tax evasion and three counts of theft by Circuit Judge Mark Farnum. Judge Farnum ordered Mohring to serve a sentence not to exceed four years imprisonment on the income tax conviction and six years on the theft convictions, to run concurrently. Mohring pled no contest to the charges on May 20, 1985.

Mohring was charged with failing to report more than \$12,000 in taxable income on his 1979 state income tax return and evading more than \$800 in state income taxes for that year.

Rose M. Olexa of Hartford, Wisconsin, was sentenced in Washington County Circuit Court, Branch 3, by Circuit Judge Richard T. Becker on two counts of failing to file Wisconsin state income tax returns. Judge Becker ordered Olexa to serve 60 days in the Washington County jail on the first count and 30 days on the second count to run consecutively. She will have work release privileges.

Olexa was charged with failing to file state income tax returns on gross income of more than \$16,000 for 1980 and more than \$14,000 for 1981. She was found guilty on both counts after a jury trial on September 25, 1985.

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

INFORMATION PUBLICATIONS AVAILABLE

The Department publishes informational material called "publications". These are small pamphlets which provide detailed information about specific areas of Wisconsin tax laws.

For 1985, the following publications may be obtained at any of the Department's offices located throughout Wisconsin.

Publication Number	Publication Title
100	1985 Wisconsin Tax Requirements for Nonresidents
101	1985 Wisconsin Tax Requirements for Part-Year Residents
102	1985 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders
103	Reporting Capital Gains and Losses for Wisconsin by Individuals, Estate and Trusts
104	Wisconsin Taxation of Military Personnel
105	Adoption Expenses: Wisconsin Tax Benefits for 1985
200	How Electrical Contractors Determine Their Wisconsin Sales and Use Tax
201	Wisconsin Sales and Use Tax Information
202	How Wisconsin Sales and Use Tax Applies to Motor Vehicle Sales, Leases and Repairs
203	Sales and Use Tax Information for Manufacturers
300	Alcohol Beverage Laws Relating to Underaged Persons

500	Tax Guide for Wisconsin Political Organizations and Candidates
501	Field Audit of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Tax Credit for 1985
504	Directory for Wisconsin Department of Revenue
508	Wisconsin Tax Requirements Relating to Nonresident Entertainers

If you have suggestions for additional subjects which you believe should be covered by a publication, submit your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8933, Madison, Wisconsin 53708.

NEW MARITAL PROPERTY IMPLEMENTATION LAW ENACTED DURING SPECIAL SESSION

A new tax law relating to marital property implementation was enacted during the legislature's session which ended October 18, 1985. The following is a brief description of this new law (1985 Wisconsin Act 37, published October 28, 1985).

Marital Property Implementation Law

1. Itemized Deduction Credit (Amend s. 71.09(6r)(d), as created by 1985 Wisconsin Act 29, effective for 1986 tax year and thereafter.)

1985 Wisconsin Act 37 corrects technical drafting errors to clarify that it is an itemized deduction credit, rather than a personal exemption, which is prorated under s. 71.09(6r)(d).

Therefore, if a person and that person's spouse are not both domiciled in Wisconsin during the entire tax year, their itemized deduction credit on a joint return is determined by multiplying the credit that would be available to each of them if they were both domiciled in Wisconsin during the entire tax year by a fraction the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

2. One-Time Property Tax and Rent Credit (Amend s. 71.54, as created by 1985 Wisconsin Act 29, effective for the 1986 tax year.)

1985 Wisconsin Act 37 corrects technical drafting errors to clarify that part-year residents of Wisconsin must prorate the one-time property tax and rent credit based on the ratio of Wisconsin adjusted gross income to federal adjusted gross income. In addition, no credit is allowed on a joint return if both spouses are non-residents of Wisconsin.

3. Marital Property Agreements and Unilateral Statements Under Chapter 766 (Amend s. 71.01(1g), as created by 1985 Wisconsin Act 29, effective for 1986 tax year and thereafter.)

A unilateral statement, as well as a marital property agreement, under Chapter 766 does not affect the determination of income taxable by Wisconsin, or the determination of which spouse is required to report taxable income, during the period of time that one or both spouses are not domiciled in Wisconsin.

Also, a unilateral statement, or a marital property agreement, is effective for tax purposes for any period both spouses are domiciled in Wisconsin only if it is filed with the Department before any assessment is issued.

4. Married Persons' Credit (Amend s. 71.09(7m), as affected by 1985 Wisconsin Act 29, effective for 1986 tax year and thereafter.)

1985 Wisconsin Act 29 provided that married persons filing a joint return may claim as a credit against, but not to exceed the amount of, Wisconsin net income taxes otherwise due, an amount equal to 2.5% of the earned income of the spouse with the lower earned income. The credit may not exceed \$450.

1985 Wisconsin Act 37 provides that a unilateral statement, as well as a marital property agreement, under Chapter 766 has no effect in computing earned income for purposes of this credit.

5. Homestead Credit (Amend s. 71.09(7)(a)6, 7 and 8, as affected by 1985 Wisconsin Act 29, effective for 1986 tax year and thereafter.)

A unilateral statement, as well as a marital property agreement, under Chapter 766 has no effect in computing "income", "rent constituting property taxes accrued" or "property taxes accrued" for a person whose homestead is not the same as the homestead of that person's spouse.

6. Claims for Refunds by Spouses (Amend s. 71.10(10)(f), as affected by 1985 Wisconsin Act 29, effective for 1986 tax year and thereafter.)

A unilateral statement, as well as a marital property agreement, under Chapter 766 does not affect claims for refund.

**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 December 1, 1985. Part C lists new rules and amendments which were adopted in 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

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

B. Rules at Legislative Standing Committees

- 17.01 Administrative provisions-NR*
- 17.02 Eligibility-NR*
- 17.03 Application and review-NR*
- 17.04 Repayment of loan-NR*

*These rules will be part of a new chapter, Chapter 17, which will contain rules relating to the Wisconsin Property Tax Deferral Loan Program.

C. Rules Approved by Legislative Committees But Not Yet Effective

- 11.71 Computer industry-NR
- 11.83 Motor vehicles-A

D. Rules Adopted in 1985 (In parentheses is the date the rule became effective)

- 2.045 Information returns: form 9c for employers of nonresident entertainers, entertainment corporations or athletes-R (1/1/86)
- 3.22 Real estate and personal property taxes of corporations-R (1/1/86)
- 3.30 Depreciation and amortization, leasehold improvements: corporations-R (1/1/86)
- 3.31 Depreciation of personal property of corporations-R (1/1/86)
- 3.61 Mobile home monthly parking permit fees-R (1/1/86)
- 8.51 Labels-A (9/1/85)
- 8.61 Advertising-A (9/1/85)
- 8.76 Salesperson-A (9/1/85)
- 8.81 Transfer of retail liquor stocks-A (9/1/85)
- 11.002 Permits, application, department determination-NR (9/1/85)
- 11.10 Occasional sales-A (5/1/85, 9/1/85)
- 11.16 Common or contract carriers-A (9/1/85)
- 11.17 Hospitals, clinics and medical professions-A (9/1/85)
- 11.50 Auctions-A (5/1/85)
- 11.52 Coin-operated vending machines and amusement devices-A (9/1/85)
- 11.53 Temporary events-A (9/1/85)
- 11.54 Temporary amusement, entertainment, or recreational events or places-A (9/1/85)
- 11.62 Barbers and beauty shop operators-A (9/1/85)
- 11.67 Service enterprises-A (9/1/85)
- 11.68 Construction contractors-A (9/1/85)
- 11.69 Financial institutions-A (9/1/85)
- 11.97 "Engaged in business" in Wisconsin-A (9/1/85)

ISI&E DIVISION OFFERS TAXPAYER ASSISTANCE

During the 1986 filing season (January through April 15th), the division's auditors and tax representatives will be available to answer questions.

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

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
*Appleton	265 W. Northland	(414)735-5001	7:45-4:30
*Eau Claire	718 W. Clairemont	(715)836-2811	7:45-4:30
*Green Bay	200 N. Jefferson St.	(414)436-4230	7:45-4:30
*Kenosha	5500- 8th Ave.	(414)656-7100	7:45-4:30
*LaCrosse	620 Main	(608)785-9720	7:45-4:30
*Madison	4638 University Ave.	(608)266-2772	7:45-4:30
Madison	212 East Washington Ave.	NONE	8:00-4:15
*Milwaukee	819 N. Sixth St.	(414)224-4000	7:45-4:30
*Racine	616 Lake Ave.	(414)636-3711	7:45-4:30
*Waukesha	141 N.W. Barstow St.	(414)521-5310	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Ashland	Courthouse	NONE	10:00-2:00 (a)
Baraboo	1007 Washington	(608)356-8973	7:45-4:30
Barron	57 S. 4th St.	(715)537-3621	7:45-4:30
Beaver Dam	211 S. Spring St.	(414)887-8108	7:45-4:30
Cedarburg/Grafton	220 Oak Street	(414)377-6700	7:45-4:30
Elkhorn	300 S. Lincoln St.	(414)723-4098	7:45-4:30
Fond du Lac	160 S. Macy St.	(414)929-3985	7:45-4:30
Hayward	221 Kansas Ave.	(715)634-8478	8:00-12:00
Hudson	759 Sommer St., North	(715)386-8225	7:45-4:30
Janesville	115 S. Franklin	(608)755-2750	7:45-4:30 (b)
Lancaster	237 W. Hickory St.	(608)723-2641	7:45-4:30
Manitowoc	1314 Memorial Dr.	(414)683-4152	7:45-4:30
Marinette	Courthouse	(715)735-5498	9:00-12:00
Marshfield	630 S. Central Ave.	(715)387-6346	7:45-4:30
Monroe	1220- 16th Ave.	(608)325-3013	7:45-4:30
Oshkosh	404 N. Main St.	(414)424-2100	7:45-4:30
Park Falls	1114 S. 4th Ave.	(715)762-2160	7:45-11:45
Rhineland	Sunrise Plaza	(715)362-6749	7:45-4:30
Shawano	420 E. Green Bay St.	(715)526-5647	7:45-4:30
Sheboygan	504 S. 14th St.	(414)459-3101	7:45-4:30
Superior	Courthouse	(715)394-0204	8:00-4:30
Tomah	City Hall	(608)372-3256	8:30-12:00
Watertown	415 E. Main St.	(414)261-7700	7:45-4:30
Waupaca	201½ S. Main St.	(715)258-9564	7:45-11:45
Wausau	Courthouse Annex	(715)847-5380	7:45-4:30 (c)
West Bend	429 Walnut St.	(414)338-4730	7:45-4:30
Wisconsin Rapids	1681 Second Ave. S.	(715)421-0500	7:45-4:30

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

REPORT ON LITIGATION

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

The last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: (1) "the department appealed", (2) "the de-

partment 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

Orlando A. Boudreaux
Auto expenses

Edwin F. Gordon
Tax-option corporation—manufacturer's sales tax credit
Lynn R. Lauersdorf
Losses—not for profit activity
Wages paid to spouse
Robert L. Melton
Auto expenses
Roscoe Q. Much
Constitutionality of taxes
Edward J. Roepsch
Splitting of income—husband/wife

Corporation Franchise/Income Taxes

Cedarburg Mutual Insurance Company
Insurance companies—add-back for taxes
Payco Seeds, Inc.
Nexus

Sales/Use Taxes

Bargo Foods North, Inc.
Meals—transportation companies
Gross receipts
Brenner Tank, Inc.
Repair and maintenance service
Karen Gartzke
Corporate officer liability
K Mart Corporation
Appeals
Kohler Co.
Advertising displays
Schuster Construction Company
Petition for redetermination
Negligence penalty

INDIVIDUAL INCOME TAXES

Orlando A. Boudreaux vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 6, 1985). The issue for the Commission to determine is whether the taxpayer's mileage expense for traveling from his home in Racine to various job sites in the Milwaukee area is a nondeductible commuting expense or a deductible transportation expense.

The taxpayer was an iron worker and a member of the Iron Workers Union Local 8 in Milwaukee, Wisconsin. He was registered for employment at the business office of the union in Milwaukee and received his job assignments from that office. During the year 1978, the taxpayer worked at job sites in Milwaukee and Kenosha; in 1979, at job sites in Kenosha; in 1980, at job sites in Kenosha, Milwaukee and Mt. Pleasant; and in 1981, at job sites in Mt. Pleasant, Kenosha and Racine. During the period involved, the taxpayer worked for five different employers, ranging from two to four employers per year. The taxpayer commuted on a daily basis from his home in Racine, Wisconsin to his various job sites.

The taxpayer, on his Wisconsin income tax returns, claimed a deduction for employee business travel expense. The deduction was computed on a mileage basis from the tax-

payer's home to his various job sites and back home. When the taxpayer accepted a job, assigned to him through his union, he did not know how long it would last. During the four year period involved, none of the job assignments exceeded one year. The taxpayer was not an independent contractor, but was an iron worker employee of the contractor in charge of the job site at which he was employed.

The Commission held that the taxpayer's travel expenses were nondeductible personal expenses incurred by the taxpayer in commuting from his home to his place of employment and back home. Commuting expenses are not allowable as deductions under the provisions of Section 212 of the Internal Revenue Code.

The taxpayer has not appealed this decision.

Wisconsin Department of Revenue vs. Edwin F. Gordon (Court of Appeals, District IV, October 22, 1985). The Wisconsin Department of Revenue appealed a judgment holding that s. 71.043(2), Wis. Stats., permits a sales and use tax credit to be taken against personal income tax. The department contended that the tax credit is available only to corporations. (See WTB #32 for a summary of the Wisconsin Tax Appeals Commission's decision.)

Edwin F. Gordon filed a 1979 nonresident tax return reporting Wisconsin net taxable income of \$316,419.36 and a net tax of \$30,051.94. Gordon's 1979 income included \$473,298.11 generated by his 100% share of the income of Gender, Paeschke and Frey Company (GPF), a tax-option corporation in which Gordon owned all outstanding stock. On his personal income tax return, Gordon claimed a tax credit of \$26,945.83 based on sales taxes paid by GPF. The department disallowed the full amount of the tax credit claimed. On appeal, the Wisconsin Tax Appeals Commission reversed, and the Circuit Court affirmed the decision and order of the Commission.

The sole issue in this case is whether a taxpayer who is the only shareholder in a Wisconsin tax-option corporation is entitled to claim the tax credit allowed under s. 71.043(2) on his personal income tax return.

Section 71.043(2) provides in pertinent part that "the tax imposed upon

or measured by corporation net income . . . pursuant to s. 71.01(1) or (2) may be reduced by an amount equal to the sales and use tax under ch. 77 paid by the corporation". When statutory language is clear and unambiguous the Court of Appeals may not resort to judicial rules of construction, and must arrive at the intention of the legislature by giving the language its ordinary and accepted meaning. The language of s. 71.043(2) is unambiguous. It provides that tax measured by corporation net income can be reduced by the amount of the tax credit. Since Gordon owns 100% of the stock of a tax-option corporation, a portion of his personal income tax liability is measured by corporation net income.

Therefore, the Court of Appeals held that the portion of Gordon's personal income tax that is measured by the net income of the tax-option corporation can be reduced by an amount equal to the corporation's tax credit under ch. 77, Wis. Stats.

The department has not appealed this decision.

Lynn R. Lauersdorf vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 13, 1985). The issues in this case are as follows:

A. Is the taxpayer entitled to deductions, as ordinary and necessary business expenses, in excess of the cottage rentals actually received from 1979 through 1982?

B. Is the taxpayer entitled to deductions, as ordinary and necessary business expenses, of amounts allegedly paid to his wife in conjunction with the cottage rentals or the taxpayer's part-time business as a consulting engineer?

Continuously throughout the years involved, the taxpayer was a structural and civil engineer employed full-time by the State of Wisconsin, in Madison, Wisconsin.

On August 7, 1968, the taxpayer and his wife purchased joint ownership of a cottage near Shawano, Wisconsin. They rented it out parts of each summer. For seventeen consecutive years (from 1968 through 1984), they never showed a profit, although they intended throughout those years to operate the rental business at a profit.

On his Wisconsin income tax return (but not for federal purposes), the taxpayer reported wage payments of up to \$6,544 annually to his wife, in connection with renting out the cottage (including transportation between Madison and Shawano), and also for office work done by her in conjunction with his part-time consulting engineering business. These expenses were shown on their Wisconsin income tax returns as modification deductions from their otherwise taxable income.

The taxpayer and his wife never entered into a formal partnership, lease or other business relationship between themselves; usually set no hourly wages nor regular method of compensation to her; and made no employee-type deductions or annual W-2 forms regarding her alleged wages.

The Commission concluded that the taxpayer failed to meet his burden of proof by satisfactory evidence that his cottage rental business was entered into for profit. The record does not establish that the taxpayer had established an employer-employee relationship with his wife. The relationship was too informally structured; there was no employment agreement established at the outset or during the period under review; no employee-type deductions were taken from Mrs. Lauersdorf's "wages"; and the amounts which she received in each year were calculated as of the end of each year. Amounts deducted by the taxpayer as wages or salary paid to Mrs. Lauersdorf are not properly so characterized.

The taxpayer has not appealed this decision.

Robert L. Melton vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 28, 1985). The sole issue for the Commission to determine is whether the taxpayer's mileage expense for traveling from his home in Beloit to a job site in Edgerton, Wisconsin is a non-deductible commuting expense or a deductible transportation expense.

The taxpayer resided in Beloit and worked as a millwright for the Kenneth F. Sullivan Company of Madison, Wisconsin. He took a deduction for mileage to and from his home to the job site while employed by the Sullivan Company. Once he terminated his employment for the Sullivan Company and began working

for the Dana Corporation in Edgerton, Wisconsin, he ceased deducting his mileage as a business expense.

The taxpayer contends that his employment was temporary and outside of his tax home; thus, his transportation expenses are deductible. It was the taxpayer's understanding that the job would last anywhere from two to three months, although it actually lasted 28 months before he voluntarily left the employment to take another job.

The Commission concluded that the taxpayer's travel expenses were non-deductible personal expenses incurred by him in commuting from his home to his place of employment and back home. Commuting expenses are not allowable as deductions under the provisions of Section 212 IRC (1954) as interpreted by IRC Regulation 1.212-1(f).

The taxpayer has not appealed this decision.

Roscoe Q. Much vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 19, 1985). The department made a motion to dismiss the petition for review in this matter on the following grounds:

A. The taxpayer failed to file a proper petition for review within 60 days after receipt of the department's notice of denial of the petition for redetermination, as required by s. 73.01(5)(a), Wis. Stats., and, therefore, the Tax Appeals Commission lacks jurisdiction to review the alleged grievances of the taxpayer.

B. The department's action was proper as a matter of law in estimating the taxable income and income taxes of the taxpayer for the years 1978 through 1980 and 1982 pursuant to s. 71.11(4), Wis. Stats., due to the continued refusal of the taxpayer to properly file and report his income for income tax purposes.

C. The petition for review fails to state a claim upon which relief can be granted by the Commission.

D. There is no genuine issue as to any material fact and the department is entitled to dismissal of the taxpayer's petition for review as a matter of law.

E. There exists no legal basis on which to grant relief to the taxpayer.

During each of the years 1978, 1979 and 1980, the taxpayer filed a timely Wisconsin individual income tax return with the department in which he reported wages he earned each year. For the year 1982, the taxpayer filed a Wisconsin individual income tax return with the department in which he reported "00" wages or other income earned in Wisconsin during the year. The taxpayer claimed a \$641.13 refund of Wisconsin income tax withheld by the taxpayer's employer, FWD Corporation, which paid him \$15,971.98 in wages during 1982.

The taxpayer claimed an itemized charitable contribution deduction to "Basic Bible Church of America" of \$7,139.36 in 1978, \$7,021.26 in 1979 and \$6,555 in 1980.

The department disallowed the taxpayer's claimed charitable contributions for the years 1978 through 1980 and estimated his income as \$12,572 for 1982.

The taxpayer filed a petition for redetermination of the assessment with the department on August 21, 1984 which the department denied on November 26, 1984. On January 22, 1985, 56 days after receiving the department's denial, the taxpayer filed an appeal of the denial with the Commission. The taxpayer's appeal to the Commission was filed within 60 days after receipt of the department's notice of denial of the petition for redetermination, as required by s. 73.01(5)(a), Wis. Stats.

The taxpayer's petition for review to the Commission was general in nature, asserting "God-Given Inalienable Rights" and alleging violation of his constitutional rights under the state and federal constitution.

There is a justiciable issue as to the deductibility of alleged contributions made by the taxpayer to The Basic Bible Church of America for the years 1978 through 1980. The taxpayer is entitled to have that issue heard and decided on its merits.

There is not a justiciable issue as to the taxpayer's 1982 Wisconsin income tax liability. The return he filed for 1982 did not meet the requirements of Chapter 71 of the Wisconsin Statutes. The department acted properly and reasonably in estimating the taxpayer's 1982 income and the income tax due.

The Commission held that the taxpayer's petition for review as it relates to 1982 fails to state a claim upon which relief can be granted by the Commission; therefore, that portion is dismissed. The department's motion to dismiss the taxpayer's petition for review as it relates to 1978, 1979 and 1980 is denied.

The taxpayer has appealed this decision to the Circuit Court.

Edward J. Roepsch vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 6, 1985). The department adjusted the taxpayer's total taxable income for the years 1980 and 1982 and only allowed him to claim one-half of the total rental losses. The remaining one-half of the rental losses was allocated to the taxpayer's wife.

On May 8, 1980, the taxpayer and his wife signed a land contract to purchase two townhouses (rental property). The purchase price for the rental property was \$125,000. The down payment on the rental property was \$30,000. The down payment on the rental property was paid from the joint checking account of the taxpayer and his wife. The subsequent operating expenses were paid from the checking accounts entitled "Roepsch and Associates" or "Edward J. Roepsch, Attorney-at-Law". At the hearing before the Commission, the taxpayer testified that the Associates were his two minor sons. The taxpayer's wife was a signator on the checking accounts entitled "Roepsch and Associates".

The taxpayer on his 1980 tax return reported rental losses of \$9,283.15. The taxpayer deducted from his total taxable income the total rental losses on the rental property in 1980. The taxpayer on his 1981 tax return reported rental losses of \$10,817.95. The rental losses were divided equally between the taxpayer and his wife in 1981. The taxpayer on his 1982 tax return reported rental losses of \$9,530.23. The taxpayer deducted from his total taxable income the total amount of the rental losses in 1982.

The Commission held that income or loss arising from the sale or rental of real estate follows the legal title of the real estate. Therefore, the department's action on the taxpayer's petition for redetermination was affirmed.

The taxpayer has not appealed this decision.

CORPORATION FRANCHISE/INCOME TAXES

Cedarburg Mutual Insurance Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 1, 1985). This is a timely filed appeal to determine whether Cedarburg Mutual Insurance Company must add back for Wisconsin franchise tax purposes, fire insurance dues deducted on its federal income tax returns for the period involved, under the add-back language contained in s. 71.01(4)(a)6, Wis. Stats.

During the period under review, the taxpayer conducted all of its business in Wisconsin selling five lines of insurance: fire, allied, farmers multiple peril, homeowners multiple peril and inland marine. The taxpayer's gross income was derived from the following sources: interest, dividends, rents, premiums written, and gains on the sales of assets.

As an insurer engaged in the fire insurance business in the State of Wisconsin, the taxpayer is required under s. 601.93, Wis. Stats., to pay Wisconsin fire department dues to the Commissioner of Insurance. Wisconsin fire department dues are program revenues which are returned solely to local fire departments for use in fire inspection, prevention or protection or for funding pensions or other special funds for the benefit of disabled or superannuated fire fighters.

The Wisconsin Commissioner of Insurance's long standing administrative interpretation of the measure for calculating Wisconsin fire department dues is based on the amount of net direct fire insurance premiums less dividends. The measure for Wisconsin fire department dues, net direct fire insurance premiums less dividends, is computed as follows. Direct fire insurance premiums are collections on fire insurance policies written directly by the company. Net direct premiums are direct premiums reduced by returns to policyholders. Dividends are amounts returned to policyholders at year-end because actual experience was better than expected, which generated a surplus. Reinsurance premiums are not included in this measure.

The taxpayer paid \$18,617 in Wisconsin fire department dues in 1981. On its federal return the taxpayer deducted the fire department dues in question. By notice dated April 4, 1983, the department notified the taxpayer that it was disallowing (or adding back) the deduction it had taken for fire insurance premiums on its 1981 federal income tax return, using s. 71.01(4)(a)6 as authority, stating: "Since premium taxes and fire department dues are based on gross receipts they are not deductible."

The Commission concluded that Wisconsin fire department dues are unrelated to an insurer's profits, but rather are a cost of doing business. The fire department dues paid by the taxpayer during the period under review are not an add-back item as defined in s. 71.01(4)(a)6, Wis. Stats., but rather a component of the taxpayer's "gross income" and "gross receipts". "Gross income" and "gross receipts" as those terms are used in s. 71.01(4)(a)6, Wis. Stats., is the total of all income and receipts of an insurer. Net direct fire insurance premiums less dividends is not equal to or synonymous with gross income or gross receipts. Wisconsin fire department dues are not taxes imposed on or measured by gross income or gross receipts and are not subject to the add-back provisions of s. 71.01(4)(a)6, Wis. Stats. The department acted improperly in adding back, for Wisconsin income/franchise tax purposes, the fire department dues paid by the taxpayer and deducted on its federal income tax return during the period under review.

The department has appealed this decision to the Circuit Court.

Payco Seeds, Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, June 10, 1985). Payco Seeds, Inc., a Minnesota corporation, sought judicial review of a Wisconsin Tax Appeals Commission decision and order affirming the department's assessment of corporate franchise taxes against the taxpayer from 1973 to 1979. At issue was the determination that Payco's activities through agents "constituted far more than mere solicitation of orders" thus subjecting the taxpayer to the challenged taxes. (See WTB #41 for a summary of the Wisconsin Tax Appeals Commission's decision.)

The taxpayer maintained that such a determination violates the United States Constitution's prohibition against state interference with interstate commerce, is violative of the department's own procedures, and is contrary to the evidence and applicable law. Ultimately, the issue focuses on whether there were sufficient facts to support the finding of the taxpayer's agents engaging in more than "mere solicitation" in Wisconsin.

First, the Tax Appeals Commission found that during 1973 through 1979, the taxpayer did not own any real property nor did it maintain an office in Wisconsin. It had its principal offices in Dassel, Minnesota.

Second, the taxpayer, by oral contract, employed two resident sales representatives who conducted business from their own Wisconsin offices and had sales areas in Wisconsin. They were not independent contractors and seldom sold products for any other business. They were paid a base salary with commissions. They were responsible for their own business expenses, although they were entitled to some reimbursements.

Third, these agents sent their Wisconsin dealers' orders to Dassel, Minnesota for approval or rejection. Upon approval, orders were filled and shipped or delivered from Dassel.

Fourth, these agents helped dealers fill out settlement sheets and made contacts for new dealers, made credit checks on new dealers, stocked and sold the taxpayer's product to new customers without risk for lost or damaged products, accepted payments and adjusted and collected payments for the taxpayer, delivered the taxpayer's product to dealers, and removed extra and spoiled products, all of which the Tax Appeals Commission determined "constituted far more than the mere solicitation of orders contemplated by Section 381 of 15 United States Code".

Finally, the taxpayer knew about and acquiesced in rental of an office in which the agents carried out their duties of soliciting sales for the taxpayer.

The Circuit Court concluded that the Tax Appeals Commission's order and decision does not violate the United States Constitution's prohibi-

tion against state interference with interstate commerce, is not violative of the Department's own procedures, and is not contrary to the evidence and applicable law. Ultimately, there were sufficient facts to support the finding of the taxpayer's agents engaging in more than "mere solicitation" in Wisconsin. Therefore, the decision and order of the Tax Appeals Commission is affirmed and the assessment against Payco Seeds, Inc. for corporate franchise taxes for the fiscal years ending August 31, 1973 through 1979 is sustained.

The taxpayer has not appealed this decision.

SALES/USE TAXES

Bargo Foods North, Inc. and Republic Airlines vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 2, 1985). The issues for the Commission to determine are (a) whether the sale of meals by Bargo Foods North, Inc. to Republic Airlines was for resale within the meaning of s. 77.51(4)(intro.), Wis. Stats., or was for transfer without valuable consideration within the meaning of s. 77.51(4)(k), Wis. Stats., and (b) whether the fee the taxpayer paid to Milwaukee County for the right to sell meals to airlines at the county-owned airport was tax deductible from gross receipts within the meaning of s. 77.51(11)(a)4, Wis. Stats.

During the period under review, 1978 through 1981, the taxpayer, Bargo Foods North, Inc. (Bargo), was a Wisconsin corporation engaged principally in food and beverage catering for commercial air transportation companies arriving and departing at Milwaukee County Airport. The Intervenor, Republic Airlines (Republic), is a Wisconsin corporation engaged in commercial air transportation, which maintains its corporate offices in Minneapolis, Minnesota.

Bargo sold meals and beverage kits to Republic which the taxpayer placed in Republic's aircrafts departing Mitchell Field. The meals, which were chilled when delivered, were placed by Bargo in ovens aboard the aircraft. The ovens were turned on in-flight by Republic employees to heat the meals to serving temperature. Bargo also serviced Republic's flights arriving at Mitchell Field. In connection with arriving flights,

Bargo removed and washed the used dishes and equipment. Bargo also provided catering service at Mitchell Field to Ozark, Hughes Airwest, and Southern Airlines, and operators of corporate aircraft.

During the years 1978 through 1981, airline operations were regulated by the Civil Aeronautics Board, an agency of the federal government. The Board's regulations required that food service was to be provided at "no charge" Republic did not set any price for meals served passengers. If a passenger, for any reason, refused to accept a meal in flight, the passenger would not have received a rebate. On the other hand, Republic did sell alcoholic drinks to its passengers in flight. In those instances, the passenger was advised of the price of mixed drinks, wine or beer by the flight attendant and paid for the drink in cash. All meals purchased by Republic from Bargo in Milwaukee were served to passengers in flight at points beyond the geographic boundaries of the State of Wisconsin.

Bargo had an agreement with Milwaukee County, Wisconsin, which owned Mitchell Field, whereunder Bargo was granted a right to operate its airline catering business at the County's airport for a fee computed at 7% of Bargo's gross receipts for some of the period of time in dispute and 8% for the remainder. Bargo passed on this airport charge to Republic dollar for dollar. For the years 1978 through 1981, the airport charges totaled \$245,860. These airport charges were included in the gross receipts upon which the department's deficiency assessment was calculated.

Republic did not give Bargo a resale certificate certifying that the meals it purchased were for resale. Neither did the other airlines Bargo serviced at Mitchell Field. Bargo initially charged them all sales tax on the meals, but Republic objected and indemnified Bargo if Republic was subsequently found liable on its purchase. Bargo then stopped charging sales tax to Republic, but continued to collect sales tax from the other airlines.

The Commission concluded that the sale of meals by Bargo Foods North, Inc. to Republic Airlines was not for resale within the meaning of s. 77.51(4)(intro.), Wis. Stats., but rather was for transfer without valuable

consideration within the meaning of s. 77.51(4)(k), Wis. Stats. The fee Bargo Foods North, Inc. paid to Milwaukee County for the right to sell meals to airlines at the county-owned airport was not a tax and was not deductible from gross receipts within the meaning of s. 77.51(11)(a)4, Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Brenner Tank, Inc. vs. Wisconsin Department of Revenue

(Wisconsin Tax Appeals Commission, August 29, 1985). The dispute between Brenner Tank, Inc. and the Wisconsin Department of Revenue relates to the sales tax on \$70,141 of the taxpayer's gross receipts in the years 1978 through 1982, inclusive. The issue for the Commission to determine is whether or not the gross receipts for repair work performed in the State of Wisconsin on truck bodies for non-resident customers that will remove the truck bodies from this state and only use the truck bodies in the customer's operation outside of Wisconsin is exempt from the sales tax under s. 77.52(2)(a)10, Wis. Stats.

The taxpayer is engaged in the business of manufacturing and repairing stainless steel truck bodies which are used to haul milk and other liquids. The \$70,141 of gross receipts were received by the taxpayer for the repair of stainless steel truck bodies owned by out-of-state customers that are not engaged in operations in Wisconsin.

These out-of-state customers brought the truck bodies from out of Wisconsin to the taxpayer's facility in Fond du Lac, Wisconsin so that the tanks could be repaired at that facility. The tanks were then removed from Wisconsin by the customers for use in their operations outside Wisconsin.

The taxpayer did not charge sales tax on the gross receipts from the repair of the stainless steel truck bodies owned by these out-of-state customers nor did the taxpayer have valid exemption certificates on file for these out-of-state customers.

The Commission concluded that the stainless steel truck bodies involved in this proceeding were tangible personal property and under the provisions of s. 77.52(1), Wis. Stats., these stainless steel truck bodies were taxable tangible personal property. Under the provisions of s.

77.52(2)(a)10, Wis. Stats., the taxpayer was subject to sales tax on its gross receipts from the repair services performed on these stainless steel truck bodies. The taxpayer's gross receipts for the in-state repair of stainless steel truck bodies of out-of-state customers to be used outside the state but delivered in the state were not exempt under the provisions of ss. 77.52(2)(a)10 and 77.54(5)(a), Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Karen Gartzke vs. Wisconsin Department of Revenue

(Wisconsin Tax Appeals Commission, May 31, 1985). The issues in this case are (a) whether the department was correct in imposing an officer liability against the taxpayer relating to Dousman Lawn and Garden, Inc. and (b) whether the taxpayer willfully failed to make payment of the sales tax due for the period October 1978 through September 1979.

The taxpayer was the secretary of Dousman Lawn and Garden, Inc. and a full-time employee and general manager of the company. She and her husband owned one-half of the common stock of Dousman Lawn and Garden, Inc. The taxpayer was authorized to and did sign the majority of checks on the account of Dousman Lawn and Garden, Inc. at the Dousman State Bank.

During the fiscal year ending September 30, 1979, Dousman Lawn and Garden, Inc. filed timely monthly sales tax returns and remitted a total of \$3,972.85 in sales tax based upon reported taxable receipts of \$99,321.25. Dousman Lawn and Garden, Inc. filed a Wisconsin sales and use tax annual information return for the fiscal year ending September 30, 1979 showing total gross receipts of \$138,364.10 (indicating previous under reporting of \$39,042.85) and additional sales tax due of \$1,561.71. This return was signed by the taxpayer on December 12, 1979 (the due date). No remittance accompanied this form.

Richard Herr owned the other one-half of the common stock of Dousman Lawn and Garden, Inc. In the fall of 1979, the taxpayer and Herr had a falling out. The taxpayer attempted to purchase Herr's interest in Dousman Lawn and Garden, Inc. but Herr had another purchaser and would not sell to the taxpayer. At the

end of November 1979, the taxpayer left the business. The business shut down in late November 1979 and remained closed through December 1979.

The taxpayer and her husband brought a lawsuit against Herr over the corporation. On January 11, 1980, the taxpayer and her husband entered into an agreement with Herr for settlement of the lawsuit. Her understanding was that Herr agreed to pay the sales tax liability.

Subsequent to the taxpayer's sale of her interest to Herr, Herr sold the business to Verhoeven Enterprises, Inc., which continued to do business as Dousman Lawn and Garden, Inc.

During 1980, the department attempted to collect the outstanding sales tax liability from Dousman Lawn and Garden, c/o Richard Herr, but was unable to do so. On August 19, 1983, the department issued a Notice of Potential Successor Liability against Verhoeven Enterprises, Inc. for the sales tax liability of \$1,561.71, but no interest. Verhoeven Enterprises, Inc. paid the tax on November 25, 1983. There remained only the interest due and owing as of that date.

The Commission held that the taxpayer was an officer and employee of Dousman Lawn and Garden, Inc. with responsibility for filing the sales tax returns and for making payment of sales tax due. She willfully failed to make payment of the sales tax due with the annual information return. She was personally liable for the sales and use tax. The taxpayer's total liability is the amount of interest due on the original sales tax liability as of November 25, 1983 and there is no additional interest which would have accrued subsequent to that date.

The taxpayer has not appealed this decision.

K Mart Corporation vs. Wisconsin Department of Revenue

(Circuit Court of Dane County, August 21, 1985). K Mart appealed a decision of the Wisconsin Tax Appeals Commission which held that the Commission is without jurisdiction to hear the taxpayer's appeal because the notice of appeal was filed after the statutory time for appeal had expired.

On August 21, 1980, the department assessed sales and use taxes against K Mart in the amount of

\$97,246.80. On September 3, 1980, K Mart filed a petition for redetermination of the assessment with the department. Section 71.12(1)(a), Wis. Stats., requires the department to make a redetermination on the petition within six months after it is filed. On February 3, 1981, before the six month period expired, the department and K Mart agreed to extend the time for the department to act on K Mart's petition until "six months after the [Department] is notified by the taxpayer of the final decision in the case 'J.C. Penney Co., Inc. vs. Wisconsin Department of Revenue' which is currently pending before the Circuit Court".

On July 27, 1982, the Court of Appeals issued its decision in the Penney case referred to in the stipulation. On August 20, 1982, the department and J.C. Penney Company agreed not to appeal the Court of Appeals' decision. K Mart never gave notice to the department of the Penney decision. On March 8, 1983, the department denied K Mart's petition for redetermination. K Mart received the department's denial on March 10, 1983.

On May 10, 1983, K Mart mailed to the Wisconsin Tax Appeals Commission a petition for review of the department's denial of the petition for redetermination. The department moved the Commission to dismiss the petition for review on the grounds that it was filed late. K Mart asked the Commission to declare that the department's assessment was null and void because the department had failed to act within the time set by statute. On January 27, 1984, the Commission ruled that it had no jurisdiction to hear the matter because K Mart's petition for review was filed after the statutory time for appeal to the Commission had expired.

It is undisputed that K Mart had 60 days from receipt of the denial of redetermination to appeal the Department's decision. It is further undisputed that K Mart received the denial of redetermination on March 10, 1983, and that its 60 days within which to file an appeal expired on May 9, 1983. Finally, it is undisputed that K Mart's appeal was untimely.

K Mart contended that the department failed to make a final redetermination within the time permitted by statute, and thus lost jurisdiction to collect the tax. Since the tax was thus

rendered void by the department's own actions, K Mart contended that it could not be late in appealing from the assessment of a void tax. Additionally, K Mart argued that the department should be estopped from asserting the validity of the tax and K Mart's untimeliness in appealing because the department failed to hold a required conference and also sent K Mart allegedly misleading statements regarding the time to appeal.

The Circuit Court concluded that the department's denial of redetermination, before the stipulated time for redetermination expired, does not render the taxes void ab initio. The Court also concluded that the department is not estopped from asserting K Mart's untimeliness in filing a notice of appeal with the Tax Appeals Commission. Finally, the Court concluded that K Mart's appeal was untimely. Therefore, the Court affirmed the decision of the Tax Appeals Commission and dismissed K Mart's petition for review.

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

Kohler Co. vs. Wisconsin Department of Revenue (Court of Appeals, District IV, September 25, 1985). Kohler Company appealed a judgment affirming a Wisconsin Tax Appeals Commission decision which held Kohler liable for use taxes on promotional display items. (See WTB #38 for a summary of the Circuit Court's decision.)

Kohler manufactures plumbing fixtures which it sells to its distributors who sell the products to plumbing supply retailers, builders and contractors. To promote sales, Kohler designed a series of product displays for distributor and dealer showrooms. Typically these displays highlight a Kohler bathtub, toilet or sink in an attractive environment of false walls, carpeting, towels, lighting fixtures, mirrors and sometimes potted plants.

Distributors may acquire certain displays at "No charge with the purchase of . . . fixtures and fittings at net". For the tax years in question, 1973 through 1976, Kohler purchased the decorative items used in these displays from suppliers both inside and outside Wisconsin. It did not pay a sales tax on the Wisconsin purchases, giving each supplier a resale certificate pursuant to s. 77.53(11), Wis. Stats. Neither did it

pay a use tax. The Department of Revenue decided that the decorative items in the displays were gifts by Kohler to its distributors, and issued a notice of deficiency for use tax in the amount of \$39,987.61.

" '[A] person who acquires property to give it away is a user or consumer as opposed to a reseller, and is liable for the use tax.' " Revenue Dept. v. Milwaukee Brewers, 111 Wis. 2d 571, 578 (1983), quoting Revenue Dept. v. Milwaukee Brewers, 108 Wis. 2d 553, 558 (Ct. App. 1982); see also s. 77.51(4)(k), Wis. Stats.

The Commission found that "in most cases, there was no separate charge to the distributor for the display materials when the listed package of fixtures and fittings were purchased at wholesale price to the distributor", and that Kohler "purchased the advertising display materials involved herein free of sales tax, by giving resale certificates to its Wisconsin vendors". The Commission's conclusion of law drawn from these findings was that "the display materials in question were given, not sold to petitioner's distributors", and therefore that Kohler was liable for use tax on those materials.

The department argued that the Commission's conclusion is sound because Kohler called the decorative items in these displays "free" and available at "no charge". Kohler did not dispute these facts, but attacked the conclusion the Commission drew from them. Kohler contended that it is the economic realities of a transaction, not advertising "puffery", which should govern its taxability.

The department argued that, because the evidence shows the invoice amount for the displays in question equals the distributor net price of the fixtures alone, there can be no consideration given for the included decorative items. The undisputed testimony of Kohler's witnesses showed that, in every case, its cost for the decorative items provided in each display were recovered in the invoice price.

The Commission's finding that there is "no separate charge" for the decorative materials in these displays is accurate. However, the Court of Appeals found no evidence suggesting that "no separate charge" is in reality no charge. Therefore, the Court of Appeals concluded that the determi-

nation does not reflect economic reality within the meaning of Department of Revenue v. Sterling Custom Homes, 91 Wis. 2d 675, 679 (1979). The fact that Kohler referred to the display materials as "free" or "no charge" is irrelevant to the economic realities of the taxed transactions. The department and the Commission have confused the concepts of cost and price. Given this standard and the evidence of record, the Court of Appeals concluded that reasonable minds could not have made the same determination as the Commission. Because the record showed that Kohler recouped the costs of all included decorative items, the Court of Appeals concluded those items were resold and were not gifts. Kohler is therefore not liable for a use tax on the items.

The department has appealed this decision to the Supreme Court.

Schuster Construction Company vs. Wisconsin Department of Revenue (Court of Appeals, District IV, July 11, 1985). Schuster Construction Company appealed a Circuit Court order which affirmed an order of the Wisconsin Tax Appeals Commission. The taxpayer contended the Commission erred in limiting its jurisdiction to issues raised in the petition for redetermination, and in concluding that the taxpayer failed to show good cause which would abate the penalty imposed on a sales and use tax deficiency. (See WTB #38 for a summary of the Circuit Court's decision.)

The Department of Revenue notified the taxpayer of a sales and use tax deficiency determination including

interest and a penalty. The taxpayer filed a petition for redetermination which stated in part: "[W]e are requesting partial abatement of the proposed addition to the Sales Taxes for the periods 1974, 1975, 1976, 1977, and January 1, to August 31, 1978. We do not object to the measure of the tax; however, the objection is to the penalty as proposed in the amount of \$23,049.53."

The department denied the petition for redetermination. The taxpayer filed a petition for review of the department's decision, and at the hearing on the petition, the taxpayer contended it was appealing the assessment plus interest, as well as the penalty. The Commission ruled that it lacked jurisdiction to decide issues not raised in the petition for redetermination and upheld imposition of the penalty. The Circuit Court affirmed.

While the statutes governing petitions for redetermination are silent as to the contents of a petition, the administrative rules are not. Wis. Adm. Code section Tax 3.91 provides that "[t]he petition for redetermination specified in sections 71.12(1), . . . and 77.59(6), Wis. Stats., shall . . . set forth clearly and concisely the specific grievances to the assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based". The failure to set forth all grievances precludes their consideration as would failure to specify an issue in a petition for review before the Commission.

The record does not contain a closing stipulation indicating that the

parties agreed on different issues at an informal conference (Wis. Adm. Code section Tax 3.93). In the absence of such a stipulation, the Court is bound by the issues alleged in the petition.

The taxpayer challenged the Commission's finding that it failed to show good cause which would abate the penalty. A court must uphold an administrative agency's factual finding if, "upon an examination of the entire record, the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably, *might* have reached the decision. . . ."

A field auditor for the department testified that he recommended imposition of a penalty because the taxpayer had previously been penalized and had made very few changes in its procedures. The taxpayer did not ask how to compute the use tax. The method used in the prior audit was employed because proper records were not kept. The taxpayer offered no evidence of the reasonableness of its reliance on other companies' representations that purchases were exempt, or that there was good cause for its accounting error.

A reasonable person could have found that the taxpayer did not meet its burden of proving there was good cause for the error. Substantial evidence supports the finding.

The Court of Appeals affirmed the Circuit Court order.

The Supreme Court denied the taxpayer's petition for review.

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

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2. Declaration Requirements of Surviving Corporation After Merger

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1. Farmers' Exempt Milk House Supplies
2. Paging Equipment in Central Office of Telephone Company
3. Cable Company Purchases Cable It Installs
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Withholding Taxes

1. Reporting Requirements for Employers of Agriculture, Domestic or Other Employees Exempt from Withholding Tax

INDIVIDUAL INCOME TAXES

1. Gain on Installment Sales—Persons Moving Into or Out of Wisconsin

Statutes: sections 71.07(1) and 71.05(1)(a)5, 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.30 and 2.95, September 1983 Register

Facts and Question: Sales of tangible property (e.g., land, buildings, machinery) or intangible property (e.g., stocks, bonds) may be made under installment arrangements that provide for a part or all of the sales price to be paid after the year in which the sales are made. If these sales result in gains and qualify for Wisconsin tax purposes under the installment method of reporting income, the gross profit may be prorated over the period in which payments under the installment arrangement are received.

For individuals moving into or out of Wisconsin, how are these installment payments (gross profit and interest) taxed for Wisconsin income tax purposes?

Answer: For both residents and nonresidents for taxable years prior to 1975, gain or loss derived from the sale of real property or tangible personal property followed the situs of the property. Gain or loss from the sale of intangible personal property followed the residence of the individual.

Beginning with the 1975 taxable year and thereafter, all gain or loss realized or incurred while a Wisconsin resident from the sale of real property, tangible personal property, and intangible personal property is taxable by Wisconsin, regardless of where the property is located. However, the amount of gain which is includable in Wisconsin taxable income from the sale of property located outside Wisconsin is limited to the gain portion of the installment payments received while a Wisconsin resident. The gain from the sale of such out-of-state property sold while the individual is a nonresident is not taxable for Wisconsin purposes (s. 71.07(1), 1983 Wis. Stats., and Wis. Adm. Code section Tax 2.30 and 2.95).

A. Persons Moving Into Wisconsin

For sales of property reported under the installment method by individuals who move into Wisconsin, the gain portion of each installment payment received after Wisconsin residence is established is treated as follows:

(1) The gain is taxable by Wisconsin for sales of

- Tangible property (e.g., land, buildings, machinery) located in Wisconsin.
- Tangible property located outside Wisconsin if the sale occurred in 1975 or later and the seller was a Wisconsin resident at the date of sale (see

Wis. Adm. Code section Tax 2.30 for computation of gain).

- Intangible property (e.g., stocks, bonds) if the seller was a Wisconsin resident at the date of sale.

(2) The gain is not taxable by Wisconsin for sales of

- Tangible property located outside Wisconsin if the sale occurred prior to 1975 or if the seller was a nonresident at the date of sale of the tangible property.
- Intangible property if the seller was a nonresident at the date of sale.

The interest portions of installment payments received by Wisconsin residents are taxable by Wisconsin, regardless of whether the taxpayer was a resident or nonresident at the time of sale.

Example 1: A taxpayer moved from Arkansas and became a Wisconsin resident on July 1, 1984. On January 3, 1984, while an Arkansas resident, he sold his Arkansas building in an installment sale. The gross profit percentage for the sale was 60% and interest was charged at the rate of 10%. On November 15, 1984, he sold business equipment located in Arkansas in an installment sale with a gross profit percentage of 40% and interest at a rate of 10%. He received the following installment payments in 1984:

Sale of Building

State of Residence on Date of Payment	Date of Payment	Total Payment	Principal	Gain Portion (60% of Principal)	Interest
Ark.	6/30/84	\$13,000	\$ 8,000	\$4,800	\$5,000
Wis.	12/31/84	9,100	4,500	2,700	4,600
Total		<u>\$22,100</u>	<u>\$12,500</u>	<u>\$7,500</u>	<u>\$9,600</u>

Sale of Equipment

State of Residence on Date of Payment	Date of Payment	Total Payment	Principal	Gain Portion (40% of Principal)	Interest
Wis.	11/15/84	\$ 2,000	\$ 2,000	\$ 800	\$ 0
Wis.	12/15/84	585	500	200	85
Total		<u>\$ 2,585</u>	<u>\$ 2,500</u>	<u>\$1,000</u>	<u>\$ 85</u>

Building: None of the \$7,500 gain on the sale of the building is taxable by Wisconsin because the building was sold while the taxpayer was an Arkansas resident. Interest income of \$4,600 (12/31/84 interest) is taxable by Wisconsin.

Equipment: The total gain of \$1,000 is taxable by Wisconsin because the taxpayer was a Wisconsin resident on the date of sale. Interest income of \$85 is also taxable on his 1984 Wisconsin return.

Example 2: A taxpayer moved into Wisconsin and became a Wisconsin resident on November 10, 1978. Prior to her move, she sold her interest in a partnership (intangible asset) at a gain and elected to report the proceeds under the installment method.

The gain from the sale of the partnership interest is not taxable by Wisconsin, but any interest income received after Wisconsin residence was established must be reported to Wisconsin.

B. Persons Moving Out of Wisconsin

When a Wisconsin resident sells property under the installment method and later moves out of the state, the gain portion of the installment payments received after Wisconsin residence is terminated may be taxable to Wisconsin, depending on the type of property (tangible or intangible), the property's location at the date of sale, and the date the installment payments are received.

For years prior to 1982, gain realized on the sale of a Wisconsin residence was taxable if the replacement residence was not located in Wisconsin (s. 71.05(1)(a)5, 1983 Wis. Stats.). Beginning with the 1982 taxable year, gain realized on the sale of a Wisconsin residence may be deferred in accordance with Section 1034(a) of the Internal Revenue Code even though the replacement residence is outside Wisconsin. Since no gain is realized under the installment method until payment is received, if a residence was sold prior to 1982 and an out-of-state replacement residence was acquired, installment payments received in 1982 and subsequent years are not taxable by Wisconsin provided the individual qualifies for deferral of gain under Section 1034(a) of the Internal Revenue Code.

For property sold while a Wisconsin resident and reported under the installment method by individuals who move out of Wisconsin, the gain portion of each installment payment received after the individual's Wisconsin residence is terminated is treated as follows:

(1) The gain is taxable by Wisconsin for sales of

- (a) Tangible property other than a principal residence (e.g., land, buildings, machinery) located in Wisconsin.
- (b) A principal residence located in Wisconsin if the gain may not be deferred or excluded from income under the Internal Revenue Code (e.g., a more expensive residence is not purchased or the taxpayer does not qualify for the age 55 and over exclusion).
- (c) A principal residence located in Wisconsin if the replacement residence is outside Wisconsin and the sale occurred prior to 1982, for payments received prior to 1982. (For payments received in 1982 and subsequent years, gain is not taxable by Wisconsin provided the individual qualifies for deferral of gain under Section 1034(a) of the Internal Revenue Code.)

(2) The gain is not taxable by Wisconsin for sales of

- (a) Tangible property located outside Wisconsin.
- (b) A principal residence located in Wisconsin if the replacement residence is outside Wisconsin and the sale occurred prior to 1982, for payments received in 1982 and subsequent years, provided the individual qualifies for deferral of gain under Section 1034(a) of the Internal Revenue Code.
- (c) A principal residence located in Wisconsin if the replacement residence is outside Wisconsin and

the sale occurs in 1982 or thereafter, provided the individual qualifies for deferral of gain under Section 1034(a) of the Internal Revenue Code.

- (d) Intangible property, regardless of where the property is located.

The interest income portions of installment payments received by an individual after his or her Wisconsin residence is terminated (i.e., while a nonresident) are not taxable by Wisconsin.

Example 1: A taxpayer moved from Wisconsin and became a Florida resident on October 15, 1984. On January 20, 1984 she sold her Wisconsin summer cottage in an installment sale. The gross profit percentage for the sale was 32% and the interest rate was 12%. She received the following installment payments in 1984:

State of Residence on Date of Payment	Date of Payment	Total Payment	Principal	Gain Portion (32% of Principal)	Interest
Wis.	4/20/84	\$ 4,700	\$ 3,500	\$1,120	\$1,200
Wis.	7/20/84	4,595	3,500	1,120	1,095
Florida	10/20/84	4,490	3,500	1,120	990
Total		<u>\$13,785</u>	<u>\$10,500</u>	<u>\$3,360</u>	<u>\$3,285</u>

The taxpayer must report a gain of \$3,360 and interest income of \$2,295 (\$1,200 and \$1,095) on her 1984 Wisconsin return. The interest income of \$990 received while a Florida resident is not taxable by Wisconsin.

Example 2: A taxpayer moved out of Wisconsin and became an Iowa resident on February 15, 1984. Prior to moving out he sold shares of stock (intangible asset) at a gain which he is reporting under the installment method. The gross profit percentage was 20% and he received interest at a rate of 8%. He received the following installment payments in 1984:

State of Residence on Date of Payment	Date of Payment	Total Payment	Principal	Gain Portion (20% of Principal)	Interest
Wis.	1/30/84	\$500	\$340	\$68	\$160
Iowa	5/30/84	500	350	70	150
Iowa	9/30/84	500	360	72	140

The taxpayer must report a gain of \$68 (1/30/84 gain) and interest of \$160 (1/30/84 interest) on his 1984 Wisconsin return. If the taxpayer had sold the stock on or after February 15, 1984 (i.e., while an Iowa resident), no portion of the installment payments would be taxable by Wisconsin.

Example 3: On July 1, 1980, a taxpayer sold his Wisconsin residence for \$100,000 on a land contract. The contract provided for a \$25,000 down payment and principal payments of \$15,000 on July 1, 1981, 1982, 1983, 1984 and 1985. The taxpayer realized a \$35,000 gain on the sale. He purchased a new residence outside Wisconsin for \$125,000. For federal purposes, he must defer the \$35,000 gain. He elected to report the gain under the installment method for Wisconsin. Under the installment method, the following amounts of gain would be realized each year:

Year	Principal Payment	Gain Portion
1980	\$ 25,000	\$ 8,750
1981	15,000	5,250
1982	15,000	5,250
1983	15,000	5,250
1984	15,000	5,250
1985	15,000	5,250
	<u>\$100,000</u>	<u>\$35,000</u>

The taxpayer is required to report \$8,750 of gain as an addition modification on his 1980 return and \$5,250 of gain in 1981. Since no gain is realized under the installment method until the taxpayer has received payment, the gains on the installment payments received in 1982 and subsequent years are not taxable by Wisconsin.

2. Land Contract as "Security" in Corporate Liquidation

Statutes: section 71.333(4), 1983 Wis. Stats.

Facts and Question: Under s. 71.333(4), 1983 Wis. Stats., the gain to be recognized by a shareholder for the year of corporate liquidation is limited to the greater of

- The portion of assets received by the shareholder which consists of money, or of stock or securities acquired by the liquidating corporation after January 1, 1955, or
- The shareholder's ratable share of the earnings or profits of the liquidating corporation accumulated after January 1, 1911.

A corporation has the following net assets to distribute in liquidation:

Cash	\$ 5,000
Land contract receivable	30,000
Equipment and real estate	500,000
Less: Liability owing	<u>(435,000)</u>
Net fair market value of assets	<u>\$100,000</u>

Does the \$30,000 land contract receivable constitute a "security" within the meaning of s. 71.333, 1983 Wis. Stats., and accordingly subject the taxpayer to recognition of gain on that asset in the year of liquidation?

Answer: No. "Securities" is a term which may acquire different meanings depending upon the circumstances and context with which the term is used. For this purpose, the term should take on a meaning which contemplates the use of one's money by another as an investment in a business enterprise. The nature of the debt should evidence a continuing interest in the affairs of the corporation. In addition to stocks, "securities" would include bonds and notes, usually of a long-term duration. Although "securities" would not have to possess all of the attributes of stock, the phrase "stock or securities" as used in s. 71.333, 1983 Wis. Stats., should take on a meaning similar to stock. When viewed in this context, a land contract would not be a security. In the instant case, the land contract simply represents the balance due the seller under the terms of a standard land contract.

CORPORATION FRANCHISE/INCOME TAXES

1. Expenses Related to Wholly Exempt Income

Statutes: section 71.04(2)(b)9, (4)(b) and (7m), 1983 Wis. Stats.

Note: This Tax Release is a corrected version of the Tax Release which originally was published in Wisconsin Tax Bulletin #44. This Tax Release applies to taxable years 1983 and thereafter, as well as retroactively to the earliest taxable year in which additional assessments or refunds may be made as of July 2, 1983.

Facts: Section 71.04(2)(b)9 and (7m), 1983 Wis. Stats., effective for the taxable year 1983 and thereafter and effective retroactively to the earliest taxable year in which additional assessments or refunds may be made as of July 2, 1983, does not allow deductions related to "wholly exempt income". Wholly exempt income for corporations subject to Wisconsin franchise or income tax includes amounts received from affiliated or subsidiary corporations for interest, dividends or capital gains that, because of the degree of common ownership, control or management between the payor and payee, are not subject to taxation under Chapter 71. Interest on obligations of the United States is included in "wholly exempt income" for a corporation subject to the income tax.

In 1983, Corporation X received \$1,000 in dividends from Corporation Y, a nonunitary subsidiary, and \$5,000 in dividends from Corporation Z, a unitary subsidiary. Both Corporation Y and Corporation Z are wholly owned subsidiaries of Corporation X. Because Corporation Y is a nonunitary subsidiary of Corporation X, the \$1,000 in dividends Corporation X received from Corporation Y is exempt from taxation under Chapter 71. The \$5,000 in dividends Corporation X received from Corporation Z is not exempt under Chapter 71 but would be deductible to the extent of \$2,500 under s. 71.04(4)(b), 1983 Wis. Stats.

Question 1: Does "wholly exempt income" for Corporation X include the \$2,500 in deductible dividends under s. 71.04(4)(b), 1983 Wis. Stats., received from Corporation Z in addition to the \$1,000 in dividends received from the nonunitary subsidiary Corporation Y?

Answer 1: Section 71.04(2)(b)9, 1983 Wis. Stats., does not apply to the \$2,500 in dividends deductible under s. 71.04(4)(b) because of the definition of "wholly exempt income". Section 71.04(2)(b)9, 1983 Wis. Stats., states that wholly exempt income does not include income excludable, exempt or deductible under specific provisions of Chapter 71. In this case, only the \$1,000 would be considered "wholly exempt income".

Question 2: What types of expenses would be included as nondeductible under s. 71.04(2)(b)9, 1983 Wis. Stats.?

Answer 2: Section 71.04(2)(b)9, 1983 Wis. Stats., specifies any amount directly or indirectly related to producing wholly exempt income is not deductible. Examples of such expenses would be taxes, interest, and administrative fees related to the production of this wholly exempt income.

2. Declaration Requirements of Surviving Corporation After Merger

Statutes: section 71.22(10)(a), 1983 Wis. Stats.

Facts and Question: Corporation A merges into Corporation B on July 31, 1984. A's net tax liability for 1983 was

\$100,000 and B's was \$10,000. Corporation B's net tax liability for the 1984 calendar year was \$15,800 (computed on \$200,000 Wisconsin net income).

May Corporation B use exception number 1 to the addition to the tax (s. 71.22(10)(a), 1983 Wis. Stats.) in determining the amount of its estimated tax payments for 1984? What amount must Corporation B use as the "tax shown on the return of the corporation for the preceding taxable year" to qualify for this exception?

Answer: Corporation B may use exception number 1 and satisfy the requirements of s. 71.22(10)(a), 1983 Wis. Stats., by timely paying \$2,500 ($\$10,000 \div 4$) for each of the four installment periods applicable to its 1984 tax liability. Corporation A's 1983 liability of \$100,000 is not included in Corporation B's 1983 tax liability for this purpose. Corporation B is not subject to the 90% payment requirement for 1984 in s. 71.22(10)(a) and (b), 1983 Wis. Stats., because its 1984 Wisconsin net income was less than \$250,000.

SALES/USE TAXES

1. Farmers' Exempt Milk House Supplies

Statutes: section 77.54(34), 1985 Wis. Stats.

Facts and Question: A farm supply store sells various items to persons engaged in farming that may be used in and around the farm milking parlor or milk house. Which items may be purchased without tax under s. 77.54(34), Wis. Stats., by a farmer who issues a properly completed Farmers Exemption Certificate (Form S-206) to his or her supplier?

Answer: The following items are considered milk house supplies for sales/use tax purposes: milk filters, soaps, detergents, pipeline cleaners, manual cleaners, acid cleaners, sanitizers (i.e., iodine and chlorine), udder washes and dips, udder balms, teat dilators, insect strips, paper towels, cloth udder towels, udder sponges, brushes and brooms, window cleaners and water softener salt.

This exemption does not apply to purchases of electricity or equipment, including dispensers, sinks, faucets, buckets and pails, strainers, washup hose or milk cans.

2. Paging Equipment in Central Office of Telephone Company

Statutes: section 77.54(24), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 11.66(2), January 1983 Register

Facts and Question: A telephone company purchased paging equipment which is located in their central office with the other telephone equipment. The equipment consists of a computerized paging terminal and related equipment. A person wishing to page a subscriber dials an ordinary seven-digit telephone number followed by coded digits activating the computerized automatic paging terminal. The terminal initiates a radio transmission that causes the pager to beep. The pagers provide one-way communication. When the subscriber receives a radio transmission he/she must make an ordinary telephone call to a designated telephone number to ascertain the message.

The paging equipment was charged to the company's central office equipment account. The Bureau of Utility Ac-

counting in the Wisconsin Public Service Commission indicates that this one-way paging equipment is properly charged to Account No. 221, Central Office Equipment.

Is this purchase of paging equipment by a telephone company which is charged to the company's central office equipment account exempt under s. 77.54(24), 1983 Wis. Stats?

Answer: Paging equipment charged to Account 221, "Central Office Equipment" by a telephone company in accordance with accounting methods approved by the Wisconsin Public Service Commission, is exempt from the Wisconsin sales/use tax under s. 77.54(24), 1983 Wis. Stats.

3. Cable Company Purchases Cable It Installs

Statutes: sections 77.51(5) and (28) and 77.52(2)(a)12, 1983 Wis. Stats.

Wis. Adm. Code: section Tax 11.66(2), January 1983 Register

Facts and Question: A cable TV company purchases and then installs its own underground cable. Outside contractors or other persons are not involved in this underground work. Is the purchase of the cable a taxable transaction?

Answer: This transaction is subject to the sales and use tax under s. 77.52(1), Wis. Stats., because persons engaged in providing CATV service are the consumers of the tangible personal property used in providing such services under section Tax 11.66(2).

4. News Service Provides Ticker Tape

Statutes: sections 77.51(29) and 77.52(1), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 11.29, July 1977 Register, and section Tax 11.67, September 1984 Register

Facts and Question: A news service company provides the service on a video screen or on a ticker. The ticker provides a printed (hard) copy. If a subscriber elects to receive the service on a ticker, it must use equipment provided by the news service. If the subscriber prefers video screen reception, it must provide its own equipment.

The subscriber is charged for each office in which it elects to take the service, and there is a separate charge for each ticker. The news service company breaks its subscriber's billing down to itemize the service and the equipment charge. The news service company charge for the equipment is approximately 48% of the total amount charged a subscriber each month for service and equipment. The contract signed by the subscriber also sets forth one amount for the news service and a separate charge for the equipment provided.

Are the gross receipts from the charge for the equipment subject to the sales tax, when the equipment is used in conjunction with a news service?

Answer: The gross receipts received from charges for tickers are subject to tax under s. 77.52(1), Wis. Stats., under the factual situation in this particular case. This equipment is not being provided "incidental" to the news service so that the charges would not be subject to the sales tax.

5. Service of Shredding Sensitive Business Records

Statutes: sections 77.51(4)(h) and 77.52(2)(a) 10 and 11, 1983 Wis. Stats.

Wis. Adm. Code: section Tax 11.38, October 1976 Register

Facts and Question: A person operates a mobile shredding service on a truck chassis, which shreds sensitive business records at the customer's place of business. The shredded material is bagged or balled. The customer is charged an hourly rate based on the labor and machinery involved. The taxpayer uses a shredder-baler with 5 tons pressure which has a capacity of producing 8 bales per hour. The shredded material is handled in one of three ways:

- (a) Left with the customer to be disposed of or sold by the customer,
- (b) Destroyed by shredder operator (material which cannot be recycled is incinerated), or
- (c) Sold by shredder operator to customers for packaging and shipping materials.

Is this a taxable service under the definition of gross receipts in s. 77.51(4)(h), Wis. Stats., or under s. 77.52(2)(a) 10 or 11, Wis. Stats.?

Answer: The gross receipts from the service of shredding sensitive business records is not a taxable service under the sales and use tax law.

6. Manufacturing in a "Self-Service" Print Shop Which Uses Photocopy Machines

Statutes: sections 77.51(27) and 77.54(2) and (6)(a), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 11.56, August 1985 Register

Facts and Question: A small print shop is engaged in three different types of operations at one location. The three different types of operations are as follows:

- (a) The "back room" which contains the typical commercial printers'-type machinery, such as offset presses, where the printer's employees use the printing machinery to perform large volume jobs.
- (b) The copier-duplicator area where the printer's employees use photocopy machines to produce up to 200 copies of an item for a customer. If more than 200 copies are needed, and the customer is not in a particular hurry, the job is run on an offset press in area (a).
- (c) The "customer" area where office supplies, self-service selectric typewriters, a work table and self-service copy machines are made available for the use by customers. If customers want to make their own copies they must obtain an auditron at the counter which is plugged into the copy machine and it records the number of copies made. The customer then returns the auditron to a print shop employee, who issues a bill or collects a cash payment from the customer.

Copy machines use dispersant, a drying agent which disappears into the air, and toner, which is ink which is transferred to the paper.

Which of the operations in the three different areas are considered "manufacturing" under s. 77.51(27), 1983 Wis.

Stats., so that the exemption under s. 77.54(6)(a), 1983 Wis. Stats., applies?

Answer: The printing operations conducted in areas (a) and (b) are essentially equivalent to a commercial printer's operations and qualify as "manufacturing" under s. 77.51(27), 1983 Wis. Stats. As such, the printing equipment used in these areas are exempt manufacturing machines under s. 77.54(6)(a), Wis. Stats. The repair of and supplies used in these machines are also exempt from the sales/use tax.

The employees of a manufacturer generally operate the manufacturer's machines in a step-by-step production process popularly regarded as manufacturing. When customers operate photocopy machines, the activity does not meet the popularly regarded concept in s. 77.51(27), Wis. Stats. Since the activity of customers is not "manufacturing" there is no exemption for the purchase of the copy machines used in the "customer" area (c) or for the supplies used to operate such machines. However, the paper and toner which are transferred to the customer may be purchased without tax for resale by the print shop operator.

7. Scope of Manufacturer's Machinery Exemption in a Manufacturer's Steam Plant

Statutes: sections 77.51(27) and 77.54(6)(a), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 11.40, November 1981 Register, and section Tax 11.68(4)(b), January 1984 Register

Facts and Questions: A manufacturer produces steam in a steam plant which is used to operate its manufacturing machinery on the production line. Which of the following items are exempt under s. 77.54(6)(a), Wis. Stats., so that the repair and maintenance of such items are also exempt from the sales/use tax?

- (a) Turbines which produce steam which run the generators which produce electricity.
- (b) Boiler condensate system which reduces the steam to water, demineralizes it, and returns it to the boiler.
- (c) Feed water system which conditions water for use in boiler.
- (d) Blowdown equipment which takes water off boiler and rids it of minerals.
- (e) An O₂ system used to measure the amount of oxygen in the exhaust stack and to meter the amount of air going into the boiler for combustion.
- (f) An oil heater used to heat the oil as it moves toward the boiler. This assists in pumping and atomizing for better combustion.
- (g) A water pump in the river which pumps water to the cooling tower.
- (h) Air compressors which produce compressed air only used in manufacturing machines.
- (i) Ash handling equipment used to dispose of waste products.
- (j) Precipitators located in a chimney.
- (k) Coal pile crane, hoppers and crushers in the coal yard and the conveyor which transfers coal to the boiler.

- (l) Cooling towers used to cool water running through the compressors and generators.

Answer: In the manufacturer's powerhouse the items listed in (a), (b), (c), (d), (e), (f) and (h) and the conveyor which transfers coal to the boiler (k) are directly and exclusively used in the step-by-step manufacturing process and the exemption in s. 77.54(6)(a), Wis. Stats., applies to such items. The river water pump (g), the ash handling equipment (i), precipitators (j), the coal pile crane, hoppers and crushers in the coal yard (k) and cooling towers (l) are not used directly in manufacturing and are not exempt under s. 77.54(6)(a). However, the precipitators and cooling towers may qualify as exempt waste treatment facilities for property tax purposes under s. 70.11(21), Wis. Stats., which in turn would create a sales tax exemption under s. 77.54(26).

Note: Other manufacturers may not use the same item in exactly the same way and the tax status could vary accordingly. The tax status of an item purchased by a manufacturer always presents a question of fact dependent entirely upon the actual use to which the purchaser puts such purchase.

WITHHOLDING TAXES

1. Reporting Requirements for Employers of Agriculture, Domestic or Other Employees Exempt from Withholding Tax

Statutes: sections 71.10(8n), 71.19(1) and 71.20(1), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.04 and 2.90, September 1983 Register

Background: Section 71.20(1), 1983 Wis. Stats., requires an employer, at the time of payment of "wages" to an employee, to deduct and withhold state taxes from such wages. Section 71.19(1) provides that "wages", for purposes of withholding state taxes, shall not include remuneration paid:

- (a) For active service as a member of the armed forces of the United States for any month during any part of which such member served in a combat zone during an induction period or was hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone during an induction period;
- (b) For agricultural labor;
- (c) For domestic service in a private home, local college club or local chapter of a college, fraternity or sorority;
- (d) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service;
- (e) For services by a citizen or resident of the United States for a foreign government or an international organization;
- (f) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

- (g) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (h) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which newspapers or magazines are charged to him;
- (i) For services not in the course of the employer's trade or business to the extent paid in any medium other than cash;
- (j) To, or on behalf of, an employee or his beneficiary from a trust created or organized in the United States and forming part of a stock bonus, pension or profit sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries and which trust is exempt from taxation, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;
- (k) For personal services performed in Wisconsin in the form of retirement, pension and profit-sharing benefits, received by nonresidents after retirement from the employ of the employer for whom such personal services were performed;
- (l) To, or on behalf of, an employee or beneficiary from a plan described in s. 815.18(31)(a) under which the benefits are fully funded by life insurance or annuities;
- (m) If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages, but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages;
- (n) In the form of tips paid to employees if the tips are paid in a medium other than cash or if the cash tips received by an employee in any calendar month are less than \$20.

Even though the remuneration in (a) through (n) above is not included in the definition of "wages" for withholding purposes, and is therefore not subject to withholding, an informational return is still required to be filed. Section 71.10(8n), 1983 Wis. Stats., provides that any resident or nonresident who pays an individual \$600 or more in a calendar year of remuneration excluded from the definition of wages shall, on or before January 31 of the succeeding year, furnish the Department of Revenue a written statement in such form as required by the Department disclosing the name of the payor, the name and address of the recipient and the total amount paid to the recipient in the year. If the individual received wages and also remuneration excluded from the definition of wages, both from the same payor, the wages and the excluded remuneration

shall both be reported to the Department, regardless of the amount of the excluded remuneration. A Form W-2 Wage and Tax Statement should be completed for each recipient.

Filing Procedures: If an employer is registered with the Wisconsin Department of Revenue for withholding income tax from employee's earnings, a copy of each employee's Form W-2 should be submitted with the Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages (Form WT-7).

If an employer is not registered for Wisconsin withholding and is not required to withhold Wisconsin income taxes for any employees, the type of employment (agriculture, domestic, etc.) should be indicated on the state copy of the Form W-2 in box 4, Employer's State number. Send the completed Form W-2 to the Wisconsin Department of Revenue, Post Office Box 8920, Madison, Wisconsin 53708, by January 31 following the year in which the wages or remuneration were paid.