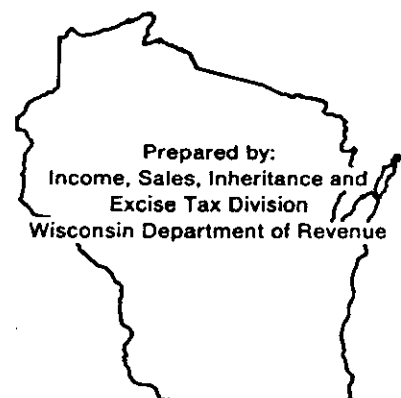


# WISCONSIN TAX BULLETIN

April 1988  
NUMBER 55

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## NEW TAX LAWS TO BE ADDRESSED IN SPECIAL ISSUE

The Governor's budget bills and other tax bills were still pending before the Wisconsin Legislature at the time this issue went to press. If any of these bills become law, a special issue of the Wisconsin Tax Bulletin will be published to provide information about the tax law changes.

## WITHHOLDING TAX TABLES WILL BE REVISED

Effective for payroll periods beginning on or after May 1, 1988, Wisconsin employers will be required to use new withholding tables in computing Wisconsin income taxes to be withheld from an employee's wages.

The tax tables have been adjusted primarily to reflect the reduction in Wisconsin income tax rates which became effective for 1987 Wisconsin income tax returns filed by taxpayers. In addition to the tables, several alternate methods of computing withholding are also provided.

The new withholding tables and alternate methods are included in the "Wisconsin Employer's Withholding Tax Guide." This publication will be mailed in early April to all employers registered with the Department of Revenue to withhold Wis-

### IN THIS ISSUE

	Page
New Tax Laws to Be Addressed in Special Issue .....	1
Withholding Tax Tables Will Be Revised .....	1
Six New Counties Adopt County Sales/Use Tax .....	1
New Tax Provisions in Lottery Law ..	1
Wisconsin Accounting Periods for Partnerships, S Corporations, and Personal Service Corporations .....	2
Extensions to File for Individuals .....	3
Effect of IRS Announcement 87-82 on Wisconsin Extensions of Time to File .....	3
Change in Occasional Sales Rule for Nonprofit Organizations .....	4
1988 Estimated Tax Requirements for Individuals, Estates, and Trusts ..	4
Refund Questions .....	4
Gift Tax Returns Due April 15 .....	4
Change in Sales Tax Requirements for Organizations Conducting Bingo Events .....	5
Wisconsin Tax Bulletin Includes Index .....	5
Do You Have Suggestions for 1988 Tax Forms .....	5
Correction to Wisconsin Tax Bulletin 54 .....	5
Hudson Office Has Been Relocated ..	5
Criminal Enforcement Activities .....	5
New ISI&E Rules and Rule Amendments .....	6
Report on Litigation .....	6
Tax Releases	
Individual Income Taxes .....	12
Homestead Credit .....	12
Farmland Preservation Credit .....	13
Sales/Use Taxes .....	13
March Tax Report .....	16
Index for Issues 1-55 .....	18

consin income taxes. Employers who do not receive copies of this publication may obtain copies by writing to: Wisconsin Department of Revenue, Post Office Box 8903, Madison, WI 53708, or calling (608) 266-1961.

## SIX NEW COUNTIES ADOPT COUNTY SALES/USE TAX

On April 1, 1988, the 1/2% county sales and use tax begins in six new counties: Ashland, Door, Langlade, Pierce, Polk, and Vilas. The counties of Barron, Buffalo, Dunn, Iowa, Jackson, Lincoln, Marathon, Oneida, Rusk, Sawyer, St. Croix, and Walworth had previously adopted the county tax. The Tax Report included with Tax Bulletin 54 (January 1988) explains how this new county tax applies to retailers and other persons.

On page 16 of this Bulletin is a copy of the March 1988 Tax Report which was sent in late March to all retailers who have a seller's permit.

## NEW TAX PROVISIONS IN LOTTERY LAW

The Wisconsin Legislature has enacted changes to the Wisconsin tax laws as a result of creating the state lottery. The

following are brief descriptions of each of the tax provisions. Sections of the statutes affected and the effective dates of the new provisions are indicated.

All of the provisions described are contained in 1987 Wisconsin Act 119, which was published December 7, 1987.

1. **Provide for Taxation of Lottery Winnings Received by Nonresidents** (1987 Act 119, amend s. 71.07(1), effective December 8, 1987).

Income of nonresident individuals from the Wisconsin lottery under Chapter 565 of the Wisconsin Statutes is taxable by Wisconsin.

2. **Expand Confidentiality Provisions** (1987 Act 119, create ss. 71.11(44)(c)12 and 77.61(5)(b)9, effective December 8, 1987).

The executive director of the Wisconsin Lottery Board is authorized to receive Wisconsin tax return information for the purpose of withholding delinquent Wisconsin taxes and child support from lottery winnings as required by s. 565.30(5), Wis. Stats.

3. **Provide for Withholding of Income Taxes from Lottery Winnings** (1987 Act 119, create s. 71.205, effective December 8, 1987).

The executive director of the lottery is required to withhold Wisconsin income tax from any lottery prize of \$2,000 or more. The amount withheld is to be determined by multiplying the amount of the prize by the highest tax rate applicable to individuals under s. 71.09(1g), Wis. Stats.

4. **Provide That Lottery Retailer Contracts May Not Be Entered Into With Persons Having Tax Delinquencies** (1987 Act 119, create s. 565.10(1)(3)(b) and (c), effective December 8, 1987).

No lottery retailer contract for the retail sale of lottery tickets or lottery shares may be entered into with a

person who has been finally adjudged to be delinquent in the payment of taxes under Chapters 71, 72, 76, 77, 78, or 139 of the Wisconsin Statutes if the person remains delinquent in the payment of those taxes at the time the person seeks to enter into the lottery retailer contract.

If the retailer is an association, partnership, or corporation, the above provision applies to the association, partnership, or corporation and to the officers or directors of the association, partners of the partnership, or officers, directors, and shareholders owning an interest of 5% or more of the corporation, unless the lottery board determines that the association, partnership, or corporation has terminated its relationship with the individual whose actions directly contributed to the association's, partnership's, or corporation's conviction or entry of plea.

5. **Provide for Withholding of Delinquent State Taxes, Child Support, or Debts Owed the State from Lottery Winnings** (1987 Act 119, create s. 535.30(5), effective December 8, 1987).

The executive director of the lottery board shall report the name, address, and social security number of each winner of a lottery prize equal to or greater than \$1,000 to the Department of Revenue to determine whether the payee of the prize is delinquent in the payment of state taxes under Chapters 71, 72, 76, 77, 78, or 139, or court-ordered payment of child support or has debt owing to the state.

Upon certification of a delinquency by the department or upon court order, the executive director shall withhold the certified amount for remittance to the appropriate agency or person. In instances where a payee of the prize is delinquent in one or both of these payments and has a debt owing to the state, the amount remitted to the appropriate agency or person shall be in proportion to the prize amount as is the delinquency or debt owed by the payee.

## WISCONSIN ACCOUNTING PERIODS FOR PARTNERSHIPS, S CORPORATIONS, AND PERSONAL SERVICE CORPORATIONS

Partnerships, S corporations, and personal service corporations that report their federal income on the basis of a calendar year or fiscal year must use that same accounting period for Wisconsin purposes.

The federal Revenue Act of 1987, enacted December 22, 1987, created section 444 of the Internal Revenue Code which provides an election for a partnership, S corporation, or personal service corporation that would otherwise have had to change its taxable year under the Tax Reform Act of 1986. The election permits these entities to retain the fiscal year used for their last taxable year beginning in 1986 or to adopt or change to a fiscal year which results in no more than a three-month deferral period. The election to retain the former fiscal year is available only if made for the entity's first taxable year beginning after December 31, 1986.

Section 71.02(1)(fm) and (2)(h), Wis. Stats., and section Tax 2.165, Wis. Adm. Code, provide that partnerships and corporations must adopt the same accounting period for Wisconsin as for federal income tax purposes. Therefore, if a partnership, S corporation, or personal service corporation makes a section 444 election for its first taxable year beginning after 1986, that election also applies for Wisconsin income or franchise tax purposes.

In IRS Notice 88-10, the Internal Revenue Service has indicated that the election will not be required to be made before the later of April 30, 1988, or 60 days after the publication of temporary regulations. Additionally, those regulations will extend the due date for filing an income tax return that results from making a section 444 election for the first taxable year after December 31, 1986, or from deciding not to make a section 444 election. In either case, the due date will be the later of (1) the original due date or (2) the due date of the section 444 election. A partnership, S corporation, or personal service corpora-

tion making a section 444 election must attach a copy of its federal election form to its Wisconsin income or franchise tax return. The Wisconsin return is due on the same date as the corresponding federal return.

To assist in the processing of returns filed after the normal due date, taxpayers should type or print "FILED UNDER IRS REGULATIONS" at the top of page 1 of the Wisconsin return filed.

For federal purposes, the partners or shareholders of a partnership or S corporation which makes a section 444 election must make "required payments" as provided in IRC section 7519. Such partners and shareholders are not required to make enhanced estimated tax payments for Wisconsin purposes in addition to the estimated tax payments required in ss. 71.21 or 71.22, Wis. Stats.

## EXTENSIONS TO FILE FOR INDIVIDUALS

### Forms WI-Z, 1A, 1, and 1NPR

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

If you are not applying for a federal extension, but need extra time to file a Wisconsin return, a 30-day extension of time to file may be requested on Wisconsin Form I-101, "Application for Extension of Time to File Wisconsin Income Tax Return." The application for extension must be submitted on or before April 15, 1988.

If an individual who has been granted an extension files a Wisconsin return and has a tax due, the amount due is subject to 12%

interest per year for the extension period (s. 71.10(5)(b), Wis. Stats.). To avoid interest charges, individuals may pay the tax due on or before the original due date of the return. A Form 1-ES, "1987 Wisconsin Estimated Tax Voucher," should be submitted with any payment. This will ensure that the payment is properly credited to the individual's account. Individuals using a federal extension can obtain a 1987 Form 1-ES from any Department of Revenue office. Individuals applying for a Wisconsin extension may use the 1987 Form 1-ES that is attached to the bottom of the application for the Wisconsin extension.

U.S. citizens who are not in the United States or Puerto Rico on April 15, 1988, are allowed an automatic extension until June 15, 1988, to file their returns. These persons do not have to request an extension, but should attach a statement to their returns indicating that they were outside of the United States or Puerto Rico on April 15, 1988.

An individual serving in the Armed Forces or serving in support of the Armed Forces in an area designated as a combat zone is allowed an extension of time for filing a return, payment of tax, filing refund claims, etc., for which a time limit is prescribed. The extension is for the period which a member of the Armed Forces is in a combat zone or is continuously hospitalized outside the United States as a result of injuries received in a combat zone and the next 180 days. These persons do not have to request an extension, but should attach a statement to their returns indicating they were serving in the Armed Forces in a combat zone or hospitalized outside the United States.

Applications for extensions and related correspondence should be sent to:

Wisconsin Department of Revenue  
Post Office Box 8903  
Madison, Wisconsin 53708

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

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

1987 Homestead Credit claims must normally be filed no later than December 31, 1988, Farmland Preservation Credit claims for 1987 must normally be filed no later than 12 months after the farmland owner's 1987 taxable year ends (e.g., December 31, 1988, for calendar year taxpayers). Because December 31, 1988, is a Saturday and the next business day (January 2, 1989) is a legal holiday, Homestead Credit claims and calendar year Farmland Preservation Credit claims must be filed no later than January 3, 1989.

## EFFECT OF IRS ANNOUNCEMENT 87-82 ON WISCONSIN EXTENSIONS OF TIME TO FILE

### Federal:

Section 806 of the Tax Reform Act of 1986 generally requires partnerships, S corporations, and personal service corporations (PSCs) to use the taxable year of their owners. Although Revenue Procedure 87-32 and Revenue Ruling 87-57 provide guidance to taxpayers affected by section 806 of the Tax Reform Act of 1986, there remain uncertainties surrounding the provision. IRS Announcement 87-82 describes the relief that will be provided to certain taxpayers affected by these uncertainties.

Announcement 87-82 provides that a partnership, S corporation, or PSC which is required to file a return for a short period beginning in 1987 in order to comply with section 806 of the 1986 Tax Reform Act may file its short period return on or before the latest of (1) the normal due date, (2) October 15, 1987, or (3) 30 days after the date federal Form 1128, "Application for Change in Accounting Period", is approved by the IRS. Such taxpayers should type or print "FILED UNDER ANNOUNCEMENT 87-82" at the top of page 1 of the federal return in order to assist in processing returns filed after the normal due date.

**Wisconsin:**

Wisconsin will recognize the automatic extension of time to file short period returns required under section 806 of the Tax Reform Act of 1986 provided by IRS Announcement 87-82. Taxpayers should attach a copy of federal Form 1128 or other explanation of change in taxable year to their Wisconsin income or franchise tax return.

To assist in the processing of returns filed after the normal due date, taxpayers should type or print "FILED UNDER ANNOUNCEMENT 87-82" at the top of page 1 of the Wisconsin return filed.

## **CHANGE IN OCCASIONAL SALES RULE FOR NON-PROFIT ORGANIZATIONS**

Effective January 1, 1988, section Tax 11.10(3)(d), Wis. Adm. Code, provides that nonprofit organizations with sales of tangible personal property and services (other than sales of admissions, tickets, meals, food, and beverages) exceeding \$7,000 annually are taxable on all gross receipts, unless the department determines that sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or a partial vocation or occupation.

For 1985, 1986 and 1987, the dollar amount of such sales was \$2,500 instead of \$7,000.

## **1988 ESTIMATED TAX REQUIREMENTS FOR INDIVIDUALS, ESTATES, AND TRUSTS**

Estimated income tax payments are tax deposits made during the year to prepay the income tax and minimum tax that will

be due when an income tax return is filed. Every individual, married couple filing jointly, estate, or trust is required to pay 1988 Wisconsin estimated tax if they expect to owe \$200 or more on their 1988 Wisconsin income tax return. Form 1-ES, "1988 Wisconsin Estimated Tax Voucher," is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment is due on April 15, 1988. Installment payments are also due on June 15, 1988, September 15, 1988, and January 17, 1989. For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year, and the 1st month of the following fiscal year.

Full-year residents, part-year residents, estates, and trusts are subject to the estimated tax requirements for 1988. However, an estate is not required to pay estimated tax during the first two years of its existence.

If an individual, married couple filing jointly, estate, or trust does not make the estimated tax payments when required, or underpays any installment, a penalty may be assessed.

## **REFUND QUESTIONS**

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

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

## **GIFT TAX REPORTS DUE APRIL 15**

A Wisconsin gift tax is imposed upon all gifts by a donor who is a Wisconsin resident (regardless of the donee's residence) and gifts of Wisconsin real estate or tangible personal property located in Wisconsin (regardless of where the donor or donee resides).

1987 Wisconsin gift tax reports must be filed if the total value of taxable gifts given in 1987 by one donor (person giving the gift) to one donee (person receiving the gift) exceeds \$10,000. Gift tax reports of the donee and donor for 1987 must be filed by April 15, 1988. A return need not be filed if the value of the gift is \$10,000 or less. Beginning in January 1988, the department no longer processes or keeps a permanent record of gift tax returns filed for gifts of \$10,000 or less.

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

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

The gift tax due is figured on Wisconsin Form 6. In determining the 1987 gift tax due, an annual exemption of \$10,000 is allowed for all gifts made during a calendar year by one donor to one donee. Gifts to a spouse are completely exempt from Wisconsin gift tax. A lifetime personal exemption of \$50,000 is allowed for gifts to lineal issue (children, grandchildren), lineal ancestors (parents, grandparents), the wife or widow of a son, the husband or widower of a daughter, an adopted or mutually acknowledged child, and a mutually acknowledged parent. There is no lifetime exemption allowed to other donees.

## CHANGE IN SALES TAX REQUIREMENTS FOR ORGANIZATIONS CONDUCTING BINGO EVENTS

Effective October 1, 1987, organizations conducting bingo events were no longer required to file sales tax returns at the end of each event. Instead, these organizations are required to obtain a seller's permit from the Wisconsin Department of Revenue which will allow them to report and pay the sales tax either monthly, quarterly, or annually.

If an organization conducting bingo events already holds a seller's permit for other reasons, bingo receipts should be included on the sales tax returns already being filed with the department.

This new method of reporting sales tax on bingo receipts does not apply to the reporting of the 2% gross receipts tax. The Bingo Occasion Report (Form 242-B-3) must be filed and the 2% gross receipts tax must be paid to the Bingo Control Board within 15 days after the date of the bingo occasion.

An application for a Wisconsin seller's permit can be obtained by writing the Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, Wisconsin, 53708, or by calling (608)266-2776. There is a \$5.00 fee required.

## WISCONSIN TAX BULLETIN INCLUDES INDEX

Once each year the Wisconsin Tax Bulletin includes an index of articles, tax releases, and other attachments that have appeared in past Bulletins.

For the convenience of its users, the WTB index includes page numbers for each issue number listed. The index can be found on pages 18 to 41 of this Bulletin.

## DO YOU HAVE SUGGESTIONS FOR 1988 TAX FORMS?

Do you have suggestions for improving the Wisconsin tax forms and instructions? Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, Post Office Box 8933, Madison, Wisconsin 53708. Please be specific and send your suggestions in early. The department appreciates hearing from you.

## CORRECTION TO WISCONSIN TAX BULLETIN 54

The Tax Release titled "Treatment of Capital Losses by Corporations for 1987" on page 14 of WTB 54 contains a Wisconsin statute reference of s. 71.02(2)(bg). This reference should be s. 71.02(1)(bg), 1987 Wis. Stats.

## HUDSON OFFICE HAS BEEN RELOCATED

The address for the Department of Revenue's Hudson office given on page 7 of WTB 54 has been changed to Suite 1B, 1810 Crestview Drive, Hudson, telephone (715) 386-8224.

## CRIMINAL ENFORCEMENT ACTIVITIES

### Individual Income Tax

A Beaver Dam man has been ordered to serve 3 years probation and pay a \$500 fine for criminal violations of the Wisconsin state income tax law.

Russell J. Warren, Route 1, Conventry Lane, Beaver Dam, Wisconsin was con-

victed in Dodge County Circuit Court, Branch 3, Juneau after he entered no contest pleas to 2 counts of failing to file state income tax returns. Circuit Judge Thomas W. Wells sentenced Warren to 6 months imprisonment on each count, stayed execution of the sentence, placed Warren on probation for 3 years and ordered him to pay a \$500 fine as a condition of probation. He must also pay the taxes, penalties, and interest due.

Warren was charged with failing to file state income tax returns for each of the years 1983 and 1984 on gross income in excess of \$33,000 for 1983 and \$38,000 for 1984.

A Milwaukee man has been ordered to serve 12 months in jail for criminal violations of the Wisconsin state income tax law.

Christopher L. Niesl, who formerly resided at 3864 South 92nd Street, Milwaukee, was sentenced in Milwaukee County Circuit Court, Branch 22 by Circuit Judge William J. Haese on 2 counts of failing to file state income tax returns. Judge Haese sentenced Niesl to 6 months in jail on each count to be served consecutively and ordered him to pay a \$500 fine on each count. If the fines are not paid, Niesl must serve an additional 30 days in jail on each count.

Niesl was charged with failing to file state income tax returns on gross income of \$36,320 for 1982 and \$15,281 for 1983. He was found guilty on both counts after trial by a jury on October 14, 1987.

### Excise Taxes

On November 10, 1987, BL's, Inc., a tavern doing business at 901-903 Rose Street, La Crosse, was found guilty of failing to maintain invoices for its liquor purchases. Judge Michael Mulroy fined the corporation \$200 plus court costs of \$70.

On December 21, 1987, Harold R. Bauer, a tavern operator in the Town of Dell Prairie, Adams County, was found guilty of purchasing liquor from an unauthorized source. Judge Raymond Gieringer ordered Bauer to pay a fine of \$179, including costs. Bauer had 60 days to pay the fine, or in default of payment, spend 18 days in the Adams County jail.

Fuel Service, Inc., 15 East Walnut Street, Chippewa Falls, was found guilty of jobbing cigarettes without a permit in Chippewa and Barron Counties. Fuel Service was fined a total of \$1,291 in December 1987.

## 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 state in the process as of March 15, 1988. Part C lists new rules and amendments which are adopted. Part D lists emergency rules. ("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

### A. Rules at Legislative Council Rules Clearinghouse

- 2.16 Change in method of accounting for corporations-A
- 2.19 Installment method of accounting for corporations-A
- 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies-A
- 2.21 Accounting for incorporated contractors-A
- 2.22 Accounting for incorporated dealers in securities-R&R
- 2.24 Accounting for incorporated retail merchants-A

- 2.25 Corporation accounting generally-A
- 2.26 "Last in, first out" method of inventorying for corporations-A
- 2.39 Sales factor option-NR
- 2.45 Apportionment in special cases-A
- 2.50 Apportionment of net business income of interstate public utilities-A
- 2.505 Apportionment of net business income of interstate professional sport clubs-A
- 2.53 Stock dividends and stock rights received by corporations-A
- 2.56 Insurance proceeds received by corporations-A
- 2.65 Interest received by corporations-A
- 2.72 Exchanges of property by corporations generally-A
- 2.721 Exchanges of property held for productive use or investment by corporations-A
- 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations-A
- 2.88 Interest rates A
- 3.44 Organization and financing expenses—corporations-R&R
- 3.45 Bond premium, discount and expense—corporations-A
- 11.05 Governmental units-A
- 11.09 Medicines-A
- 11.12 Farming agriculture, horticulture and floriculture-A
- 11.19 Printed material exemptions-A
- 11.40 Exemption of machines and processing equipment-A
- 11.51 Grocers' guidelist-A
- 11.57 Public utilities-A
- 11.61 Veterinarians and their suppliers - A

### B. Rules of Legislative Standing Committee

- 3.095 Interest income from federal obligations-R&R

### C. Rules Adopted in 1988

- 11.10 Occasional sales-A (effective 1/1/88)

### D. Emergency Rules

- 3.095 Interest income from federal obligations-A (extended to 3/31/88)

## REPORT ON LITIGATION

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

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

The following decisions are included:

### Individual Income Taxes

Kenneth P. Jansen and Robert Thurow (p. 7)  
Entertainment expenses

### Corporation Franchise or Income Taxes

Castle Corporation (p. 7)  
Installment sales

The United States Shoe Corporation (p. 7)  
Business loss carryforward

William Wrigley, Jr., Co. (p. 8)  
Nexus

### Sales/Use Taxes

Badgerland Harvestore Systems, Inc. (p. 10)  
Refunds and remedies of taxpayer—claims for refund

Fiedler Foods, Inc. (p. 10)  
Sale of business or business assets

Montgomery Ward & Co., Inc. (p. 11)  
Interest—change in rate

YMCA of Beloit, et al. (p. 11)  
Appeals—must be timely

## INDIVIDUAL INCOME TAXES

**Entertainment expenses.** *Kenneth P. Jansen and Robert Thurow vs. Wisconsin Department of Revenue* (Circuit Court of Outagamie County, undated). For the years 1980 through 1983, Robert H. Thurow was a salesperson for Gateway Liquor Company. For each of the years in question, the taxpayer took a deduction on his individual income tax returns, business expenses for drinks purchased for "Class B" licensees (tavern owners) while talking business, and cases of alcohol given as Christmas presents to licensees.

For the years 1980 through 1983, Kenneth P. Jansen was a salesperson for Badger Liquor Company, Inc. For each of the years in question, the taxpayer took as a deduction on his individual income tax returns, business expenses for rounds of drinks purchased when he visited "Class B" licensees (tavern owners) on business.

The department, pursuant to field audits, disallowed these deductions and issued assessments to the taxpayers based upon the adjustments. The disallowances were in accordance with s. 125.69(2), Wis. Stats., which bars liquor wholesalers from furnishing things of value to "Class B" licensees. In a decision dated May 13, 1986, the Wisconsin Tax Appeals Commission affirmed the disallowances.

The taxpayers challenge the finding that they provided a "thing of value" to holders of Class B licenses within the meaning of s. 125.69(2), Wis. Stats. The taxpayers also challenge the finding that the Department of Revenue has enforced the statute consistently and has not changed their practice in regards to disallowing such deductions. Finally, the taxpayers challenge the finding by the Commissioner that they, as employees, are covered under s. 125.69(2), Wis. Stats.

The Circuit Court concluded:

A. It is uncontraverted in the record that the taxpayers bought drinks for "Class B" license holders. The Commissioner's holding that the buying of drinks is a "thing of value" is a reasonable determination on his part.

B. The Commissioner's finding that the taxpayers were not successful in showing a change in interpretation of s. 125.69(2), Wis. Stats., had occurred is supported in the record. The testimony of the Department of Revenue provides the Commissioner with evidence which reasonably allows him to make a determination that the department is acting consistent to past policy.

C. If employees were allowed to provide things of value, the statute would not effectively accomplish the goal the legislature desired. The discretion of the Commissioner in his finding is proper and the Court will not set aside his finding that the taxpayers are included under s. 125.69(2), Wis. Stats.

The taxpayers have not appealed this decision.

□

## CORPORATION FRANCHISE OR INCOME TAXES

**Installment sales.** *Castle Corporation vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, December 23, 1987). Castle Corporation appeals from a judgment affirming a Tax Appeals Commission order requiring Castle to pay income tax on the total gain of an installment sale of real estate in the year of sale, even though Castle only received approximately 37% of the purchase price that year. The dispositive issue is whether the 30% rule found in section Tax 2.19(1), Wis. Adm. Code, is invalid because it exceeds the bounds of correct interpretation of s. 71.11(8), Wis. Stats., thus violating s. 227.11(2)(a), Wis. Stats.

Castle sold land to the city of Oshkosh for \$744,072 in February of 1982. By year's end, Castle had received \$274,802.40, approximately 37% of the purchase price. Castle reported the transaction on its federal and state income tax returns for the year ending December 31, 1982, as an installment sale, thus deferring taxes on

\$319,349.31, the balance of the gain on the sale.

On audit, the Wisconsin Department of Revenue disallowed deferral of the \$319,349.31 because the payments Castle received in 1982 exceeded 30% of the selling price. On review, the Commission affirmed the department. On judicial review, the Circuit Court affirmed the Commission.

The Court of Appeals concluded section Tax 2.19(1), Wis. Adm. Code, contradicts the express purpose of s. 71.11(8)(a), Wis. Stats., by requiring a method of accounting which distorts corporate income rather than clearly reflecting it. Because section Tax 2.19(1), Wis. Adm. Code, "exceeds the bounds of correct interpretation," thus violating s. 227.11(2)(a), Stats., the Commission's decision is reversed.

The department has not appealed this decision.

□

**Business loss carryforward.** *The United States Shoe Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 28, 1987). The sole issue for decision is whether U.S. Shoe may deduct the loss carryforward attributable to various subsidiaries for the period 1971-75 as set forth and modified in the foregoing findings.

The United States Shoe Corporation (U.S. Shoe), is an Ohio corporation which has been subject to the Wisconsin corporate franchise tax since the tax year 1975.

On March 7, 1980, the department issued an assessment denying to the taxpayer a net business loss carryforward for its fiscal years ended July 31, 1976, and July 31, 1977, based on losses sustained by certain predecessor corporations in fiscal years 1970 through 1975.

In 1966, U.S. Shoe acquired the shares of Freeman-Toor Corporation, a Delaware corporation (F-T (Del.)), based in Beloit,

Wisconsin. F-T (Del.) had for years been engaged in the manufacture of men's shoes and footwear under the Freeman and Manley brand names, sold through numerous retail stores and men's shoe departments across the nation, with each such retail location being incorporated under Delaware law as a wholly-owned subsidiary of F-T (Del.). That business was continued by those companies through July 31, 1974, during which interval those companies were operated as part of the Men's Footwear division of U.S. Shoe.

On May 2, 1974, U.S. Shoe incorporated a wholly-owned subsidiary under Ohio law by the name of Freeman-Toor Corporation (F-T (OH)). F-T (OH) had a Wisconsin net operating loss of \$9,123 for its fiscal year ended July 31, 1974.

Effective as of the close of business on July 31, 1974, F-T (Del.) and all of its wholly-owned retail subsidiaries were merged into F-T (OH). At the time of that merger, sixteen of the various retail subsidiaries merging into F-T (OH) had net operating losses for the fiscal years 1971 through 1974 in the aggregate amount of \$854,708. As an Ohio corporation, F-T (OH), held all the same assets subject to all of the liabilities of F-T (Del.) and its retail subsidiaries.

During the fiscal year, August 1, 1974, through July 31, 1975, F-T (OH) incurred an operating loss, as reported on line 28 of its 1975 Wisconsin Form 4, of \$4,111,540 which resulted in a Wisconsin net loss on line 34 of its Wisconsin Form 4 of \$899,594.

Effective as of the close of business on July 31, 1975, F-T (OH) was merged into U.S. Shoe. As an Ohio corporation, U.S. Shoe held all of the assets subject to all of the liabilities of F-T (OH).

On its 1976 Wisconsin Form 4, U.S. Shoe claimed a net business loss offset of \$899,594 based on the loss amount reported on line 34 of F-T (OH)'s 1975 Wisconsin Form 4. Not all of the loss offset was used in fiscal 1976 so that on its return for FYE July 31, 1977, it claimed a similar offset of \$139,926. The loss offset

claimed by U.S. Shoe consisted of losses of the following corporations for the indicated year in the indicated amounts: sixteen retail subsidiaries of F-T (Del.), which did not engage in business in Wisconsin, for fiscal years 1970 through 1971, \$855,643; H.O. Toor Footwear for fiscal year 1975, \$2,717; F-T (OH) for fiscal 1974, \$9,123; F-T (OH) for fiscal 1975, \$5,111,540; for a total of \$5,979,023. This amount had been shown on F-T (OH)'s Wisconsin franchise tax return for fiscal 1975. A portion of this amount was allocated to Wisconsin by application of F-T (OH)'s apportionment ratio for that year, resulting in a Wisconsin loss of \$899,594.

The Department's assessment notice to the taxpayer disallowed the offset on the grounds that the loss was that of F-T (OH) and not U.S. Shoe.

During the period August 1, 1974, through July 31, 1975, F-T (OH) continued to conduct the same business operations which had been conducted by F-T (Del.) and its retail subsidiaries prior to their merger into F-T (OH). F-T (OH) had no other business, and was operated as part of the Men's Footwear division of U.S. Shoe. Subsequent to July 31, 1975, U.S. Shoe continued to conduct the same business operations which had been conducted by F-T (OH) from August 1, 1974, through July 31, 1975, and by F-T (Del.) and its retail subsidiaries prior to that time. This includes the manufacture and sale of the same category of products (men's shoes and footwear), under the same brand names, using the same manufacturing, distribution and sales facilities and personnel, under the same general business organization. U.S. Shoe otherwise continued its other business.

The Commission concluded that the taxpayer is entitled to carry forward the losses of Freeman-Toor (Del.) or Freeman-Toor (OH) during 1971 through 1975 as offsets against its 1976 and 1977 Wisconsin income for corporate franchise tax purposes under s. 71.06, Wis. Stats., to the extent income was earned by the same trade or business as incurred the losses initially.

The department has appealed this decision to the Circuit Court.

□

**Nexus.** *William Wrigley, Jr., Co. vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, August 20, 1987). William Wrigley, Jr., Co. (Wrigley) petitioned for judicial review of a decision of the Wisconsin Tax Appeals Commission which upheld the franchise tax assessment of the Wisconsin Department of Revenue for the years 1973 through 1978. In companion, the department petitioned for judicial review of that portion of the Commission's decision which determined that interest on the taxes found due should be calculated at the simple interest rate under s. 71.09(5)(a), Wis. Stats., rather than the higher delinquent interest rate under s. 71.13(1)(a), Wis. Stats.

Wrigley challenges the Commission's Order on three grounds: (1) that the failure of the Commission to involve the member who presided at the two-day evidentiary hearing in making its decision violated Wrigley's constitutional right to due process and its statutory rights; (2) that the Commission's decision is not supported by substantial evidence; and (3) that the Commission's decision rests on an improper interpretation or application of controlling law.

The pertinent and undisputed sequence of events relating to Wrigley's first challenge revolves around Commissioner William B. Smith. He was assigned to preside over the hearing held on August 26-27, 1985, and did so. Due to legislative action, his term on the Commission expired in October of 1985. A transcript of the hearing was prepared and available to the full Commission in reaching its decision. However, the record contains no indication that Smith ever prepared proposed findings of fact, conclusions of law, or decision in the case, ever reported to the full Commission regarding the hearing, or was ever consulted in any fashion prior to the Commission's entry of its order of November 18, 1986.



The only evidence in the record to support the Commission's finding on credit transaction involvement is the testimony of the two regional managers employed by Wrigley during the period in question and the company's formal position description for the regional manager. John Kroyer, regional manager from 1973 to 1975, testified that he had two or three times per year voluntarily gotten involved in mediating a credit dispute to protect future sales to a good customer. Gary Hecht, regional manager from 1976 to 1978, testified that he had no involvement of any kind in credit transactions with Wrigley customers while he was regional manager. The company's position description recites among the "Principal Activities" of the regional manager that he "Represents the company on credit problems as necessary."

Wrigley also argues that the failure of the Commission to involve Commissioner Smith violates its statutory rights. It relies principally on the requirements of 227.46(2), Wis. Stats. The department points to the language in 73.01(4)(e), Wis. Stats., "irrespective of ch. 227," to argue that the s. 227.46(2) procedure is inapplicable to the Commission's decision.

In making a decision in a case before it, the Commission may act only with the concurrence of at least three of its members. The legislature has authorized the Commission to make decisions after evidentiary hearings without all members sitting through each such hearing, but has expressly conditioned this exercise of authority with the requirement that the matter be "reported" to the full Commission.

The Circuit Court concluded that

A. There is nothing in the record by which the Commission could find that in 1976 to 1978 the regional manager "carried on" activity other than to have concluded that Gary Hecht was lying. His testimony was not patently absurd nor contrary to the laws of nature so as to permit ignoring it or finding its opposite. Rather, the finding could only have been made through an assessment of Hecht's credibility. To have done so without the benefit of Commissioner Smith's impressions of

Mr. Hecht violated Wrigley's rights to due process.

B. The Commission's finding cited above is not qualified as to the time this activity occurred. In its opinion, the Commission restates the essence of the finding but explicitly recites that this activity was "carried on by it (Wrigley) during the years 1973-1978." Looking to the decision of the Commission in this case in the context of the record presented by the transcript and exhibits, there are several material findings made where the Commission was clearly called upon to assign weight or to draw inferences from the testimony. This is apparent in the findings that Wrigley's representatives in Wisconsin for the entire period in question were "maintaining offices in (their) home" and "conducting regular and periodic training seminars in Wisconsin," amongst others. As a result the Commission, in failing to consult with Commissioner Smith, has violated s. 73.01(4)(b).

Having found that the Commission has violated Wrigley's due process and statutory rights, the Circuit Court concluded that the case be dismissed without prejudice and that the Decision and Order of the Commission dated November 18, 1986, be remanded to the Commission for further proceedings not inconsistent with this decision. At the least, the Commission shall consult personally with Mr. Smith concerning his impressions of the credibility of the witnesses and the weight to be accorded their testimony. The decision issued by the Commission after such consultation shall affirmatively describe the procedures used to meet these directions.

See the following case for the decision of the Commission on the remand.



*Nexus. William Wrigley Jr. Company vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 25, 1987). This matter was remanded to the Commission by a Decision

and Order issued on August 20, 1987, by Dane County Circuit Judge Michael Nowakowski. In his Decision and Order, Judge Nowakowski instructed this Commission to consult personally with former Commissioner William Bradford Smith concerning his impressions of the credibility of certain witnesses and the weight to be accorded their testimony.

The Commission took the following steps in compliance with the remand order:

A. The entire Commission file in this matter was provided Commissioner Smith for his perusal and review.

B. Mr. Smith was invited to and attended executive sessions of this Commission held on September 21, 1987, and October 12, 1987, while all five members were present.

C. Mr. Smith's views were solicited as to the credibility of the testimony of Gary Hecht and John Kroyer and the weight to be accorded that testimony.

D. Mr. Smith advised the Commission that he found the testimony of Gary Hecht and John Kroyer to be "extremely credible" and would accord it great weight.

After consultation with former Commissioner William Bradford Smith, the majority of the Commission reaffirmed its Decision and Order of November 18, 1986.

The Commission held that the credibility of Messieurs Hecht and Kroyer, both witnesses called by William Wrigley Jr. Company, as well as the other witnesses who testified, was never questioned or in issue by the Commission. That testimony was completely accepted and accorded substantial weight. Although the company job descriptions of both Hecht and Kroyer called for them to participate in credit transactions, it is clear and uncontroverted from their testimony that Gary Hecht, regional manager from 1976 to 1978, had no involvement of any kind in credit transactions with Wrigley customers while John Kroyer, regional manager from 1973 to 1975, did.

The Commission never believed or concluded or intended to intimate that Gary Hecht or any other witness lied or was in any way untruthful. Although the credit transaction was highlighted in its opinion, this Commission did not rest its decision on that basis alone, but rather relied on the totality of all the different non-immune activities specified at page 25 of its opinion, including the credit activities in 1973 to 1975 as well as the maintaining home offices and conducting regular and periodic training seminars in Wisconsin, which findings were based on the unimpeached, credible testimony of the taxpayer's own witnesses which are supported by the record.

Therefore, the Commission's Decision and Order of November 18, 1986, was affirmed.

The taxpayer has appealed this decision back to the Circuit Court.

□

## SALES/USE TAXES

**Refunds and remedies of taxpayer—claims for refund.** *Badgerland Harvestore Systems, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 27, 1987). The taxpayer does not object to the amount of taxes and interest shown as due the department on the modified Notice of Additional Sales and Use Tax Assessment, however, it does object to the department's refusal to allow the taxpayer to offset against the deficiency assessed the amount of at least \$1,394.73 for the year ending January 31, 1979, \$3,381.51 for the year ending January 31, 1980, \$3,737.22 for the year ending January 31, 1981, or a total of \$8,513.46.

During each of the years in question, the taxpayer purchased products from A. O. Smith Harvestore Products, Inc. and paid Wisconsin sales/use tax on such purchases equal to 4% of the entire invoice price of the products purchased. The entire amount of Wisconsin sales/use tax paid by

the taxpayer on such purchases was collected by A. O. Smith and remitted by A. O. Smith to the department. Subsequent to the payment of the taxes, the taxpayer received refunds from A. O. Smith on such purchases which reduced the purchase price of the products purchased.

The taxpayer did not receive a refund from A. O. Smith for the 4% sales/use tax on the refunded amounts, which was initially paid by the taxpayer to A. O. Smith and remitted by A. O. Smith to the department.

The purchase price refunds to the taxpayer on its purchases of products from A. O. Smith constituted a reduction in the "gross receipts" of A. O. Smith from the taxpayer subject to Wisconsin sales/use tax, pursuant to s. 77.51(4), Wis. Stats., and the "sales price" paid by the taxpayer on such purchases, pursuant to s. 77.51(15), Wis. Stats. Had the taxpayer and A. O. Smith known the amount of the refunds at the time A. O. Smith filed its Wisconsin sales/use tax returns covering the purchase of such refunded products, the amount of taxable "gross receipts" or "sales price" related to such purchases would have been the invoice sales price of such products less the amount of the sales price refund.

Prior to April 30, 1986, A. O. Smith Harvestore Products, Inc. was subject to a final sales/use tax field audit determination for each of the years in question.

The taxpayer did not pay any sales/use tax directly to the department on the items in dispute.

The Commission concluded that the taxpayer was not the "person" required to file with the department, a sales tax return reporting the sales tax in question, and the taxpayer was not the "person" who paid the sales tax involved to the department within the intent and meaning of s. 77.59(4), Wis. Stats., and, thus, has no legal standing to make a claim for refund of sales taxes paid, nor legal standing to claim an offset for sales taxes paid under the doctrine of equitable recoupment. The Commission lacks the authority to act on the claims for refund/offset in question when neither the legislature nor the courts

have granted the taxpayer legal standing to proceed in the matters involved herein.

The taxpayer has appealed this decision to the Circuit Court.

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**Sale of business or business assets.** *Fiedler Foods, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, December 23, 1987). Fiedler Foods, Inc., appeals from an order affirming a decision of the Tax Appeals Commission. The Commission upheld an assessment of sales taxes against Fiedler in connection with the sale of its business fixtures. The issue is whether Fiedler continued to "hold" its seller's permit on the date of the sale within the meaning of ss. 77.54(3) and (7), and 77.51(10)(a), Wis. Stats., and thus was ineligible to claim the "occasional sales" exemption from the sales tax.

Fiedler operated a grocery store in Cuba City, Wisconsin, and held a Wisconsin sales tax permit. In early 1984, Fiedler sold all of its assets, consisting of store fixtures and merchandise inventory, to Redfearn Foods, Inc. On Saturday, March 3, 1984, Fiedler took its final inventory, and at 11:00 p.m., placed its seller's permit in an envelope addressed to the Wisconsin Department of Revenue and deposited it in a mailbox outside the Cuba City Post Office, which had closed at 4:00 p.m. that day. Sometime after 11:00 p.m., the closing took place and Redfearn took possession of the property. Because the post office was closed over the weekend, the envelope was not postmarked until Monday, March 5, and was not received by the department until the following day. The department assessed a tax on the sale of Fiedler's equipment on grounds that, under the applicable statutes and administrative rules, Fiedler was not entitled to claim the exemption for occasional sales of property because it continued to hold a seller's permit on March 3, 1984, the date of the sale.

Fiedler argues first that it did not "hold" a seller's permit at the time of sale within the

meaning of s. 77.51(10)(a), Wis. Stats., because, having been deposited in a mailbox an hour earlier, the permit was no longer in its physical possession. Fiedler did not physically deliver the permit to the department. Had it done so there would be no question of compliance with the rules, for personal delivery to the department is now conclusive on the issue under section Tax 11.13(3)(a), Wis. Adm. Code. Fiedler chose the other alternative, delivery by mail under section Tax 11.13(3)(b), Wis. Adm. Code, and thus made legal delivery to the department conditional on the postmark date.

Fiedler next argues that the "postmark" rule is "inconsistent" with the statute under which it was adopted, s. 77.51(10)(a), Wis. Stats. Fiedler's position is that because the statute speaks in terms of "hold(ing)" a permit and does not specifically refer to "postmarks," "mailing," or "personal delivery," the department lacked authority to adopt a rule conditioning compliance with the statutes on postmark mailing or personal delivery.

The Court of Appeals concluded that Fiedler lost the exemption not, as it argues, simply because the post office was closed, but because it selected a specific means of qualifying for the exemption and then failed to comply with the applicable requirements. Tax exemptions, being matters of legislative grace, are to be strictly construed against granting the exemption and the Court cannot say that the department's interpretation of the exemption statutes and rules in this case lacked a rational basis, even though an alternative interpretation may have been equally reasonable. Therefore, the order of the Wisconsin Tax Appeals Commission is affirmed.

The taxpayer has not appealed this decision.



**Interest—change in rate.** *Montgomery Ward & Co., Inc. v. Wisconsin Depart-*

*ment of Revenue* (Court of Appeals, District IV, December 31, 1987). *Montgomery Ward & Co., Inc. (MWC)*, appeals from a judgment affirming a decision and an order of the Wisconsin Tax Appeals Commission. The Commission affirmed the Department of Revenue's deficiency assessment against MWC for sales and use taxes for the taxable period February 1, 1976, through January 31, 1981. The assessment charged interest on the deficiencies at the rate of 12% per annum. The issues are:

A. Whether the 12% interest rate, which was first established on July 31, 1981, may be applied to deficiencies accruing prior to that date.

B. If so, whether the retroactive application violates MWC's constitutional right to equal protection of the laws.

Prior to July 31, 1981, the statutory interest penalty on sales and use tax deficiencies was 9% per year. In the 1981 budget act, the legislature increased the rate to 12%. The act also provided that the change would "first appl[y] to all determinations, assessments or other actions made by the department . . . on August 1, 1981, regardless of the taxable period to which they pertain." Finally, the act provided that "[a]ll sections of this act take effect on . . . the day following publication . . ." The act was published on July 30, 1981, and thus its "effective date" was July 31, 1981.

On June 17, 1982, the department assessed the 1976-1981 deficiencies against MWC, charging interest at the rate of 12% for the entire period. MWC appealed to the Tax Appeals Commission, which upheld the assessment and interest charge as authorized by s. 77.60(1), Stats., as amended by s. 1125hm, ch. 20, Laws of 1981. MWC sought judicial review and the Circuit Court affirmed, concluding:

A. That the statutory amendments evinced an intent on the part of the legislature that the interest rate increase was to have a retroactive effect.

B. That the retroactive application was not unconstitutional.

The Court of Appeals concluded that because there was no ambiguity, much less any conflict, in the "initial applicability" provisions of s. 2203(45)(g) and the "effective date" provisions of s. 2204, there is no need to consider the legislative materials cited by MWC. The Commission and the Court correctly interpreted the provisions of the act as authorizing imposition of the 12% interest rate on the deficiency determinations in question. The fact that some taxpayers may be assessed interest at different rates depending upon when the delinquency or deficiency is found and when the assessment is made does not establish the unconstitutionality of the laws.

The taxpayer has appealed this decision to the Supreme Court.



**Appeals—must be timely.** *YMCA of Beloit, YWCA of Greater Milwaukee, YWCA of Greater Milwaukee d/b/a YWCA Cafeteria, YWCA of La Crosse, YMCA of Metropolitan Milwaukee, YMCA (Madison), YMCA of Waukesha, Sheboygan YMCA, Family YMCA of Northern Rock County, Inc., YMCA of La Crosse, Wisconsin, YMCA (Racine), YMCA of Manitowoc, Wisconsin, Inc., Family YMCA (Appleton), YMCA, Inc., (Green Bay), and YMCA (Eau Claire) vs. Department of Revenue* (Court of Appeals, District IV, October 15, 1987). The taxpayers appealed an order dismissing their petition for review of a February 27, 1986, decision and order of the Wisconsin Tax Appeals Commission which sustained the Department of Revenue's determination that the taxpayers are retailers under s. 77.51(7), Wis. Stats., some of whose transactions are subject to sales and use taxes. The taxpayers' petition for review was timely filed and served on the department as required by s. 227.16(1)(a), Wis. Stats., but was not served on the Commission until thirty-four days after the Commission's decision and order was mailed. The trial court dismissed the petition because the taxpayers' failure to

timely serve the Commission deprived it of jurisdiction or competency.

The taxpayers claimed: (1) The decision and order of the Commission was not a final and complete decision which began the running of the statute limiting their time to petition for review. (2) The decision and order was invalid because of the composition of the decisionmaker. (3)

Section 227.16(1), Wis. Stats., does not apply to constitutional claims which the Commission was not competent to decide.

The Court of Appeals concluded that the Commission's decision and order was a final decision within s. 227.15, Wis. Stats., and that the taxpayers' petition for review of that decision and order was required to be filed and served as pre-

scribed in s. 227.16(1)(a), Wis. Stats. Because it was not, the taxpayers failed to properly invoke the jurisdiction of the trial court.

The taxpayers have not appealed this decision.

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## 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.)

The following Tax Releases are included:

### Individual Income Taxes

1. Interest Income Received from Bonds Issued by a Wisconsin Municipal Redevelopment Authority (p. 12)

### Homestead Credit

1. Homestead Credit: Claims on Behalf of Decedents Not Allowed (p. 12)

### Farmland Preservation Credit

1. Farmland Preservation Credit: Depreciation Addback (p. 13)

### Sales/Use Taxes

1. County Tax - Contractor Purchases Building Materials in County Having County Tax (p. 13)
2. Local Government Franchise Fees (p. 13)
3. Milk Standards (p. 14)
4. Out-of-State Nonprofit Organizations (p. 14)
5. Welding of Rail to Be Installed Out-of-State (p. 15)

## INDIVIDUAL INCOME TAXES

### 1. Interest Income Received from Bonds Issued by a Wisconsin Municipal Redevelopment Authority

Statutes: Sections 66.431(5)(a)4.c. and 71.05(1)(a)1, 1987 Wis. Stats.

Question: Is interest income which an individual receives from bonds issued by a Wisconsin municipal redevelopment authority excludable from Wisconsin taxable income?

Answer: Yes. Section 66.431(5)(a)4.c., 1987 Wis. Stats., provides that bonds issued by a redevelopment authority under this section of the Wisconsin Statutes are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt for all taxes.

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## HOMESTEAD CREDIT

### 1. Homestead Credit: Claims on Behalf of Decedents Not Allowed

Statutes: Section 71.09(7)(b), 1987 Wis. Stats.

Wis. Adm. Code: Section Tax 14.01(5)(b)4, February 1980 Register.

Facts and Question: Mary Jones was a full-year Wisconsin resident during 1987 and paid rent on her homestead all of 1987. Mary died on January 21, 1988, after she had filled out and signed her homestead claim, but before she had mailed it to the Department of Revenue. The personal representative of her estate found the return and sent it in.

Is the estate of Mary Jones entitled to any homestead credit for 1987?

**Answer:** No. Section 71.09(7)(b), 1987 Wis. Stats., and section Tax 14.01(5)(b)4, Wis. Adm. Code, provide that the right to file a homestead credit claim is personal to the claimant and does not survive his or her death. Even if the claimant was alive for the entire year of the claim, the claim may be allowed only if the claimant is alive at the time the claim is filed.

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## FARMLAND PRESERVATION CREDIT

### 1. Farmland Preservation Credit: Depreciation Addback

**Statutes:** Section 71.09(11)(a)6.a, 1987 Wis. Stats.

**Note:** This Tax Release applies only with respect to taxable years 1987 and thereafter.

**Background:** Section 71.09(11)(a)6.a, as amended by 1987 Wisconsin Act 27 defines household income to be household income computed under sub. (7)(a)6, plus nonfarm business losses, plus amounts under s. 46.27, less net operating loss carryforwards, less first-year depreciation allowances under section 179 of the Internal Revenue Code and *less the first \$25,000 of depreciation expenses in respect to the farm claimed by all of the individuals in a household.*

**Facts and Question 1:** John Deer and his wife are partners in a farm partnership. The farm partnership has \$60,000 of farm depreciation. What depreciation must be added back to household income?

**Answer 1:** The depreciation to be added back is \$35,000 (\$60,000 - \$25,000). Only the first \$25,000 of farm depreciation per household is excluded from this addback.

**Facts and Question 2:** Alex Chalmer is a 50% owner in a farm partnership. Total depreciation claimed by the partnership is \$40,000. His wife, Alice, owns and operates a beauty shop. She claims \$5,000 of depreciation on her Schedule C. What depreciation must be added back to household income?

**Answer 2:** The depreciation to be added back is \$5,000. This is the \$5,000 of depreciation from Alice's *nonfarm* business. Since Alex's share of farm depreciation is \$20,000, no addback is required for farm depreciation because it is less than \$25,000.

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## SALES/USE TAXES

### 1. County Tax - Contractor Purchases Building Materials in County Having County Tax

**Statutes:** Sections 77.51(2) and 77.71(1), (2), and (3), 1985 Wis. Stats.

**Wis. Adm. Code:** Tax 11.68(7), July 1987 Register.

**Facts and Question:** A plumbing contractor is located in County "A" which has the county tax. The contractor pays its supplier the state and county sales/use tax on all the building materials it purchases, as most of the materials purchased are used in construction activities. This contractor does 10% of its construction work in an adjacent county, County "B," which does not have a county sales and use tax.

Can this plumbing contractor obtain a refund from the state of the county tax paid on construction materials used in County "B" which does not have a county tax?

**Answer:** No, there is no provision in the county sales and use tax law for a contractor located in a county that has adopted the tax to get a refund or credit for materials installed in another county, if the contractor pays county tax on the purchase of construction materials by accepting delivery of these materials in a county which has adopted the tax.

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### 2. Local Government Franchise Fees

**Statutes:** Sections 66.082(1)(b)3, 77.51(4)(a)4, and 77.52(2)(a)12, 1985 Wis. Stats.

**Wis. Adm. Code:** Section Tax 11.26(1), December 1983 Register.

**Facts and Question:** Certain local governmental units in Wisconsin impose a franchise fee on the gross receipts from providing cable television service in the locality and the revenue collected by the municipality is used to regulate cable television service. Other Wisconsin municipalities raise general revenue by imposing a franchise fee on cable company revenues as provided under s. 66.082(1)(b)3, 1985 Wis. Stats.

Section 77.51(4)(a)4, 1985 Wis. Stats., provides in part that taxable gross receipts for sales tax purposes do not include "taxes" imposed by municipalities of this state upon or with respect to retail sales, if measured by a certain percentage of the sales price or gross receipts and provided the retailer is the person who is required to make the payment of the tax to the governmental unit levying the tax. The franchise fee authorized under s. 66.082

(1)(b)3, 1985 Wis. Stats., may be a tax other than one measured by a stated percentage of sales price or gross receipts.

Is the Wisconsin sales tax imposed on municipal franchise fees levied on cable companies to raise revenue if the revenue is specifically allocated to regulate cable television companies? Also, is the Wisconsin sales tax imposed on municipal franchise fees paid by cable companies which raise general revenue for the municipality as provided under s. 66.082(1)(b)3, 1985 Wis. Stats.?

Answer: If a municipality has a franchise fee imposed on cable companies for the purpose of regulating cable television service, this fee is not a "tax" and the Wisconsin sales tax is imposed on this type of franchise fee. If a municipality raises general revenue under the authority in s. 66.082(1)(b)3, 1985 Wis. Stats., from the cable franchise fee, this fee is a "tax" and the sales tax is not imposed on this local government levy provided it is measured by a stated percentage of sales price or gross receipts. "Taxes" are imposed for the purpose of general revenue of the Wisconsin municipality. See *Milwaukee vs. Milwaukee E.R.&L. Co.*, 147 Wis. 458.



### 3. Milk Standards

Statutes: Section 77.51(20), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.67(1), September 1984 Register

Facts and Question: Milk standards are approximately 40 gram portions subdivided from uniform, preserved, raw milk collected from dairy cow herds and have a known milkfat and protein content. The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) determines the fat and protein values by triplicate analyses using the Association of Official Analytical Chemists (AOAC) methods. These standards are subsequently sold to and used by the dairy industry to calibrate automated testing devices, as required by s. Ag 107.06, Wis. Adm. Code, to insure the accuracy of butterfat and protein tests.

The standards are offered for sale by DATCP with a report containing the average of the three triplicate analyses for fat and for protein. These analyses must have a maximum triplicate difference of no more than 0.03%. The standard is subject to a one time use by the purchasing laboratory. DATCP prices the calibration standards, which consist of a set of duplicate 40 gram portions of 12 to 15 individual herd milks and a report giving their fat and protein values, at \$95 per set. The daily performance standards, which consist of five replicate 40 gram portions of five or six individual herd milks and a report giving their fat and protein values, are \$55 per set. Most of this cost is not reflected in the small

portion of milk transferred to the purchaser, but is in the cost of running the three fat analyses by the Mojonnier extraction method and of running the three protein analyses by the Kjeld-Foss method. The average values of these tests are sent out on the report with the samples.

These standards are physically used by the purchasing laboratory for the purpose of establishing a base level on the instrument being calibrated or on which the lab conducts a daily performance check.

Are the sales of milk standards by a government agency taxable sales of tangible personal property?

Answer: Yes. The sales of the milk standards are sales of tangible personal property which are subject to the sales tax. The objective of the purchaser, is to obtain the personal property (milk standards) used to calibrate the various testing devices used in the laboratory of a dairy plant and, thus, under s. Tax 11.67(1), Wis. Adm. Code, the sale of the property is taxable.



### 4. Out-of-State Nonprofit Organizations

Statutes: Section 77.54(9a)(f), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.14(7)(a)4, July 1987 Register.

Facts And Question: Section 77.54(9a)(f), 1985 Wis. Stats., provides a sales and use tax exemption for the gross receipts from sales to, and the storage by, use by, or other consumption of tangible personal property and taxable services by:

"Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80(2), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation."

Does an out-of-state nonprofit religious, charitable, scientific, or educational organization qualify for this sales and use tax exemption?

Answer: Yes. A qualifying organization located out-of-state qualifies for this exemption to the same extent a Wisconsin located qualifying organization would be entitled to this exemption. The out-of-state organization is not required to obtain a Certificate of Exempt Status from the Department of Revenue to claim an exemption. It should give the seller the Certificate of Exemption (Form S-207) when purchasing tangible personal

property or taxable services without tax, indicating on Form S-207 that it qualifies for exemption under s. 77.54(9a)(f), Wis. Stats.



## 5. Welding of Rail to Be Installed Out-of-State

**Statutes:** Sections 77.51(14)(h) and (14r), 77.52(2)(a)11, and 77.55(2), 1985 Wis. Stats.

**Facts and Question:** Company A operates a rail welding operation in Wisconsin for one railway. The railway purchases rail in 39 or 78 foot lengths from out-of-state suppliers. They are shipped via the railway's train to Company A's plant. Company A welds these sections together to make a ribbon rail which is approximately a quarter of a mile in length. These welded sections are loaded onto the railway's cars as they are being made. The railway hauls them to their destination outside Wisconsin. A Way-Bill is prepared for each shipment.

Section 77.55(2), 1985 Wis. Stats., provides a sales tax exemption for "The gross receipts from sales of tangible personal property to

a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier."

Section 77.51(14r), 1985 Wis. Stats., provides that the point of transfer of possession to the purchaser is the location of the sale for both tangible personal property and services.

Is Company A's service of welding rail a taxable fabrication service under s. 77.52(2)(a)11, 1985 Wis. Stats.? Does the exemption in s. 77.55(2), 1985 Wis. Stats., apply to this service?

**Answer:** This service by Company A is taxable under s. 77.52(2)(a)11, 1985 Wis. Stats. Although s. 77.55(2), 1985 Wis. Stats., provides an exemption for sales of tangible personal property sold to a common carrier which the purchasing carrier removes from Wisconsin for use out-of-state, this exemption does not apply to the purchase of fabrication services which are taxable under s. 77.52(2)(a)11. Therefore, the railway's purchases of this rail fabrication service performed in Wisconsin are subject to the sales tax, even though the fabricated rail may be installed out-of-state.

