

of \$213, an increase over the average payment of \$180 last year. There were 600,000 taxpayers who made payments with their 1977 returns.

- 250,000 Homestead Credit refunds were issued averaging \$265 per claimant, an increase over the average refund of \$206 issued last year.
- About 700 Farmland Preservation Credit claims were filed with the Department.

1978 TAXPAYER ASSISTANCE

During the period January through June 1978, many requests for taxpayer assistance were received by the Department relating to income, franchise, and sales/use taxes and homestead and farmland credits. Taxpayer assistance involves answering questions and providing information and tax forms to taxpayers and tax practitioners who write, telephone or visit the Department's offices. Approximately 300 auditors, tax representatives and limited term employees at 37 different offices located throughout the state spent part of their time providing taxpayer assistance services.

In the first half of 1978, over 351,000 persons contacted the Department's offices for assistance. These persons asked a total of 507,000 questions, with 64% relating to individual income tax. More than one-half of these inquiries were received by telephone.

During this period, the Department also obtained information about the types of persons who visit its offices to receive assistance. On selected dates, persons were asked to complete a short questionnaire. Of the 3,500 completed questionnaires, 58% of the persons who visited a Department office were age 65 or older. Sixty-five percent traveled no more than 5 miles to get to the office and 70% had received assistance in prior years.

HOMESTEAD AND FARMLAND PRESERVATION CREDIT FILING DEADLINES

Less than three months remain for Wisconsin residents to file a 1977 Homestead claim, and for many farmland owners to

file a Farmland Preservation Credit claim. The law does not permit late returns nor extensions of time for these credits.

December 31, 1978 is the last day for filing a Homestead claim. It is also the last day for filing a Farmland claim for farmland owners who are calendar year taxpayers. Farmland claims of persons who file income tax returns on a fiscal year basis must be filed no later than 12 months after the end of their fiscal year. The homestead credit should be claimed on Wisconsin Schedule H and the farmland credit on Schedule FC.

So far this year, about 250,000 1977 Homestead claims and about 700 Farmland claims have been received. These claims have provided more than \$65 million in rent and property tax rebates.

Some of the requirements which must be met to qualify for benefits under these two programs for 1977 are as follows:

Homestead Credit (available only to individuals). A claimant:

- Must have been a full year Wisconsin resident.
- Must have been at least 18 years of age on December 31, 1977.
- Must have a household income of less than \$9,300 (\$9,900 if claimant, spouse or dependent is 65 or older).
- Is not claimed as a dependent on someone else's 1977 federal income tax return (does not apply to persons 62 or older).
- At the time of filing, cannot be receiving general relief or Aid to Families With Dependent Children (AFDC).
- Must have lived all or part of 1977 in property subject to real estate taxes.

Farmland Preservation Credit (available to individuals and corporations owning farmland). A claimant:

- Must have been a full year Wisconsin resident (corporations must have been organized under Wisconsin law and in existence for all of 1977).
- Must be the owner of at least 35 acres of farmland which is subject to agricultural use restrictions and

which produced at least \$6,000 in gross farm profits (or \$18,000 in last three years combined).

- Must report farm income on a farm business schedule for income tax purposes.
- Must have a household income of less than \$35,000.

For additional information concerning the eligibility requirements for these programs, instructions on how to file and the necessary claim forms, contact any Wisconsin Department of Revenue office or write to Department of Revenue, P.O. Box 8906, Madison, WI 53708.

BULK ORDERS OF TAX FORMS

The order blank (Form P-744) for requesting a bulk supply of 1978 Wisconsin income tax forms is scheduled to be mailed in early October. As in past years, bulk orders of income tax forms requested by professional tax preparers are subject to a minimal handling charge. However, no charge is made for forms which will be used for distribution to the general public, such as is commonly done by many banks, post offices and libraries.

Persons ordering bulk supplies of tax forms are again asked to determine their order amounts as accurately as possible. Orders for forms should be placed as early as possible. This will aid the Department in identifying possible shortages of forms.

If you are not currently on the Department's mailing list to receive the bulk order blank and would like one, call any Department office or write to the Department of Revenue, Central Services Section, P.O. Box 8903, Madison, WI 53708.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

Arthur L. Solliday vs. Department of Revenue (Circuit Court of Jefferson County, Case No. 6600, May 11, 1978.) The Albert F. Solliday Trust was created

under the will of Albert F. Solliday, who died a resident of Jefferson County, Wisconsin on May 10, 1958. The will was filed and probated in Jefferson County Court. Albert L. Solliday ("petitioner") was appointed trustee by the court and served as trustee from 1959 to the time of the litigation.

The original income beneficiary of the trust was an Illinois resident and died in 1974. The 2 residuary beneficiaries are petitioner, an Oklahoma resident, and the original income beneficiary's son, an Illinois resident. None of these beneficiaries have at any time during the years in question been a Wisconsin resident.

For all years in question (1959 to 1972), petitioner had sole discretion with regard to the trust's management. This discretion has always been exercised in Oklahoma.

In accordance with his discretion as trustee, petitioner employed an Oklahoma bank to assist the managing of the trust assets. These assets consist of securities and Texas oil interests, which have been held by the bank in Oklahoma for all the years in question. During the period, petitioner employed an Oklahoma law firm as counsel in connection with trust matters.

During the period involved, the trust was under the continuing supervision of the Jefferson County Court. However, subsequent to its initial appointment of the trustee, the court held no hearings or other proceedings affecting the trust. The court had no contact with the trust or its management other than through its acceptance of annual accountings concerning the trust's operations which the trustee was required to, and did, render to the court.

Also during this period, petitioner prepared and filed income tax returns for the trust with the Internal Revenue Service and the Oklahoma Tax Commission. No returns were filed with, and no taxes were paid to, the Wisconsin Department of Revenue.

By its terms, the trust terminated on September 17, 1974, upon the death of the income beneficiary. In the course of obtaining court approval to terminate the

trust and distribute its assets, petitioner contacted the Wisconsin Department of Revenue and requested a closing statement under s. 71.08 (6), Wis. Stats. Upon audit of the trust, the Department assessed the trust income taxes, interest and fees for the period 1959 to 1972.

The Tax Appeals Commission upheld the Department's assessment. The Circuit Court ruled in favor of petitioner.

The issue in dispute was whether or not the trust has been "administered" in Wisconsin under s. 71.07 (7) (b), Wis. Stats. The Department contended that the trust is "administered" where the trust is based (i.e., in a probate or other court), looking to the court's supervisory functions and powers. That is, the place of administration, actually or constructively, is the situs of the court in which the administration by the trustee is being supervised.

The court stated, however, that the trust is administered either where the business of the trust is conducted by the trustee or where the management of the affairs of the trust was being done. Both of these places, the court concluded, were not in Wisconsin. Wisconsin, therefore, cannot impose its income tax on the trust's income.

The Department has not appealed this decision.

Dernehl-Taylor Co., Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, May 26, 1978.) The sole issue in this case was whether gross receipts from "doggie bags" purchased by restaurants and other food service businesses to pass on to their customers the unconsumed portion of meals sold qualify for the exemption under s. 77.54 (6) (b), Wis. Stats., because they are used to transfer merchandise to customers. The Commission found that the gross receipts from "doggie bags" qualify for this sales and use tax exemption.

The Department did not appeal this decision.

In the Matter of the Estate of Bertie M. Frautschy, Deceased: State of Wisconsin vs. The First National Bank of Monroe (Wis. 2d, Wisconsin Supreme Court, Case No. 76-081, June

30, 1978.) On December 7, 1974, Bertie M. Frautschy died, establishing and leaving, by will, money to the "John Cowles Frautschy Scholarship Fund". This fund was directed to give scholarships to male, Protestant graduates of Monroe High School based on need. The will directed the fund's managing committee to give "favorable consideration" to 3 relatives of the deceased if they show an interest in college education.

Two inheritance tax statutes were involved in the litigation. Under s. 72.11 (1) (a), Wis. Stats., an inheritance tax is imposed on the transfer of property to any distributee from a person who dies while a Wisconsin resident, unless the transfer is exempt by another statute. Section 72.15 (1) (a) 2, Wis. Stats., exempts from the inheritance tax transfers to "voluntary associations organized . . . solely for religious, humane, charitable, scientific or educational purposes".

The court held that the transfer is exempt from the inheritance tax. As a general proposition, it stated that a testamentary or inter vivos trust is not necessarily less charitable because relatives of the settlor may become beneficiaries of the trust. The court held that relatives may be beneficiaries and the trust will still be charitable or educational so long as: (1) The trustees are not *required* to pay benefits to relatives; and (2) The relatives may only benefit from the trust on the same basis of need as non-relatives.

Heinrichs Family Trust, Affiliated Bank of Hilldale vs. Department of Revenue (Wisconsin Tax Appeals Commission, June 30, 1978.) In 1973, a grantor established a family trust. Under the terms of the trust instrument, the trust was required to distribute all net income annually to the trust beneficiaries.

During 1973, 1974 and 1975, the trust sold trust assets (3 apartment buildings) and realized capital gains on the sales. These capital gains were paid or credited to the trust beneficiaries.

The issue before the Commission was whether the trust was liable for an assessment of additional income taxes on these capital gains. The trust contended that the income was allocated and distributed to the trust beneficiaries and is taxable to

them, not to the trust. The Department argued that, on the sale, the income became part of the trust's corpus and taxable to the trust.

The Commission decided in favor of the trust. It concluded that the income qualifies as "distributable net income" (as capital assets "paid, credited or required to be distributed to any beneficiary during any taxable year") under s. 643(a)(3) of the Internal Revenue Code and s. 701.20(2), Wis. Stats.

The Department has appealed this decision.

Janesville Data Center, Inc. vs. Department of Revenue (Wis. 2d , Wisconsin Supreme Court, Case No. 75-825, June 30, 1978.) The taxpayer transferred data furnished by its customers on to keypunch cards and magnetic tapes and returned these cards and tapes to the customers which the customers ultimately used in computers. The taxpayer also translates its customer's data into codes which a computer can interpret, by punching holes in keypunch cards or by inserting magnetic bits on magnetic tapes. The taxpayer also verified more than half of the cards for accuracy by repeating the keypunch transcribing operation. In 10% of the jobs the customer also was provided with a computer printout of the information in the cards or tapes furnished to the customer. The period under review preceded the enactment of s. 77.52(2)(a)13, Wis. Stats. (1977), imposing the tax on computer processing services effective August 1, 1977. Section 77.52(2)(a)13 was subsequently repealed, effective July 1, 1978.

The sole issue in this case was whether the gross receipts of the taxpayer from sales of computer keypunched cards, magnetic tapes and printouts are subject to the sales tax as sales of tangible personal property or whether these gross receipts were exempt from the tax as non-taxable services. The Court concluded that although tangible personal property was transferred by the taxpayer to its customers, the essence of the transaction was the transfer of intangible coded information and, therefore, it was not subject to the sales and use tax.

Midwestern Gas Transmission Co. vs. Department of Revenue (Wis. 2d , Wisconsin Supreme Court, Case No. 76-106, June 30, 1978.) The taxpayer owns and operates a pipeline through which it transports natural gas. The pipeline begins at the Manitoba-Minnesota border and runs to Marshfield, Wisconsin. Taxpayer purchases natural gas from a Canadian supplier and sells it to various customers along the route.

The taxpayer consumes some natural gas at 2 compressor stations in Wisconsin. The stations are necessary to increase the pressure of the gas flow in the pipeline. At each Wisconsin station, a small amount of gas is withdrawn from the pipeline, filtered or strained to remove foreign particles, metered, reduced in pressure and used to fuel engines which run the compressors. The gas taken from the pipeline never comes to rest before it is consumed.

The sole issue before the Court was whether the natural gas consumed at the taxpayer's 2 Wisconsin compressor stations was subject to the Wisconsin use tax. The Department contended that taxpayer used or consumed the gas within the meaning of s. 77.53(1), Wis. Stats. (the use tax imposition statute).

The Court held that the use tax was not applicable under s. 77.54(1), Wis. Stats., which exempts from the tax transfers of tangible personal property which this state is prohibited from taxing under the U.S. Constitution. The Court stated that the Department sought to impose the use tax on natural gas consumed in engines providing the pressure necessary to propel gas through interstate commerce. Although this activity takes place within Wisconsin, the Court held that the consumption was an integral part of the process of interstate commerce which does not have substantial nexus with the state.

Harold W. Fuchs Agency, Inc. vs. Department of Revenue (Circuit Court of Dane County, Case No. 160-052, July 10, 1978.) Taxpayer is engaged in the sale and rental of photocopy machines and copy machine paper and equipment. One issue was whether taxpayer's moneys collected from users of its photocopy vend-

ing machines located in city of Milwaukee public buildings are subject to the sales tax. Taxpayer placed 16 machines in city buildings as specified by its contract with the city, serviced the machines and collected the money from them, periodically accounted for the receipts to the city and paid the city 5.55¢ for each 10¢ copy made. The Court concluded that these gross receipts were subject to the sales tax.

Taxpayer contended that many of the machines' users were city employees using the machines for city business. Therefore, it was asserted, a large portion of the gross receipts were exempt under s. 77.54(9a), Wis. Stats., as sales to a city. The Court held that the case record contained no evidence to establish this and without a record as to what part of receipts represented city funds, there can be no exemption under the statute.

The second issue was whether transportation charges collected by the taxpayer on intrastate shipments of tangible personal property were subject to the sales tax. These transportation charges were separately stated on the invoices issued to taxpayer's customers.

The Court stated that if the transportation charges were for transportation which occurred after the sale to the customer, such charges were not taxable under s. 77.51(11)(b)5, Wis. Stats. If these charges represent transportation which took place before the sale, they were subject to the tax under s. 77.51(11)(a)3, Wis. Stats.

Under s. 77.51(4r), a sale occurs at the location of the customer when possession is transferred to the customer by the common carrier. Section 402.401(2)(a), Wis. Stats., provides that a sale is completed as soon as a retailer delivers the purchased property to a common carrier. Therefore, the court had to determine which of these two conflicting statutes prevails to determine where a sale takes place for sales tax purposes. The court found the sales and use tax law controls, and that the sale takes place at the location of the customer. Therefore, the transportation charges collected by the taxpayer from its customers on intrastate sales are subject to the sales tax.

On both issues, the Court confirmed the conclusions of the Tax Appeals Commission.

The taxpayer has not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers 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.)

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

SALES TAX

I. Lawn and Garden Tractors

Rule Tax 11.12, entitled "Farming, agriculture, horticulture and floriculture", indicates that a retailer's gross receipts from sales of lawn and garden tractors are subject to the 4% sales tax. Thus, a retailer must impose the tax on sales of lawn and garden tractors, even though they may be sold to a farmer.

The purchaser-farmer may claim a refund from this department if he or she is able to show that the tractor qualifies for the farmer's exemption under the sales

and use tax law. The farmer should send a letter requesting a refund to the Wisconsin Department of Revenue, Compliance Bureau, 4638 University Avenue, P.O. Box 8902, Madison, WI 53708.

II. Cost Sharing

A manufacturer may furnish electricity to a nearby foundry under an agreement between the parties that the electricity will be provided at the manufacturer's cost of production. The manufacturer's gross receipts from such sales are taxable, even though the electricity is not sold for a profit.

III. Carpeting (Removing or Moving)

The total charge for removing carpeting in connection with the repair, service or maintenance of the carpeting (e.g., remake it by cutting out worn areas, resewing, patching and sizing), and the charge for reinstalling the carpeting in the same room, or in another room or area, is subject to the tax. It is immaterial whether such charges are separately itemized on the customer's bill.

Labor charges to remove carpeting from one room and install it in another room, or to remove it from one home and install it in another room, are not taxable if no repair services are performed to the carpeting during the moving operations. The removal of old carpeting in conjunction with the installation of new carpeting

also is not a taxable service, if no repair services are performed to the old carpeting.

IV. Farming - Canning Companies

Under the common canner-grower contract, the production of a crop of vegetables for canning is a joint venture. At a minimum, a canner commonly contributes the seed, the supervisory services of field personnel and the labor for harvesting. The canner has a pecuniary interest in the crop and shares with the grower some of the risk involved in growing the crop. Therefore, canners may purchase farm machines without tax when the machines are used in such a farming activity.

V. Federal Food Stamps

A retailer's gross receipts from the redemption of federal food stamps are not subject to the sales tax. This is true even though the stamps are used to purchase items that would otherwise be taxable, such as candy, popcorn, gum, confectations and soft drinks.

VI. Self-Service Car Washes

The total gross receipts of persons engaged in the business of providing coin-operated self-service car washes which involve a pressurized spray of soap and water are taxable. This is similar to the taxability of the receipts of other persons providing car wash service.