measured by the annual rent reduction. Compensation for services performed for a landlord who requires that the employe reside on the premises are excludable from taxable income under IRC section 119.

In filing claims for homestead credit for the years 1976 and 1977, Schwirtz included the value of his maintenance services as rent constituting property tax accrued, but did not include such amount in household income. Upon audit of the claims, the Department reduced rent claimed by the amount represented by services performed. The Tax Appeals Commission, however, ruled that the rent credit, even though excludable from household income under s. 71.09 (7) (a) 1, Wis. Stats., constituted rent paid in cash or its equivalent, since it was a negotiated part of his actual compensation.

The Department has not appealed this decision.

SALES/USE TAXES

Jane H. Caryer, Inc., d/b/a Caryer Interiors vs. Wisconsin Department of Revenue (Circuit Court of Dane County, December 10, 1979.) Taxpayer is engaged in the business of interior decorating and designing, including the purchase and installation of carpeting and related material for residential, commercial and tax exempt clients. During the period involved, one-third of the taxpayer's contracts were with tax exempt organizations, such as the state, and religious and charitable organizations. This case is only concerned with the contracts made with such exempt organizations.

The exempt organizations would contract with the taxpayer for installed carpeting and would be charged by taxpayer for both the labor and the materials installed. The taxpayer's profit was figured on the total of labor and the actual material, i.e., profit would be added on to the total cost of the carpeting as installed. Thus, there was always only one bid and one billing by the taxpayer to its tax exempt client covering the job, but the job included carpet, installation materials, and installation.

With respect to these transactions with tax exempt organizations, the taxpayer gave its suppliers resale certificates in lieu of paying sales taxes on its purchase of carpeting, and did not pay use or sales taxes on its resale of the carpeting to the tax exempt organizations. Taxpayer did pay sales and use taxes with respect to transactions involving purchasers that were not tax exempt.

The Department took the position that 4% use tax was due on the carpet and other materials used to perform this "real property construction activity".

The Court found that sales of carpeting to a person that sells and installs the carpeting are subject to the tax, even though the carpeting is installed in the premises of an exempt organization.

The taxpayer has not appealed this decision.

Gene E. Greiling vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 25, 1980.) During the period involved, taxpayer Gene E. Greiling operated a wholesale bedding and potted plant business, as a sole proprietor, in Denmark, Wisconsin. Taxpayer was not required to hold a seller's permit, and did not file any sales and use tax returns with the Wisconsin Department of Revenue.

Taxpayer purchased, without paying sales or use tax, pre-cut, predrilled, and shaped metal tubing and polyethylene film, which he used to cover and protect the potted plants, bedding plants and flowers which he ultimately sold, both at his home facility in Denmark, Wisconsin, and at temporary display outlets, also utilizing said materials, throughout Wisconsin. The materials involved constituted "building materials" because they were used to erect a freestanding structure on land. The polyethylene film had a useful life of between one and two years. The structures involved were erected by hand and were easily disassembled and removed from the temporary display areas. The materials qualified for investment credit treatment under the Internal Revenue Code. Taxpayer did not intend to make his enclosures a permanent accession to the freehold.

The Department assessed a use tax on the metal tubing and polyethylene film taxpayer purchased without payment of sales or use tax during the years 1972 through 1976.

The taxpayer did not dispute the measure of tax, but alleged that the items in dispute were not subject to tax under the imposition and definition language contained in s. 77.51 and 77.52, Wis. Stats. In the alternative, taxpayer alleged that if subject to tax, the materials involved were specifically exempt under the agricultural exemption language contained in s. 77.54 (3), Wis. Stats. Taxpayer also objected to the imposition of statutory interest.

The primary issue for the Commission was to determine whether the taxpayer was engaged in the construction of real property structures or improvements, or in other words, was the structure involved when assembled a fixture and therefore part of the realty.

The Commission ruled that the structures involved when assembled did not become a fixture and part of the realty and, therefore, the metal tubing and polyethylene film used therein was not subject to tax under s. 77.51 (4) (i), Wis. Stats.

The Department of Revenue has appealed this decision to Circuit Court.

Leicht Transfer & Storage Co., Inc., vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 23, 1979.) Taxpayer operated a household goods moving service under certificate of authority issued by the Wisconsin Public Service Commission. During the period involved, the taxpayer purchased for use in its moving operation, furniture pads, covers, packing supplies, tape, piano boards, ladders, walk boards, straps, lining paper and corrugated boxes, all without paying a sales tax. The miscellaneous moving van equipment and supplies in issue were used solely on the taxpayer's moving vans in connection with its household goods moving operation to load the van and hold the merchandise safely and securely in place during transit.

The corrugated boxes protected and secured articles during transit. The Wisconsin Public Service Commission tariffs for household goods movers dictate the rate for each specific size of corrugated container used in a customer's move and the charge therefore is computed on a unit basis. Taxpayer sold nothing but new corrugated containers to its customers; the ultimate control and disposition of the containers upon unpacking lying entirely with the customer. Taxpayer was bound by state and federal law to charging and collecting only the rates specified within the state and federal household goods carrier tariffs. During the period, 52.7% of the corru-

gated containers and packing materials purchased by taxpayer were used in interstate operations and delivered to taxpayer's customers outside the State of Wisconsin and 47.3% of the corrugated containers and packing materials were used solely in intrastate operations.

In addition to its household goods moving, taxpayer also operated warehousing and shipping facilities on a contract basis for various manufacturers of paper products in the Green Bay area. Taxpayer's warehousing customers directed the taxpayer to ship various orders of their finished products via railroad directly from the taxpayer's warehouse facilities. To protect the products being shipped, taxpayer used car lining paper to line the interior of the railroad cars used.

Taxpayer did not give any exemption certificates to its suppliers of the items here in question.

The Commission ruled as follows:

1. The miscellaneous items such as furniture pads, covers, packing supplies, tape, piano boards, ladders, walk boards, straps, lining paper and corrugated boxes do not qualify for the exemption from tax contained in s. 77.54 (5) (b), Wis. Stats.
2. The car lining paper is not an accessory or attachment for railroad freight cars and thus is not exempt from tax under s. 77.54 (12), Wis. Stats. Also, the car lining paper is not part of a container exempt from tax within the meaning of s. 77.54 (6) (b), Wis. Stats.
3. The corrugated boxes and packing materials are not utilized to transport the taxpayer's merchandise to its customers and thus are not exempt from tax under s. 77.54 (6) (b), Wis. Stats. The corrugated boxes and related packing materials purchased by the taxpayer and used by it in its household goods moving operation were purchased "for resale" and therefore excluded from tax under the provisions of section 77.51 (4) of the Wisconsin Statutes.

The taxpayer has appealed this decision to Circuit Court.

Sargento Cheese Company, Inc. vs. Wisconsin Department of Revenue (Circuit Court of Dane County, November 19, 1979.) On April 20, 1978 the Tax Appeals Commission entered its decision in the case of Sargento Cheese Company, Inc. vs. Wisconsin Department of Revenue. On that same date, the Commission mailed a copy of its decision to the taxpayer. On May 18, 1978, taxpayer filed a petition for review of the decision with the clerk of courts of Dane County. Service by mail was made upon the Department by the mailing of a copy by certified mail, bearing a post mark dated May 17, 1978. No service of the petition for review was made upon the Commission within 30 days of the service on taxpayer by mail of the Commission's decision.

The Department moved to dismiss taxpayer's petition on the ground that the Circuit Court of Dane County lacked subject matter jurisdiction because taxpayer failed to serve its petition for review on the Commission within 30 days after the service of the Commission's decision on the taxpayer.

The Department's motion to dismiss was granted by the Circuit Court because of the court's lack of subject matter jurisdiction due to taxpayer having failed to serve its petition for review on the Wisconsin Tax Appeals Commission within the time specified by section 227.16 (1) (a), Wis. Stats.

Taxpayer has appealed this decision to the Court of Appeals.

Alyce N. Leutermann vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 18, 1980.) Taxpayer operated a grocery store and obtained a Wisconsin seller's permit for the business on March 17, 1975. She ceased operating the store on December 31, 1976, and sold the business which included fixtures and equipment on January 4, 1977.

The taxpayer testified that when she ceased business operations on December 31, 1976 she destroyed and threw away her Wisconsin seller's permit. On January 28, 1977 taxpayer forwarded a letter to the Department of Revenue indicating she was no longer engaged in business and that she had ceased operations.

The sole issue for the Commission to determine was whether the taxpayer held or was required to hold a Wisconsin seller's permit on the sale of her business assets on January 4, 1977, in accordance with Section 77.51 (10) (a) of the Wisconsin Statutes. The statute's last sentence reads, in part, "No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller's permit . . .".

The Commission held in favor of the department in finding that the taxpayer's self-destruction of her seller's permit did not constitute a proper surrendering of the permit. Therefore, she actually held a seller's permit on January 4, 1977 and her gross receipts from the sales of business fixtures and equipment were subject to the tax.

Taxpayer has not appealed the decision.

Wisconsin Department of Revenue vs. Bailey-Bohrman Steel Corporation, (Wisconsin Supreme Court, February 7, 1980.) The question in this case was whether the Bailey-Bohrman Steel Corporation was engaged in manufacturing as defined in s. 77.51 (27), Wis. Stats., and was therefore exempt from use taxes under s. 77.54 (6) (a). The Supreme Court concluded that, under these statutes and in light of the undisputed facts, the machinery used by the taxpayer, Bailey-Bohrman Steel Corporation, was exempt from the Wisconsin use tax and accordingly, reversed the judgment of the circuit court.

This litigation resulted from an assessment of use taxes levied upon the taxpayer for the period commencing on December 1, 1972, and ending on September 30, 1974. Following the levy by the Wisconsin Department of Revenue, the taxpayer petitioned for a redetermination of the tax. That petition was denied. The Department's action was reversed by the Wisconsin Tax Appeals Commission on April 27, 1977. Subsequently, the Department commenced an action in the circuit court for Dane County to review the decision of the Tax Appeals Commission that Bailey-Bohrman was exempt from use taxes. The circuit court reversed the Commission's order of nontaxability and held that the taxpayer was not a manufacturer. A judgement ordering Bailey-Bohrman to pay the use tax was entered, and it is from that judgement that the taxpayer appealed to the Supreme Court.

Bailey-Bohrman advertised itself as an independent "steel service center and 'Processor.' " Its claim for exemption was based upon the assertion that it was a "manufacturer" as

that term is defined in s. 77.51 (27), Wis. Stats.

The taxpayer's business essentially consisted of purchasing large rolls of hot rolled coiled steel and cutting the steel into narrower widths by the use of the machinery whose tax status was in question on this appeal. The taxpayer purchased hot rolled sheets of steel stock having a width of not more than 48 inches and a thickness of less than one-half inch. Each of these rolls or coils of steel weighed approximately 15 tons.

The first step in the process involved lifting the coils by crane onto a line, where they were unrolled on a decoiler. This decoiled or flattened steel was then conveyed by rollers through a slitter, which consisted of two rotary knives, adjusted to accord with the eventual width of steel desired. This machine also trimmed off the rough outside edge of the steel sheet. Oil was sometimes added during the cutting operation upon a customer's request or because it facilitated cutting by acting as a lubricant. After the steel was cut into narrower widths, the strips were recoiled, lifted off the line, tagged with a customer's part number, and made ready for shipment to customers. The cutting was generally done in accordance with specific customer requests, and the width was cut to conform to the use to be made of it by the customer. The only thing the taxpayer did in addition to cutting the steel into the narrower widths was to occasionally cut the length of the coil in half. The taxpayer's plant consisted of the large rollers, cutting devices, and the cranes. The cranes were used for handling the original hot rolled coils and the steel which had been split and recoiled in accordance with the customer's order.

The Commission found, and the Department conceded, that the large coils of hot rolled steel stock had no practical use prior to Bailey-Bohrman's splitting them into the desired width. The narrower widths were specified by the taxpayer's customers in order that the steel could be fed into the presses or other machinery at a customer's plant. The steel was tailored by the taxpayer for a particular succeeding manufacturing step in a customer's operation. Almost all of the cut steel was tagged with a part number conforming to the customer's intended use.

After processing by the taxpayer, the steel had a different dimension and configuration than it had when it came from the steel mill. However, after being cut, the narrower strips were recoiled into rolls resembling the original uncut roll of steel. The taxpayer did not press, stamp, or in any way change the thickness of the steel. Ordinarily, the length of the steel strip was left unchanged. The taxpayer's president, in response to a question, stated that he would categorize the operation as "slitting steel".

The Supreme Court indicated that the only question was one of law—whether the undisputed facts revealed in the record satisfy the objective standards for exemption detailed in s. 77.51 (27). The six objective elements set forth therein require that, for the exemption to apply, there must be production by machinery, of a new article, with a different form, with a different use, with a different name, and by a process popularly regarded as manufacturing. The Department of Revenue did not dispute that the taxpayer used machinery, that the split steel had a different use from the uncut steel, and that the process is popularly regarded as manufacturing. The Commission found that all of the elements of the definition were satisfied. The circuit court, however, set aside the Commission's finding that the taxpayer produced "a new article with a different form," and it also found it to be "debatable whether there had been a change in name within the meaning of the statute".

The Department asserted that the taxpayer's machinery was not exempt because the process did not result in a new article with a different form and name. The Department contended that a new article was not produced because the material before the taxpayer's processing was coiled steel and after processing it remained coiled steel. The Department also asserted that the only change in the steel by the taxpayer's processing was a change in width and occasionally a change in length when the original coil length was cut in half. It also argued that the eventual product did not have a significantly different name because, prior to processing, the steel was referred to as "hot rolled coiled steel" and afterwards was called "coiled steel".

The Supreme Court disagreed with each of these contentions and stated that it must be acknowledged that the chemical, metallurgical, and physical characteristics of the steel was unchanged by the taxpayer's processing; but the fact that there had been no change of that kind did not mean that the statutory criteria are unsatisfied. The processing by the taxpayer converted a roll of steel, which was essentially unusable by the taxpayer's customers, into an article which could be utilized in further production processes. The original 15-ton coiled steel roll had no known use before being slit into desired widths. The processing converted the rolled steel into a new article. Although that new article possesses a number of the characteristics of the original one, the slitting process created a new and usable article that did not exist before.

The Court also found it difficult to accept the Department's argument that the original material did not assume a different form as a result of the processing. While the original material was a coiled roll of steel and the end product was also a coiled roll of steel, the shape, outline, configuration, and weight of the cut steel was different from that of the uncut steel. The steel in its rolled form may have been shorter than the original material used and, in any event, was narrower. The shape of the steel was altered. The coiling process was performed in either case only for the purpose of facilitating transportation and handling. The steel emerged from the process in a different form.

The Supreme Court concluded that the end product of the Bailey-Bohrman Steel Corporation was the result of production by machinery by a process popularly regarded as manufacturing of a new article with a different form and with a different name.

The Department has not appealed this decision.

GIFT TAX

Estate of John F. Stratton, et al vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 10, 1979.) This case involved the distribution of the assets of two trusts. The first was a testamentary trust under the will of Harold M. Stratton for the benefit of John F. Stratton and his family. The second was the Bessie A. Stratton Living Trust, also for the benefit of John F. Stratton and his family. Harold M. and

Bessie A. Stratton were the parents of John F. Stratton.

The issue was whether the 1968 distributions to John F. Stratton's daughters, on termination of the two trusts over the assets of which he had a general power of appointment, constituted taxable gifts.

The Wisconsin Tax Appeals Commission affirmed the conclusion that John F. Stratton effectively released his power of appointment within the intent and meaning of s. 232.09, Stats., 1967, and that the 1968 distribution was a taxable transfer under s. 72.75, Stats., 1967.

The taxpayers have appealed this decision to Circuit Court.