

the 1980 taxable year. If a sale is reported on a 1980 Wisconsin return on the installment method pursuant to the Installment Sales Revision Act, but such sale does not qualify for the use of that method under the December 31, 1979 Internal Revenue Code, an adjustment must be made on Schedule I to account for this difference in law.

Wisconsin Corporation Franchise/Income Taxes: The Wisconsin net income of corporations is not determined by reference to the federal Internal Revenue Code. The requirements for reporting sales of real estate and isolated sales of personal property using the installment method by corporations are contained in Wisconsin Code section Tax 2.19. Some of the provisions in this rule are similar to the requirements for reporting under the internal Revenue Code prior to its amendment in 1980. As a result of a Wisconsin Supreme Court decision in the case of *State ex rel Waldheim & Co. v. Wisconsin Tax Commission*, 187 Wis. 539, Wisconsin does not permit corporations to use the installment method to report income from personal property regularly sold during the course of business. The Waldheim decision is incorporated in the provisions of rule Tax 2.19. In view of rule Tax 2.19 and the Waldheim case, the Installment Sales Revision Act of 1980 will not apply to the computation of Wisconsin net income of corporations for the taxable year 1980.

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 following decisions are included:

Income and Franchise Taxes

- Edward H. Anderson vs. Wisconsin Department of Revenue
- Sharon M. Chappa vs. Wisconsin Department of Revenue
- Donna L. Daniels vs. Wisconsin Department of Revenue
- Kenneth F. DeBoer vs. Wisconsin Department of Revenue

- Eslinger, Mark H. and Lorraine R. vs. Wisconsin Department of Revenue
- Vance A. Glewen vs. Wisconsin Department of Revenue
- J. John Gudenschwager, J. John Gudenschwager Family Estate vs. Wisconsin Department of Revenue
- Curt G. Joa, Inc. vs. Wisconsin Department of Revenue
- Randy Larsen vs. Wisconsin Department of Revenue
- Nick Novasic vs. Wisconsin Department of Revenue
- Old Orchard Corporation vs. Wisconsin Department of Revenue
- Joseph J. Puta vs. Wisconsin Department of Revenue
- Steven R. Shumaker and Karen L. Shumaker vs. Wisconsin Department of Revenue
- Howard U. Taylor, Margaret T. Taylor, Wayne Thomas Feyerisen, Frances C. Feyerisen, James W. McCarville, Karen Beth McCarville, Michael E. Fairfield, and Donna J. Fairfield vs. Dennis J. Conta, Individually and as Former Secretary of the Wisconsin Department of Revenue, and Mark E. Musolf, Individually and as Secretary of the Wisconsin Department of Revenue
- Peter Y. Taylor, Jr., and the Peter Y. Taylor, Jr. Family Estate (A Trust), Et. Al. vs. Wisconsin Department of Revenue
- Erwin J. Thoenes vs. Wisconsin Department of Revenue
- Union Prescription Centers, Inc. vs. Wisconsin Department of Revenue
- WTMJ, Inc. and Newspapers, Inc. vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Donna Brewer vs. Wisconsin Department of Revenue
- Chicago Bridge & Iron Company vs. Wisconsin Department of Revenue
- H. Derksen & Sons Co., Inc. vs. Wisconsin Department of Revenue
- Midcontinent Broadcasting Company of Wisconsin, Inc. vs. Wisconsin Department of Revenue
- Milwaukee Brewers Baseball Club vs. Wisconsin Department of Revenue

- William A. Mitchell vs. Wisconsin Department of Revenue
- Gordon Obermann vs. Wisconsin Department of Revenue
- Dennis R. Olkwitz vs. Wisconsin Department of Revenue
- Peck Meat Packing Corporation vs. Wisconsin Department of Revenue
- J. C. Penney Co., Inc. vs. Wisconsin Department of Revenue
- James Peterson Sons, Inc., Et. Al. vs. Wisconsin Department of Revenue

Homestead Credit

- Kurt M. Stege vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Edward H. Anderson (Deceased) vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 29, 1980). During the year 1973, Edward H. Anderson, was the sole shareholder of the Washington Island Storage Corporation, a Wisconsin corporation, which was incorporated in 1959. On September 30, 1973 the corporation, Washington Island Storage Corporation, was liquidated. Edward H. Anderson was the sole transferee of the corporation's assets. Subsequent to September 30, 1973 no further activities were conducted by the Washington Island Storage Corporation.

A 1973 Wisconsin Franchise Income Tax Return was filed by Washington Island Storage Corporation covering the last fiscal year beginning November 1, 1972 and ending September 30, 1973. The return was filed under date of December 5, 1973 and indicated a net tax due and unpaid of \$3,296.59. Payment of this tax was not made at the time of submission of the return or at any subsequent time. As a result of this outstanding, unpaid liability, an assessment was issued on January 29, 1974 against Washington Island Storage Corporation for \$3,296.59 plus interest. The assessment was not contested, however, the amount due remained unpaid. On May 23, 1977, an assessment for the amount due from Washington Island Storage Corporation was issued against Edward H. Anderson, pursuant to s. 71.11(21n), Wisconsin Statutes, which was enacted on May 5, 1976.

Section 71.11(21n) reads as follows:

"(21n) ADDITIONAL ASSESSMENTS AGAINST DISSOLVED CORPORATION. If all or substantially all of the business or property of a corporation is transferred to one or more persons and the corporation is liquidated, dissolved, merged, consolidated or otherwise terminated, any tax imposed by this chapter on such corporation may be assessed and collected as prescribed in this section against the transferee or transferees of such business or property. Notice shall be given to such transferee or transferees under sub. (22) within the time specified in sub. (21) irrespective of any other limitations imposed by law. If such corporation has dissolved, such notice may be served on any one of the last officers or members of the board of directors of such corporation."

The Commission concluded that s. 71.11(21n) clearly indicates that it was intended to have prospective and not retrospective application and that the assessment against Edward H. Anderson is not an additional assessment which would make him personally liable under s. 71.11(21n).

The Department has not appealed this decision.

Sharon M. Chappa vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). The sole issue in this case is whether the department's assessment based on estimates of income for the years 1976 and 1977 was correct.

The taxpayer did not file a return for the year 1976 despite requests from the department to do so. The taxpayer did file her 1977 return, reported Wisconsin total income in the amount of \$13,304.77 and claimed on Schedule A & B of her federal Form 1040 contributions as follows: "entire salary was turned over to the Order of Almighty God, a Religious Order" in the amount of \$13,304.77.

The taxpayer was employed by the Oshkosh Truck Corporation and received wages as an employee of said corporation as follows: 1976 - undetermined, 1977 - \$13,304.77. In the year 1976, the taxpayer did

not have any withholding taxes withheld from her wages. In the year 1977, she had \$15.49 withheld for state taxes, of which she filed a return claiming a refund in said amount.

In the years 1976 and 1977 the taxpayer turned over her paychecks that she received as an employee to the Order of Almighty God, Chapter 11003 of the Life Science Church of Bloomington, Minnesota; in return, said church paid for her expenses which included such items as food, housing, transportation, chiropractic and other expenses, all of which were of a personal expense directly attributable to the taxpayer's daily living.

The Commission ruled that the taxpayer's 1976 conveyance of her services and the income earned therefrom was simply an anticipatory assignment of income and did not relieve her of her individual obligation to file a Wisconsin income tax return for the calendar years 1976 and 1977 and to pay the taxes due thereunder. It stated that the income the taxpayer received in 1976 and 1977 was reportable by her irrespective of her affiliation with the Life Science Church of Bloomington, Minnesota.

The Commission further ruled the department acted properly in issuing an estimated income tax assessment against the taxpayer for the year 1976, after her refusal to voluntarily file a return for said year. However, the estimated assessment against the taxpayer for the year 1977 was not correct because she filed a return for that year. The department's estimated income of \$15,000 was adjusted to \$13,304.77 as the taxpayer's taxable income for 1977. The taxpayer's deduction on her 1977 return of her contribution in the amount of \$13,304.77 to the Life Science Church of Bloomington, Minnesota was denied.

The taxpayer has not appealed this decision.

Donna L. Daniels vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 21, 1980). During taxable years 1976 and 1977, the taxpayer was a graduate student in the University of Wisconsin - Madison's Department of Genetics. In each of those years taxpayer received \$3,900 under the

federal Public Health Service Act of 1974, designated as a "National Research Service Award" (NRSA).

The taxpayer filed a 1976 return on which she did not declare the \$3,900 NRSA award as income. She did not file a 1977 return because she did not believe the \$3,900 was taxable and because she believed she did not meet the minimum filing requirement for that year with any other income. Taxpayer contended that the \$3,900 NRSA award for each year is exempt from Wisconsin income taxation under sec. 117 of the Internal Revenue Code as a scholarship or fellowship grant. The department contended that the amounts are subject to Wisconsin individual income tax for the years in question.

One portion of the federal "Revenue Act of 1978" (P.L. 95-600), enacted on November 6, 1978, provided that amounts received as NRSA awards made in calendar years 1974 through 1979 may be excluded from recipients' incomes for federal income tax purposes as tax-free scholarships or fellowships.

The Commission ruled that the two \$3,900 amounts which taxpayer received in taxable years 1976 and 1977 were not exempt from Wisconsin income taxation under section 117 of the Internal Revenue Code in the years received. They are taxable by the Wisconsin individual income tax for those years. The Commission also ruled that enactment of the federal "Revenue Act of 1978" exempting NRSA awards from federal income taxation retroactive to 1974 does not also exempt the awards from Wisconsin income taxation for taxable years 1976 and 1977 because of the very clear and unambiguous language precluding that result in s. 71.02(2)(b)2 and 3, Wis. Stats.

The taxpayer has not appealed this decision.

Kenneth F. De Boer vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1980). During the years 1975-1977, Kenneth De Boer was a resident of Wisconsin. For the years 1975 and 1976, the department disallowed deductions by the taxpayer of land rents he paid to his wife, Sandra L. De Boer, in the amounts of \$2,290 and \$1,962, respectively. Also, for the years 1975 and 1976,

the department disallowed the taxpayer's splitting between himself and his wife income from the sale of livestock in the amount of \$426. For the year 1977, the department disallowed \$200 in wages paid by Mr. De Boer to his wife, but did allow \$3,985 in wages verified as being actually paid to her. The taxpayer did not challenge this disallowance. The taxpayer did challenge the remaining adjustments to his 1975-77 Wisconsin returns.

Prior to and during the years 1975-77, Mr. De Boer engaged in the business of farming on farm lands he and his wife owned in joint tenancy. The buildings, machinery and livestock were owned in joint tenancy. Mr. De Boer and his wife purchased the farm in 1964 on a land contract with no down payment. Payments were made from the net farming income.

During the years 1975-77, milk and dividend checks were made out to both the taxpayer and his wife; both of them signed the checks; and the checks were deposited into joint checking accounts. The taxpayer and his wife had a joint checking account; Mrs. De Boer also had a personal account into which she deposited wages paid to her. In 1967, Mr. De Boer and his wife signed a joint venture agreement stating that their farm operation was, prior to 1967 and would be after 1967, conducted as a joint venture and that all their farm property was jointly owned.

During the years 1975-77, Mrs. De Boer functioned equally with the taxpayer in operating the farm with the exception that she did not milk. Her functions included: washing and feeding cows; raising calves; cleaning barns; hauling hay; running and repairing machinery; keeping books; and planning. The taxpayer and his wife did not keep partnership books during these years.

In the years 1975 and 1976, the rents paid by the taxpayer to his wife did not reflect the rental value of the farm but were amounts determined by the taxpayer in an attempt to give Mrs. De Boer one-half of what was left after paying taxes, bills and household expenses and paid every once in awhile.

During the years 1975-77, the taxpayer paid social security taxes on himself but Mrs. De Boer paid no social security taxes on herself. The

farm income, with the exception of income from sale of livestock, was reported as a sole proprietorship. In 1975, amounts reported as sale of livestock included sales of swine. Subsequent to that year, Mr. De Boer and his wife no longer had a hog operation.

The Tax Appeals Commission ruled that the income and/or loss from sale of livestock in the years in question was income/loss from the farm business operations conducted by the taxpayer as a sole proprietor and as such was taxable solely to the taxpayer and could not be split with Mrs. De Boer.

The Commission also ruled that the taxpayer may not deduct from his farm business income land rents paid to his wife.

The taxpayer has appealed this decision to Circuit Court.

Eslinger, Mark H. and Lorraine R. vs. Wisconsin Department of Revenue, (Wisconsin Tax Appeals Commission, July 8, 1980). Taxpayers received an estimated assessment for the years 1977 and 1978 during which time they were residents of Wisconsin.

They maintained that they did not receive any income of any type for the years 1977 and 1978. Both taxpayers prepared, signed and filed with the Department of Revenue, Form 1, Wisconsin combined individual income tax returns for each year. The returns reflected zero Wisconsin income.

During the year 1977, Mark H. Eslinger was an employee for The Landy Company of Eau Claire and received \$13,820.02 in wages. During the year 1978, he worked for The Landy Company, Armour-Star Company, Rochester Silo Company and Packerland Company, and received substantial wages therefrom.

During the year 1977, Lorraine Rose Eslinger was an employee of The Landy Company of Eau Claire and received \$9,164.28 in wages. During the year 1978, she was an employee of The Landy Company, Wisconsin Beef Institute and Whitehall Packing Company, and received substantial wages therefrom.

During the period involved, the Eslingers sold two parcels of real estate they owned in Wisconsin. They did not report the sales on either

their 1977 or 1978 Wisconsin income tax return. During 1977 and 1978, they also received rental income from the real estate they owned in Wisconsin, and in 1978 they held an auction sale at which they sold various items of personal property.

The Eslingers allege that the federal reserve notes they received during 1977 and 1978 from the above activities do not constitute legal tender and thus are non-reportable to and non-taxable by the State of Wisconsin. Mark H. Eslinger testified that he received approximately \$16,500.00 in 1977 and \$7,000.00 in 1978 in federal reserve notes.

The Wisconsin Tax Appeals Commission concluded that the federal reserve notes received by taxpayers during the years 1977 and 1978 constitute legal tender subject to Wisconsin income taxation. It ruled that the department acted properly in issuing an estimated assessment against taxpayers when they failed to accurately report their income for the years 1977 and 1978.

The taxpayers have appealed this decision to Circuit Court.

Vance A. Glewen vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1980). During the years 1975-1977, Vance A. Glewen was a resident of Wisconsin and engaged in the business of farming. For the years 1975-77, the taxpayer reported the farm income as a sole proprietorship, except the income from the sale of livestock which he allocated one-half to his wife. The department disallowed the taxpayer's allocation to his wife of one-half of the income from the sale of livestock.

The farming business was conducted on land rented from the taxpayer's father. Taxpayer owned no real estate during the years in question. Mr. Glewen and his wife started farming in 1972. During the years 1975-77, the taxpayer's operation was mostly a hog operation. He did have some cash crops but most crops he raised were used for feed. The taxpayer owned his own breeding stock during the years involved. In 1972 the taxpayer and his wife acquired 100 hogs, both signed the note to acquire these hogs. Mr. Glewen never bought sows; he always raised his own sows. He did

buy 10-15 boars once a year because he needed different stock.

For the years involved, the taxpayer and his wife do not claim to have had a partnership, but claim to be a joint venture. The taxpayer and his wife signed a joint venture agreement on February 15, 1979 although this agreement was not filed with the county clerk.

During the years involved, the taxpayer and his wife did not utilize partnership or joint venture accounting methods. Checks received by the taxpayer and his wife were written out in both names. The husband deposited proceeds from the sales in joint checking accounts. Mrs. Glewen testified it was her understanding that she owned one-half the livestock on the farm. Also, Mrs. Glewen participated substantially in the operation of the farming business and was paid wages for these services.

The Tax Appeals Commission ruled that the income from sale of livestock was income from the farm business operations conducted by the taxpayer as a sole proprietor. The income from the sale of livestock was assessable and taxable solely to the taxpayer.

The taxpayer has appealed this decision to Circuit Court.

J. John Gudenschwager, J. John Gudenschwager Family Estate vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 11, 1980). During the period 1973 through 1976, J. John Gudenschwager a/k/a J. John Gudenschwager Family Estate, was a resident of West Allis, Wisconsin. The issues for the Commission to determine were as follows:

(1) Whether the taxpayer's income earned during the year 1973 as an individual was reportable by him and not by a trust for Wisconsin income tax purposes.

(2) Whether the department's doomsage assessment for the years 1974, 1975 and 1976 should be affirmed. The taxpayer failed to file returns for those years.

During the period under review, J. John Gudenschwager was a real estate salesman and managed a little laundry, did file and report his 1973 Wisconsin income as required but

failed to file and report his 1974, 1975 and 1976 income to the department. The taxpayer contends that in the years 1974, 1975 and 1976 his business enterprise operated at a loss, therefore, he was not required to file his Wisconsin income tax return. Taxpayer claims he communicated to the department regarding his nonfiling for the years 1974 through 1976 as follows:

"Re: Form 1 returns for 1974 and 1975

The writer is the representative for the above named persons and will be happy to answer any inquiries you may have.

The current address of the above is, 2304 S 66th Street, West Allis, WI 53214. For the periods here in question, the persons have been in a state of flux moving a total of three times.

Mr. Gudenschwager has been self-employed for the periods here involved and for calendar year 1976 and 1977; in the commercial laundry business. Because of unsettled conditions, it has been difficult to file timely returns. The writer is in the process currently of bringing these filings up to date. Please be assured that there are nothing but reportable losses for all periods here involved. Any further questions, please address the writer. Signed Peter Y. Taylor, Sr."

The Department of Revenue based its assessment for the years 1974, 1975 and 1976 on the estimated (doomsage) assessment in the following manner: For the year 1974 - \$12,000 of taxable income, for the year 1975 - \$13,000 of taxable income, for the year 1976 - \$14,000 of taxable income.

During 1973 taxpayer had a "Family Trust", also known as an equity or constitutional trust, and conveyed to same various items of his real and/or personal property and the right to all income he received. In return, the taxpayer received all the beneficial ownership of his family trust, including the right to designate all owners of beneficial interests. After the taxpayer assigned his property and/or lifetime services to his trust, all the income he received was attributed by him to the trust, which used same to pay the personal deductible and nondeductible living

expenses of the taxpayer and his family.

Taxpayer also served as manager of his family trust, and any monies left over after the allocations specified above were paid to him for services he allegedly rendered in said capacity or to his designate. Taxpayer retained complete control over this income and/or assets after the creation of the family trust involved.

The department, in its assessment, determined that the family trust could not be recognized for Wisconsin income tax purposes and recomputed the taxpayer's Wisconsin income tax liability based on said conclusion. Taxpayer appealed that determination to the Commission. The taxpayer was required by the department to report and file 1974, 1975 and 1976 Wisconsin income tax returns and taxpayer neglected and failed to report and file these returns as required.

The Commission concluded that:

(1) Income is taxed to the individual who earns it.

(2) The taxpayer performed services during the period under consideration and was compensated therefor; those amounts constituted gross income to the taxpayer when received, notwithstanding the trust agreement involved.

(3) The taxpayer's conveyance of his lifetime services and the income earned through the performance of those services was simply an assignment of income and ineffective to shift the tax burden from the taxpayer to his family trust.

(4) The amounts paid taxpayer in return for his services was income to him and should have been so reported.

(5) The taxpayer failed to file his Wisconsin income tax returns for the years 1974, 1975 and 1976 and the department's doomsage assessment as assessed is presumptively correct and that the taxpayer failed to meet his burden of proof to show in what respects the department's action on his petition for redetermination was in error.

The taxpayer has appealed this decision to Circuit Court.

Curt G. Joa, Inc. vs. Wisconsin Department of Revenue (Wisconsin

Tax Appeals Commission, October 21, 1980). The taxpayer, Curt G. Joa, Inc., is a Wisconsin corporation which was engaged in business in Wisconsin during the year 1975. The department issued a \$4,893.67 franchise tax assessment against the taxpayer covering the year 1975 in which it assessed tax, interest, fees and penalties. The taxpayer appealed the imposition of the 25% negligence penalty provided by s. 71.11 (46), Wis. Stats.

The taxpayer was required by statute to file a Wisconsin corporation franchise/income tax return for the year 1975 by the 15th day of the third month following the close of the corporation's income year (March 15, 1976). It filed a "tentative" Wisconsin corporation franchise/income tax return on March 15, 1976. The taxpayer requested and was granted a thirty-day extension for filing its required 1975 Wisconsin return. It failed, however, to file its required Wisconsin franchise/income tax return by the extended date and did not file a return for 1975 until September 19, 1977. The taxpayer also requested and was granted extensions of time by the Internal Revenue Service in which to file its federal 1975 income tax return but failed to do so in a timely fashion.

The Wisconsin Department of Revenue and the Internal Revenue Service both audited the taxpayer's books and records covering the period 1971 through 1974 in 1975 and 1976. At the end of 1974, the taxpayer changed accountants and an assistant comptroller terminated his employment with Curt G. Joa, Inc. During the year 1975, the taxpayer moved a domestic subsidiary from Northbrook, Illinois to Wisconsin. It also expanded foreign sales, was engaged in business in 24 countries, and was involved with a DISC, Joa, International.

As a business decision, the taxpayer desired to reflect both Wisconsin and federal audit changes in its 1975 franchise/income tax returns. However, neither the federal nor the state audits impaired the taxpayer's opportunity to file a timely 1975 Wisconsin franchise/income tax return.

The Commission concluded that the taxpayer's failure to file its 1975 Wisconsin corporation franchise tax return within the time allowed was

not due to reasonable cause. Therefore, the department's imposition of the 25% negligence penalty was correct under the circumstances.

The taxpayer has not appealed this decision.

Randy Larsen vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 13, 1980). Taxpayer was a Wisconsin resident, subject to the income tax provisions of Chapter 71, Wis. Stats. Taxpayer claims to have filed a 1975 Wisconsin income tax return. He testified that the return is what "people commonly call a Fifth Amendment return" and explained that on the return he objected to answering questions or providing information on the basis of the 5th Amendment to the U.S. Constitution, specifically his privilege against self-incrimination. The Department of Revenue denies receiving the return as it did not have it in its files.

On December 19, 1977, the department issued taxpayer a "Notice of Amount Due" for \$1,660 of individual income tax, attaching an explanation that because taxpayer did not file a Wisconsin return as required by statute, the department estimated taxpayer's income and computed the tax due on that income.

At the February 20, 1979 public hearing before the Tax Appeals Commission on this appeal, taxpayer did not introduce a copy of his allegedly-filed 1975 Wisconsin income tax return and declined the afforded opportunity of introducing evidence or testimony regarding his income, deductions or other tax information for the calendar year 1975. Taxpayer repeatedly stated that he so declined on the basis of his privilege under the first, fourth, fifth, ninth, thirteenth and fourteenth amendments to the U.S. Constitution. He added that such evidence or testimony might tend to incriminate him under federal tax criminal statutes and said that he would testify only if he were guaranteed complete immunity from all federal and state prosecution.

At the Commission's hearing on this matter, taxpayer was afforded 30 days after his receipt of the hearing transcript to submit a written brief of his position, however, no written brief was submitted.

The Commission concluded that income tax assessments made by the department are presumptively correct and the burden of proof to establish that assessments are incorrect is on the person assessed.

Taxpayer failed to meet his burden of proof.

The taxpayer has not appealed this decision.

Nick Novasic vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 13, 1980). During taxable year 1974, taxpayer was a nonresident of Wisconsin who owned rental real property in Oak Creek, Wisconsin from which he derived a net profit of \$50,862.20. This amount comprised taxpayer's only income subject to the Wisconsin tax during 1974.

Taxpayer filed his 1974 Wisconsin income tax return under date of June 18, 1976. Attached to that return was a copy of the 1974 federal income tax return for taxpayer and his wife. That return reflected federal adjusted gross income of \$17,116.43 and itemized deductions of \$12,795.17. On the federal return, besides the Wisconsin real property rental income, taxpayer reported dividend and interest income, capital gain income and a large net loss from rental property located outside of Wisconsin. This loss basically accounts for the difference between federal adjusted gross income (\$17,116.43) and Wisconsin taxable income (\$50,862.20).

On his 1974 Wisconsin income tax return, taxpayer claimed \$38,001.65 as Wisconsin itemized deductions, rather than the \$12,795.17 itemized deductions claimed on his 1974 federal return. Taxpayer calculated this amount by multiplying the federal itemized deductions by 2.97, a factor he determined, his representative testified, by literally applying the formula for nonresidents contained in s. 71.02 (2) (f), Wis. Stats. ($\$50,862.20 \div \$17,116.43 = 2.97$; $\$12,795.17 \times 2.97 = \$38,001.65$).

The issue was whether taxpayer was limited to claiming itemized deductions of \$12,795.17 as shown on his 1974 federal income tax return, or may he claim \$38,001.65 as itemized deductions as determined by his interpretation of the formula in s. 71.02 (2) (f), Wis. Stats.