

C. Rules Adopted in 1981 (In parentheses is the date the rule was adopted.)

- 1.11 Requirements for examination of returns (8/1/81)
- amendment
- 2.081 Indexed income tax rate schedule (5/1/81)
- new rule
- 2.081(3) Indexed income tax rate schedule for taxable year 1981
- new rule
- 2.31 Taxation of personal service income of nonresident professional athletes (1/1/81)
- new rule
- 2.505 Apportionment of net business income of interstate professional sports clubs (1/1/81)
- new rule
- 2.955 Credit for income taxes paid to other states (2/1/81)
- amendment
- 4.53 Certificate of authorization (1/1/81)
- new rule
- 8.87 Intoxicating liquor tied-house prohibitions (6/1/81)
- new rule
- 9.08 Cigarette sales to and by Indians (8/1/81)
- new rule
- 11.12 Farming, agriculture, horticulture and floriculture (12/1/81)
- amendment
- 11.16 Common or contract carriers (12/1/81)
- amendment
- 11.40 Exemption of machines and processing equipment (12/1/81)
- amendment
- 11.83 Motor vehicles (7/1/81)
- amendment
- 11.88 Mobile homes (1/1/81)
- new rule
- 11.925 Sales and use tax security deposits (8/1/81)
- new rule

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:

Income and Franchise Taxes

- Kenko, Inc. vs. Wisconsin Department of Revenue
Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue
Wolfgang O. Horn vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club
Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue
Robert E. Curtis vs. Wisconsin Department of Revenue
Servomation Corporation, Successor to Servomation of Wisconsin, Inc. vs. Wisconsin Department of Revenue
Trudell Trailer Sales, Inc. vs. Wisconsin Department of Revenue

Gift Tax

- Estate of John F. Stratton et. al. vs. Wisconsin Department of Revenue

Homestead Credit

- Helen M. Raschik vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Kenko, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 28, 1981). Kenko, Inc., a corporation organized under the laws of Minne-

sota, was actively engaged in the construction business in the state of Wisconsin during the year 1979 and was subject to the provisions of ch. 71, Wis. Stats. Prior to the year 1979, the taxpayer did not engage in any activity in the state of Wisconsin, and thus was not subject to the provisions of ch. 71, Wis. Stats. Kenko, Inc., however, was actively engaged in the construction business in Minnesota. Kenko, Inc. did not file a Form 4, Wisconsin "Corporation Franchise or Income Tax Return" with the department for 1978, and was not required to file for this period of time.

Taxpayer filed a 1979 Form 4, Wisconsin "Corporation Franchise or Income Tax Return" with the department on or about March 19, 1980. A net tax liability of \$8,687 was shown on Line 38 of the return, and this amount was remitted to the department at the time of filing the return.

Kenko, Inc. did not file estimated tax returns or remit estimated tax payments to the department for the year 1979 as set forth in s. 71.21, Wis. Stats. Taxpayer was required to file estimated tax returns and remit estimated tax installments in the following amounts at the following prescribed times:

Installment Due Date:	Required Installment:
3-15-79	\$1,737.40
6-15-79	\$1,737.40
9-15-79	\$1,737.40
1-15-80	\$1,737.40

Taxpayer was subject to the addition to tax assessment and applicable interest, unless it qualified for an exception to avoid the payment of the addition to tax under s. 71.22 (10) (a), Wis. Stats.

The issue involved is as follows: Assuming that Kenko, Inc., was not required to file (and did not file) a 1978 Wisconsin franchise or income tax return and was required to file (and filed) a 1979 return, and assuming that the taxpayer was required to file a declaration of estimated tax under s. 71.22 (1), Wis. Stats., for 1979 but did not so file, is Kenko, Inc. excused from the 9% addition to the tax by virtue of s. 71.22 (10) (a), Wis. Stats.? Section 71.22 (10) (a), Wis. Stats., provides that an addition to the tax shall not be imposed if total payments of

estimated tax equal or exceed "The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation on or measured by the income of the preceding year and such preceding year was a taxable year of 12 months. . . ."

The Commission held that the corporation's failure to file a declaration of estimated tax for taxable year 1979 is not excused from the 9% addition to the tax by the exception provided in s. 71.22(10)(a), Wis. Stats. Kenko, Inc. did not meet the following requirements of s. 71.22(10)(a), Wis. Stats.: (a) it did not file a 1978 Wisconsin franchise or income tax return (the year prior to taxable year 1979, the year in question); (b) no tax was shown on a 1978 return; and (c) since no 1978 return was filed for 1978, no return was filed covering the 12 month period preceding taxable year 1979, the year in question.

The taxpayer has not appealed this decision.

Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1981). Taxpayer is a production credit association organized under the Farm Credit Act of 1971, 12 U.S.C. Section 2001 *et. seq.*, with offices in Wisconsin.

The Farm Credit Act of 1971, 12 U.S.C. Section 2095(a) provides that:

Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in amount equal to one-half of one percentum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed 3½ percentum of the loans outstanding at the end of the fiscal year, beyond which 3½ percentum further additions to such reserves are not required but may be made) first to the restoration of the impairment, if any, of capital; and second, to the establishment and maintenance of the surplus

accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

At the beginning of 1977, Production Credit Association of Dodgeville had total outstanding loans in the amount of \$28,594,527.00. It had a balance in its loan valuation reserve account as required by the statutory provision described, above, in the amount of \$1,000,808.44, or 3½ percent of its total outstanding loans. During 1977 the taxpayer experienced bad debt losses in the amount of \$30,000.00 and recoveries on previously written off loans in the amount of \$4,031.99 for a net loss of \$25,968.12. The balance in the loan valuation reserve account at the end of 1977, prior to any addition for 1977, was thus \$974,840.32. Total outstanding loans were \$29,219,561.34 at the end of 1977. 3½ percent of that figure is \$1,022,684.64. Taxpayer thus added the amount of \$47,844.32 to its loan reserve valuation account with a resulting total in that account of \$1,022,684.64.

Pursuant to Section 166(c) of the Internal Revenue Code, the taxpayer is allowed a deduction for federal income tax purposes "for a reasonable addition to a reserve for bad debts". At the beginning of 1977 the balance in the taxpayer's reserve for bad debts, which resulted from previous additions, losses, and recoveries, was \$1,000,808.44. Production Credit Association took a deduction for federal income tax purposes for 1977 in the amount of \$47,844.32, computed similarly to its addition to its loan valuation reserve account.

Section 71.04(9)(b), Wis. Stats., provides:

Savings and loan associations, mutual service banks, production credit associations and credit unions may make a deduction for a reasonable addition to reserve for bad debts of 2/3 of such sums as they are required to allocate to their loss reserves pursuant to statutory provisions or rules and regulations or orders of any state or federal governmental supervisory authorities.

Taxpayer contended that it is entitled to compute in the following manner an addition to bad debt reserves for Wisconsin franchise tax

purposes. At the beginning of 1977 the balance in the Wisconsin reserve for bad debts, resulting from previous additions, losses, and recoveries, was \$444,403.84. At the end of 1977, after deducting the net losses in the amount of \$25,968.12, but before any addition, the balance was \$418,435.72. Taxpayer took a deduction for reasonable addition to Wisconsin reserve for bad debts for 1977 in the amount of \$97,398.53, computed as 2/3 of one-half percent of total loans outstanding at the end of 1977. This deduction and addition to Wisconsin reserve for bad debts resulted in a balance in Wisconsin reserve for bad debts at the end of 1977 in the amount of \$515,834.25.

The department contended that the taxpayer is not entitled to compute an addition to bad debt reserves in the manner provided above, since the taxpayer's accounts contain only the \$47,844.32 addition to bad debt reserves. The department contended that in 1977 taxpayer was entitled to a deduction of two-thirds of the amount taxpayer added to its loan reserve valuation account, or \$31,896.21 (2/3 x \$47,844.32). If the taxpayer had incurred bad debt losses in 1977 in excess of the \$31,896.21 deduction for addition to bad debt reserves the department would have allowed a deduction for actual net bad debts losses in lieu of a deduction for the addition to the bad debt reserves.

The Commission held that the department's action in allowing as a deduction two-thirds (\$31,896.21) of the total sum allocated by the taxpayer in 1977 to its loan reserves account (\$47,844.32) is in conformity with a literal interpretation of the provisions of s. 71.04(9)(b), Wis. Stats.

The taxpayer has appealed this decision to Circuit Court.

Wolfgang O. Horn vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 9, 1981). During the period under review, Wolfgang Horn was a Wisconsin resident serving on a full-time basis as a professor of psychology at the University of Wisconsin—Stevens Point. This is an appeal of an income tax assessment involving the following three items of income and deductions: (1) taxpayer's net income from rents and royalties from foreign sources for the years

1975 through 1978, (2) certain charitable contributions claimed by taxpayer as itemized deductions on his 1978 income tax return, and (3) taxpayer's sale of real estate in Portage County, Wisconsin in tax year 1978.

During the years 1975 through 1978 Wolfgang Horn received income consisting of royalties from Germany and rents from real property he owned in Germany and Spain. For each of these years, taxpayer included this foreign source income on his federal income tax return and subtracted it from his Wisconsin income. Taxpayer contended that he believed his foreign source income was not taxable by Wisconsin because in 1971 he was audited by the department for the tax years 1969 and 1970. During the course of the audit, a department employe wrote a letter to the taxpayer which read in part:

"A review of the tax treaties between the United States and West Germany reveals that we should not tax the rent received from German real estate or the royalties received on German copyrights. Our assessment has been changed accordingly. The expenses relating to these items, including interest on loans on foreign property, cannot be allowed because of the direct relationship to non-taxable income."

This statement which was not contradicted until the commencement of the audit under review, induced the taxpayer to rely on it by subtracting his German source income on his Wisconsin income tax return. This reliance was to his detriment, as it resulted in his not reporting income which the department later claimed was taxable. This statement also induced taxpayer to rely on it by subtracting his Spanish source income on his Wisconsin tax return. This reliance was also to his detriment.

The second issue involved the taxpayer's 1978 itemized deductions for contributions. In 1978, taxpayer obtained a charter and a certificate of ordination from the Universal Life Church of Modesto, California. The Universal Life Church of Modesto, California is a corporation which had been recognized by the Internal Revenue Service in Publication 78 as an organization to which contributions are deductible under sec.

170 of the Internal Revenue Code. The taxpayer named his church the Universal Life Church of the Healing Spirit. A document was filed with the register of deeds of Portage County on November 30, 1978 regarding the organization's status as a religious society under Chapter 187, Wis. Stats.

Neither Universal Life Church of the Healing Spirit nor its assets are controlled by the Universal Life Church of Modesto, California. However, taxpayer had detailed guidelines from the California church as to how his church should be operated and sent the California church reports on his church's activities and finances every 6 months. The Universal Life Church of the Healing Spirit did not submit an application for tax exempt status to the Internal Revenue Service. Taxpayer believed this was not necessary as he believed his church was only a branch of the California church. No listing under the Universal Life Church of the Healing Spirit of Stevens Point is carried in any publication of the Internal Revenue Service as an organization exempt from tax, contributions to which are deductible.

On August 2, 1978, taxpayer requested that the California church send him additional information and an official church flag, for which he submitted \$105 which he identified as a "donation". In return, Wolfgang Horn received a loose-leaf binder with the title "We Are One" which included information and forms on how to organize a church and avoid taxes. The taxpayer followed these instructions in organizing his church and his financial affairs. Taxpayer testified that his church was organized because he and his wife could not find an existing church that met with their approval. The directors of the Universal Life Church of the Healing Spirit were Wolfgang Horn, his wife and his son Frank. The operations of the church were controlled by the majority of the Board of Directors.

In 1978, the taxpayer claimed an itemized deduction on his income tax return for a large charitable donation consisting of cash and property to the Universal Life Church of the Healing Spirit. Nothing in the record indicates that there was a cash donation in the year claimed although one exhibit indicates that there was a transfer of real estate by

quit claim deed of land in Portage County, Wisconsin recorded on November 30, 1978 by Frank H. Horn, Wolfgang O. Horn and Frieda T. Horn to themselves as trustees of the Universal Life Church of the Healing Spirit, Inc. There is no evidence of the portion owned by any of the grantors. The taxpayer also testified that the total amount of donations claimed includes donations of others.

Taxpayer's church operated out of his home. The church consisted of 9 members; 7 members of his family and 2 others. The "ULC Chapter Report" signed by taxpayer and dated January 28, 1979, covers the period of July 26, 1978 to January 25, 1979, which includes the period under review and states there are 7 members on the roll. Taxpayer refused to disclose the names of the other members. Wolfgang Horn also testified that he did not want other members because his family planned to move to North Carolina.

The donations to this church were mainly used to purchase real estate although funds were used for other purposes. Some of the funds were used to purchase two vacuum cleaners. One vacuum cleaner was used at the personal residence of the taxpayer. The other vacuum cleaner was used at a North Carolina church owned building which was occupied by a caretaker. Some of the funds were used for transportation. Transportation included the cost of sending his son Frank to California to get a younger son out of a California religious group and costs of scouting for real estate to purchase. The taxpayer testified that his church could have spent more for personal purposes but it wanted to conserve its capital to purchase real estate.

The taxpayer's church has two ordained ministers, the taxpayer and his son. No formal training is required to become ordained. Services were held in taxpayer's dining room.

The third issue involved the sale of a parcel of real estate in Portage County. The parcel was owned by Frank H., Freida T. and Wolfgang O. Horn. According to a real estate closing statement in the record it was sold under a contract dated October 21, 1978. The date of closing was December 1, 1978. The real estate was transferred by the tax-

payer, his wife and son to themselves as the trustees of Universal Life Church of the Healing Spirit on November 30, 1978 and, on the same day, transferred by the trustees to the purchasers. Taxpayer did not present evidence of title ownership of the Portage real estate prior to the property transfer to the church. Nor did he present any evidence to challenge the department's calculation of gain on the sale.

The Commission held that the department is barred for the period under review from collecting Wisconsin income tax on taxpayer's German royalties and rents, but not barred from collecting Wisconsin income tax on Spanish rents, under the doctrine of equitable estoppel. The reliance on the department's statement as it related to the German rents and royalties was reasonable. However, the reliance on the department's statement in determining the taxability of the Spanish source income was not reasonable as the letter did *not* state that tax treaties between the U.S. and Spain were examined nor did the letter make a statement relating to Spanish income.

The Commission further concluded that the taxpayer is not entitled to an itemized deduction on his 1978 income tax return for the asserted \$3,729 portion of the value of the Portage real estate nor for the asserted \$10,934 cash contributions he made to the Universal Life Church of the Healing Spirit. The church was technically not an organization to which contributions may be made and itemized deductions taken therefor under sec. 170 of the Internal Revenue Code.

Also, the taxpayer did not meet his burden of proof in overcoming the presumptive correctness of the department's assessment resulting from the 1978 gain on the sale by the taxpayer of the Portage real estate.

Neither the department nor the taxpayer have appealed this decision.

SALES/USE TAXES

Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club (Circuit Court of Dane County, August 17, 1981). This case involves two issues: 1) Does the sales or use tax apply to the purchase by

the Milwaukee Brewers Baseball Club of the tickets which when purchased by the customer give him or her the right to enter the stadium to view the game? and 2) Does the sales or use tax apply to the baseball club's purchase of promotional items distributed to a class of ticket holders on special occasions? The Wisconsin Tax Appeals Commission held that neither of the above situations involved taxable sales. (See Wisconsin Tax Bulletin #21 for a summary of the Commission's decision.)

Taxpayer is engaged in the ownership and operation of a professional baseball franchise known as the Milwaukee Brewers, with the principal office located at Milwaukee County Stadium. In connection with its home games, taxpayer sells admission tickets on a season ticket and individual game basis. The department assessed use tax on amounts paid by the taxpayer to an out-of-state vendor for the purchase of admission tickets and amounts paid by the taxpayer to out-of-state vendors for purchases of promotional items.

The Circuit Court held that the purchase and use of the paper tickets by the taxpayer were not taxable. The Court considered the paper tickets items sold at retail as part and parcel of admissions. The sale of admissions is taxable as a service. A ticket is the permission to enter a place ("admission") and its sale is also considered a service which is taxed under s. 77.52(2)(a)2, Wis. Stats.

The Circuit Court reversed the Tax Appeals Commission's decision relating to the promotional items. The Court held that the promotional items are not part of a "sale of admissions". The promotional items are taxable under s. 77.51(4)(k), Wis. Stats., which provides that a sale to a purchaser who distributes an article "gratuitously apart from the sale of other tangible personal property or service" is taxable as a sale.

The department and the taxpayer have appealed this decision to the Court of Appeals.

Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 8, 1981). Cuna Mutual Insurance Society is a life insurance company, organized under

the laws of the state of Wisconsin, whose principal place of business is located in Madison, Wisconsin. For the years 1975 through 1978, the department assessed use tax against the taxpayer. The issue involved is whether the taxpayer's publication, *Dimensions*, constitutes institutional advertising which would be exempt from the use tax under s. 77.54(25), Wis. Stats.

The taxpayer's business purpose is to provide for the insurance needs of credit unions and credit union members. The taxpayer has from time to time from 1975 to the present contracted with a Wisconsin printer to supply the paper and print a publication entitled *Dimensions* and the printer has, except for the first 9 months of 1975, delivered the publication each month to the taxpayer for distribution. The taxpayer distributed *Dimensions* free of charge and 94.3% of all issues were sent outside of Wisconsin. The publication is distributed free of charge to credit unions only.

Dimensions is a 16 page monthly publication of the taxpayer's paid for by the taxpayer and clearly identified on its cover as a Cuna Mutual Group publication. Cuna Mutual Group is the collective entity of the taxpayer and its subsidiaries. *Dimensions* contains a wide variety of articles relating to the companies within the Cuna Mutual Group, the products and services of those companies, the companies' relationship to the credit union movement and other subjects of interest to the credit unions. *Dimensions* advertises companies of the Cuna Mutual Insurance Group, their activities, products and services, and their commitment to the credit union movement.

A series of monthly editions of the publication were submitted into evidence and they contained in addition to the preceding identified contents, the following: specific advertisements for specific services of the taxpayer or members of its group; interviews and profiles with individual employees or agents of the taxpayer; information regarding appointments to positions within the credit union movement or the taxpayer's group; schedules of various events; articles regarding consumer protection legislation; and messages of seasons greeting.