Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue (Circuit Court of Iowa County, June 24, 1982). The issue in this case involves the manner in which the taxpayer may compute its addition to bad debt reserves for Wisconsin franchise tax purposes. (See WTB #26 for summary of the Tax Appeals Commission's decision.)

The issue in this case involves an interpretation of s. 71.04 (9) (b), Wis. Stats. This section permits a production credit association to take a deduction for an addition to its reserve for bad debts of ⅔ of the amount that they are required to allocate for federal loss reserve purposes. The taxpayer interprets that section to mean that it is entitled, each year, to deduct as an addition to its reserve for bad debts a sum equal to ⅔ of one-half percent of its loans outstanding at the end of a particular year. It is the position of the department that this section permits the taxpayer to deduct ⅔ of the amount actually added to its valuation reserve against loan assets. Thus, regardless of the amount of the outstanding loans made by the taxpayer for a given year, the department contends that a deduction for bad debt reserve is allowable only up to an amount equal to ⅔ of the sum actually allocated for federal loss reserve purposes.

The Circuit Court upheld the Tax Appeals Commission's decision. The Court held that production credit associations are permitted to deduct as a reserve for bad debts ⅔ of the sums that they are required to allocate for federal loss reserve purposes. In this case, the requirement necessitated the taxpayer allocate for federal loss reserve purposes the sum of $47,844.32.

The taxpayer has appealed this decision to the Court of Appeals.

SALES/USE TAXES

Richard or Alvin Hamland vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 14, 1982). The issue in this case is whether a truck tractor used solely to spread liquid manure on a farm is exempt from the sales and use tax under s. 77.54 (3), Wis. Stats.

The taxpayers purchased a used truck tractor in May, 1981 and did not pay any use tax at the time they filed a Form ST-10 with the Division of Motor Vehicles in conjunction with the registration of the vehicle. The Department of Revenue subsequently assessed $300 in use tax against the Hamlands.

Richard Hamland and his brother Alvin were engaged in a dairy farm partnership at the time the vehicle was purchased. He and his brother purchased the vehicle for the sole purpose of spreading liquid manure over their 500 tillable acres. Hamland purchased a 4500-gallon liquid manure tank from Mr. Friedenfeld at the same time he purchased the tractor. Mr. Friedenfeld installed a power take-off on the truck tractor and extended its frame so that the liquid manure tank could be mounted on it. Mr. Hamland stated that he gave Friedenfeld one check for $13,000 for the truck tractor, liquid manure tank, and customizing work. Taxpayer testified that he took possession of the truck tractor only after it had been so customized. Mr. Hamland further testified that the truck tractor was not fit for highway use in that it needed many repairs and neither the odometer nor speedometer were in working condition.

The taxpayer further indicated that the liquid manure tank has never been removed from the truck tractor and that the vehicle is used solely to spread liquid manure over the fields. The vehicle is used occasionally to cross the highway as the farm is divided by a highway. The truck tractor had considerably less traction than a farm tractor, but had considerably more speed than a farm tractor. Hamland stated that he purchased the truck tractor rather than a farm tractor because the cost of the truck tractor was only $7,500 and the cost of a farm tractor to pull a 4500-gallon liquid manure tank would be $20,000.

The Commission ruled that the purchase of this truck tractor was exempt from the use tax under s. 77.54 (3), Wis. Stats., which provides an exemption for farm tractors and machines. Although the statute states that the farm exemption shall not apply to automobiles, trucks, and other motor vehicles for highway use, the Commission found that the particular customizing of the truck tractor changed it into a vehicle not designed primarily for highway use and that the vehicle was in fact not used on the highway. The Commission also found that the truck tractor was used for the same purpose as a farm tractor, and therefore the farm exemption applied.

The department has not appealed this decision.

Hunter Heating and Air Conditioning, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 20, 1982). The issue in this case relates to appealing an assessment after an additional field audit assessment has been paid by the taxpayer. The Department of Revenue, by notice dated March 27, 1981, issued a field audit assessment of sales and use tax against the taxpayer in the amount of $2,834.14, including interest and penalty. On April 22, 1981, the taxpayer paid the total amount of the assessment, and on May 28, 1981 it filed a petition for redetermination with the department. On June 23, the department denied the petition for redetermination on the basis that the assessment was already paid. The taxpayer then appealed to the Tax Appeals Commission on August 13, 1981.

The Commission indicated that pursuant to s. 77.59 (6) (c), Wis. Stats., payment shall be considered an admission of the validity of that portion of the deficiency determination and may not be recovered in an appeal or in any other action or proceeding. Section 77.59 (6) (c), Wis. Stats., also limits the time that one may make a deposit from the filing of the petition for redetermination to any time the department makes its redetermination. The taxpayer's check was mailed to the department and there was nothing on the face of the check to indicate that it was to be made as a deposit, and the check was not accompanied by any cover letter with any instructions to the department.

The Commission held that it does not have any jurisdiction in this matter and for that reason, the department's motion to dismiss the appeal is granted.

Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 10, 1982). During the pe-

riod April 1, 1975 through March 31, 1976 taxpayer, Edward Kraemer & Sons, Inc., was a Wisconsin corporation, engaged in producing rock-based products. The sole issue for the Commission to determine was whether the taxpayer's purchases of the equipment and machinery, including repair parts and replacements thereof, used in its plant production of rock-based products are exempt from the use tax under the terms of the manufacturing exemption provided in s. 77.54 (6) (a), Wis. Stats.

During the period under review the taxpayer was engaged in the processing of granite and limestone materials into commercial products. Taxpayer's product production operations involve plants which convert raw, unprocessed "shot rock" (rock rubble resulting from the drilling and blasting of raw stone from quarries and/or sand and gravel pits) into twenty-nine commercially salable products. A plant is composed of various pieces of equipment, including a primary crusher, one or more intermediate crushers, a roll crusher, screening and washing units, surge bins and conveyors. Each plant is self-contained and independently capable of transforming raw material (stone) into final products meeting defined specifications imposed by the taxpayer's customers. During the production process raw material is reduced in size, graded to various size specifications, blended where necessary with additive materials (such as sand, clay, black dirt or paper mill waste), washed and prepared as a finished product. The plant production process also eliminates various deleterious substances (such as clay, friable sandstone, chert (silica dioxide), or other materials with chemical compositions of sulphates, carbonates or phosphates) in accordance with defined product specifications. Taxpayer's plants are both fixed and mobile. Both types of plant are completely self-contained and capable of producing a multiplicity of separate and identifiable finished products.

Each plant, and the purchased components, including repair parts and replacements thereof, are used exclusively and directly in the rock product production operations of the taxpayer. Each of the finished products produced by the taxpayer's rock processing is a new article, with a different form, use and name from the raw materials. Each of the finished products has a different form, in terms of shape, dimension and content, than the preprocessed raw material. The preprocessed stone selected as the taxpayer's raw material has no commercial use as a product meeting applicable product specifications. As a result of the taxpayer's processing, twenty-nine separate products, each with a specific and different use from the existing raw material, are produced by the taxpayer. The raw material prior to processing is commonly called "stone". Each of the twenty-nine finished products produced by the taxpayer is tangible personal property possessing its own and different commonly used name, such as "bituminous road mix", "granular subbase", "sealcote", and "agricultural lime", which name identifies a product with known characteristics meeting defined product specifications.

The Commission held that during the period involved taxpayer did produce, by the use of machinery, a new article with a different form, use and name, from existing materials by a process popularly regarded as manufacturing. Taxpayer's rock processing operation constitutes "manufacturing" within the meaning of that term under s. 77.51 (27), Wis. Stats. The taxpayer's purchase and use of equipment and machinery in the processing activities of its rock processing operations are exempt from the tax under s. 77.54 (6) (a), Wis. Stats.

The department has appealed this decision to the Circuit Court.

Rause Enterprises, et. al. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 29, 1982). On January 11, 1980 the department issued six assessments to six business enterprises in which Thomas W. Rause had an ownership interest. Each assessment covered the period October 1, 1975 through June 30, 1979, some time during which each business enterprise operated a McDonald's restaurant franchise and held seller's permits in Wisconsin.

The issues involved in this case are as follows:

1. Are the department's sales or use tax assessments against the taxpayers barred by the doctrine of equitable estoppel?
2. Were the taxpayers' purchases of disposable plastic eating utensils, napkins, straws, bag liners, and disposable placemats subject to use tax under s. 77.53 (1), Wis. Stats., or exempt as purchases for resale under s. 77.51 (4) (intro.), Wis. Stats.?

For use in and by the McDonald's restaurants, taxpayers purchased various items of tangible personal property, without paying either sales or use tax on these purchases, from sellers located both in and outside of Wisconsin. The vast majority of these purchases were from sellers located outside of Wisconsin. The tangible personal property so purchased includes disposable plastic eating utensils, paper products, styrofoam containers, food stuffs, cleaning supplies and office and restaurant equipment. In 1976, covering the 1975 calendar year, Thomas W. Rause (part-owner of "Rause Enterprises") reported and self-assessed use tax attributable to the restaurant in Stevens Point. Mr. Rause testified that this use tax was paid in connection with the purchase of kitchen equipment for the restaurant, and that the contract with the supplier called for payment of equipment by check to the supplier and payment of the tax by separate check to the department which he reported as use tax.

Taxpayers conceded that tangible personal property which they purchased was subject to the tax, but that use tax was not paid because of reliance upon the department's printed instructions for sales and use tax Form ST-12 (July 1979 revision). Taxpayers asserted that the department's misleading instructions upon which they relied should preclude the department from collecting the use tax in dispute under the doctrine of equitable estoppel. Mr. Rause testified that he relied upon the following portion of the instructions for line 7 (labeled "Use Tax") of the form: "The use tax, which is 4% of the purchase price, must be paid when property used in Wisconsin is purchased from an out-of-state *retailer* who did not impose at least a 4% tax on the sale." (emphasis added). Mr. Rause also testified that he did not include his out-of-state purchases in the measure of the use tax because he made these purchases at whole-

sale, not at retail; that the taxpayers made purchases from out-of-state wholesalers, not out-of-state *retailers*, referred to in the instructions; and that while he recognized that s. 77.51 (7) (d) and (9), Wis. Stats., included certain wholesalers in the definition of "retailer", he believed that the statutory language did not apply to his purchases.

The Commission held that the department's assessments against the taxpayer are not barred by the doctrine of equitable estoppel.

In regard to the second issue, the Commission held that the taxpayers' purchases of disposable plastic eating utensils, napkins, straws, bag liners and disposable placemats were not subject to the use tax imposed by s. 77.53 (1), Wis. Stats., but rather are exempt as purchases for resale under s. 77.51 (4) (intro.), Wis. Stats.

The department requested a rehearing on the matter of the bag liners. The Commission granted the department's request for a rehearing. However, prior to the rehearing the parties stipulated that the bag liners are subject to use tax.

Neither the department nor the taxpayer have appealed to the Circuit Court.

Eric F. Tamm vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 23, 1982). The sole issue in this case is whether Eric F. Tamm, an officer and employe of Avant Supply, Inc., who had control, supervision or responsibility for filing sales tax returns and making payment of the amount of tax imposed under the sales tax law, willfully failed to comply with s. 77.60 (9), Wis. Stats. If he did he is personally liable for such sales tax.

The Tax Appeals Commission held that during the period under review, the taxpayer was an officer and an employe of Avant Supply, Inc., he had control, supervision and responsibility and was required by s. 77.50 (9), Wis. Stats., to file the proper sales tax returns and make payments of the amount of tax imposed under the sales tax law. He willfully failed to make such payments to the department within the intent and meaning of s. 77.60 (9), Wis. Stats. Therefore, he is personally liable to the department for such taxes, interest and penalties thereon.

The taxpayer has not appealed this decision.

HOMESTEAD

Helen M. Raschick vs. Wisconsin Department of Revenue (Circuit Court of Burnett County, May 24, 1982). Helen M. Raschick appealed the Wisconsin Tax Appeals Commission's decision of October 9, 1981 to the Circuit Court of Burnett County (see WTB #26). The Circuit Court granted the department's motion and dismissed the action.

The taxpayer has appealed the Circuit Court's action to the Court of Appeals.

GIFT TAX

Carolyn Hribar vs. Wisconsin Department of Revenue (Circuit Court of Racine County, May 27, 1982). Taxpayer, Carolyn Hribar, and the department entered into a Stipulation dated January 5, 1982, which provided that this case be held in abeyance pending the determination of the Circuit Court and any subsequent court of appeals in the matters of Anna Gerovac v. Wisconsin Department of Revenue and Peter Gerovac v. Wisconsin Department of Revenue (See Wisconsin Tax Bulletin #29).

Judgment was entered on March 18, 1982 by the Circuit Court granting the petitions of Anna Gerovac and Peter Gerovac to set aside the decision of the Wisconsin Tax Appeals Commission and to vacate the gift tax assessments against the Gerovacs. The Circuit Court held that Peter Gerovac had no beneficial interest in the property which he is alleged to have made gifts of to Carolyn Hribar, and that the gift tax assessments against Peter Gerovac, as donor, and Carolyn Hribar, as donee, should be vacated.

The Circuit Court held that the order of the Wisconsin Tax Appeals Commission entered on July 22, 1981, dismissing Carolyn Hribar's petition for review be set aside, and the assessments against Carolyn Hribar be vacated in all respects.

Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue (Circuit Court of Dane County, May 24, 1982). Warren Gilson conveyed a parcel of land by deed to Gilson Medical Electronics, Inc. There was no condition on the face of the deed nor on any other document expressing any intent other than a simple conveyance. There was no consideration for the deed.

The department assessed gift tax on the transfer to the corporation pursuant to Subchapter IV of Chapter 72 of the 1975 Wisconsin Statutes. Taxpayers contended that it was the intention of Warren Gilson to in effect make a gift to his children who are holders of all the common stock of the corporation. The Tax Appeals Commission held that the conveyance was a taxable transfer to the corporation, and not to the common stockholders of the corporation as individuals.

The Circuit Court upheld the Commission's decision. The property of the corporation is not that of its stockholders and they have no interest in the corporate property (Estate of Shepard, 184 Wis. 88, 197 NW 344 (1924)). The conveyance of land was a taxable transfer to the corporation.

The taxpayers have appealed this decision to the Court of Appeals.