in terms of profits. The taxpayer holds a 100% interest in each of these companies, except for some of the preferred stock of Bessmer & Lake Erie Railroad Co.

In 1975, these railroad companies had approximately $500 million in assets. They owned 2,700 miles of track, 445 locomotives, 32,000 freight cars and had 32,000 employes.

These railroad companies are common carriers, authorized to do business by the Interstate Commerce Commission (ICC) and by various state regulatory agencies. Each company has its own Board of Directors, officers and employes. The companies have common directors and officers (with permission of the ICC), but have no common directors or officers with the taxpayer.

The taxpayer plays no role in management of these companies and would be prohibited from doing so under the ICC. The taxpayer merely acts as a shareholder in these companies, and as such, elects the Boards of the companies.

Each railroad has its own management, financing (each has its own credit line; the taxpayer does not participate in raising capital for any of these companies), and personnel benefits. Its employes are covered under the Railroad Retirement Act and the Railroad Unemployment Act, rather than Social Security and state unemployment plans. There are no common benefits for the employes of the railroad subsidiaries and the taxpayer's employes. These companies receive no management services from the taxpayer, and they do not look to the taxpayer on major policy decisions.

The only capital contribution by the taxpayer of these companies was in 1978 to help finance a new facility for one of the companies.

The ICC requires that these companies remain independent. The ICC sets the rates charged by railroads, sets policies concerning abandonment, and requires a uniform accounting system. These companies are prohibited by law from discriminating in favor of any customer and actively seek customers other than the taxpayer.

The taxpayer has opposed rate increases for railroads. The taxpayer also uses other carriers, such as Conrail. However, a significant amount of the transactions of these railroads involve United States Steel Corporation as the customer (the percentage of sales by the railroads to the taxpayer ranges from 39% to 100% of the railroads' total sales). These transactions are at market rates.

Each railroad company, by its Board of Directors, determines its own dividend after examining the financial situation in a year. The taxpayer has no input into that decision.

In determining the amount of income from the taxpayer's mining operations subject to apportionment, the department's assessment separated net income from mining sales to third parties from total income from mining by using the ratio of sales to third parties to total income from mining, which methodology only considered sales and did not consider the property or payroll involved in the mining function.

Use of the statutory factors of sales, payroll and property to separate income from mining sales to third parties from total mining income shows a reduction in apportionable income of $9,885,876 in 1972, $11,591,610 in 1973, $19,763,010 in 1974, and $24,495,789 in 1975.

In computing the payroll and property factors for the apportionment formula, the department used sales percentages to separate apportionable from nonapportionable payroll and property, which added to the overall impact of sales on the apportionment result.

Intupersa is a small steel fabricating plant located in Guatemala. It made no sales to the taxpayer and utilized local suppliers of raw materials and made all sales in that area. United States Steel Corporation owned a 93% interest in this company. The taxpayer may have had personnel on the Board, and the major policy decisions of Intupersa had to have approval of the taxpayer's Board of Directors.

Orinco Mining Company was a Venezuelan mining company which prior to 1975 was a supplier of iron ore to the taxpayer. The taxpayer had a 100% interest in this company. In 1975, the Venezuelan government expropriated this company's property, as a result of which the taxpayer received a dividend of $115 million representing a return of the taxpayer's capital. Prior to January 1, 1975, the taxpayer had representatives on the Board of Orinco, but after January 1, 1975 the company no longer had any property. In 1975, this company sold its services to the Venezuelan government as mining consultants.

Navios Corporation and Navigen Company are two of the taxpayer's transportation subsidiaries. United States Steel Corporation had a 100% interest in both. They are both Liberian shipping lines. Navios did no business with the taxpayer in 1975. Navigen did provide ocean hauling services for the taxpayer in 1975, but on the same basis as transportation for third parties. These companies had no common officers with the taxpayer and were operated independently and autonomously from the taxpayer.

United States Steel Corporation presented no evidence concerning the operations of U.S. Steel International, Inc. and United States Steel International Sales Company (DISC) to show that these companies were discrete business enterprises.

In addition to its subsidiaries, the taxpayer owns a minority interest in the following dividend paying companies:

A. Ashco, Inc. - Engaged in pumping stations and water pipeline businesses. The taxpayer owns a 35% interest in this company and has some input into its decisions.

B. Oglebay Norton Co. - A large company on the New York Stock Exchange. The taxpayer owns a 3.4% interest in this company.

C. Rinker Materials Co., Inc. - The taxpayer owns an 11.29% interest in this company and has no input except as a shareholder.

D. Structural Dynamics - The taxpayer owns a 45% interest acquired with the proviso that Dr. Jason A. Lemon remain employed with this company for at least five years and that arrangements be made to protect the taxpayer's percentage of participation in the event that new stock is issued.

E. Altos Hornos de Vizcaya, S.A. - A Spanish company in which the taxpayer has a 26.77% interest. The taxpayer made a loan to this company in consideration for

which the taxpayer was to have representation on the Board of Directors for ten years and at least 25% of the voting power of the stockholders, coupled with a change to be made in AHV's by-laws to assure that decisions be made only by a 76% vote. Also under the terms of the agreement, the taxpayer was to provide technical and managerial assistance for ten years.

As to the five companies discussed in the paragraph above, none of them had officers in common with the taxpayer, and there were no purchases or sales between these companies and the taxpayer. The taxpayer has no legal control over these companies.

United States Steel Corporation's total sales in 1975 included its income from intangibles and the proceeds from the sale, exchange and redemption of intangible investments.

There are no published statutory sections, Wisconsin Administrative Code sections, instruction booklets or other materials available to the public which set forth the department's position as was stated in its internal Field Audit Section Bulletin 77-9 that only receipts from "the main thrust of the taxpayer's business" are to be included in calculating the denominator of the sales factor. FASB 77-9 was not promulgated until 2 3/4 years after the 1975 statutory change as to intangible income became effective. The department had proposed an administrative rule which would have provided that for purposes of the calculation of the denominator of the sales factor, the term "sales" only would include those "from the taxpayer's principle business activity". This rule was not enacted, on advice of counsel, because of the potential for problems in litigation.

The taxpayer's total sales in 1975 included its income from intangibles and the proceeds from the sale, exchange and redemption of intangible investments.

The Commission held:

A. The taxpayer's USS Realty Development Division, Sterling Park Development Division and Investment Division were not discrete business enterprises but rather were integral parts of the taxpayer's unitary business during the period at issue. Under s. 71.07(2), Wis. Stats., the taxpayer's business within Wisconsin was an integral part of such unitary business during the period at issue. Therefore, pursuant to s. 71.07(2), Wis. Stats., the taxpayer's income derived from the operations of these divisions, including the intangible income derived from the operation of its Investment Division during 1975, was includable in its Wisconsin apportionable income for the years at issue.

B. The taxpayer's twelve railroad subsidiaries were discrete business enterprises whose activities were unrelated to the taxpayer's activities in Wisconsin. Dividends received by the taxpayer from these subsidiaries are not properly includable in the taxpayer's Wisconsin apportionable income in 1975.

C. The taxpayer's foreign subsidiaries, Orinco Mining Co., Intupersa, Navigen Company and Navios Corporation, were discrete business enterprises whose business activities were unrelated to the taxpayer's activities in Wisconsin. Dividends received by the taxpayer from these foreign subsidiaries are not properly includable in the taxpayer's Wisconsin apportionable income in 1975.

D. The following companies paying dividends to the taxpayer in 1975 were discrete business enterprises whose business activities were unrelated to the taxpayer's activities in Wisconsin: Ashco, Inc.; Oglebay Norton Co.; Rinker Materials Co., Inc.; Structural Dynamics; and Altos Hornos de Vizcaya, S.A. Dividends received by the taxpayer from these foreign subsidiaries are not properly includable in the taxpayer's Wisconsin apportionable income in 1975.

E. Income from intangibles and proceeds from the sale, exchange and redemption of intangible investments received by the taxpayer in 1975 and includable in its 1975 Wisconsin apportionable income come within the intent and meaning of s. 71.07(2)(c)1, Wis. Stats., as "total sales" includable in the denominator of the sales factor.

F. The department's methodology in separating apportionable from nonapportionable income from the taxpayer's mining operations was in error in employing only a sales ratio to the taxpayer's total income from mining and was in error in using a sales ratio to determine apportionable payroll and property. The taxpayer's methodology in determining Wisconsin apportionable income from mining, utilizing sales, property and payroll factors, was shown to be a more accurate calculation and is hereby adopted by the Commission. The department's determination of the taxpayer's Wisconsin apportionable income from mining operations is reduced as follows: 1972 reduced by $9,885,876; 1973 reduced by $11,591,610; 1974 reduced by $19,763,010; and 1975 reduced by $24,495,789.

G. Under Wisconsin law, the taxpayer is not entitled to combine the sales, payroll and property of dividend paying subsidiaries in the denominator of the three factors.

H. The issues raised by the taxpayer in objecting to Wisconsin's imposition of the double weighted sales factor in conjunction with Wisconsin's change to destination based sales reporting and in objecting to the cumulative burden of Wisconsin taxation on the taxpayer's Wisconsin activities resulting from statutory changes (destination sales, double weighting the sales factor and inclusion of intangible income) are constitutional issues, and the Commission lacks authority or jurisdiction to rule on the constitutional issues raised by the taxpayer.

Neither the taxpayer nor the department has appealed this decision.

SALES/USE TAXES

Netex Pet Foods, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 29, 1985). The sole issue in this case is whether or not Netex is a person who may file a claim for refund of sales tax within the meaning of s. 77.59(4), Wis. Stats.

Netex alleged that it was engaged in the business of manufacturing feed ingredients for sale to other manufacturers of feed. As an alleged man-

ufacturer, the taxpayer may have been entitled to exemption from Wisconsin sales tax on its purchases of machines and specific processing equipment and repair parts, as well as other exemptions.

Netex did not claim all the exemptions that it allegedly was entitled to but rather paid a sales tax to the retailers on its purchase of tangible personal property and taxable services. Netex did not pay any sales tax directly to the department on the items in dispute.

Netex filed a claim for refund and request for sales tax audit for the period June 1, 1977 through May 31, 1981. The department advised Netex that it did not consider this a claim for refund and it would neither grant nor deny the claim because Netex had no sales tax account or consumer use tax account.

The Commission held that the taxpayer was not the "person" required to file, with the department, a sales tax return, reporting the sales tax in question. The taxpayer was not the "person" who paid the sales tax involved to the department within the intent and meaning of s. 77.59(4), Wis. Stats., and thus, has no legal standing to make a claim for refund of sales tax paid.

The taxpayer has not appealed this decision.

Skycom Corporation of Wisconsin, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 12, 1985). The issues for the Commission to determine are as follows:

A. Are the taxpayer's gross receipts from the rental of parabolic discs to George and Kris Krembs for the Ramada Airport and the Ramada Sands subject to the Wisconsin sales tax under s. 77.52(1), Wis. Stats.?

B. Are the taxpayer's gross receipts for the services provided at Northridge Lake Apartments, Mill Valley Condos, Willow Creek Condos, Chateau Condominiums, and Prospect Towers subject to the Wisconsin sales tax as providing a cable television system under s. 77.52(2)(a)12, Wis. Stats.?

During the period under review, Skycom Corporation owned and leased two parabolic discs to George and Kris Krembs at the Ramada Airport and Ramada Sands on a flat fee basis. Skycom Corporation merely rented the discs at these locations.

Skycom Corporation owned and maintained parabolic discs at Northridge Lake Apartments, Mill Valley Condos, Willow Creek Condos, Chateau Condominiums, and Prospect Towers. The taxpayer also maintained antennas to provide UHF and VHF reception.

Each parabolic disc pulled in microwave signals to allow certain viewers to obtain the movie channel and ESPN, the sports channel. Skycom Corporation did not generate any microwave signals, but amplified microwave signals transmitted by satellites owned by third parties. Skycom Corporation sometimes paid a fee to the owners of the satellites for amplifying its signals.

The parabolic discs were attached to the general wiring system or the master antenna system of a building. The antenna wiring was already in the units and was not installed by Skycom Corporation. Skycom Corporation did not own the master antennas, but maintained the master antennas. The UHF and VHF antennas were not owned by Skycom Corporation but were owned by the homeowner's association or the owner of the apartment buildings. Skycom Corporation never sold or installed UHF or VHF antennas, and this was not part of its service fee.

Skycom Corporation also owned and maintained a decoder block which was a wire from the individual TV set to the wall tap.

The taxpayer charged the individual apartment dwellers or condominium dwellers a monthly fee for the reception of the additional television channels. Not every resident of an apartment complex or condominium served by Skycom subscribed to receive the additional television channels.

The Commission concluded that the taxpayer's gross receipts from its rental of parabolic discs to George and Kris Krembs for the Ramada Airport and the Ramada Sands are subject to the Wisconsin sales tax. The taxpayer's gross receipts for the services provided at Northridge Lake Apartments, Mill Valley Condos, Willow Creek Condos, Chateau Condominiums, and Prospect Towers are subject to the Wisconsin sales tax as providing a cable television system under s. 77.52(2)(a)12, Wis. Stats. Skycom Corporation did not qualify for any exemptions under s. 77.51(28), Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Wisconsin Department of Revenue vs. Valley Ready Mixed Concrete Co., Inc. (Circuit Court of Dane County, May 2, 1985). The issue in this case is whether the Wisconsin Tax Appeals Commission's determination that Valley Ready Mix "manufactured" concrete in its mixer trucks was erroneous as a matter of law. In its decision dated November 13, 1984, the Commission ruled that Valley Ready Mix was entitled to a sales and use tax exemption on the purchase of truck chassis, mixing units and repair and replacement parts used in the company's manufacture of concrete. (See WTB #41 for a summary of the Commission's decision.)

The Circuit Court found that the Commission's conclusion that Valley Ready Mix's operations constituted manufacturing — while reasonable people might reach different conclusions on the same question — is reasonable based on the facts. Thus, the Circuit Court affirmed the Commission's decision.

The department has not appealed this decision.

HOMESTEAD CREDIT

Evelyn M. Fillner vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 31, 1985). The issue before the Commission is whether the department correctly adjusted the claimant's 1982 homestead credit claim.

The department adjusted the claimant's 1982 claim because she jointly owned the real estate with Darwin Fillner, her adult son. The department allowed her to claim her share of the taxes plus 25% of the remaining taxes as rent.

The claimant in her petition for redetermination stated that "I owned said property until my son gave me a gift of home improvements such as aluminum siding, screens and windows, ... He had to have half ownership (in name only) to get his loan from the loan company."

The Commission concluded that during the period involved the claimant was deemed to have an ownership interest of only 50% in the homestead in question, as record title was held jointly by her with her adult son. The department acted properly when it adjusted the claimant's 1982 property taxes accrued to 50% of the tax bill on the homestead plus 25% of the remaining 50% of the 1982 tax bill as rent constituting property taxes accrued.

The claimant has not appealed this decision.

Alice L. Szymczyk vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 29, 1985). The only issue pending before the Commission is whether the claimant, who resided in a nursing home and received medical assistance under Title XIX at the time she filed her 1983 homestead credit claim, is entitled to a homestead credit refund for 1983.

The claimant filed a 1983 homestead credit claim and attached a real estate tax bill addressed to John Szymczyk at 1901 Hamilton Street, Manitowoc, Wisconsin. The claimant claims that she paid the real estate taxes in 1983.

On December 23, 1983, the claimant entered the Park Lawn Nursing Home. While residing in the nursing home, she received medical assistance under Title XIX. The claimant filed her 1983 homestead claim while a resident of the nursing home.

The Commission held that the claimant is not eligible for homestead credit for 1983 because at the time she filed for the credit she resided in a nursing home and was receiving medical assistance under Title XIX.

The claimant has not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

Individual Income Taxes

1. Political Contributions
2. Taxability of Layoff Benefits
3. Taxability of Railroad Retirement Benefits
4. Treatment of Gain on Involuntarily Converted Property Replaced Outside Wisconsin

Corporation Franchise/Income Taxes

1. Assessments by Wisconsin Public Service Corporation
2. Nexus for Foreign Corporations Holding Wisconsin Partnership Interests
3. "No Tax Change" Field Audits
4. Wisconsin Treatment of Foreign Sales Corporations and Domestic International Sales Corporations

Sales/Use Taxes

1. Blank Videotape Purchased by TV Station
2. Farmers' Irrigation Equipment
3. Septic Tanks Owned by Municipality
4. Telephone Call Detail Charges
5. Waste Reduction and Recycling Exemptions
6. Waste Reduction and Recycling Exemption for Road Machinery

Homestead Credit and Farmland Preservation Credit

1. Add Back for Gain on Sale of Principal Residence
2. Farmland Credit for Not-for-Profit Corporation

INDIVIDUAL INCOME TAXES

1. Political Contributions

Statutes: section 71.02(2)(b), 1983 Wis. Stats.

Facts: Taxpayer A contributes a painting to the campaign fund of a political candidate. The painting has a fair market value of $100. The campaign committee immediately sells the painting in a fund raising auction to Taxpayer B for $130.

Question 1: For Wisconsin purposes, may Taxpayer A claim a deduction for a political contribution?

Answer 1: No, Taxpayer A may not claim a deduction for the contribution of the painting. Only contributions or gifts of money may be deducted. Wisconsin follows the federal Internal Revenue Code Section 218, as it existed immediately prior to its repeal in 1978. Section 218 allowed as a deduction any political contribution, which was defined in Code Section 41(c)(1) as "a contribution or gift of money to ...."

Question 2: Are there any tax consequences to Taxpayer A as a result of donating the painting?

Answer 2: Yes, under Section 84 of the Internal Revenue Code, the contribution must be treated as a sale. Taxpayer A is considered to have realized an amount equal to the fair market value of the painting at the time of transfer. If the fair market value exceeds Taxpayer A's basis in the painting, short or long term capital gain is realized. If Taxpayer A's basis is greater than the fair market value, the loss is not deductible.

Question 3: For Wisconsin purposes, may Taxpayer B claim a deduction for a political contribution?

Answer 3: Yes, Taxpayer B may claim a deduction of $30. The fair market value of the painting is $100. If Taxpayer B pays $130 for the painting, Taxpayer B may deduct $30 ($130 purchase price minus the $100 actual value of the asset acquired).

Question 4: If the painting is not immediately resold, how would the political contribution be determined?

Answer 4: The amount of political contribution is dependent upon the fair market value of the painting at the time