

## DO YOU HAVE SUGGESTIONS FOR 1987 TAX FORMS?

Do you have suggestions for improving the Wisconsin tax forms and instructions? Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8933, Madison, WI 53708. Please be specific and send your suggestions in early. The Department appreciates hearing from you.

## PLEASE GIVE US YOUR COMMENTS

As a means of improving the Wisconsin Tax Bulletin, we need your help. Please take the time to answer the questions on page 35 of this Bulletin and send your reply to us.

## NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under Parts A and B, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their state in the process as of March 15, 1987. Part C lists new rules and amendments which are approved but not yet effective. ("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

### A. Rules at Legislative Council Rules Clearinghouse

- 2.16 Change in method of accounting for corporations-A
- 2.19 Installment method of accounting for corporations-A
- 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies-A
- 2.21 Accounting for incorporated contractors-A
- 2.22 Accounting for incorporated dealers in securities-R&R
- 2.24 Accounting for incorporated retail merchants-A

- 2.25 Corporation accounting generally-A
- 2.26 "Last in, first out" method of inventorying for corporations-A
- 2.45 Apportionment in special cases-A
- 2.50 Apportionment of net business income of interstate public utilities-A
- 2.505 Apportionment of net business income of interstate professional sports clubs-A
- 2.53 Stock dividends and stock rights received by corporations-A
- 2.56 Insurance proceeds received by corporations-A
- 2.65 Interest received by corporations-A
- 2.72 Exchanges of property by corporations generally-A
- 2.721 Exchanges of property held for productive use or investment by corporations-A
- 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations-A
- 2.88 Interest rates-A
- 2.99 Minimum tax—individuals, estates and trusts-NR
- 3.03 Dividends received, deductibility of-A
- 3.08 Retirement and profit-sharing payments by corporations-A
- 3.10 Salesmen's and officers' commissions, travel and entertainment expense of corporations-R
- 3.12 Losses on account of wash sales by corporations-A
- 3.37 Depletion of mineral deposits by corporations-A
- 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron-A
- 3.44 Organization and financing expenses—corporations-R&R
- 3.45 Bond premium, discount and expense—corporations-A
- 3.47 Legal expenses and fines—corporations-R
- 3.54 Miscellaneous expenses not deductible—corporations-A
- 3.81 Offset of occupational taxes paid against normal franchise or income taxes-A
- 3.91 Petition for redetermination-A
- 3.92 Informal conference-A
- 3.93 Closing stipulations-A
- 3.94 Claims for refund-A

### B. Rules at Legislative Standing Committees

- 2.395 Sales factor option-NR

### C. Rules Approved by Legislative Standing Committee But Not Yet Effective

- 1.06 Application of federal income tax regulations for persons other than corporations-A
- 1.10 Depository bank requirements for withholding, motor fuel, general aviation fuel and special fuel tax deposit reports-A
- 1.13 Power of attorney-A
- 2.01 Residence-A
- 2.03 Corporation returns-A
- 2.05 Information returns, forms 8 for corporations-A
- 2.08 Returns of persons other than corporations-A
- 3.07 Bonuses and retroactive wage adjustments paid by corporations-A

## 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 non-acquiescence" or (3) "the department has not appealed" (in this case the department has acquiesced to Commission's decision).*

The following decisions are included:

### Individual Income Taxes

Chris Culver  
Business expenses—wages

Zeev Edelman  
Travel expenses

St. Charles Lockett  
Business expenses  
Rental expenses  
Sale of assets

Urban P. Van Susteren  
Assessments—failure to file

John S. Wright  
Individual retirement account—roll-over

**Corporation Franchise/Income Tax**

American Telephone & Telegraph Co.  
Dividends and interest—taxable

William Wrigley Jr. Company  
Nexus

**Sales/Use Tax**

Frisch, Dudek and Slattery, Ltd.  
Photocopies—lawyers

**INDIVIDUAL INCOME TAXES**

**Business expenses—wages.** *Chris Culver vs. Wisconsin Tax Appeals Commission, Department of Revenue* (Court of Appeals, District III, October 21, 1986). Chris Culver appealed a judgment affirming a Wisconsin Tax Appeals Commission decision. See WTB 41 and 46 for summaries of the Wisconsin Tax Appeals Commission and Circuit Court decisions.

Culver, a dairy farmer, claimed a \$21,000 business expense deduction in 1979 for wages paid to his wife, Linda. The Commission ruled, however, that Culver failed to prove that he and Linda actually maintained an employer-employee relationship. Culver argued that he met his burden because he paid Linda a reasonable amount, pursuant to an employment contract, and kept accurate records of the work she performed.

The Court of Appeals affirmed the judgment affirming the Wisconsin Tax Appeals Commission's decision.

The taxpayer has not appealed this decision.

□

**Travel expenses.** *Zeev Edelman vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 24, 1986). The issue before the Commission is whether the taxpayer is an indefinite employe under the test stated in Revenue Ruling 83-82, 1983-1 C.B. 1983, with his tax home in Wisconsin

and therefore is not permitted travel deductions under IRC Section 162(a)(2) unless he is away from home.

From 1975 through 1982, the taxpayer was employed as a nuclear engineer with the Israeli Institute of Technology, Israel, at a salary of \$4,000 to \$5,000 annually. Under the date of October 29, 1981, Mary M. Henszey, personnel director, Sentry Equipment Corporation (Sentry) made a written offer of employment to the taxpayer. Pursuant to Sentry's October 29, 1981, written offer of employment, the duration of the taxpayer's employment was to be for a period of 15 to 18 months, as a mechanical project engineer at a salary of \$25,000 annually. Sentry petitioned the Immigration and Naturalization Service (INS) to classify the taxpayer as a temporary worker for a 15 to 18 month period, thus, allowing the taxpayer to be employed at Sentry's Oconomowoc, Wisconsin office. Under the date of October 28, 1981, the INS granted Sentry's petition requesting that the taxpayer be classified as a temporary worker for a 15 to 18 month period. Sentry petitioned the INS for, and was granted, the following extensions of the taxpayer's and his family's visas: January 7, 1983, January 1984, January 7, 1985, May 4, 1985.

The taxpayer has continuously resided in the United States from 1982 until the present.

In the years 1982, 1983 and 1984, the taxpayer filed a 1040 nonresident tax form in the State of Wisconsin. Since moving to the United States in 1982, the taxpayer has purchased a car and furniture. During the period under review, the taxpayer owned an apartment and maintained bank accounts and stock accounts in Israel. During the period under review, the taxpayer's children attended the Glendale Public Schools in Glendale, Wisconsin.

In 1982, 1983 and 1984, the taxpayer claimed employe business deductions for travel, meals, and lodging pursuant to IRC Section 162(a)(2).

The taxpayer has petitioned the INS requesting that he and his family be granted permanent resident status. The taxpayer was offered, and accepted, permanent employment with Sentry in April or March of 1985.

The Commission concluded the taxpayer is an indefinite employe and his tax home is Wisconsin. Travel deductions under IRC Section 162(a)(2) are not permitted unless the taxpayer is away from the tax home.

The taxpayer has not appealed this decision.

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**Business expenses, rental expenses, sale of assets.** *St. Charles Lockett vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 14, 1986). The issues before the Commission are:

A. Whether the taxpayer is entitled to reduce her gain by \$4,500 on the sale of 3904 N. 77th/7610 W. Melvina Street in the 1979 tax year.

B. Whether the taxpayer had a \$7,000 gain or a \$6,450 gain upon the repossession of the 1719 W. Capitol Drive property in the 1977 tax year.

C. Claimed rental expenses related to 1719 W. Capitol Drive for the 1978 tax year.

D. Claimed Schedule C expenses for 1978, 1979 and 1980 tax years. The question to be determined by the Commission is whether New York was the taxpayer's tax home in those years.

E. Capital loss carryover in the 1978 tax year.

The taxpayer provided no substantiation of the claim that \$4,500 was spent by her in capital improvements on the 3904 N. 77th/7610 W. Melvina Street property.

The department assessed a gain on repossession of \$7,000 based upon the statements of the taxpayer's representative that she only received \$7,000 and not the \$10,000 downpayment required by the land contract. The taxpayer presented an uncorroborated, unsigned letter saying the amount received was \$6,450 based on money collected.

The taxpayer claimed rental expenses of \$8,796.43 in repairs, \$190.30 for insurance, \$1,300.97 interest, \$835.82 for

taxes and \$2,984.95 in depreciation. No income was reported so the taxpayer claimed a total loss of \$13,908 on the 1719 W. Capitol Drive property. The department disallowed the claimed loss citing the expenditures to be either personal expenses or capital costs.

During the period of 1978-1982, the taxpayer was a resident of Wisconsin and was employed by Nicholas Laboratories headquartered in New Berlin, Wisconsin. However, most of her work was directed at the East Coast market area. Her base of employment was New York.

The Commission concluded:

A. The taxpayer failed to meet her burden of proof as to whether she would be entitled to reduce her gain on the sale of 3904 N. 77th/7610 W. Melvina Street in the 1979 tax year.

B. The taxpayer failed to meet her burden of proof as to the gain on the 1719 W. Capitol Drive property.

C. The taxpayer failed to meet her burden of proof as to the disallowed rental expenses on the 1719 W. Capitol Drive property for the 1978 tax year.

D. In 1978, 1979 and 1980, New York was the tax home of the taxpayer.

E. The loss incurred in 1975 was disallowed by the department in a separate assessment not before the Commission at this time, that assessment was not appealed to the Commission and is, therefore, final and determinative as to that issue of the loss carry forward. The department's motion to dismiss this part of the appeal is granted based on lack of jurisdiction.

The taxpayer has not appealed this decision.

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**Assessments—failure to file.** *Urban P. Van Susteren vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 20, 1986). The disputed issue for the Commission to determine is whether the taxpayer failed to make Wisconsin income tax reports for the calendar years 1979, 1980, 1981 and 1982 with intent, in any case, to defeat or evade the income tax

assessment required by law as set forth in s. 71.11(6)(b), Wis. Stats.

During the period here under review (1979-1982), Urban P. Van Susteren was a resident of the State of Wisconsin and a long-term Circuit Judge for Outagamie County, Wisconsin.

The taxpayer filed his 1979 Wisconsin income tax return with the department, late, on November 18, 1981, after repeated requests to do so. The taxpayer filed his 1980 Wisconsin income tax return with the department, late, on October 1, 1982, once again after repeated requests to do so. The taxpayer filed his 1981 Wisconsin income tax return with the department, late, on April 6, 1983, again after repeated requests and also after a criminal complaint for his failure to file was issued against him by the department. The taxpayer filed his 1982 Wisconsin income tax return with the department, late, on February 7, 1984. The taxpayer was aware of his income tax filing requirements during the period here under review.

The taxpayer's excuse for his non-timely filing was his busy schedule as a circuit judge, his many outside activities and his reliance on his accountant.

The Commission concluded the department has met its burden of proof to show by clear and convincing evidence that the taxpayer's failure to file his Wisconsin individual income tax returns for the years 1979, 1980, 1981 and 1982 within the time allowed by law was with the intent "to defeat or evade the income tax assessment required by law" as that term is used in s. 71.11(6)(b), Wis. Stats. The taxpayer's taxable income for each of the years under review was subject to the assessment of an added 50% of the tax on the entire underpayment as provided in s. 71.11(6)(b), Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

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**Individual retirement account—rollover.** *John S. Wright vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 24, 1986). The only issue raised by the taxpayer is the department's inclusion in the taxpayer's 1980 taxable income of

\$18,700 from an IRA which was transferred by the taxpayer from one account to another in that year.

In 1980, the taxpayer transferred \$18,700 from an Individual Retirement Account with INA Life Insurance Company of North America to an account with Nationwide Insurance Co. The account at Nationwide Insurance Co. did not qualify as an IRA. On the face of the check dated September 10, 1980, from INA, it is stated that the check is F/B/O John S. Wright's IRA Account #70-0700-075844. Although the taxpayer believed this account was a qualified IRA, it was not a qualified IRA. The taxpayer did not rollover his INA account within the 60-day rollover period as provided for by IRC 401.

The Commission concluded the department's inclusion of \$18,700 in the taxpayer's 1980 taxable income was correct.

The taxpayer has not appealed this decision.

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## CORPORATION FRANCHISE/INCOME TAXES

**Dividends and interest—taxable.** *American Telephone & Telegraph Co. vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, September 10, 1986). The issues include a challenge to the Wisconsin Tax Appeals Commission's Decision and Order as violating Wisconsin statutes by taxing dividend and interest income from business not transacted in and property not located in Wisconsin and the contention is raised that the taxing apportionment formula violates constitutional requirements. (See WTB 46 for a summary of the Commission's decision.)

The issues in this case require the court to look first at whether AT&T is a unitary business. AT&T does not dispute that the Bell System, consisting of AT&T and its subsidiaries, may be regarded as a unitary business. However, the taxpayer's entire argument is based on its presumption that the Long Lines and General Department are separate businesses. The taxpayer is willing to concede that AT&T is a unitary business provided that Long Lines and General