Department are treated as discrete businesses.

American Telephone and Telegraph Company (AT&T) is a New York corporation having its principal place of business in New York City. During the years in question, AT&T was the parent corporation of 21 operating telecommunications companies. AT&T is divided into the Long Lines Department ("Long Lines") and the General Department. Long Lines is responsible for the construction, operation and maintenance of a nation-wide network of telecommunications facilities. The General Department is responsible for the investment and holding of stock in its subsidiaries, the provision of capital to them and the rendering of technical assistance, advice and research to them in all aspects of the telecommunications business. Long Lines maintained its own set of books, records and accounts in which it separately recorded property, revenues and expenses attributable to the interstate business in accord with Federal Communications Commission (FCC) rules. AT&T's single largest income source was its dividend income, derived from its equity investment in its subsidiaries. The custody and control of the stock held in these subsidiaries was maintained by the General Department. The General Department also received another major type of income from fees for the provision of technical advice and assistance pursuant to license contract agreements, which included the services of professionals such as engineers, technicians and specialists in the fields of telecommunications. Royalty income was also received from persons licensed to use AT&T's patents.

The taxpayer argues that the so-called multiform method accurately reflects AT&T's income taxable by Wisconsin and argues that because the department accepted this method for over 50 years, it should continue to do so. This argument fails to account for the change in the Wisconsin statutes which resulted in the increased imposition of tax—the inclusion of intangible types of income including those derived from mortgages, stocks, bonds and securities as apportionable income.

The taxpayer next argues that the Commission erred in concluding that the department acted properly in applying its Rule 2.50 to apportion AT&T's dividend and interest income. The essence of this argument is that the Long Lines and General Departments are discrete business entities.

The taxpayer repeatedly states that Rule 2.50 results in a distorted result because the tax imposed results in a 400% increase. The taxpayer also argues that Rule 2.50 results in a tax on property which is not located in and business not transacted in Wisconsin.

The taxpayer argues that a combined report should be accepted as a reasonable measure of AT&T's tax liability for the years 1975 and 1976. The taxpayer next argues that the department's assessment violates the Constitution. The Due Process Clause and the Commerce Clause require that there be a reasonable relationship between income taxed and the taxpayer's activities in the taxing state.

The taxpayer also argues that the Wisconsin apportionment scheme violates the Commerce Clause and denies equal protection by imposing greater burdens on economic activities taking place outside the state than were placed on similar activities within the state.

The taxpayer also argues that s. 71.07 (1m), Wis. Stats., discriminates in favor of a personal holding company so as to create an unreasonable classification.

The Circuit Court affirmed the Commission's decision and order.

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

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Nexus. *William Wrigley Jr. Company vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 18, 1986). The issues for the Commission to determine in the order of their relative importance are:

A. Whether the business activities of Wrigley in Wisconsin during the years 1973 through 1978 constituted doing business in Wisconsin within the intent and meaning of s. 71.01(2), Wis. Stats., in excess of the "solicitation of orders" protected by P.L. 86-272; and

B. Whether the tax assessed, if found to be due, is subject to delinquent or simple interest, and whether the $10 late filing penalty was properly imposed.

The William Wrigley Jr. Company (Wrigley) is an Illinois corporation, headquartered in Illinois, which manufactures and sells various chewing gum products throughout the United States.

Wrigley did not file Wisconsin corporate franchise/income tax returns or pay any taxes to Wisconsin for the years 1973-1978. It did file in its home state of Illinois and in those states where it had offices and/or manufacturing facilities. Because Wrigley had not filed or paid taxes in Wisconsin the department, on October 6, 1980, issued a franchise tax assessment against it in the total amount of $246,641.04 covering the years 1973-1978. Said assessment included a late filing penalty, a negligence penalty and delinquent interest.

Wrigley petitioned the DOR for redetermination on the grounds that (a) Wrigley did not engage in business within Wisconsin in a manner sufficient to subject it to the taxing jurisdiction of the State of Wisconsin under Wis. Adm. Code s. Tax 2.82, and that Wrigley was protected from Wisconsin income tax liability by federal law, P.L. 86-272, 15 U.S.C. Sec. 381 ("P.L. 86-272") and the United States Constitution; and (b) the assessment of delinquent interest and negligence penalties violated both Wisconsin's tax code and the DOR's regulations.

The department in its brief filed with the Commission "concedes that Wrigley's non-filing of returns and declarations of estimated tax was due to reasonable cause and not due to willful neglect, since it did not file upon the advice of counsel that Wrigley was exempt from taxation by Wisconsin under federal law ... and that the evidence shows that the figures used by the department in the computation of the property factor in the apportionment formula should be modified in the assessment notice ... to show that each employe maintained on average a supply of chewing gum valued at $1,000 and promotional literature valued at $200".

Wrigley sells its gum products nationwide through a sales staff comprised of field representatives, key account managers, regional sales managers and district managers. During the 1973 to 1978 peri-

od Wrigley had 7 or 8 geographical sales districts in the United States. At that time its Chicago based Midwestern District was comprised of Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, and parts of Iowa, and the Upper Peninsula of Michigan. The Wisconsin sales region of the Midwestern District was managed by a regional manager who lived in Wisconsin along with 4-5 sales representatives who lived in Wisconsin and were each responsible for a geographic territory within the State.

During 1973-1976, two of these sales representatives worked exclusively in territories within the boundaries of Wisconsin, one spent a portion of his working time in various Upper Michigan counties, and another spent approximately one-third of his working time in the State of Iowa. In addition one representative, who resided in Minnesota, worked in some of the western counties of Wisconsin which were included in Wrigley's Minnesota region. In 1977 the boundaries of the Wisconsin region were redrawn. Certain southern Wisconsin counties became part of the Peoria, Illinois region and were handled by a sales representative who lived in Illinois, and certain western Wisconsin counties became part of the Iowa region and were handled by a sales representative living in Iowa.

During the period in dispute, each sales representative received from Wrigley a leased vehicle, usually a station wagon, and a supply of gum, display racks and promotional literature. The gum was carried on Wrigley's books as inventory, the display racks were not, as they were given away to the accounts serviced. The gum, display racks and promotional literature were kept in the representative's home except for one representative who received special permission to rent storage space at Reynolds Transfer and Storage, in Madison. Each sales representative was reimbursed by his employer for business expenses connected with the automobile and for overnight lodging, meals and long distance telephone calls.

Each sales representative spent the large majority of his time calling on customers or potential customers in an effort to sell Wrigley's products. During a typical call to an indirect retail account, the sales representative would survey the display of Wrigley gum products and its package and flavor distribution, check the products for freshness, replacing stale gum if necessary, and make a sales presentation regarding a particular Wrigley promotion or the need to modify distribution or display of Wrigley products.

The majority of sales were made in the following manner: Direct accounts would submit their orders to Wrigley's office in Illinois for approval or rejection and then Wrigley would ship the gum to the direct account by common carrier. Occasionally, on the average of once a month, sales representatives would erect a display stand in an indirect account's (retailer's) store and stock it from his supply of sample gum. He would then report the transaction to Wrigley's Chicago office by "agency stock check" who would then bill the retailer's wholesaler, who would in turn bill the retailer. The average retail value of the gum transferred in such a transaction ranged from between $8 to $16.

Although the sales representative played no direct role in the credit worthiness of his customers, he did routinely receive copies of any credit type letters sent by his employer.

The first regional manager employed by Wrigley during the years 1973-1978 resided in Wisconsin, maintained a business office in the basement of his home and held yearly training sessions there. He kept his files in a company-issued file cabinet as well as a supply of gum, display racks and promotional literature. He did not receive reimbursement from Wrigley for the use of a portion of his home for an office but did claim an income tax deduction for it. He also held a training session at a local hotel.

Wrigley's credit department in Chicago possessed the sole discretion as to whether credit was to be granted to a customer and virtually all credit transactions were handled there. All payments for Wrigley products were mailed directly to Chicago and it was Wrigley's credit department which followed up on delinquent accounts.

During the years 1973-1978, Wrigley purchased extensive advertising on television and radio programs in Wisconsin and in newspapers printed and sold in Wisconsin. Newspaper advertising included the printing of a coupon, which the reader could clip out to receive a special premium or to purchase gum from a retailer at a reduced price. In 1973, 1974, and 1975, Wrigley purchased spot television and radio advertising in Green Bay, LaCrosse, Madison, and Milwaukee. In 1976, it purchased spot television advertising in the same cities and also in Wausau. In 1977 and 1978, it purchased spot television advertising only in Milwaukee.

The Commission concluded the ongoing business activities of the William Wrigley Jr. Company in the State of Wisconsin during the years 1973 through 1978 exceeded the "solicitation of orders" protected by 15 U.S.C. Sec.381 (P.L. 86-272).

The taxpayer had "nexus" with the State of Wisconsin and its income for the years 1973 through 1978 was subject to apportionment and taxation by the State of Wisconsin, within the intent and meaning of s. 71.01(2), Wis. Stats.

The $10 late filing penalty contained in s. 71.11(40), Wis. Stats., is mandatory and not subject to review by this Commission.

Due to the provisions of s. 71.13(2), Wis. Stats., the taxes due hereunder are subject to the interest rates contained in s. 71.09(5)(a), Wis. Stats., not the delinquent interest rates imposed by s. 71.13 (2), Wis. Stats.

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

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SALES/USE TAXES

Photocopies—lawyers. *Frisch, Dudek and Slattery, Ltd. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, September 18, 1986). The Department of Revenue appealed from an order reversing a decision of the Wisconsin Tax Appeals Commission. The issue is whether the law firm is required to pay sales taxes on photocopy charges it bills to clients. (See WTB 46 for a summary of the Circuit Court's decision.)

The dispute is whether the law firm is a "retailer" and whether it makes "sales" of photocopies to its clients. Frisch bills clients only for photocopies made for the clients' benefit. Because photocopying

expenses can vary significantly from case to case and client to client, Frisch elected to include these charges in its itemization of out-of-pocket costs and disbursements, billing them separately from the legal fees, in order to fairly distribute the costs among all clients. Copies billed to clients represent roughly one-half of all copies made by the firm. The billed copies are those made for opposing counsel, courts, government agencies, and for the firm's own internal use. The clients themselves receive only a small portion of the billed copies. All decisions on photocopy billing are made by the attorney handling the case.

Only a very few copies ever find their way to the client, and when they do, it is only as an incident to their use in the firm's representation of the client. In addition, the copies are not "produced ... to the special order of the [client]"; the decision to copy is the firm's alone.

The Court of Appeals concluded the firm was not a "retailer" of photocopies and thus no sales tax may be imposed on its client photocopying charges under s. 77.52(1), Wis. Stats., and in doing so affirmed the order of the Circuit Court.

The department has not appealed this decision.

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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.)

The following Tax Releases are included:

Individual Income Taxes

1. Interest Received from Community Development Authority Bonds
2. Manufacturer's Sales Tax Credit Allowable to Shareholders of Tax-Option (S) Corporations
3. Wisconsin Tax Treatment of Section 1256 Contracts

Sales/Use Taxes

1. Voice Messaging Business (Gross Receipts and Purchases)

INDIVIDUAL INCOME TAXES

1. Interest Received From Community Development Authority Bonds

Statutes: Section 71.05(1)(a)1, 1985 Wis. Stats.

Background: Wisconsin Administrative Code section Tax 3.095 (4) provides that interest received from public housing authority bonds of Wisconsin municipalities is exempt from Wisconsin income tax. However, public housing authorities no longer exist upon the adoption of an ordinance creating a community development authority, as a result of Chapter 273, Laws of 1967 (s. 66.4325(1), 1985 Stats.). In creating the community development authorities, the legislature made no provision in Chapter 66, Wis. Stats., that interest received from bonds issued by community development authorities would be tax exempt.

Facts and Question: 42 U.S.C. Section 1437i(b) exempts from federal income tax interest issued by public housing authorities, defined as any state, county, municipality or other governmental entity or public body which is authorized to engage in or assist in the development or operation of low income housing.

In addition, Federal Revenue Ruling 82-56 states interest paid on bonds issued by municipal housing authorities that are exempt from federal income taxation under 42 U.S.C. Section 1437i(b) is excluded from the gross income of the bondholders without regard to the provisions of Section 103 of the Internal Revenue Code, relating to interest from government obligations.

Is interest received from a bond issued by a community development authority taxable for Wisconsin income tax purposes under s. 71.05(1)(a)1, 1985 Wis. Stats.?

Answer: Section 71.05(1)(a)1, 1985 Wis. Stats., provides an add back modification of any state or municipal interest excluded from federal income by reason of Section 103 of the Internal Revenue Code. However, Revenue Ruling 82-56 provides that community development bond interest received is excluded from federal income *without* regard to IRC Section 103. Therefore, the interest received from bonds issued by a community development authority, which is excluded from federal income under 42 U.S.C. Section 1437i(b), is not taxable for Wisconsin because there is no add back modification provided for in s. 71.05(1)(a), 1985 Wis. Stats.

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2. Manufacturer's Sales Tax Credit Allowable to Shareholders of Tax-Option (S) Corporations

Statutes: Section 71.043, 1985 Wis. Stats.

Facts: Section 71.043(2), 1985 Wis. Stats., states: "The tax imposed upon or measured by corporation net income ... pursuant to s. 71.01(1) or (2) may be reduced by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state." In addition, s. 71.043(3) provides in part that "such credit, to the extent not offset by the tax liability of the same year may be offset against the tax liability of the subsequent year." A credit, to the extent not used, may be carried forward 15 years.