On December 21, 1987, Harold R. Bauer, a tavern operator in the Town of Dell Prairie, Adams County, was found guilty of purchasing liquor from an unauthorized source. Judge Raymond Gieringer ordered Bauer to pay a fine of $179, including costs. Bauer had 60 days to pay the fine, or in default of payment, spend 18 days in the Adams County jail.

Fuel Service, Inc., 15 East Walnut Street, Chippewa Falls, was found guilty of jobbing cigarettes without a permit in Chippewa and Barron Counties. Fuel Service was fined a total of $1,291 in December 1987.

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, 1988. Part C lists new rules and amendments which are adopted. Part D lists emergency rules. ("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)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
2.39 Sales factor option-NR
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 sport 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
3.44 Organization and financing expenses—corporations-R&R
3.45 Bond premium, discount and expense—corporations-A
11.05 Governmental units-A
11.09 Medicines-A
11.12 Farming agriculture, horticulture and floriculture-A
11.19 Printed material exemptions-A
11.40 Exemption of machines and processing equipment-A
11.51 Grocers' guidelist-A
11.57 Public utilities-A
11.61 Veterinarians and their suppliers - A

B. Rules of Legislative Standing Committee

3.095 Interest income from federal obligations-R&R

C. Rules Adopted in 1988

11.10 Occasional sales-A (effective 1/1/88)

D. Emergency Rules

3.095 Interest income from federal obligations-A (extended to 3/31/88)

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 nonacquiescense" or (3) "the department has not appealed" (in this case the department has acquiesced to the Commission's decision).

The following decisions are included:

Individual Income Taxes

Kenneth P. Jansen and Robert Thurow (p. 7)
Entertainment expenses

Corporation Franchise or Income Taxes

Castle Corporation (p. 7)
Installment sales

The United States Shoe Corporation (p. 7)
Business loss carryforward

William Wrigley, Jr., Co. (p. 8)
Nexus

Sales/Use Taxes

Badgerland Harvestore Systems, Inc. (p. 10)
Refunds and remedies of taxpayer—claims for refund

Fiedler Foods, Inc. (p. 10)
Sale of business or business assets

Montgomery Ward & Co., Inc. (p. 11)
Interest—change in rate

YMCA of Beloit, et al. (p. 11)
Appeals—must be timely

INDIVIDUAL INCOME TAXES

Entertainment expenses. *Kenneth P. Jansen and Robert Thurow vs. Wisconsin Department of Revenue* (Circuit Court of Outagamie County, undated). For the years 1980 through 1983, Robert H. Thurow was a salesperson for Gateway Liquor Company. For each of the years in question, the taxpayer took a deduction on his individual income tax returns, business expenses for drinks purchased for "Class B" licensees (tavern owners) while talking business, and cases of alcohol given as Christmas presents to licensees.

For the years 1980 through 1983, Kenneth P. Jansen was a salesperson for Badger Liquor Company, Inc. For each of the years in question, the taxpayer took as a deduction on his individual income tax returns, business expenses for rounds of drinks purchased when he visited "Class B" licensees (tavern owners) on business.

The department, pursuant to field audits, disallowed these deductions and issued assessments to the taxpayers based upon the adjustments. The disallowances were in accordance with s. 125.69(2), Wis. Stats., which bars liquor wholesalers from furnishing things of value to "Class B" licensees. In a decision dated May 13, 1986, the Wisconsin Tax Appeals Commission affirmed the disallowances.

The taxpayers challenge the finding that they provided a "thing of value" to holders of Class B licenses within the meaning of s. 125.69(2), Wis. Stats. The taxpayers also challenge the finding that the Department of Revenue has enforced the statute consistently and has not changed their practice in regards to disallowing such deductions. Finally, the taxpayers challenge the finding by the Commissioner that they, as employes, are covered under s. 125.69(2), Wis. Stats.

The Circuit Court concluded:

A. It is uncontraverted in the record that the taxpayers bought drinks for "Class B" license holders. The Commissioner's holding that the buying of drinks is a "thing of value" is a reasonable determination on his part.

B. The Commissioner's finding that the taxpayers were not successful in showing a change in interpretation of s. 125.69(2), Wis. Stats., had occurred is supported in the record. The testimony of the Department of Revenue provides the Commissioner with evidence which reasonably allows him to make a determination that the department is acting consistent to past policy.

C. If employes were allowed to provide things of value, the statute would not effectively accomplish the goal the legislature desired. The discretion of the Commissioner in his finding is proper and the Court will not set aside his finding that the taxpayers are included under s. 125.69(2), Wis. Stats.

The taxpayers have not appealed this decision.

❐

CORPORATION FRANCHISE OR INCOME TAXES

Installment sales. *Castle Corporation vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, December 23, 1987). Castle Corporation appeals from a judgment affirming a Tax Appeals Commission order requiring Castle to pay income tax on the total gain of an installment sale of real estate in the year of sale, even though Castle only received approximately 37% of the purchase price that year. The dispositive issue is whether the 30% rule found in section Tax 2.19(1), Wis. Adm. Code, is invalid because it exceeds the bounds of correct interpretation of s. 71.11(8), Wis. Stats., thus violating s. 227.11(2)(a), Wis. Stats.

Castle sold land to the city of Oshkosh for $744,072 in February of 1982. By year's end, Castle had received $274,802.40, approximately 37% of the purchase price. Castle reported the transaction on its federal and state income tax returns for the year ending December 31, 1982, as an installment sale, thus deferring taxes on $319,349.31, the balance of the gain on the sale.

On audit, the Wisconsin Department of Revenue disallowed deferral of the $319,349.31 because the payments Castle received in 1982 exceeded 30% of the selling price. On review, the Commission affirmed the department. On judicial review, the Circuit Court affirmed the Commission.

The Court of Appeals concluded section Tax 2.19(1), Wis. Adm. Code, contradicts the express purpose of s. 71.11(8)(a), Wis. Stats., by requiring a method of accounting which distorts corporate income rather than clearly reflecting it. Because section Tax 2.19(1), Wis. Adm. Code, "exceeds the bounds of correct interpretation," thus violating s. 227.11(2)(a), Stats., the Commission's decision is reversed.

The department has not appealed this decision.

❐

Business loss carryforward. *The United States Shoe Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 28, 1987). The sole issue for decision is whether U.S. Shoe may deduct the loss carryforward attributable to various subsidiaries for the period 1971-75 as set forth and modified in the foregoing findings.

The United States Shoe Corporation (U.S. Shoe), is an Ohio corporation which has been subject to the Wisconsin corporate franchise tax since the tax year 1975.

On March 7, 1980, the department issued an assessment denying to the taxpayer a net business loss carryforward for its fiscal years ended July 31, 1976, and July 31, 1977, based on losses sustained by certain predecessor corporations in fiscal years 1970 through 1975.

In 1966, U.S. Shoe acquired the shares of Freeman-Toor Corporation, a Delaware corporation (F-T (Del.)), based in Beloit,

Wisconsin. F-T (Del.) had for years been engaged in the manufacture of men's shoes and footwear under the Freeman and Manley brand names, sold through numerous retail stores and men's shoe departments across the nation, with each such retail location being incorporated under Delaware law as a wholly-owned subsidiary of F-T (Del.). That business was continued by those companies through July-31, 1974, during which interval those companies were operated as part of the Men's Footwear division of U.S. Shoe.

On May 2, 1974, U.S. Shoe incorporated a wholly-owned subsidiary under Ohio law by the name of Freeman-Toor Corporation (F-T (OH)). F-T (OH) had a Wisconsin net operating loss of $9,123 for its fiscal year ended July 31, 1974.

Effective as of the close of business on July 31, 1974, F-T (Del.) and all of its wholly-owned retail subsidiaries were merged into F-T (OH). At the time of that merger, sixteen of the various retail subsidiaries merging into F-T (OH) had net operating losses for the fiscal years 1971 through 1974 in the aggregate amount of $854,708. As an Ohio corporation, F-T (OH), held all the same assets subject to all of the liabilities of F-T (Del.) and its retail subsidiaries.

During the fiscal year, August 1, 1974, through July 31, 1975, F-T (OH) incurred an operating loss, as reported on line 28 of its 1975 Wisconsin Form 4, of $4,111,540 which resulted in a Wisconsin net loss on line 34 of its Wisconsin Form 4 of $899,594.

Effective as of the close of business on July 31, 1975, F-T (OH) was merged into U.S. Shoe. As an Ohio corporation, U.S. Shoe held all of the assets subject to all of the liabilities of F-T (OH).

On its 1976 Wisconsin Form 4, U.S. Shoe claimed a net business loss offset of $899,594 based on the loss amount reported on line 34 of F-T (OH)'s 1975 Wisconsin Form 4. Not all of the loss offset was used in fiscal 1976 so that on its return for FYE July 31, 1977, it claimed a similar offset of $139,926. The loss offset claimed by U.S. Shoe consisted of losses of the following corporations for the indicated year in the indicated amounts: sixteen retail subsidiaries of F-T (Del.), which did not engage in business in Wisconsin, for fiscal years 1970 through 1971, $855,643; H.O. Toor Footwear for fiscal year 1975, $2,717; F-T (OH) for fiscal 1974, $9,123; F-T (OH) for fiscal 1975, $5,111,540; for a total of $5,979,023. This amount had been shown on F-T (OH)'s Wisconsin franchise tax return for fiscal 1975. A portion of this amount was allocated to Wisconsin by application of F-T (OH)'s apportionment ratio for that year, resulting in a Wisconsin loss of $899,594.

The Department's assessment notice to the taxpayer disallowed the offset on the grounds that the loss was that of F-T (OH) and not U.S. Shoe.

During the period August 1, 1974, through July 31, 1975, F-T (OH) continued to conduct the same business operations which had been conducted by F-T (Del.) and its retail subsidiaries prior to their merger into F-T (OH). F-T (OH) had no other business, and was operated as part of the Men's Footwear division of U.S. Shoe. Subsequent to July 31, 1975, U.S. Shoe continued to conduct the same business operations which had been conducted by F-T (OH) from August 1, 1974, through July 31, 1975, and by F-T (Del.) and its retail subsidiaries prior to that time. This includes the manufacture and sale of the same category of products (men's shoes and footwear), under the same brand names, using the same manufacturing, distribution and sales facilities and personnel, under the same general business organization. U.S. Shoe otherwise continued its other business.

The Commission concluded that the taxpayer is entitled to carry forward the losses of Freeman-Toor (Del.) or Freeman-Toor (OH) during 1971 through 1975 as offsets against its 1976 and 1977 Wisconsin income for corporate franchise tax purposes under s. 71.06, Wis. Stats., to the extent income was earned by the same trade or business as incurred the losses initially.

The department has appealed this decision to the Circuit Court.

❐

Nexus. *William Wrigley, Jr., Co. vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, August 20, 1987). William Wrigley, Jr., Co. (Wrigley) petitioned for judicial review of a decision of the Wisconsin Tax Appeals Commission which upheld the franchise tax assessment of the Wisconsin Department of Revenue for the years 1973 through 1978. In companion, the department petitioned for judicial review of that portion of the Commission's decision which determined that interest on the taxes found due should be calculated at the simple interest rate under s. 71.09(5)(a), Wis. Stats., rather than the higher delinquent interest rate under s. 71.13(1)(a), Wis. Stats.

Wrigley challenges the Commission's Order on three grounds: (1) that the failure of the Commission to involve the member who presided at the two-day evidentiary hearing in making its decision violated Wrigley's constitutional right to due process and its statutory rights; (2) that the Commission's decision is not supported by substantial evidence; and (3) that the Commission's decision rests on an improper interpretation or application of controlling law.

The pertinent and undisputed sequence of events relating to Wrigley's first challenge revolves around Commissioner William B. Smith. He was assigned to preside over the hearing held on August 26-27, 1985, and did so. Due to legislative action, his term on the Commission expired in October of 1985. A transcript of the hearing was prepared and available to the full Commission in reaching its decision. However, the record contains no indication that Smith ever prepared proposed findings of fact, conclusions of law, or decision in the case, ever reported to the full Commission regarding the hearing, or was ever consulted in any fashion prior to the Commission's entry of its order of November 18, 1986.

The only evidence in the record to support the Commission's finding on credit transaction involvement is the testimony of the two regional managers employed by Wrigley during the period in question and the company's formal position description for the regional manager. John Kroyer, regional manager from 1973 to 1975, testified that he had two or three times per year voluntarily gotten involved in mediating a credit dispute to protect future sales to a good customer. Gary Hecht, regional manager from 1976 to 1978, testified that he had no involvement of any kind in credit transactions with Wrigley customers while he was regional manager. The company's position description recites among the "Principal Activities" of the regional manager that he "Represents the company on credit problems as necessary."

Wrigley also argues that the failure of the Commission to involve Commissioner Smith violates its statutory rights. It relies principally on the requirements of 227.46(2), Wis. Stats. The department points to the language in 73.01(4)(e), Wis. Stats., "irrespective of ch. 227," to argue that the s. 227.46(2) procedure is inapplicable to the Commission's decision.

In making a decision in a case before it, the Commission may act only with the concurrence of at least three of its members. The legislature has authorized the Commission to make decisions after evidentiary hearings without all members sitting through each such hearing, but has expressly conditioned this exercise of authority with the requirement that the matter be "reported" to the full Commission.

The Circuit Court concluded that

A. There is nothing in the record by which the Commission could find that in 1976 to 1978 the regional manager "carried on" activity other than to have concluded that Gary Hecht was lying. His testimony was not patently absurd nor contrary to the laws of nature so as to permit ignoring it or finding its opposite. Rather, the finding could only have made through an assessment of Hecht's credibility. To have done so without the benefit of Commissioner Smith's impressions of Mr. Hecht violated Wrigley's rights to due process.

B. The Commission's finding cited above is not qualified as to the time this activity occurred. In its opinion, the Commission restates the essence of the finding but explicitly recites that this activity was "carried on by it (Wrigley) during the years 1973-1978." Looking to the decision of the Commission in this case in the context of the record presented by the transcript and exhibits, there are several material findings made where the Commission was clearly called upon to assign weight or to draw inferences from the testimony. This is apparent in the findings that Wrigley's representatives in Wisconsin for the entire period in question were "maintaining offices in (their) home" and "conducting regular and periodic training seminars in Wisconsin," amongst others. As a result the Commission, in failing to consult with Commissioner Smith, has violated s. 73.01(4)(b).

Having found that the Commission has violated Wrigley's due process and statutory rights, the Circuit Court concluded that the case be dismissed without prejudice and that the Decision and Order of the Commission dated November 18, 1986, be remanded to the Commission for further proceedings not inconsistent with this decision. At the least, the Commission shall consult personally with Mr. Smith concerning his impressions of the credibility of the witnesses and the weight to be accorded their testimony. The decision issued by the Commission after such consultation shall affirmatively describe the procedures used to meet these directions.

See the following case for the decision of the Commission on the remand.

❐

Nexus. *William Wrigley Jr. Company vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 25, 1987). This matter was remanded to the Commission by a Decision and Order issued on August 20, 1987, by Dane County Circuit Judge Michael Nowakowski. In his Decision and Order, Judge Nowakowski instructed this Commission to consult personally with former Commissioner William Bradford Smith concerning his impressions of the credibility of certain witnesses and the weight to be accorded their testimony.

The Commission took the following steps in compliance with the remand order:

A. The entire Commission file in this matter was provided Commissioner Smith for his perusal and review.

B. Mr. Smith was invited to and attended executive sessions of this Commission held on September 21, 1987, and October 12, 1987, while all five members were present.

C. Mr. Smith's views were solicited as to the credibility of the testimony of Gary Hecht and John Kroyer and the weight to be accorded that testimony.

D. Mr. Smith advised the Commission that he found the testimony of Gary Hecht and John Kroyer to be "extremely credible" and would accord it great weight.

After consultation with former Commissioner William Bradford Smith, the majority of the Commission reaffirmed its Decision and Order of November 18, 1986.

The Commission held that the credibility of Messieurs Hecht and Kroyer, both witnesses called by William Wrigley Jr. Company, as well as the other witnesses who testified, was never questioned or in issue by the Commission. That testimony was completely accepted and accorded substantial weight. Although the company job descriptions of both Hecht and Kroyer called for them to participate in credit transactions, it is clear and uncontroverted from their testimony that Gary Hecht, regional manager from 1976 to 1978, had no involvement of any kind in credit transactions with Wrigley customers while John Kroyer, regional manager from 1973 to 1975, did.

The Commission never believed or concluded or intended to intimate that Gary Hecht or any other witness lied or was in any way untruthful. Although the credit transaction was highlighted in its opinion, this Commission did not rest its decision on that basis alone, but rather relied on the totality of all the different non-immune activities specified at page 25 of its opinion, including the credit activities in 1973 to 1975 as well as the maintaining home offices and conducting regular and periodic training seminars in Wisconsin, which findings were based on the unimpeached, credible testimony of the taxpayer's own witnesses which are supported by the record.

Therefore, the Commission's Decision and Order of November 18, 1986, was affirmed.

The taxpayer has appealed this decision back to the Circuit Court.

❐

SALES/USE TAXES

Refunds and remedies of taxpayer—claims for refund. *Badgerland Harvestore Systems, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 27, 1987). The taxpayer does not object to the amount of taxes and interest shown as due the department on the modified Notice of Additional Sales and Use Tax Assessment, however, it does object to the department's refusal to allow the taxpayer to offset against the deficiency assessed the amount of at least $1,394.73 for the year ending January 31, 1979, $3,381.51 for the year ending January 31, 1980, $3,737.22 for the year ending January 31, 1981, or a total of $8,513.46.

During each of the years in question, the taxpayer purchased products from A. O. Smith Harvestore Products, Inc. and paid Wisconsin sales/use tax on such purchases equal to 4% of the entire invoice price of the products purchased. The entire amount of Wisconsin sales/use tax paid by the taxpayer on such purchases was collected by A. O. Smith and remitted by A. O. Smith to the department. Subsequent to the payment of the taxes, the taxpayer received refunds from A. O. Smith on such purchases which reduced the purchase price of the products purchased.

The taxpayer did not receive a refund from A. O. Smith for the 4% sales/use tax on the refunded amounts, which was initially paid by the taxpayer to A. O. Smith and remitted by A. O. Smith to the department.

The purchase price refunds to the taxpayer on its purchases of products from A. O. Smith constituted a reduction in the "gross receipts" of A. O. Smith from the taxpayer subject to Wisconsin sales/use tax, pursuant to s. 77.51(4), Wis. Stats., and the "sales price" paid by the taxpayer on such purchases, pursuant to s. 77.51(15), Wis. Stats. Had the taxpayer and A. O. Smith known the amount of the refunds at the time A. O. Smith filed its Wisconsin sales/use tax returns covering the purchase of such refunded products, the amount of taxable "gross receipts" or "sales price" related to such purchases would have been the invoice sales price of such products less the amount of the sales price refund.

Prior to April 30, 1986, A. O. Smith Harvestore Products, Inc. was subject to a final sales/use tax field audit determination for each of the years in question.

The taxpayer did not pay any sales/use tax directly to the department on the items in dispute.

The Commission concluded that the taxpayer was not the "person" required to file with the department, a sales tax return reporting the sales tax in question, and 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 taxes paid, nor legal standing to claim an offset for sales taxes paid under the doctrine of equitable recoupment. The Commission lacks the authority to act on the claims for refund/offset in question when neither the legislature nor the courts have granted the taxpayer legal standing to proceed in the matters involved herein.

The taxpayer has appealed this decision to the Circuit Court.

❐

Sale of business or business assets. *Fiedler Foods, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, December 23, 1987). Fiedler Foods, Inc., appeals from an order affirming a decision of the Tax Appeals Commission. The Commission upheld an assessment of sales taxes against Fiedler in connection with the sale of its business fixtures. The issue is whether Fiedler continued to "hold" its seller's permit on the date of the sale within the meaning of ss. 77.54(3) and (7), and 77.51(10)(a), Wis. Stats., and thus was ineligible to claim the "occasional sales" exemption from the sales tax.

Fiedler operated a grocery store in Cuba City, Wisconsin, and held a Wisconsin sales tax permit. In early 1984, Fiedler sold all of its assets, consisting of store fixtures and merchandise inventory, to Redfearn Foods, Inc. On Saturday, March 3, 1984, Fiedler took its final inventory, and at 11:00 p.m., placed its seller's permit in an envelope addressed to the Wisconsin Department of Revenue and deposited it in a mailbox outside the Cuba City Post Office, which had closed at 4:00 p.m. that day. Sometime after 11:00 p.m., the closing took place and Redfearn took possession of the property. Because the post office was closed over the weekend, the envelope was not postmarked until Monday, March 5, and was not received by the department until the following day. The department assessed a tax on the sale of Fiedler's equipment on grounds that, under the applicable statutes and administrative rules, Fiedler was not entitled to claim the exemption for occasional sales of property because it continued to hold a seller's permit on March 3, 1984, the date of the sale.

Fiedler argues first that it did not "hold" a seller's permit at the time of sale within the

meaning of s. 77.51(10)(a), Wis. Stats., because, having been deposited in a mailbox an hour earlier, the permit was no longer in its physical possession. Fiedler did not physically deliver the permit to the department. Had it done so there would be no question of compliance with the rules, for personal delivery to the department is now conclusive on the issue under section Tax 11.13(3)(a), Wis. Adm. Code. Fiedler chose the other alternative, delivery by mail under section Tax 11.13(3)(b), Wis. Adm. Code, and thus made legal delivery to the department conditional on the postmark date.

Fiedler next argues that the "postmark" rule is "inconsistent" with the statute under which it was adopted, s. 77.51 (10)(a), Wis. Stats. Fiedler's position is that because the statute speaks in terms of "hold(ing)" a permit and does not specifically refer to "postmarks," "mailing," or "personal delivery," the department lacked authority to adopt a rule conditioning compliance with the statutes on postmark mailing or personal delivery.

The Court of Appeals concluded that Fiedler lost the exemption not, as it argues, simply because the post office was closed, but because it selected a specific means of qualifying for the exemption and then failed to comply with the applicable requirements. Tax exemptions, being matters of legislative grace, are to be strictly construed against granting the exemption and the Court cannot say that the department's interpretation of the exemption statutes and rules in this case lacked a rational basis, even though an alternative interpretation may have been equally reasonable. Therefore, the order of the Wisconsin Tax Appeals Commission is affirmed.

The taxpayer has not appealed this decision.

❐

Interest—change in rate. *Montgomery Ward & Co., Inc. v. Wisconsin Department of Revenue* (Court of Appeals, District IV, December 31, 1987). Montgomery Ward & Co., Inc. (MWC), appeals from a judgment affirming a decision and an order of the Wisconsin Tax Appeals Commission. The Commission affirmed the Department of Revenue's deficiency assessment against MWC for sales and use taxes for the taxable period February 1, 1976, through January 31, 1981. The assessment charged interest on the deficiencies at the rate of 12% per annum. The issues are:

A. Whether the 12% interest rate, which was first established on July 31, 1981, may be applied to deficiencies accruing prior to that date.

B. If so, whether the retroactive application violates MWC's constitutional right to equal protection of the laws.

Prior to July 31, 1981, the statutory interest penalty on sales and use tax deficiencies was 9% per year. In the 1981 budget act, the legislature increased the rate to 12%. The act also provided that the change would "first appl[y] to all determinations, assessments or other actions made by the department . . . on August 1, 1981, regardless of the taxable period to which they pertain." Finally, the act provided that "[a]ll sections of this act take effect on . . . the day following publication . . ." The act was published on July 30, 1981, and thus its "effective date" was July 31, 1981.

On June 17, 1982, the department assessed the 1976-1981 deficiencies against MWC, charging interest at the rate of 12% for the entire period. MWC appealed to the Tax Appeals Commission, which upheld the assessment and interest charge as authorized by s. 77.60(1), Stats., as amended by s. 1125hm, ch. 20, Laws of 1981. MWC sought judicial review and the Circuit Court affirmed, concluding:

A. That the statutory amendments evinced an intent on the part of the legislature that the interest rate increase was to have a retroactive effect.

B. That the retroactive application was not unconstitutional.

The Court of Appeals concluded that because there was no ambiguity, much less any conflict, in the "initial applicability" provisions of s. 2203(45)(g) and the "effective date" provisions of s. 2204, there is no need to consider the legislative materials cited by MWC. The Commission and the Court correctly interpreted the provisions of the act as authorizing imposition of the 12% interest rate on the deficiency determinations in question. The fact that some taxpayers may be assessed interest at different rates depending upon when the delinquency or deficiency is found and when the assessment is made does not establish the unconstitutionality of the laws.

The taxpayer has appealed this decision to the Supreme Court.

❐

Appeals—must be timely. *YMCA of Beloit, YWCA of Greater Milwaukee, YWCA of Greater Milwaukee d/b/a YWCA Cafeteria, YWCA of La Crosse, YMCA of Metropolitan Milwaukee, YMCA (Madison), YMCA of Waukesha, Sheboygan YMCA, Family YMCA of Northern Rock County, Inc., YMCA of La Crosse, Wisconsin, YMCA (Racine), YMCA of Manitowoc, Wisconsin, Inc., Family YMCA (Appleton), YMCA, Inc., (Green Bay), and YMCA (Eau Claire) vs. Department of Revenue* (Court of Appeals, District IV, October 15, 1987). The taxpayers appealed an order dismissing their petition for review of a February 27, 1986, decision and order of the Wisconsin Tax Appeals Commission which sustained the Department of Revenue's determination that the taxpayers are retailers under s. 77.51(7), Wis. Stats., some of whose transactions are subject to sales and use taxes. The taxpayers' petition for review was timely filed and served on the department as required by s. 227.16(1)(a), Wis. Stats., but was not served on the Commission until thirty-four days after the Commission's decision and order was mailed. The trial court dismissed the petition because the taxpayers' failure to

timely serve the Commission deprived it of jurisdiction or competency.

The taxpayers claimed: (1) The decision and order of the Commission was not a final and complete decision which began the running of the statute limiting their time to petition for review. (2) The decision and order was invalid because of the composition of the decisionmaker. (3) Section 227.16(1), Wis. Stats., does not apply to constitutional claims which the Commission was not competent to decide.

The Court of Appeals concluded that the Commission's decision and order was a final decision within s. 227.15, Wis. Stats., and that the taxpayers' petition for review of that decision and order was required to be filed and served as prescribed in s. 227.16(1)(a), Wis. Stats. Because it was not, the taxpayers failed to properly invoke the jurisdiction of the trail court.

The taxpayers have 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.)

The following Tax Releases are included:

Individual Income Taxes

Homestead Credit

Farmland Preservation Credit

Sales/Use Taxes

INDIVIDUAL INCOME TAXES

1. Interest Income Received from Bonds Issued by a Wisconsin Municipal Redevelopment Authority

Statutes: Sections 66.431(5)(a)4.c. and 71.05(1)(a)1, 1987 Wis. Stats.

Question: Is interest income which an individual receives from bonds issued by a Wisconsin municipal redevelopment authority excludable from Wisconsin taxable income?

Answer: Yes. Section 66.431(5)(a)4.c., 1987 Wis. Stats., provides that bonds issued by a redevelopment authority under this section of the Wisconsin Statutes are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt for all taxes.

❐

HOMESTEAD CREDIT

1. Homestead Credit: Claims on Behalf of Decedents Not Allowed

Statutes: Section 71.09(7)(b), 1987 Wis. Stats.

Wis. Adm. Code: Section Tax 14.01(5)(b)4, February 1980 Register.

Facts and Question: Mary Jones was a full-year Wisconsin resident during 1987 and paid rent on her homestead all of 1987. Mary died on January 21, 1988, after she had filled out and signed her homestead claim, but before she had mailed it to the Department of Revenue. The personal representative of her estate found the return and sent it in.