11.925 Sales and use tax security deposits-A
11.95 Retailer's discount-A
11.97 "Engaged in business" in Wisconsin-A
11.98 Reduction of delinquent interest rate under s. 77.62(1), Stats.-A
14.01 Administrative provisions-A
14.04 Property taxes accrued-A
14.05 Gross rent and rent constituting property taxes accrued-A

B. Rules at Revisor of Statutes Office for Publication of Hearing Notice

2.41 Separate accounting method-A
2.46 Apportionment of business income of interstate air carriers-R&R
2.49 Apportionment of net business incomes of interstate finance companies-R&R
17.01 Administrative provisions-A
17.02 Eligibility-A
17.03 Application and review-A

C. Rules at Legislative Standing Committee

7.01 Purchases and invoices-A
7.23 Activities of brewers, bottlers and wholesalers-A

D. Rules Adopted in Period from March 16, 1990 to June 25, 1990 (effective date is given in parentheses)

11.10 Occasional sales-A (5/1/90)
11.16 Common or contract carriers-A (5/1/90)
11.18 Dentists and their suppliers-A (5/1/90)
11.26 Other taxes in taxable gross receipts and sales price-A (5/1/90)
11.32 "Gross receipts" and "sales price"-A (5/1/90)
11.41 Exemption of property consumed or destroyed in manufacturing-A (5/1/90)
11.57 Public utilities-A (5/1/90)
11.66 Communications and CATV services-R&R (5/1/90)
11.67 Service enterprises-A (5/1/90)
11.68 Construction contractors-A (5/1/90)
11.84 Aircraft-A (5/1/90)
11.85 Boats, vessels and barges-A (5/1/90)

E. Rules Adopted in 1990 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
2.03 Corporation returns-A
2.04 Information returns and wage statements-R&R
2.06 Information returns required of partnerships and persons other than corporations-R
2.08 Returns of persons other than corporations-A
2.10 Copies of federal returns, statements, schedules, documents, etc., to be filed with Wisconsin returns-A
2.30 Property located outside Wisconsin - depreciation and sale-A
2.69 Income from Wisconsin business-R
2.89 Penalty for underpayment of estimated tax-R
2.955 Credit for income taxes paid to other states-A
3.03 Dividends received, deductibility of-R&R
3.08 Retirement and profit-sharing payments by corporations-A
3.085 Retirement plan distributions-A
3.096 Interest paid on money borrowed to purchase exempt government securities-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-R&R
3.37 Depletion of timber 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
3.47 Legal expenses and fines—corporations-R
3.54 Miscellaneous expenses not deductible—corporations-R&R
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
8.01 Tax liability-NR
8.02 Revenue stamps—occupational tax-R&R
8.03 Affixing stamps-R
8.04 Refunds-R&R
8.05 Special tax on intoxicating liquor-R
8.06 Mixture of specially taxed and regularly taxed intoxicating liquors-R
8.11 Reports-A
8.12 Samples-NR
8.21 Purchases by the retailer-A
8.22 Purchases made outside of state-A
8.23 Sales to non-licensees-NR
8.31 Sales out of Wisconsin-A
8.51 Labels-R
8.61 Advertising-A
8.66 Merchandise on collateral-A
8.71 Bitters-R
8.76 Salesperson-R&R
8.81 Transfer of retail liquor stocks-A
8.87 Intoxicating liquor tied-house prohibitions-A
11.05 Governmental units-A
11.09 Medicines-A
11.12 Farming, agriculture, horticulture and floriculture-A
11.19 Printed material exemption-A
11.40 Exemption of machines and processing equipment-A
11.51 Grocers' guidelist-A
11.535 Operators of a swap meet, flea market, craft fair or similar event-NR
11.57 Public utilities-A
11.61 Veterinarians and their suppliers-A
14.03 Household income and income-A
14.06 Marriage, separation, or divorce during a claim year-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 nonacquiescence" 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

Edward J. and Eleanor L. Blakely, et al. (p. 6)
Minimum tax - 1986

Robert and Marcia Stark (p. 7)
Allocation of expense - solely-owned property

Urban P. Van Susteren (p. 8)
Assessments - failure to file

Farmland Preservation Credit

Jack McManus (p. 8)
Farmland preservation credit - constitutionality

Corporation Franchise or Income Taxes

Astra Plating, Inc. (p. 8)
Manufacturer's sales tax credit - manufacturing defined

Nelson Brothers Furniture Corporation (p. 9)
Allocation of income - separate accounting

Sentry Financial Services Corporation, et al. (p. 9)
Allocation of income - between affiliates

Sales/Use Taxes

Parks-Pioneer Corporation (p. 10)
Waste reduction and recycling

Republic Airlines, Inc. (p. 11)
When and where sale takes place

Leonard W. Vanasse (p. 12)
Boats, vessels and barges - storage outside Wisconsin

INDIVIDUAL INCOME TAXES

Minimum tax—1986. *Edward J. and Eleaner L. Blakely vs. Wisconsin Department of Revenue, and Richard N. and Marlene O. Mastenbrook vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 19, 1990). The issue in this case is whether the taxpayers owed federal alternative minimum tax (AMT) under sec. 55 of the Internal Revenue Code (IRC) for purposes of application of the 1986 Wisconsin minimum tax (WMT) under sec. 71.60(1), Wis. Stats.

The taxpayers were all Wisconsin residents throughout 1986 and at all times relevant to their petitions. They timely filed joint Forms 1040 and Forms 1 for their 1986 tax years. Both of their 1986 Forms 1040 showed an AMT on Line 51. However, in each case the total tax shown on Line 55 was in the same amount as it would have been had there been no AMT, due to the computational mechanics of subtracting out general business credits on Line 47 and adding them back in as AMT on Line 51. The taxpayers' federal AMT shown at Line 51, Form 1040, resulted solely from the method of computation as set forth on the Form 1040 and other federal forms attached thereto.

The taxpayers' Wisconsin Forms 1 included an attached statement reducing the federal AMT to zero on the grounds that "federal AMT is reduced by general business credits for which the taxpayer received no federal or Wisconsin tax benefit in 1986." Accordingly, the taxpayers included no WMT under sec. 71.60, Wis. Stats., on Line 16 of their respective Forms 1.

The taxpayers' 1986 federal taxable income differed from their 1986 Wisconsin taxable income in various respects, including the following:

(1) Through their ownership interests in various partnerships and corporations, for 1986 federal income tax purposes the taxpayers had 1986 general business credits under IRC sec. 38, more specifically known as investment credits and targeted jobs credits. Through the same sources they had general business credit carryforwards to 1986 from prior years 1978 and 1982 through 1985. Such credits or credit carryforwards were not allowed for Wisconsin income tax purposes.

(2) The Mastenbrooks in 1986 had federally taxable interest on U.S. government obligations. Wisconsin does not tax such interest.

(3) In 1986 the taxpayers had federally taxable refunds of 1985 Wisconsin income taxes they overpaid. Wisconsin neither allows state income taxes as deductions from income nor taxes state income tax refunds.

(4) The taxpayers recognized federal depreciation recapture income in 1986 because of the liquidation during 1986 of Martichick, Inc., an S corporation they owned. Wisconsin does not provide for or tax such depreciation recapture.

(5) A portion of the wages paid by the taxpayers' S corporations and partnerships were used for federal targeted jobs tax credits and were therefore not deductible from income under IRC sec. 280C(a).

(6) By virtue of their ownership of Alpha Distributors Ltd., the taxpayers federally deducted a reserve for bad debts under IRC sec. 166(c). The federal reserve for 1986 was smaller than the bad debts which became worthless during such year and were therefore deductible from Wisconsin income under sec. 71.04(7), Wis. Stats.

The taxpayers' 1986 federal AMT was calculated under IRC sec. 55, as it read prior to the Tax Reform Act of 1986. Their federal AMT was calculated by: starting with their adjusted gross income (AGI); reducing AGI by certain items set forth in IRC sec. 55(b)(1); increasing the result by the items of tax preference referred to in IRC sec. 55(b)(2) and described in IRC sec. 57, the result being the "alternative minimum taxable income"; subtracting an exemption amount of $40,000; multiplying the result by 20%; and subtracting the regular tax for the year 1986. This computation had the following results, among others:

(A) The taxpayers' AGI included the income differences listed in parts (2), (3), and (4) above. These three items were, by means of the calculation described above, subjected to federal AMT. Under the department's determination, they were also made subject to WMT under application of sec. 71.60, Wis. Stats.

(B) The taxpayers' federal AGI was not reduced by the income differences listed in parts (5) and (6) above. These wages and bad debts, deductible from Wisconsin but not regular federal income, were by means of the calculation described above subjected to fed-

eral AMT. Under the department's determination, these wages and bad debts were also made subject to WMT.

(C) In computing their 1986 AMT, the entire amount of the taxpayers' federal general business credit carryovers from prior years, as listed in part (1) above, were subtracted from their 1986 regular federal income tax to determine their "regular tax for the taxable year" for AMT purposes under IRC sec. 55(a). This subtraction caused their "regular tax for the taxable year" to fall below the amount equal to 20% of their alternative minimum taxable income less their $40,000 exemption.

Had the general business credit carryforwards referred to in part (C) above only been subtracted from the taxpayers' regular income tax to the extent that they generated a 1986 federal tax benefit, their "regular tax for the taxable year" would have been equal to the 20% amount described in IRC sec. 55(a), and there would have been no AMT. Under the calculation as required by the IRS forms, however, the excess federal credit carryforwards were used to reduce the "regular tax for the taxable year" below the 20% amount, giving rise to a nominal AMT in the same amount as the excess credit carryforwards. These excess credit carryforwards therefore provided the taxpayers with no 1986 federal tax benefit, and were allowed to be carried forward to 1987 and later years, under IRC sec. 55(c)(3). Under the department's determination, the taxpayers' federal general business credit carryforwards from years prior to 1986 were made subject to WMT, even though the taxpayers received no Wisconsin tax benefit from the excess credit carryforwards in any year, and no federal tax benefit from such excess credit carryforwards for the year 1986 or any prior year.

Had the taxpayers' federal AMT for 1986 been calculated under IRC sec. 55, as it read as a result of amendment by the Tax Reform Act of 1986, the calculation would have been similar to that set forth above, with the following relevant differences (in parts (1) to (4) below, all references to "IRC" are the Internal Revenue Code as amended by the Tax Reform Act of 1986):

(1) The starting point would have been the taxpayers' taxable income for the year, adjusted as provided in IRC secs. 56 and 58, and increased by the items of tax preference listed in IRC sec. 57, the result being the "alternative minimum taxable income", per IRC sec. 55(b)(2).

(2) The "exempt amount", or $40,000 in the taxpayers' cases, is subtracted, per IRC sec. 55(d).

(3) The result is multiplied by 20%, per IRC sec. 55(b)(1)(A); the result (since the taxpayers had no alternative minimum tax foreign tax credit) is called the "tentative minimum tax", per IRC sec. 55(b).

(4) If the tentative minimum tax is greater than the "regular tax for the taxable year", the excess is the amount of the federal AMT, per IRC sec. 55(a).

Of these differences, the only one which would affect the amount of the WMT is the definition of "regular tax for the taxable year" under part (4). Under the Tax Reform Act of 1986, the definition of "regular tax" was clarified in such a way that the taxpayers' excess general business credits **could not possibly** be subtracted as part of the calculation, as they were on their 1986 federal Forms 1040 as filed, per IRC sec. 55(c), as amended by sec. 701(a) of the Tax Reform Act of 1986. The result would have been that there would have been no 1986 federal AMT for purposes of the 1986 WMT.

The taxpayers received no 1986 federal tax benefit from the amount of general business credit carryforwards equal to the AMT shown on Line 51, Forms 1040. Wisconsin law does not allow (and has never allowed) federal general business credits to offset any Wisconsin tax liability. The taxpayers received no Wisconsin tax benefit in any year from their general business credit.

The Commission concluded as follows:

(1) Section 71.60(1), Wis. Stats., as amended by 1987 Wis. Act 27, applies in this case and requires application of sec. 55 of the Internal Revenue Code as it existed prior to amendments made by sec. 701(a) of the Tax Reform Act of 1986, which was enacted October 22, 1986, but first effective in 1987.

(2) Wisconsin individual income tax law requires only compliance with the Internal Revenue Code. Taxpayers are not bound in every instance to apply the Code identically for federal and Wisconsin tax purposes.

(3) Under the Internal Revenue Code, the taxpayers would have been permitted to claim less than the full amount of their available general business credits against regular tax, so as to eliminate the alternative minimum tax under IRC sec. 55. This would have increased their regular tax liability and current payment required by the amount of AMT avoided.

(4) Determination of the federal alternative minimum tax "owed" for Wisconsin minimum tax purposes under sec. 71.60(1), Wis. Stats., is not necessarily limited by calculations made on the federal alternative minimum tax forms, and the taxpayers may file their Wisconsin returns, including Wisconsin minimum tax, reflecting an alternative but proper application of the Internal Revenue Code.

(5) Where, as here, the taxpayers demonstrate that they would have been permitted federally to decrease their claims of credit against regular income tax liability, thereby increasing the current regular income tax payment required, in **lieu of** paying an equal amount of alternative minimum tax, they must be held to have owed no alternative minimum tax for purposes of sec. 71.60(1), Wis. Stats. Accordingly, they owe no Wisconsin minimum tax under said section.

The Commission therefore reversed the department's actions denying redetermination of the assessments in these cases.

The department has appealed this decision to the Circuit Court.

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Allocation of Expense—solely-owned property. *Robert and Marcia Stark vs. Tax Appeals Commission, Department of Revenue, State of Wisconsin* (Court of Appeals, District II, January 31, 1990). The Tax Appeals Commission, Department of Revenue and State of Wisconsin (collectively, the state),

have appealed from that portion of a Circuit Court judgment of a Commission decision wherein the Circuit Court stated: "The taxpayer and his wife are specifically allowed to recompile tax returns which are the subject of this proceeding, in compliance with generally accepted accounting principles as they apply to interest and bad debts expense." The taxpayers did not file a cross-appeal.

The issue in this case is the handling of interest expense relating to a rental condominium property. The warranty deed for the condominium was issued to Robert Stark and Marcia Stark, as husband and wife. Both Robert and Marcia signed the purchase money mortgage. Only Robert, however, signed the mortgage note for the property. On the challenged tax returns, Robert claimed all the rental losses and interest expense from the condominium property. The Department of Revenue reallocated 50 percent of the claimed rental loss and interest expense to the taxpayer's wife because she was an owner of the property in joint tenancy. The Commission affirmed the department's reallocation. The Circuit Court agreed with the Commission that both the rental expense and interest expense must be split between the joint tenants and could not be claimed exclusively by the taxpayer, and its decision affirmed the Commission in all respects.

After the issuance of the decision, the taxpayer filed a reconsideration letter with the Court concerning the allowability of the interest expense deduction. The taxpayer requested that he and his wife be allowed to recompile the tax returns in compliance with "generally accepted accounting principles" as they apply to interest and bad debts expense. The state opposed the addition of that language. The Circuit Court entered a judgment that included the language requested by the taxpayer.

The Appeals Court concluded that the Circuit Court's order represents a modification of the Commission's decision, and that the modification is not justified. The Appeals Court therefore ordered that that portion of the order that allows the taxpayer to recompile tax returns for the years in question be reversed, and that the remainder of the order that affirmed the Commission's decision be affirmed.

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 Supreme Court, April 23, 1990). This is a review of a decision of the Court of Appeals, which reversed an order of the Circuit Court of Outagamie County. The order of the Circuit Court affirmed an order of the Wisconsin Tax Appeals Commission that upheld the penalty imposed by the department against the taxpayer under sec. 71.11(6)(b), Wis. Stats. (1983-84). See *Wisconsin Tax Bulletin* 59, page 8, for a summary of that decision.

The issues in this case are whether the provision under which the taxpayer was penalized, sec. 71.11(6)(b), Wis. Stats., applies to the case at hand, and if so, whether the taxpayer failed to file timely returns with intent to defeat the tax assessment for the years in question. There is no claim that the taxpayer is guilty of tax evasion.

The Wisconsin Supreme Court concluded that the penalty provision, sec. 71.11(6)(b), Wis. Stats. (1983-84), could be applied to untimely filers, but that it was improper to apply it in this case. The Court held that there is insufficient evidence in the record to sustain the Commission's finding that the taxpayer failed to file timely returns with the intent to defeat the tax assessments for the years in question.

The department has not appealed this decision.

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FARMLAND PRESERVATION CREDIT

Farmland preservation credit—constitutionally. *Jack McManus, as Personal Representative of the Estate of Dorothy McManus vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, March 29, 1990). This is an appeal from an order of the Circuit Court of Dane County, affirming a decision of the Wisconsin Tax Appeals Commission declaring constitutional the Farmland Preservation Credit statute, sec. 71.09(11), Wis. Stats. (1977-78). The issues in this case are whether sec. 71.09(11), Wis. Stats., is a tax provision; and if so, whether it violates the uniformity of taxation clause, article VIII, section 1 of the Wisconsin Constitution.

In 1978, Dorothy and Jack McManus owned 331.3 acres of farmland as joint tenants. That year the McManuses had $180,987 is household income. Dorothy's income was approximately $6,000. Dorothy applied for a farmland preservation credit based on her interest in the land. The department denied her claim because her household income exceeded $38,429, the maximum allowed under the statute. The Commission upheld the determination on the same ground. The Circuit Court affirmed the Commission's decision, and also declared that the statute was constitutional after rejecting due process, equal protection, and uniformity of taxation claims. On appeal, the estate maintains only its uniformity of taxation challenge to sec. 71.09(11), Wis. Stats., under article VIII, section 1 of the Wisconsin Constitution.

The Court of Appeals concluded that the farmland preservation credit law, sec. 71.09(11), Wis. Stats. (19877-78), is a relief statute, not a tax statute, and that it is therefore not subject to the uniformity requirement.

The taxpayer has not appealed this decision.

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CORPORATION FRANCHISE OR INCOME TAXES

Manufacturer's sales tax credit—manufacturing defined. *Astra Plating, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 14, 1990). This decision and order is the result of the Commission's reconsideration of the prior decision and order, as reported in *Wisconsin Tax Bulletin* 63, page 9. This decision supersedes the prior decision. The issue in the case is whether the taxpayer's automobile "bumper-recycling" operation constitutes manufacturing.