The taxpayer failed to appear at the Commission's hearing either by corporate officer or by representative.

The Commission held that the department's assessments are presumed to be correct in the absence of any evidence as to their incorrectness and concluded that the taxpayer's installations of various above ground cables were taxable services described in sec. 77.52(2)(a)10, Wis. Stats.

The taxpayer has not appealed this decision.

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Telecommunication services — access charges. *GTE Sprint Communications Corporation, now known as U.S. Sprint Communications Company, vs. Wisconsin Bell, Inc. and State of Wisconsin* (Wisconsin Supreme Court, May 15, 1990). GTE Sprint Communications Corporation, now U.S. Sprint Communications Company, appeals a judgment of the Circuit Court of Milwaukee County which denied U.S. Sprint's motion for summary judgment seeking to have declared unconstitutional the retail sales tax imposed upon the transfer of origination and termination services ("access services"), pursuant to secs. 77.51(14)(m) and 77.52(2)(a)4, Wis. Stats. (1985-86). The first question is whether the tax violates the equal protection clauses of either Article I, Section I of the Wisconsin Constitution or the Fourteenth Amendment, Section I of the United States Constitution. If not, the second question is whether the tax violates the commerce clause of Article I, Section 8 of the United States Constitution.

U.S. Sprint contends that secs. 77.51(14)(m) and 77.52(2)(a)4, Wis. Stats., violate equal protection because the tax only applies to purchases of access services by inter-LATA carriers. (Note from Editor: In a decision dated January 11, 1988, the Circuit Court of Milwaukee County held in the case of *Wisconsin Bell, Inc. v. Schneider Communications, Inc. v. Department of Revenue*, that the term interexchange carrier as used in sec. 77.51(13)(p) and (14)(m), Wis. Stats., referred to facilities based carriers only and did not include resellers. Thus, charges for access services to resellers are not subject to sales and use tax.)

U.S. Sprint argues there is no rational basis for the legislature's classifying inter-LATA carriers separately from local exchange carriers and resellers for the purpose of taxing the transfer of access services.

U.S. Sprint and the State agree that the legislature enacted sec. 77.51(14)(m), Wis. Stats., to offset the expected loss of revenue caused by a ruling which concluded that neither inter-LATA carriers nor resellers were liable to pay the tax for the purchase of access services. The legislature responded by amending the definition of a "sale" to include the purchase of access services by an inter-LATA carrier.

The Court concluded that to tax the transfer of access services to inter-LATA carriers but not the same transfer to local exchange carriers and resellers denies inter-LATA carriers the constitutional guarantee of equal protection of the laws. The Court, therefore, declared unconstitutional the tax imposed upon the transfer of access services to an inter-LATA carrier pursuant to secs. 77.51(4)(m) and 77.52(2)(a)4, Wis. Stats.

Wisconsin Bell, Inc. and the State of Wisconsin have 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. In situations where the facts vary from those given herein, the answers may not apply. 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 and Corporation Franchise or Income Taxes

Sales/Use Taxes

All Taxes

INDIVIDUAL INCOME TAXES

1. Loss on Personal Residence Reimbursed While a Nonresident

Statutes: Section 71.04(1), Wis. Stats. (1987-88).

Background: Federal law provides that if your employer reimburses you for a loss on the sale of your home when you transfer to a new location, the payment must be included in federal taxable income as compensation for services.

Under sec. 71.04(1)(a), Wis. Stats. (1987-88), income from personal services of nonresident individuals follows the situs of the services.

Facts and Question: A Wisconsin resident is notified by his or her employer that he or she is being transferred to New York. The taxpayer abandons his or her domicile in Wisconsin and becomes a resident of New York. The taxpayer sells his or her personal residence in Wisconsin at a loss. The loss is reimbursed by the taxpayer's employer at a time when the taxpayer is a resident of New York.

Is the reimbursement received by the New York resident taxable income to Wisconsin?

Answer: No. The reimbursement is connected to services the taxpayer will perform in New York. Therefore, it is not taxable under sec. 71.04(1), Wis. Stats. (1987-88).

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2. Retirement Benefits Paid to a Former Spouse Under a Qualified Domestic Relations Order

Statutes: Section 71.05(1)(a), Wis. Stats. (1987-88).

Background: Taxpayers' payments from certain Milwaukee city and county retirement systems and from the Wisconsin Retirement System that are attributable to the former Milwaukee Public School Teachers' Annuity and Retirement Fund and the Wisconsin State Teachers' Retirement System qualify for exemption from Wisconsin income tax if the amount is paid on the account of a person who was a member of, or who was retired from, any of such qualifying retirement systems as of December 31, 1963. Sec. 71.05(1)(a), Wis. Stats. (1987-88).

The taxpayer participating in a qualifying retirement system may have his or her rights or payments subject to division under a qualified domestic relations order. 1989 Wisconsin Act 218, effective April 28, 1990. A qualified domestic relations order is a judgment, decree, or order which meets certain requirements that a court issues under the domestic relations law. Such judgment, decree, or order basically divides the taxpayer's rights or payments in the qualifying retirement system between the taxpayer and his or her spouse.

Facts and Question: A person was a member of the Wisconsin State Teachers' Retirement System as of December 31, 1963. All his or her payments received from the Wisconsin Retirement System become exempt from Wisconsin income tax. In 1990, the person falls under a qualified domestic relations order that equally divides his or her payments with a former spouse.

Do the former spouse's payments from the qualifying retirement system under the qualified domestic relations order qualify for the income tax exemption for 1990 and thereafter?

Answer: Yes. The former spouse's payments from the qualifying retirement system under such order are exempt from Wisconsin income tax when the payments would have been exempt if the participant had received them. The reason is that the former spouse is receiving payments on the account of a person who was a member of the Wisconsin State Teachers' Retirement System as of December 31, 1963, which makes the payments exempt from Wisconsin income tax.

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3. Statute of Limitations for Issuing an Assessment-Extension Agreement

Statutes: Sections 71.77(2), (5) and (8) and 71.80(18), Wis. Stats. (1987-88).

Background: In sec. 71.77, Wis. Stats. (1987-88), sub. (2) provides that with respect to an income tax assessment, notice must be given within 4 years of the date the tax return was "filed." Subsection (5) provides that the limitation period may be extended if an agreement between the taxpayer and the department is entered into prior to the expiration of the limitation period. Subsection (8) further provides that a return filed before the last day prescribed by law for filing the return is deemed to be "filed" on the last day. Section 71.80(18), Wis. Stats. (1987-88), provides that a tax return is considered to be filed on time if it is mailed in a properly addressed, postage prepaid envelope that is postmarked before midnight of the last day prescribed for filing, provided it is actually received by the department within 5 days of the last prescribed date.

Facts and Question: The 1985 Wisconsin individual income tax return of a calendar year taxpayer is mailed in an envelope that is postmarked April 15, 1986, but not received by the department until April 18, 1986. On April 17, 1990, an assessment extension agreement is signed by the taxpayer and an authorized representative of the department.

May the department issue an assessment against the taxpayer within the time specified in the agreement, or is the agreement invalid because it was considered to have been executed after the expiration of the four-year statute of limitations?

Answer: An assessment may be issued within the period of time specified in the agreement. The extension agreement is valid because it is considered to have been executed prior to the expiration of the limitation period.

In *Sta-Rite Industries, Inc., vs. Wisconsin Department of Revenue* (Wisconsin Circuit Court, Milwaukee County, March 14, 1990), the Circuit Court held that the language in sec. 71.10(13), Wis. Stats. (1983-84) (renumbered sec. 71.80(18), Wis. Stats. (1987-88)), merely provides that the timeliness of a properly mailed tax return is considered only with respect to the imposition of a late filing penalty, and that section of the statutes does not control the four-year statute of limitations for assessing additional income taxes. The Circuit Court upheld the department's position that the four-year statute of limitations begins to run on the date the department receives the tax return.

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HOMESTEAD CREDIT

1. Community Spouse Income Allowance as Household Income

Statutes: Section 71.52(6), Wis. Stats. (1987-88), and sec. 49.455, Wis. Stats., as created by section 1453 of 1989 Wisconsin Act 31, effective September 30, 1989.

Note: This Tax Release applies only with respect to 1989 and subsequent years' homestead credit claims.

Background: As a part of 1989 Wisconsin Act 31, a "Spousal Impoverishment Program" (sec. 49.455, Wis. Stats.) was enacted, effective September 30, 1989. The income provision of this program is referred to as the "community spouse income allowance". The program is administered by each county's health and social services department.

Under this program, all or part of the income of an "institutionalized spouse" (a spouse in a nursing facility or a medical institution) who is on Title XIX medical assistance may be allocated to the "community spouse" (the spouse not living in the nursing facility or medical institution), if the community spouse's income is less than a predetermined amount established by law; that amount is $1,500 per month for 1989 and $1,565 per month for 1990. When part of the institutionalized spouse's income is allocated to the community spouse, less resources are available to pay for the cost of the institutionalized spouse's medical care, and consequently a proportionately larger part of the cost of medical care is paid by medical assistance.

Question: Does the income allowance which a community spouse receives from an institutionalized spouse under sec. 49.455, Wis. Stats., affect household income on a homestead credit claim filed by the community spouse?

Answer: No. The household income of a community spouse who receives an income allowance under the Spousal Impoverishment Program is computed in the same manner as the household income of any married claimant who resides separately from his or her spouse. The community spouse income allowance is not included in the list of items which must be added to Wisconsin adjusted gross income when computing household income for homestead credit purposes.

In determining a married claimant's household income when the spouses live apart, the claimant is required to include all of his or her own "nonmarital property" income but is not required to include any of the spouse's "nonmarital property" income (such as social security benefits; SSI payments; and pensions, annuities, and railroad retirement benefits attributable to employment before the determination date).

The couple's "marital property" income must be computed under Wisconsin's marital property law, unless the claimant's spouse was not domiciled in Wisconsin. Under marital property law, one-half of the marital property income generated by the spouse's services and property would be includable in the claimant's household income, if the spouse notified the claimant of the amount and nature of that marital property income. This is true regardless of whether or not any portion of the spouse's income is allocated to the claimant under the Spousal Impoverishment Program. See Wisconsin Publication 109 for more information about the marital property law.

Example: For all of 1990, Dick was an institutionalized spouse on Title XIX medical assistance. His only source of income was social security of $800 per month. Jane is his community spouse, and she intends to file a homestead credit claim for 1990. All of her income for 1990 was nonmarital property income, consisting of gross social security of $600 per month and gross pension of $400 per month. Under the Spousal Impoverishment Program, $565 of Dick's income was allocated to Jane each month, to meet her monthly maintenance needs allowance of $1,565.

Jane's household income for 1990 is computed to be $12,000 (monthly payments of $600 of social security and $400 of pension equals $1,000 per month, times 12 months equals $12,000). This is the same household income that would have been computed if she had not received a community spouse income allowance. The income allowance of $565 per month from Dick is not considered in the computation of her household income.

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2. Dependent Deduction in Computing Household Income

Statutes: Section 71.52(5), Wis. Stats. (1987-88), as amended by section 2070m of 1989 Wisconsin Act 31 and section 8 of 1989 Wisconsin Act 100, effective with 1989 claims filed in 1990.

Note: This Tax Release applies only with respect to 1989 and subsequent years' homestead credit claims.

Background: Section 71.52(5), Wis. Stats. (1987-88) was amended by 1989 Wisconsin Acts 31 and 100, to provide a deduction from income of $250 for each qualifying dependent to determine household income on a homestead credit claim. The dependent must qualify as the claimant's dependent for federal tax purposes under section 152 of the Internal Revenue Code, and the dependent must have had the same principal abode as the claimant for more than six months during the year to which the claim relates.

Question 1: What does the statutory language "have the same principal abode as the claimant" mean?

Answer 1: Except as provided in answer 2 below, to have the same principal abode as the claimant means to live with the claimant or occupy the claimant's homestead.

Question 2: Is the $250 dependent deduction allowed for a son or daughter who qualifies as a dependent but is temporarily absent from the claimant's homestead (for example, away at college) for more than six months during the year?

Answer 2: Yes. A dependent who is temporarily absent for reasons such as school, illness, vacations, business commitments, and military service is considered to occupy the claimant's homestead during the temporary absence. A dependent's "principal abode" during temporary absences from a claimant's homestead continues to be the claimant's homestead.

Question 3: Is the $250 dependent deduction allowed for a dependent who dies during the first half of the year or who is born during the second half of the year, even though the dependent did not actually live with the claimant for more than six months during the year?

Answer 3: Yes, provided the dependent lives with the claimant during the entire time he or she is alive during the year (see question 2 regarding temporary absences due to illness, etc.). The birth or death of a dependent during the year constitutes an exception to the six months occupancy requirement.

Question 4: How does the six months occupancy requirement apply with respect to a dependent who is adopted or becomes a claimant's stepchild during the second half of a claim year?

Answer 4: The same as in answer 3. A dependent who is adopted by the claimant, is placed with the claimant for adoption, or becomes the stepchild of the claimant during the second half of a claim year is considered to have lived with the claimant for more than six months, provided he or she lives with the claimant for the balance of the year after the adoption, the placement for adoption, or becoming a stepchild.

Question 5: Does a claimant who qualifies for the Wisconsin earned income credit for income tax purposes automatically qualify for a $250 dependent deduction for homestead credit?

Answer 5: No, as illustrated in the following example:

Example: A divorced homestead credit claimant has custody of a child all year and provides over half the support of the child. The claimant qualifies for earned income credit for federal income tax purposes but may not claim the child as a dependent on the federal return, because a pre-1985 divorce decree allows the claimant's former spouse to claim the deduction for the dependent.

The claimant qualifies for the Wisconsin earned income credit based on that child, just as he or she qualifies for the federal earned income credit. However, since the child may not be claimed as a dependent on the federal tax return, the $250 dependent deduction may not be claimed on the homestead credit claim.

Question 6: May a claimant automatically deduct $250 for each dependent claimed on his or her federal income tax return?

Answer 6: No. In order for the claimant to be able to claim the $250 dependent deduction for homestead credit, the dependent must qualify as a dependent for federal tax purposes *and* must live with the claimant for more than six months during the year. The following are examples of situations where a person claimed as a dependent for federal income tax purposes does not meet the six months occupancy requirement which applies for homestead credit purposes.

(1) A divorced couple's child can be claimed as a dependent by the claimant under a pre-1985 divorce decree, but the child lives with the claimant's former spouse, as in the example in answer 5.

(2) A child qualifies as a dependent but moves away from the claimant's homestead before July 1 of a claim year, such as a student who graduates and moves permanently to an apartment in June.

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FARMLAND PRESERVATION/TAX RELIEF CREDITS

1. Farmland Credits' 95% Limitation

Statutes: Sections 71.07(3m)(c)1, 71.28(2m)(c)1 and 71.47(2m)(c)1, Wis. Stats., as created by 1989 Wisconsin Act 31, effective for claims based on property taxes accrued in 1989 and thereafter.

Note: This Tax Release applies only with respect to farmland preservation credit claims and farmland tax relief credit claims based on property taxes accrued during 1989 and thereafter.

Background: In the farmland tax relief credit law, under secs. 71.07(3m)(c)1, 71.28(2m)(c)1, and 71.47(2m)(c)1, Wis. Stats., as created by 1989 Wisconsin Act 31, the sum of farmland preservation and farmland tax relief credits "may not exceed 95% of the property taxes accrued on the farm." *Farmland preservation credit* is based on up to $6,000 of property taxes accrued on farmland subject to a certified zoning ordinance, a farmland preservation agreement, or a transition area agreement, plus all improvements (buildings) on that farmland. The *farmland tax relief credit* is based on up to $10,000 of property taxes accrued on all farmland that is part of a claimant's farm, regardless of whether or not it is subject to a zoning ordinance or an agreement, but it does not include the taxes on the improvements.

Question: Since the farmland tax relief credit is based on property taxes accrued on only farmland and not improvements, and since the 95% limitation is provided in the farmland tax relief credit law, are the total of farmland preservation and tax relief credits limited to 95% of just the farmland property taxes, exclusive of improvements?

Answer: No. The definition of "farmland" in the farmland tax relief credit law is "... real property, exclusive of improvements ...". Secs. 71.07(3m)(a)3, 71.28(2m)(a)3 and 71.47(2m)(a)3, as created by 1989 Wisconsin Act 31. However, the 95% limitation is based on property taxes accrued on the "farm". Because of the distinct difference between the wording "real property, exclusive of improvements" and "farm", the 95% limitation applies to the total property taxes on the farm, including the taxes on all land that is part of the farm and on all improvements on that land. This includes taxes on land that is not subject to an agreement or an ordinance as required under the farmland preservation credit law, as well as taxes which exceed the $6,000 limitation for farmland preservation credit computation or the $10,000 limitation for farmland tax relief credit computation.

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CORPORATION FRANCHISE OR INCOME TAXES

1. Dividends Received Deduction: Requirement to Own at Least 80% of Stock

Statutes: Section 71.26(3)(j), Wis. Stats. (1987-88).

Background: Corporations may deduct from income dividends received from a corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 80% of the total combined voting stock of the payor corporation. Sec. 71.26(3)(j), Wis. Stats. (1987-88).

Facts: Corporations X, Y, and Z all file Wisconsin franchise or income tax returns on a calendar-year basis. On January 1, 1990, Corporation X owns 68% of the common stock of Corporation Y and Corporation Z owns the remaining 32% of Corporation Y's common stock. Neither Corporation X nor Corporation Z disposes of any of the Corporation Y common stock during the taxable year. Corporation X owns 100% of Corporation Z's common stock on January 1, 1990, and does not dispose of any of this stock during the taxable year.

Corporation Y pays a $300 million dividend during 1990: $204 million to Corporation X and $96 million to Corporation Z.

Question 1: Does Corporation X have an 80% or more ownership interest in Corporation Y for purposes of the Wisconsin dividends received deduction?

Answer 1: Yes. Corporation X has a 68% direct interest in Corporation Y and a 32% indirect interest in Corporation Y through its constructive ownership of the Corporation Y shares owned by Corporation Z. Therefore, Corporation X qualifies for the Wisconsin dividends received deduction because it has an 80% or more ownership interest in Corporation Y during the entire taxable year.

Question 2: Does Corporation Z have an 80% or more ownership interest in Corporation Y for purposes of the Wisconsin dividends received deduction?

Answer 2: No. Corporation Z has only a 32% direct interest in Corporation Y. Section 318(a)(3)(C) of the Internal Revenue Code does not apply for purposes of the dividends received deduction. Therefore, Corporation Z does not qualify for the Wisconsin dividends received deduction because it does not have an 80% or more ownership interest in Corporation Y.

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2. Net Operating Loss for Purposes of Computing Wisconsin Unrelated Business Taxable Income of Exempt Organizations Taxable as Corporations

Statutes: Section 71.26(1)(a), Wis. Stats. (1987-88).

Background: Section 71.26(1)(a), Wis. Stats. (1987-88), provides that all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit are subject to Wisconsin income or franchise tax on their unrelated business taxable income as determined under sec. 512 of the Internal Revenue Code (IRC). Therefore, an exempt organization taxable as a corporation will use the amount of unrelated business income computed for federal purposes when computing the Wisconsin tax on unrelated business taxable income except that adjustments will be made to federal unrelated business taxable income to account for:

(1) Federal law changes that have not been adopted by the Wisconsin Legislature (e.g., for taxable years beginning on or after 1/1/89, only federal laws enacted by 12/31/88 have been adopted by Wisconsin).

(2) Electing (in the manner prescribed by the Internal Revenue Code) to treat an item of income or expense differently for Wisconsin than the item was treated on the federal return filed with the IRS. (See Question 3 below.)

None of the modifications provided in sec. 71.26(3), Wis. Stats. (1987-88), for regular corporations apply for computing Wisconsin unrelated business income of exempt organizations taxable as corporations.

Under sec. 512, IRC, unrelated business income is income from an unrelated trade or business after deduction for net operating losses as determined under sec. 172, IRC. Section 172, IRC, provides that a net operating loss may be carried back 3 years unless an election is made to carry the net operating loss forward to each of the next 15 years.

Question 1: Can an exempt organization taxable as a corporation carry forward a net operating loss for purposes of computing Wisconsin unrelated business taxable income where that same loss is carried back for federal purposes?

Answer 1: Yes. A different election can be made for Wisconsin purposes than was made for federal purposes. Therefore, an exempt organization taxable as a corporation may adjust federal unrelated business income (the starting point in computing Wisconsin unrelated business taxable income) to account for the carryforward of the net operating loss for Wisconsin where the same net operating loss was carried back for federal purposes.

Question 2: Can an exempt organization taxable as a corporation carry back a net operating loss for Wisconsin unrelated business taxable income purposes?

Answer 2: Yes. There is no provision in Wisconsin law that prohibits the carryback of net operating losses for purposes of computing Wisconsin income or franchise tax on unrelated business taxable income.

Question 3: Can an exempt organization taxable as a corporation elect to carry back a net operating loss when computing Wisconsin unrelated business taxable income if that loss was carried forward in computing federal unrelated business taxable income?

Answer 3: Yes. A different election can be made for Wisconsin income or franchise tax purposes than was made for federal tax purposes. Therefore, an exempt organization taxable as a corporation may adjust the amount of federal unrelated business taxable income used for Wisconsin purposes to account for the carry back of net operating losses even though the net operating losses are carried forward for federal purposes.

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3. Sales Factor — Throw Back of Sales Due to Insufficient Nexus With Destination State

Statutes: Section 71.25(9)(b), Wis. Stats. (1987-88), as affected by 1989 Wisconsin Act 31.

Administrative Rules: Section Tax 2.39(5)(c)6., January 1978 Register.

Background: A multistate corporation with operations in Wisconsin must report a portion of its net income to Wisconsin using the apportionment method if its Wisconsin operations are part of a unitary business. The apportionment formula used by most multistate corporations consists of a property factor, payroll factor, and sales factor. The numerator of the sales factor is the taxpayer's total sales in Wisconsin during the taxable year and the denominator is the taxpayer's total sales everywhere.

For purposes of computing the sales factor, sales of tangible personal property are included in the numerator of the sales factor at 50 percent if the property is shipped from a location in Wisconsin to a location in another state and the taxpayer is not within the jurisdiction, for income or franchise tax purposes, of the destination state. Sec. 71.25(9)(b)3., Wis. Stats., as created by 1989 Wisconsin Act 31. Sales are "thrown back" to Wisconsin even though the taxpayer is within the jurisdiction of the destination state if the activities in that state are limited to those protected by Public Law 86-272. Sec. Tax 2.39(5)(c)6., Wis. Adm. Code. Under Public Law 86-272, a state may not impose its income tax or franchise tax based on net income on a corporation selling tangible personal property if that corporation's only activity in the state is the solicitation of orders, which orders are approved outside the state and are filled by delivery from a point outside the state.

Facts and Question: ABC Corporation, which is doing business in and outside Wisconsin, is subject to State X's franchise tax but is not subject to its income tax. ABC Corporation's only activity in State X is the solicitation of sales. State X imposes its franchise tax on a foreign corporation doing business in the state even if the corporation's only activity is the solicitation of sales. Public Law 86-272 does not apply to State X's franchise tax because the tax is based on a corporation's net worth. ABC Corporation is not subject to State X's income tax because its only activity in State X, the solicitation of sales, is a protected activity under Public Law 86-272.

Are ABC Corporation's sales that are destined for State X treated as Wisconsin sales and included in the numerator of its sales factor?

Answer: Yes. ABC Corporation's sales destined for State X are treated as Wisconsin sales and are included in the numerator of the sales factor at 50 percent. These sales are thrown back to Wisconsin because ABC Corporation's only activities in State X, the destination state, are activities protected by Public Law 86-272.

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INDIVIDUAL AND CORPORATION FRANCHISE OR INCOME TAXES

1. Recapture of Development Zone Investment Credit

Statutes: Sections 71.07(2di), 71.09, 71.28(1di), 71.29 and 71.47(1di), Wis. Stats. (1987-88).

Background: Special tax credits are available for persons doing business in areas which have been designated by the Wisconsin Department of Development as development zones. One of these credits is the investment credit as provided by secs. 71.07(2di), 71.28(1di), and 71.47(1di), Wis. Stats. (1987-88).

If a person who has been certified for tax benefits by the Department of Development purchases an asset for use in his or her business in a development zone, he or she may be able to claim the investment credit. The credit is equal to 2.5% of the qualified investment in depreciable, tangible personal property. (The percentage is 1.75% if the taxpayer elects to expense the cost of the asset under sec. 179 of the Internal Revenue Code, rather than depreciating it.)

Under certain conditions a taxpayer may have to recapture part or all of an investment credit previously claimed by adding the recapture amount to his or her tax. The recapture applies if property upon which a credit has been claimed is disposed of or is no longer used in the taxpayer's business in a development zone before the end of the recapture period for the property as provided by sec. 47(a)(5) of the Internal Revenue Code as amended to December 31, 1985.

Facts and Question 1: In July of 1990, a taxpayer disposes of development zone investment credit property before the end of its useful life. The taxpayer is required to recapture $600 of investment credit on the 1990 Wisconsin income or franchise tax return. Is the taxpayer required to make Wisconsin estimated tax payments for the amount of recapture of development zone investment credit?

Answer 1: No, a taxpayer is not required to make estimated tax payments for the amount of recapture of investment credit. The estimated tax provisions (secs. 71.09 and 71.29, Wis. Stats. (1987-88)) establish income subject to tax as the basis for the requirement to make estimated tax payments. The development zone investment credit recapture is not an income item and therefore, estimated tax payments are not required.

Question 2: The amount of recapture of development zone investment credit is an addition to the tax for the year of recapture. May the amount of recapture be offset by nonrefundable and refundable credits allowable on the tax return?

Answer 2: Yes, the amount of recapture of development zone investment credit which is added to the tax on the return may be offset by all allowable nonrefundable and refundable credits.

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SALES/USE TAXES

1. Cotton Cloth Underpads Used by Nursing Homes

Statutes: Sections 77.51(1m) and 77.54(40), Wis. Stats., as created by 1989 Wisconsin Act 335.

Background: Section 77.54(40), Wis. Stats., as created by 1989 Wisconsin Act 335, provides an exemption from sales and use tax for the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption of cloth diapers. "Cloth diapers" as defined in sec. 77.51(1m), Wis. Stats., as created by Wisconsin Act 335, means a cloth diaper for sanitary purposes.

"Diaper" as defined in *Webster's New Collegiate Dictionary* means a basic garment for infants consisting of a folded cloth or other absorbent material drawn up between the legs and fastened about the waist.

Facts and Question: A nursing home that is not an exempt organization described in sec. 77.54(9a)(f), Wis. Stats. (1987-88), uses cotton cloth underpads in beds of residents for sanitary purposes. These underpads are washable and reusable. The underpads are used in beds of immobile patients or patients with diaper rash.

Are the gross receipts from the sale of these cotton underpads exempt from sales and use tax?