

WISCONSIN TAX BULLETIN

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EFFECT OF HOWICK DECISION ON GAINS

A Tax Release on pages 9-11 of Wisconsin Tax Bulletin (WTB) Number 23 (July, 1981) relating to the Howick decision explains how to determine gain or loss from sales of assets acquired prior to becoming a Wisconsin resident. Information in that Tax Release concerning the computation of gains should be disregarded. The Tax Release on page 13 of this WTB explains how gains should be computed.

The information on pages 9-11 in WTB Number 23 pertaining to losses is still valid.

PROPERTY TAX DEFERRAL PROGRAM DELAYED

Secretary of Revenue Mark Musolf indicated that loans will not be granted for 1981 property taxes under the Property Tax Deferral Program (see WTB #24 for a description of this program). Rather, *loans will first be granted for 1982 taxes based on loan applications filed January 1 through June 30, 1983.* High interest rates and bonding are reasons for the delay in implementing this program.

NEW TAX LAWS ENACTED IN NOVEMBER AND DECEMBER

The following new tax laws were enacted by the Legislature during November and December, 1981.

Gift Tax

Gifts Between Spouses Are Not Taxable (Chapter 93, Laws of 1981, effective July 1, 1982). Gifts made between spouses on or after July 1, 1982 will be exempt from Wisconsin gift taxes. (Note: For Wisconsin income tax purposes, the donee's basis of the property is still the basis of the donor.)

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Inheritance Tax

Property Inherited From Spouse Not Subject To Inheritance Tax (Chapter 93, Laws of 1981, effective for transfers because of deaths on or after July 1, 1982). Interspousal transfers of property, when date of death is on or after July 1, 1982, will be exempt from Wisconsin inheritance taxes.

Income Tax

Basis Of Property Acquired By Inheritance From Deceased Spouse (Chapter 93, Laws of 1981, effective July 1, 1982). The basis of an interest in property received by a surviving spouse from the deceased spouse will be the fair market value of that interest at date of death of the decedent, provided the date of death is on or after July 1, 1982. For example, if a house was acquired in joint tenancy by a husband and wife for \$40,000 and it has a date of death value on July 1, 1982 of \$90,000, the surviving spouse will have a basis of \$65,000 (one-half the original cost as a joint owner (\$20,000) and one-half the date of death value (\$45,000) which was received from the deceased spouse). If the house had been solely owned by the decedent and the house passed to the surviving spouse, the surviving spouse would have a basis of \$90,000.

Farmland Preservation Credit

10% Minimum Credit For Farmland Subject To Exclusive Agricultural Zoning (Chapter 93, Laws of 1981, effective for claims filed for the year 1981 and thereafter). Claimants who own farmland which is subject to a certified exclusive agricultural use zoning ordinance may claim a minimum farmland preservation credit of 10% of the property taxes accrued (up to a maximum of \$6,000 property taxes) on the land. Also, such claimants are eligible to file a farmland preservation credit claim regardless of the amount of household income they may have for the year. (Note: Claimants who own farmland which is *not* subject to exclusive agricultural zoning continue to be subject to a maximum household income limitation of \$36,621.)

Corporation Franchise/Income Tax

Mining Tax Deductible By Corporations (Chapter 86, Laws of 1981, effective for 1981 taxable year and thereafter). The net proceeds occupation tax imposed under s. 70.375, Wis. Stats., on corporations engaged in mining metalliferous minerals in Wisconsin will be deductible for corporation franchise/income tax purposes.

Excise Tax

1. Allows Exempt Universities to Receive Things of Value From Brewers, Bottlers and Wholesalers (Chapter 48, Laws of 1981, effective November 11, 1981). Brewers, bottlers and wholesalers will be permitted to furnish money or other things of value to private tax exempt institutions of higher education.

2. Tied-House Provisions Extended to UW Campuses (Chapter 49, Laws of 1981, effective November 11, 1981). This new law changes the restrictions applicable to the sale of alcoholic beverages at wholesale to University of Wisconsin system campuses.

3. Recodification of Alcoholic Beverage Laws (Chapter 79, Laws of 1981, various effective dates). This law recodifies the alcoholic beverage laws and includes technical changes, a reorganization of the statutes relating to the sale of alcoholic beverages, modernizes outdated language, removes obsolete provisions and clarifies certain provisions:

4. Beer and Liquor on Vessels Carrying Passengers (Chapter 76, Laws of 1981, effective November 28, 1981.) The Department of Revenue is authorized to issue a class B retail beer or liquor license for a vessel that is regularly moored in Wisconsin and has a passenger capacity of 100 or more, if the sale of liquor and beer accounts for less than 50% of the vessel's gross receipts, the vessel is certified by the U.S. Coast Guard and intends to leave its place of mooring while the sales take place.

REMINDER OF MAJOR 1981 LAW CHANGES

Major Individual Income Tax Law Changes: (All changes were enacted as part of Chapter 20, Laws of 1981.)

1. **Update Internal Revenue Code Reference to December 31, 1980.** For taxable year 1981 and thereafter, individuals, estates and trusts must use the Internal Revenue Code in effect on December 31, 1980. With one exception, federal tax laws enacted during 1981 may not be used in determining Wisconsin income and deductions for 1981. The exception is that the new accelerated cost recovery system (ACRS) enacted as part of the federal 1981 Economic Recovery Tax Act applies for Wisconsin purposes for 1981.

Wisconsin law also provides that the following three provisions of federal law may not be used for Wisconsin purposes in 1981, even though they were enacted before December 31, 1980:

- Special provisions relating to benefits received from an employer's educational assistance program.
- Foreign living cost deductions.
- Amortization provisions for pollution control facilities.

As a result of the change in Wisconsin's reference date to the Internal Revenue Code from December 31, 1979 to December 31, 1980, federal laws enacted during 1980 may now be used for Wisconsin purposes. For example, the provisions of the federal Installment Sales Revision Act of 1980 now apply for Wisconsin purposes.

2. **Work Requirements to Qualify for Child Care Expense Deduction Changed.** Beginning in 1981 an itemized deduction for work-related child and dependent care expenses may be claimed even though the employment involved is only a part-time job. Previously, it was necessary to be employed on at least a three-quarter time basis to claim an itemized deduction for these work-related expenses.

Generally, in the case of married persons both spouses must meet the work requirements. However, an exception is provided in situations where one spouse does not work but is a full-time student. The non-working (student) spouse will be treated as meeting the work requirement, provided he or she is a full-time student during at least 5 months of the taxable year.

3. **5% Minimum Tax Created.** Individuals, estates and trusts having tax preference items and adjusted itemized deductions which total more than \$10,000 for 1981 and subsequent years will be subject to a 5% minimum tax. In the case of married persons, the \$10,000 limitation applies separately to each spouse. A copy of the new reporting form (Schedule MT) which will be used to compute the amount of minimum tax due is included as part of this issue of the WTB. (Note: Any minimum tax due is required to be paid by the due date of the person's, estate's or trust's income tax return. The minimum tax is not required to be included in computing estimated tax payments on Form 1-ES.)

Major Corporation Franchise/Income Tax Law Changes: (These changes were enacted as part of Chapter 20, Laws of 1981 and are effective for the taxable year 1981.)

1. **Update Internal Revenue Code Reference to December 31, 1980 for Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts.** For taxable year 1981 and thereafter, insurance companies, regulated investment companies and real estate investment trusts must compute their income under the Internal Revenue Code in effect on December 31, 1980. Federal tax laws enacted after that date may not be used for Wisconsin purposes. (Exception: Depreciation provisions enacted during 1981 may be used on a 1981 Wisconsin return as described in item 13 below.)

2. **Deduction for State Taxes Eliminated.** Corporations are no longer allowed a deduction for state (including District of Columbia) taxes which are imposed on or measured by gross income, net income, gross receipts or capital stock. Only gross receipts taxes which are assessed in lieu of property taxes continue to be allowable as a deduction.

3. **Federal Windfall Profit Tax Not Deductible.** No deduction will be allowed to corporations for the federal windfall profit tax.

4. **Addition to Tax Penalty Not Deductible.** No deduction may be claimed for amounts paid as an underpayment of estimated tax penalty.

5. Real Estate Taxes May Be Accrued. Corporations are permitted to accrue the current year's real estate taxes (but not personal property taxes) for Wisconsin purposes in the same manner as for federal.

6. Certain Corporations May Replace Involuntarily Converted Wisconsin Property With Property Outside Wisconsin. The gain on Wisconsin property which is involuntarily converted may be deferred when the replacement property is located in another state, provided that the corporation is subject to Wisconsin's taxing jurisdiction both before and after such transactions.

7. Imputed Interest Provisions of Internal Revenue Code Section 483 Apply for Wisconsin. Amounts which are deductible as imputed interest under IRC section 483 may also be claimed as a deduction on the Wisconsin corporation franchise/income tax return. Similarly, basis adjustments pertaining to imputed interest which are required by section 483 must also be made for Wisconsin purposes.

8. Intangible Drilling Costs Must be Capitalized. Intangible drilling and development costs relating to oil, gas and geothermal wells must be capitalized in the manner prescribed by section 263 (c) of the Internal Revenue Code. Rather than being expensed in the current year, these costs must be deducted as depreciation or cost depletion.

9. Eliminate Requirement to File Extension Form 7005 Within Ten days. Corporations will no longer be required to submit a copy of federal extension form 7005 (the federal form which is used for an additional three month extension) to the Department of Revenue within ten days after it is received from the Internal Revenue Service. However, corporations will still be required to furnish a copy of form 7005 with the Wisconsin tax return when it is filed with the department.

10. Six Month Extensions Available to DISC's and Cooperatives. DISC's and Cooperatives may apply for a six month extension of the time to file a Wisconsin franchise/income tax return. (Note: Requests for this extension should be made on Wisconsin form IC-830 which is available from any department office.)

11. Corporate Reorganization Provisions Modified. The provisions in Wisconsin law relating to the tax treatment of corporate reorganizations have been changed to conform more closely to the provisions of federal law.

12. New Minimum Payment Required to Meet Certain Exceptions to Addition to Tax Penalty. Corporations making declaration payments must meet a new minimum payment requirement for purposes of claiming exception 1 or 2 to avoid the addition to tax penalty. Exception 1 (s. 71.22 (10) (a)) provides that the addition to tax penalty does not apply if installment payments for the current year equal or exceed the tax shown on the preceding year's return. Exception 2 (s. 71.22 (10) (b)) provides that no penalty applies if current year installment payments equal or exceed an amount determined by using the tax rates applicable to the current year but otherwise on the basis of the facts and income shown on the tax return for the immediate preceding year.

The new law establishes a minimum installment payment requirement to claim exception 1 or 2. To qualify for exception 1 or 2, a corporation's installment payments must be the larger of (a) the amounts required under exception 1 or 2, or (b) 60% of the corporation's actual tax liability for the taxable year.

13. New Federal Depreciation Provisions May Be Used for Wisconsin. All corporations filing a Wisconsin franchise/income tax return may elect to use the new depreciation provisions enacted as part of the federal Economic Recovery Tax Act of 1981 in determining their Wisconsin taxable income for 1981 and thereafter.

14. Corporate Tax Rate Changed. The tax rate for corporate franchise/income taxes has been changed to a flat rate of 7.9%.

Major Homestead Credit Law Change: (This change was enacted as part of Chapter 20, Laws of 1981 and is effective for claims filed for the year 1981.)

1. Depreciation Must be Added Back in Determining Household Income. All amounts of depreciation which have been deducted in determining the Wisconsin adjusted gross

income of a claimant (and his or her spouse) must be added to household income for purposes of determining a homestead credit.

Major Farmland Preservation Credit Law Changes: (All changes were enacted as part of Chapter 20, Laws of 1981 and are effective for claims filed for the year 1981.)

1. Nonfarm Wages May No Longer be Excluded from Household Income. All nonfarm wages earned by members of a claimant's household must be included in household income. The exclusion previously available for nonfarm wages (of up to \$7,500) has been repealed.

2. Depreciation Deductions Limited to \$20,000 for Purposes of Determining Household Income. Any depreciation in excess of \$20,000 which has been deducted in determining the amount of income reportable on the Wisconsin tax return of a claimant or any member of a claimant's household must be added to household income for purposes of determining a farmland preservation credit. The \$20,000 limitation on depreciation deductions applies separately to the claimant and each member of the claimant's household.

3. Nonfarm Business Losses Must be Added Back in Determining Household Income. Nonfarm business losses which have been offset against other income of a claimant or any member of a claimant's household must be added back when household income is determined. (Note: The amount of nonfarm loss to be added back to income should be determined without regard for the depreciation expense of such nonfarm business. Thus, if the loss is less than or equal to the depreciation expense for that business, no add back will be necessary. If the loss is greater than the depreciation, the depreciation will be subtracted from the loss and the resulting amount will be added back to household income.)

MAJOR FORM CHANGES

Although new legislation has required certain forms changes, the basic design of the major Wisconsin reporting forms for 1981 is very similar to last year's. The major changes

which have been made to each are described below.

Individual Income Tax Forms

Form 1A

- A new entry line (line 6) has been added for reporting taxable unemployment compensation.
- A new entry space has been added in the personal exemption credit area at line 11c. This space must be used to indicate the first names of individuals being claimed as a dependent.

Form 1

- Changes have been made in the "Computation of Wisconsin Total Income" area (lines 6 through 23) on page 1 to conform with changes made to the federal Form 1040 for 1981. The interest and dividend income entry lines have been combined into a single line and an "Other Adjustments" line (line 21) has been added. Also, a separate entry line (line 8) is now provided in this area for refunds of state and local income taxes.
- A new entry line (line 54) has been added for reporting minimum tax.

Homestead Credit Form

Schedule H

- Questions 1 through 7 which pertain to the eligibility requirements to be met by persons claiming a Homestead credit have been reworded and rearranged for 1981.
- A new entry line (line 10) has been added for reporting depreciation which must be added back in determining household income.

Farmland Credit Form

Schedule FC

- The entry line previously used to remove the first \$7,500 of nonfarm wages from household income has been deleted. (A law change repealed this exclusion.)
- A new entry line (line 6) has been added for reporting depreciation which must be added back in determining household income.
- A new entry line (line 7) has been added for reporting non-

farm business losses which must be added back in determining household income.

Corporation Forms

Form 5

- Schedule V on page 2 has been revised to reflect a law change which repealed the deduction for state taxes.
- Schedule W on page 2 has been revised to reflect law changes which (a) repealed the deduction for state taxes, (b) repealed the deduction for the federal Windfall Profit Tax, and (c) allow the accrual of real estate taxes.

Form 4

- Schedule G on page 2 has been revised to reflect a law change which repealed the deduction for state taxes.

Form 4U

- This form (which is used to determine if an underpayment of estimated tax penalty must be paid) has been revised to reflect a law change which requires corporations to make declaration payments equal to 60% of their actual tax liability for the year.

HOW TO GET INCOME TAX FORMS

In December the department mailed more than 2.3 million booklets of 1981 income tax and Homestead Credit forms. These were mailed to individuals who filed 1980 Wisconsin income tax returns or Homestead claims.

Orders for bulk supplies of tax forms are now being shipped to tax practitioners and to organizations (e.g., banks and post offices) which distribute them to the public. All the orders are expected to be filled by mid-January 1982.

During the filing season, anyone wishing a small supply of forms may obtain these from any departmental office located throughout the state. Persons are limited to six copies of any single form, however. This will avoid the supply of forms at any office from being quickly depleted and unavailable for other persons.

Practitioners or others wishing more than six copies of a form should write the Wisconsin Department of

Revenue, Central Services Section, Post Office Box 8903, Madison, Wisconsin 53708.

1982 ESTIMATED TAX FORMS TO BE MAILED

In late January, 1982 the department will mail to individuals the 1982 Estimated Tax Forms, including four preaddressed payment vouchers. These declaration forms for 1982 will be mailed to all individuals who filed a declaration of estimated tax for the year 1981. If a person needs a 1982 declaration form but did not receive it in the mail, he or she should contact any Department of Revenue office after January 25, 1982 for the form.

IRS STANDARD MILEAGE RATE APPLIES FOR WISCONSIN

The optional standard mileage rate specified by IRS for computing business automobile expenses for 1981 also applies for Wisconsin. The rate is 20¢ for the first 15,000 business miles and 11¢ per mile for mileage in excess of 15,000. A rate of 9¢ per mile which is used to calculate auto expenses for charitable, medical and moving expense deductions for federal purposes also applies for Wisconsin for 1981.

DON'T FORGET TO REPORT USE TAX ON FORM ST-12

Failure to properly report use tax is the most common error on sales and use tax returns. Before you file Form ST-12, make sure use tax is correctly reported on lines 7 and 8 of the return. The March 1981 issue of the *Sales/Use Tax Report* explains how to report use tax on the sales and use tax return, Form ST-12. If you have questions about sales or use tax, you may contact any Department of Revenue office for free assistance.

REMINDER - SALES TAX ANNUAL INFORMATION RETURN NOT REQUIRED FOR 1981

Beginning with the 1981 tax year, retailers will no longer have to file Form ST-12A, Sales Tax Annual Information Return. Eliminating the filing of this form for the 1981 tax year and thereafter resulted from legislation enacted in 1980.

INFORMATIONAL PUBLICATIONS AVAILABLE

The Income, Sales, Inheritance and Excise Tax Division of the Department of Revenue publishes a form of informational material called "publications". These are small pamphlets which provide detailed information relating to specific areas of Wisconsin tax laws. They are intended to aid the public in understanding certain aspects of the Wisconsin tax laws.

For 1981, the following publications may be obtained at each of the Division's offices located throughout Wisconsin:

Publication Number	Publication Title
100	1981 Wisconsin Tax Requirements For Nonresidents
101	1981 Wisconsin Tax Requirements For Part-Year Residents
102	Wisconsin Tax Treatment Of Subchapter S Corporations And Their Shareholders
103	Reporting Capital Gains And Losses For Wisconsin By Individuals, Estates and Trusts
104	Wisconsin Taxation Of Military Personnel
105	Adoption Expenses - Wisconsin Tax Benefits
106	Wisconsin Deduction For Child And Dependent Care Expenses
107	Combining DISC And Parent Or Affiliated Corporation's Incomes
500	Tax Guide For Wisconsin Political Organizations And Candidates
501	Field Audit Of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Tax Credit For 1981
504	Directory For Wisconsin Department Of Revenue

If you have any suggestions for additional subjects which you believe

should be covered by a publication, submit your suggestions to the Wisconsin Department of Revenue, Division of Income, Sales, Inheritance and Excise Taxes, Director of Technical Services, P.O. Box 8910, Madison, Wisconsin 53708.

EMPLOYER CONVICTED FOR FAILURE TO PAY WITHHOLDING TAXES

A Madison businessman has been ordered to pay a \$500 fine and serve probation for one year for criminal violations of the Wisconsin income tax withholding law.

Darrell J. Foss, Madison, Wisconsin doing business as Badger Restoration Company, was found guilty in September in Dane County Circuit Court, after he entered a no contest plea to one count of failing to pay over to the Wisconsin Department of Revenue, income taxes he had withheld from wages of employes. Sentencing was withheld and Foss was placed on probation for one year. Under the conditions of probation, Foss must pay accrued taxes in excess of \$15,000 to the department and pay a \$500 fine.

Criminal charges were filed against Foss in June by the Dane County District Attorney's Office after an investigation by the Intelligence Section of the ISI & E Division. Failure to make deposits of state income tax withheld is a crime punishable by a maximum fine of \$500 or imprisonment not to exceed six months or both on each count.

FISHERMAN FINED FOR FILING FRAUDULENT RETURNS

A Door County commercial fisherman has been ordered to serve a three year probationary period and pay \$7,500 in fines for criminal violations of the Wisconsin state income tax law.

Robert E. LeClair, Jacksonport, Wisconsin was placed on probation for three years. Under the conditions of probation, LeClair is jointly and severally responsible for payment of a \$7,500 fine which Judge Bartell ordered paid in sentencing LeClair's wife, Joan, last July. Mr. and Mrs. LeClair were found guilty by Judge Bartell in April after they entered no contest pleas to two counts of state income tax evasion. The LeClairs must also pay the civil tax liability,

penalties and interest. The civil assessment is expected to exceed \$24,000.

Criminal charges were filed against the LeClairs by the State Department of Justice after an investigation by the Intelligence Section of the ISI & E Division. They were charged with failing to report more than \$85,000 in taxable income for the years 1975 and 1976 and evading more than \$9,000 in state income taxes for those years.

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 stage in the process as of January 1, 1982. Part C lists new rules and amendments which have been adopted in 1981.

A. Rules At Legislative Council Rules Clearinghouse

- 2.39 Apportionment method
- amendment
- 2.40 Nonapportionable income
- repealed and recreated
- 11.71 Automatic data processing
- new rule

B. Rules At Legislative Standing Committees

- 5.01 Filing reports
- amendment
- 10.10 Taxation of savings, mortgage and credit life insurance
- amendment
- 10.11 Federal estate tax deduction
- amendment
- 10.12 Deductibility of income taxes
- amendment
- 10.13 Apportionment of property qualifying for exception
- new rule
- 10.14 Valuation of United States treasury bonds
- new rule
- 11.53 Temporary events
- new rule
- 11.56 Printing industry
- new rule

C. Rules Adopted in 1981 (In parentheses is the date the rule was adopted.)

- 1.11 Requirements for examination of returns (8/1/81)
- amendment
- 2.081 Indexed income tax rate schedule (5/1/81)
- new rule
- 2.081(3) Indexed income tax rate schedule for taxable year 1981
- new rule
- 2.31 Taxation of personal service income of nonresident professional athletes (1/1/81)
- new rule
- 2.505 Apportionment of net business income of interstate professional sports clubs (1/1/81)
- new rule
- 2.955 Credit for income taxes paid to other states (2/1/81)
- amendment
- 4.53 Certificate of authorization (1/1/81)
- new rule
- 8.87 Intoxicating liquor tied-house prohibitions (6/1/81)
- new rule
- 9.08 Cigarette sales to and by Indians (8/1/81)
- new rule
- 11.12 Farming, agriculture, horticulture and floriculture (12/1/81)
- amendment
- 11.16 Common or contract carriers (12/1/81)
- amendment
- 11.40 Exemption of machines and processing equipment (12/1/81)
- amendment
- 11.83 Motor vehicles (7/1/81)
- amendment
- 11.88 Mobile homes (1/1/81)
- new rule
- 11.925 Sales and use tax security deposits (8/1/81)
- new rule

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:

Income and Franchise Taxes

- Kenko, Inc. vs. Wisconsin Department of Revenue
Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue
Wolfgang O. Horn vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Wisconsin Department of Revenue vs. Milwaukee Brewers Baseball Club
Cuna Mutual Insurance Society vs. Wisconsin Department of Revenue
Robert E. Curtis vs. Wisconsin Department of Revenue
Servomation Corporation, Successor to Servomation of Wisconsin, Inc. vs. Wisconsin Department of Revenue
Trudell Trailer Sales, Inc. vs. Wisconsin Department of Revenue

Gift Tax

- Estate of John F. Stratton et. al. vs. Wisconsin Department of Revenue

Homestead Credit

- Helen M. Raschik vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Kenko, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 28, 1981). Kenko, Inc., a corporation organized under the laws of Minne-

sota, was actively engaged in the construction business in the state of Wisconsin during the year 1979 and was subject to the provisions of ch. 71, Wis. Stats. Prior to the year 1979, the taxpayer did not engage in any activity in the state of Wisconsin, and thus was not subject to the provisions of ch. 71, Wis. Stats. Kenko, Inc., however, was actively engaged in the construction business in Minnesota. Kenko, Inc. did not file a Form 4, Wisconsin "Corporation Franchise or Income Tax Return" with the department for 1978, and was not required to file for this period of time.

Taxpayer filed a 1979 Form 4, Wisconsin "Corporation Franchise or Income Tax Return" with the department on or about March 19, 1980. A net tax liability of \$8,687 was shown on Line 38 of the return, and this amount was remitted to the department at the time of filing the return.

Kenko, Inc. did not file estimated tax returns or remit estimated tax payments to the department for the year 1979 as set forth in s. 71.21, Wis. Stats. Taxpayer was required to file estimated tax returns and remit estimated tax installments in the following amounts at the following prescribed times:

Installment Due Date:	Required Installment:
3-15-79	\$1,737.40
6-15-79	\$1,737.40
9-15-79	\$1,737.40
1-15-80	\$1,737.40

Taxpayer was subject to the addition to tax assessment and applicable interest, unless it qualified for an exception to avoid the payment of the addition to tax under s. 71.22 (10) (a), Wis. Stats.

The issue involved is as follows: Assuming that Kenko, Inc., was not required to file (and did not file) a 1978 Wisconsin franchise or income tax return and was required to file (and filed) a 1979 return, and assuming that the taxpayer was required to file a declaration of estimated tax under s. 71.22 (1), Wis. Stats., for 1979 but did not so file, is Kenko, Inc. excused from the 9% addition to the tax by virtue of s. 71.22 (10) (a), Wis. Stats.? Section 71.22 (10) (a), Wis. Stats., provides that an addition to the tax shall not be imposed if total payments of