11.30	Credit sale, bad debt and repossessions-A
11.39	Manufacturing-A
11.45	Sales by pharmacies and drug stores-A
11.51	Grocer's guidelist-A
11.56	Printing industry-A
11.65	Admissions-A
11.67	Service enterprises-A
11.72	Laundries, dry cleaners and linen and clothing suppliers-A
11.79	Leases of highway vehicles and equipment-A
11.83	Motor vehicles-A
11.85	Boats, vessels and barges-A
11.86	Utility transmission and distribution lines-A
11.87	Meals, food, food products and beverages-A
11.94	Wisconsin sales and taxable transportation charges-A
11.95	Retailer's discount-A

D. Rules Adopted in 1984 (in parentheses is the date the rule became effective)

9.01	Definitions pertaining to cigarette tax-N (4/1/84)
9.08	Cigarette tax refunds to Indian tribes-N (4/1/84)
9.09	Cigarette sales to and by Indians-N (4/1/84)
11.15	Containers and other packaging and shipping materials-A (1/1/84)
11.16	Common or contract carriers-A (1/1/84)
11.19	Printed material exemptions-A (1/1/84)
11.26	Other taxes in taxable gross receipts and sales price-A (1/1/84)
11.32(3)	"Gross receipts" and "sales price"-A (1/1/84)
11.48	Landlords, hotels and motels-A (1/1/84)
11.50	Auctions-A (1/1/84)
11.52	Coin-operated vending machines and amusement devices-A (1/1/84)
11.68	Construction contractors-A (1/1/84)

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 Commission's decision).

The following decisions are included:

Income and Franchise Taxes

Thomas L. Adelman vs. Wisconsin Department of Revenue

Joseph Bromley vs. Wisconsin Department of Revenue

Dennis Culver vs. Wisconsin Department of Revenue

Gerald R. Hoeppner vs. Wisconsin Department of Revenue

Key Line Freight, Inc. vs. Wisconsin Department of Revenue

Douglas J. Kimball vs. Wisconsin Department of Revenue

Anthony D. Maglio vs. Wisconsin Department of Revenue

Eugene F. Mower vs. Wisconsin Department of Revenue

Roland Murphy vs. Wisconsin Department of Revenue

Wisconsin Department of Revenue vs. Overly, Inc.

333 Enterprises, Inc. vs. Wisconsin Department of Revenue

Sales/Use Taxes

Kohler Company vs. Wisconsin Department of Revenue

The Mylrea Company, Inc. vs. Wisconsin Department of Revenue

Schuster Construction Company vs. Wisconsin Department of Revenue

Senior Golf Association of Wisconsin, Inc. vs. Wisconsin Department of Revenue

Shopper Advertiser, Inc., d/b/a Shopper Advertiser - Walworth County, and Shopping News, Inc., d/b/a Greater Beloit Shopping News, vs. Wisconsin Department of Revenue

Farmland Preservation Credit

Dorothy McManus vs. Wisconsin Department of Revenue

Withholding Taxes

William D. Kleiman vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Thomas L. Adelman vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 15, 1984). The issue before the Commission is whether monies advanced by the taxpayer to A&H of Reedsburg, Inc. were loans to the corporation or contributions to capital, and whether the subsequent deduction should be treated as a business bad debt or capital loss.

A&H of Reedsburg, Inc. was incorporated in Wisconsin in 1973. The taxpayer was an officer and director of the corporation and held 50% of the common stock. On his 1980 tax return the taxpayer claimed a bad debt loss for loans made to A&H of Reedsburg, Inc. as follows:

1975	$ 7,500.00
1977	4,800.00
1979	20,000.00
TOTAL	$32,300.00

The findings of fact in this case include the following:

A. The taxpayer and the other 50% shareholder of the corporation made advances of equal amounts and at the same times to A&H of Reedsburg, Inc.

B. The taxpayer stated that there were no notes evidencing the loans nor was there anything in writing stating the terms of the loans.

C. All three advances were used to pay A&H of Reedsburg's bank loans which were past due.

D. The corporation did not establish a sinking fund to pay back the advances to the shareholders and there was no repayment schedule or fixed payment date.

E. The shareholders did not have any security interest in any of the assets of the corporation in exchange for the advances.

F. The taxpayer expected the corporation to repay the advances from its future profits when the business could afford it.

G. A&H of Reedsburg never made any repayment of the principal on these advances. The corpora-

tion paid interest on the advances in one year, 1977.

H. The taxpayer stated that the monies were treated as loans on the corporate books, but that the corporate books had been lost and were not available at the time of the hearing.

I. The corporation's franchise tax returns showed the corporation had losses of $93,704.05 for 1977, $133,000.00 for 1978, and $79,951.76 for 1979.

J. The taxpayer testified that other than the loans he and the other 50% shareholder made to the corporation, there were no additional infusions of capital to the corporation other than the initial investments of $15,000 each.

K. At some time during 1979 A&H of Reedsburg, Inc. was liquidated and dissolved.

L. In 1979 the corporation's building was sold and the proceeds went to settle the corporation's indebtedness to its bank and other creditors.

The department contends that the taxpayer's advances to A&H of Reedsburg, Inc. do not constitute a business debt that qualifies him to claim an employe business expense deduction for the year 1980. Further, the advances were contributions to capital and should be deductible as such.

The Commission's conclusions are that the advances were contributions to capital, and losses arising from such are capital losses under the Internal Revenue Code.

The taxpayer has not appealed this decision.

Joseph Bromley vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 12, 1984). During the period under review, 1977 and 1978, Joseph Bromley was a Michigan resident and the president and a shareholder of Key Line Freight, Inc., which was engaged in the freight business in Wisconsin. The issues are whether (1) Joseph Bromley is liable for the tax assessment by the department against Key Line Freight, Inc. as a transferee within the provisions of s. 71.11(21), Wis. Stats., (2) the department is estopped from asserting transferee liability upon the taxpayer, (3) the assessment notice against Joseph Bromley constitutes inadequate notice of claim against him and therefore violates the Due Process Clause of the United States Constitution, and (4) the department is estopped from asserting transferee liability upon the taxpayer by reason of him being only a 10% stockholder in Key Line Freight, Inc.

Joseph Bromley was chief operating officer and president of Key Line Freight, Inc. from 1969 until March, 1978. In addition, he was a 10% stockholder in Key Line and in 1978 he received $600,000 as his share of the liquidated assets of Key Line. In 1978 Daniel Darling, the majority stockholder in Key Line Freight, Inc., in conjunction with the minority stockholders decided to liquidate a solvent corporation (Key Line Freight, Inc.) and retire. On March 30, 1978 the corporation filed a liquidation plan in accordance with a 337 liquidation which was accepted on September 18, 1980. Notice was given to the known creditors at the time of the dissolution. A trust was set up in the amount of $400,000 to pay off creditors in the State of Michigan regarding claims. Due to unexpected claims in the Workers Compensation area, the trust funds were depleted and to date there are no funds in this trust. During the period under review, Joseph Bromley, as its chief operating officer, president and a shareholder in Key Line Freight, Inc., was required to report and pay income and franchise taxes to the State of Wisconsin. The taxpayer failed to pay over the taxes to the State of Wisconsin which was never included as a creditor when Key Line Freight, Inc. was dissolved.

On October 5, 1981, the department mailed an assessment notice to Joseph Bromley. The notice said:

> "In accordance with s. 71.11(21) of the Wisconsin Statutes, you are being assessed for the $26,644.36 of Wisconsin corporate franchise/income tax due from Key Line Freight, Inc. per our notice of July 30, 1981. You are being assessed as the last President of Key Line Freight, Inc."

The Commission ruled that assessments made by the department are presumed to be correct and the burden is upon the taxpayer to prove by clear and satisfactory evidence in what respects the department erred in its determination. The taxpayer failed to meet his burden of proof to show the department's assessment to be incorrect. During the period under review Joseph Bromley was the chief operating officer, president and shareholder of Key Line Freight, Inc., which was assessed franchise taxes in the State of Wisconsin; therefore, he is liable as a transferee under the provisions of s. 71.11(21n) of the Wisconsin Statutes for the Key Line Freight, Inc. unpaid tax as was assessed by the department. The assessment notice against Joseph Bromley constitutes adequate notice of claim against him and therefore did not violate the Due Process Clause of the United States Constitution. Laws enacted by the Wisconsin Legislature are presumed to be constitutional.

The taxpayer has appealed this decision to the Circuit Court.

Dennis Culver vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 15, 1984). The issue for the Commission is whether the taxpayer may properly deduct $19,085 in 1979 Schedule F farm expenses for amounts deposited from his individual funds into the joint checking account he maintained with his wife as "payment" for services performed for his farm.

During the period under review, there is no dispute as to the computations involved in the assessment issued by the department against the taxpayer. The payments are summarized as follows:

1979 Schedule F

1.40	Patsy Culver - Incentive Payment	$ 1,901.68
1.52	Pension and profit sharing plans - Bookkeeper	6,000.00
1.54	Patsy Culver, wife	11,184.00
	Total payments to Patsy Culver	$19,085.68

The department disallowed the $19,085 deduction to the taxpayer and credited such amount against the return of his wife who reported the amount as her income.

The taxpayer was engaged, together with his brother, in a fairly large dairy and beef cattle farm operation. He and his brother owned, as tenants in common, all farm land including acreage purchased from their father as well as from several third parties located conveniently nearby. Most of the other farm assets were owned by the brothers together. Gross farm

profits such as milk checks were deposited in the brothers' joint checking account. The brothers assigned 25% of the milk checks to their father. There was no formal partnership agreement, oral or written, between the taxpayer and his brother, and each attempted to treat his "share" of the overall farm operation as a separate business.

In conjunction with implementing the farm operation, the taxpayer and his brother adopted an arrangement wherein each would employ their respective wives to perform two functions—bookkeeping and farm chores—for pay. The bookkeeping and farm chores were divided relatively equally between the two according to their training, ability, and preference to perform certain tasks. The taxpayer's wife's bookkeeping duties involved the maintenance, organization, actual payment of bills and logging of the payments, while his sister-in-law handled the brothers' joint checking account and did more of the "book work" proper, including work related to tax return preparation. Each wife did milking, barn and field work, with the sister-in-law handling the calves. The taxpayer's wife claimed to have worked an average of 20 hours per week at bookkeeping. However, no actual record of her time spent was kept, and based on the duties described and other hours spent on chores the claim is excessive.

For 1979, the taxpayer had contracted with his wife, Patsy, to pay her $6,000 yearly for bookkeeping work, based on an estimate of 20 hours per week. In addition, she was to be paid $6.00 per hour for farm chores. A yearly incentive payment was to be made in the amount of 25% of net farm profit from the joint farm operation of the taxpayer and his brother. The taxpayer and his wife recorded her hours spent performing farm chores.

His wife received her "compensation" in the following manner. He would periodically receive checks from the Culver Brothers (business) account which would represent his "share" of farm income less expenses. He would sign those checks (or occasionally checks to him from other sources) on the reverse side and give them to his wife, Patsy, without any specific endorsement. She would sign her name and deposit the amounts that they determined he "owed" her into their joint personal checking account. Any difference between the face amount of the check and the payment due her apparently would be taken as cash and given to the taxpayer. Although his wife claimed to be free to use the joint checking account money as she saw fit, she was responsible for certain family living expenses such as food. No evidence of the specific checks drawn on the joint account was offered, although apparently no payments were made for farm business purposes. There were no payroll checks issued to the taxpayer's wife and no taxes withheld from amounts representing bookkeeping or farm chore "earnings", nor was there any social security withheld. No self-employment returns were filed by his wife. No other payments such as unemployment compensation or worker's compensation were made. The funds she received remained legally at his disposal in their joint checking account and were used, at least in part, for payment of his family living expenses.

The Commission ruled that the record does not establish that the taxpayer had established an employer-employe relationship with his wife. The relationship was too informally structured; there was no employment agreement established at the outset of or during the period under review. Amounts deducted by the taxpayer as wages or salary paid to his wife are not properly so characterized. Transfers of his individual funds respecting his wife's performance of services in his farm business to a joint checking account shared with her under the circumstances did not constitute deductible payment of "wages" under Wisconsin law.

The taxpayer has appealed this decision to the Circuit Court.

Gerald R. Hoeppner vs. Wisconsin Department of Revenue (Circuit Court of Waukesha County, March 2, 1984). The taxpayer appealed the decision of the department, which was affirmed by the Wisconsin Tax Appeals Commission, that his mileage was a nondeductible commuting expense rather than a deductible transportation expense. (See WTB #29 for a summary of the Tax Appeals Commission's decision.)

The taxpayer, who resided in Milwaukee County, claimed a mileage deduction while working across the Milwaukee-Ozaukee county line in Port Washington. He claimed a deduction for only the twelve miles from the county line to the power plant in which he worked for a total of 130 days during 1978. No mileage allowance was paid by his employer, and in place of his incurring the expense of motels and meals in Port Washington, the company had him travel back and forth from his home in Milwaukee.

The department contended that the crossing of county lines in and of itself is not determinative of what the general area of the taxpayer's regular place of employment is. Since the taxpayer's union contract provided a five-county area (including Ozaukee) to be an area for which no travel expense was payable by the employer, this fixed Port Washington as being within the taxpayer's general area of employment. The department also took the position that the taxpayer's employment in Port Washington was not "temporary", but instead "indefinite".

The taxpayer, on the other hand, pointed out that the Port Washington area is not considered as part of "Metropolitan Milwaukee", even in the Metropolitan phone book. The taxpayer testified that the Port Washington work assignment was to be for a period of five to six weeks.

The Court determined that the taxpayer had met his burden of proof that the Port Washington job was in fact "temporary" employment, not indefinite employment. However, the taxpayer failed to establish that the area involved was outside of his general work area.

The taxpayer has not appealed this decision.

Key Line Freight, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 12, 1984). During the period under review, 1977 and 1978, Key Line Freight, Inc. was a Michigan corporation doing business in Wisconsin. The issues are as follows: (1) whether the assessment against Key Line Freight, Inc. (Key Line) is barred by reason of the department not filing a claim against Key Line under the Michigan Statutes relative to corporate dissolution and the Full Faith and Credit Clause of the United States Constitution, (2) whether s. 71.337, Wis. Stats., violates the Equal Protection Clause of the United States Constitution, (3) whether the

assessment against Key Line constitutes an unfair apportionment of Key Line's income and therefore violates the Due Process Clause of the United States Constitution, (4) whether the assessment against Key Line violates the Commerce Clause of the United States Constitution, and (5) whether Key Line's gain on the sale of its capital assets constitutes business income subject to apportionment within the meaning of ss. 71.07(1m) and (2), Wis. Stats.

Key Line Freight, Inc. was organized under the laws of Michigan and engaged in the business of the interstate motor transportation of general commodities throughout a number of midwestern states including Wisconsin. It had its principal offices in Grand Rapids, Michigan. In 1977 and 1978, Key Line filed Wisconsin franchise tax returns showing that approximately 13% of its total freight pick-ups occurred in Wisconsin and approximately 9% of the total miles its tractor trailers were driven occurred in Wisconsin. It leased terminal facilities in Milwaukee and Appleton, Wisconsin. In 1977, Key Line sold certain land, seven tractors, fourteen automobiles, an airplane, furniture and fixtures, and miscellaneous other equipment, all of which was used in Key Line's business activities. It realized a net gain of $7,406 on such sale and reported the gain on its 1977 Wisconsin franchise tax return as nonapportionable income.

In March, 1978, Key Line ceased business operations. On March 30, 1978, Key Line adopted a plan of complete liquidation under Section 337 of the Internal Revenue Code. In 1978, Key Line sold real property and its operating permit, both of which were used in its business activities. The proceeds of Key Line's liquidation were distributed to its shareholders, none of whom resided in Wisconsin. It realized a gain of approximately $50,000 on the real property and approximately $2,800,000 on the sale of its operating permit, but Key Line did not report this as income on its Wisconsin franchise tax return. On March 30, 1978, the shareholders of Key Line approved its dissolution and after proceedings under Michigan law, it ceased to exist September 17, 1980.

On July 30, 1981, the department mailed an assessment notice to Key Line assessing the gain on the sale of its land and other business assets in 1977 and the gain on the sale of its land and operating permit in 1978. A petition for redetermination was filed, which was denied by the department. During the period under review all income arising from the taxpayer's gain on the sale of its land and other business assets in 1977 and the gain on the sale of its land and operating permit in 1978 was part of the corporation's unitary business which was apportionable income under s. 71.07(1m), Wis. Stats., and taxable in the State of Wisconsin.

The Commission held that during the period under review, Key Line Freight, Inc.'s gain on the sale of its capital assets constitutes business income subject to apportionment within the meaning of ss. 71.07(1m) and (2), Wis. Stats. Therefore, the gain on the sale of business capital assets stated above is apportionable in the State of Wisconsin and should have been included in the taxpayer's corporate franchise/income tax return for the years under review. Key Line failed to meet its burden of proof to show the department's assessment to be incorrect. Laws enacted by the Wisconsin Legislature are presumed to be constitutional.

The taxpayer has appealed this decision to the Circuit Court.

Douglas J. Kimball vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 15, 1984). Under date of October 26, 1981, the taxpayer filed an amended return with the department reporting certain changes to his tax year 1979 by the Internal Revenue Service (IRS) and claiming a state tax refund of $2,171 in income tax. Under date of February 22, 1982, in an apparent denial of his claim for refund, the department issued an assessment for tax year 1979.

For the year 1979, the taxpayer was audited by the IRS. During the audit, he requested a change in his method of accounting for 1979 from the cash basis to the accrual basis. This resulted in an increase in his income by reason of the change in the method of $45,204.25. The IRS agreed to this change in accounting method. The taxpayer had certain options under the Internal Revenue Code relative to the year when the additional income must be taken into account. He decided to report as income the full $45,204.25 in the year 1979. His reason for reporting his income in this manner was to avail himself of an offsetting investment tax credit which he would otherwise lose. The taxpayer filed an amended Wisconsin income tax return (dated October 26, 1981) reporting the federal adjustments to income and reporting the $45,204.25 adjustment by a 10 year spread-forward method. His position on this matter is that the spread-forward should be for 6 years rather than 10 since he was only in business since 1974.

The issues to be determined by the Commission are whether the taxpayer is entitled to spread forward for 6 years an adjustment to income in 1979 occasioned by a change in his method of accounting under the Internal Revenue Code, and whether he waived such right by agreeing that all of such adjustments be recognized in 1979 for federal income tax purposes.

The taxpayer's position was:

"Under the federal revenue code—if several options are open to the taxpayer—he had the right to choose the option that will give him the lowest tax or be to his best advantage.

"It is my understanding that the Wis. Dept. of Revenue follows the federal revenue code except for specific stated exceptions of which the right to choose an option is not specified as not being available to the taxpayer.

"In the case of Douglas Kimball which we are now considering, he had four options

I) Take total increase in 1979
II) Spread back equally to 1978 & 1977
III) Re-calculate 1977 & 1978 using the new method
IV) Spread Forward 6 years

"I believe the option chosen on the federal tax return for good and sufficient reasons and facts does not preclude using a different option on the state tax return."

His authority for his position was a photocopy of 3 pages from a Commerce Clearing House publication containing Internal Revenue Code Section 481(a), (b) and (c); a part of IRS Regulation s.1.481-1 prior to the amendment of s. 481(b) by Public Law 94-455 (1976); and a portion of Internal Revenue Code Section 466 (e) and (f).

The Commission held that when a taxpayer has an election under the Internal Revenue Code, it is possible in some instances to make one election for federal income tax purposes and to make another election for Wisconsin income tax purposes. In this case, the taxpayer is not entitled to a spread-forward of income for 6 years as an adjustment to income on his 1979 Wisconsin individual income tax return as no such election is provided for in Internal Revenue Code Section 481 for the year 1979 as he asserts.

The taxpayer has not appealed this decision.

Anthony D. Maglio vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 15, 1984). In 1978, the taxpayer was ordered by the Milwaukee County Circuit Court to quitclaim all of his interest in his jointly-owned homestead to his wife, the other joint owner, pursuant to a judgment of divorce. The transfer was in lieu of alimony. The total fair market value of the homestead at the time of transfer was $60,000 and the total cost basis was $35,900.

On February 1, 1982, the department issued an income tax assessment against the taxpayer in which it assessed a $12,050 gain realized from the transfer of his one-half interest in the homestead in question. The gain was computed as follows:

One-half of fair market value	$30,000
Less one-half of adjusted basis	17,950
Taxable Gain	$12,050

On February 17, 1982, Mr. Maglio filed a petition for redetermination of the assessment with the department, which it denied on May 24, 1982. On June 17, 1982, the taxpayer appealed the denial to the Tax Appeals Commission.

The Commission held that the taxpayer was properly assessed on the tax for one-half of the appreciation that occurred prior to the transfer of his jointly-owned homestead to his ex-spouse.

The taxpayer has not appealed this decision.

Eugene F. Mower vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 20, 1984). The issue in this case is whether the taxpayer is the record owner of real estate transferred, and whether the gain from the real estate transfer may be excluded under the nonrecognition of gain provisions of Internal Revenue Code Section 351.

Prior to 1977 the taxpayer acquired a 1/3 interest as tenant in common in an apartment building located in Chippewa Falls, Wisconsin. In February of 1977 the taxpayer attempted to transfer his 1/3 interest in the property to the Mower Insurance Agency, Inc., a corporation in which he owned the controlling interest. The transfer was reported in the corporate minutes of Mower Insurance Agency but was not evidenced by a deed or other conveyance of record, or recorded with the Register of Deeds. The taxpayer did not report any gain or loss on the transfer on his 1977 individual income tax return.

In September of 1977 the taxpayer, as an individual, executed a warranty deed transferring his interest in the apartment building to the Treeline Corporation. This deed was recorded with the Chippewa County Register of Deeds. In exchange for the property the Treeline Corporation issued stock to Mower Insurance Agency. Mower Insurance Agency did not report the transfer on its 1977 franchise tax return. After the transfer neither the taxpayer nor Mower Insurance Agency was in control of Treeline Corporation.

The department assessed a $78,000 gain to the taxpayer on the transfer of real estate in 1977. The taxpayer contends that the gain on the transfer of the real estate is subject to the nonrecognition of gain provisions of Internal Revenue Code Section 351 which states, "no gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control . . . of the corporation."

The Tax Appeals Commission concluded that title to real estate cannot be transferred by corporate minutes; thus, the taxpayer did not effect a valid transfer of his interest in the property to the Mower Insurance Agency. Nonrecognition of gain provisions under IRC Section 351 do not apply to the transfer to Mower Insurance Agency since this was not a valid transfer. Also, the nonrecognition of gains provisions do not apply to the transfer to Treeline Corporation because the Mower Insurance Agency, and not the taxpayer, received the stock of Treeline. The taxpayer held record title in the property at the time of its transfer to Treeline Corporation and must report the gain.

The taxpayer has not appealed this decision.

Roland Murphy vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 1, 1984). On the 1981 income tax return, the taxpayer had various properties that were depreciated under the ACRS provisions of the Internal Revenue Code. For federal purposes and for state purposes, these are considered tax preference items, and consequently, there are various minimum tax provisions that apply under the Internal Revenue Code and in the Wisconsin Tax Statutes. Section 71.60, Wis. Stats., defines tax preference items to mean items enumerated in Section 57(a) of the Internal Revenue Code, subsections (2), (3), (6), (8) and (11). Subsection (2) addresses accelerated depreciation. Subsection (12) addresses the specific type of accelerated depreciation under review here, the ACRS accelerated depreciation. The only question for determination is if the accelerated depreciation on the taxpayer's return, which is Section 57(a)(12) ACRS depreciation, is included as a general category of accelerated depreciation for purposes of including it in the minimum tax preference calculation.

During the period under review, ACRS of $17,637 is subject to the minimum tax on tax preference items pursuant to IRC Section 57. The taxpayer has calculated this amount and appropriately set it forth on Form 4625 at Line 1(a)(2). This line is designated "accelerated depreciation on ACRS property—other real property that is nonrecovery property or 15-year real property." In filing the minimum tax counterpart for Wisconsin, Form MT, the taxpayer excluded the $17,637 of ACRS on 15-year real property. The department has added this amount to the Form MT for purposes of calculating the appropriate minimum tax.

The Commission ruled that the taxpayer's 1981 return follows the Code as of December 31, 1980 for Wisconsin tax purposes. Wisconsin's minimum tax is calculated on items enu-