regular trips from his home in Milwaukee to the restaurant in Green Bay, as often as six days a week.

The taxpayer participated in restaurant meetings, direct negotiations with vendors, scrutiny of the restaurant's daily revenues, as well as various other duties. The taxpayer was involved in the corporation's checking accounts, savings account, and credit card operations. The taxpayer maintained a close relationship with the restaurant until it closed in January of 1995.

The Commission concluded the taxpayer was a responsible person under both sec. 71.83(1)(b)2, Wis. Stats. and sec. 77.60(9), Wis. Stats. The taxpayer had the authority and the duty to pay the company's withholding and sales tax liabilities, but he intentionally breached his duty.

The taxpayer received authorization from the restaurant's directors to take charge of the daily operations of the restaurant. He was given the **authority** to run the business. Once the taxpayer had the authority, he had a **duty** to comply with the law. He understood the tax situation but did not correct it. A person who is either given or assumes authority to operate a business has a duty to see that the business satisfies its tax obligations. The taxpayer **intentionally breached his duty** because he failed to file tax returns on a timely basis and failed to pay the corporation's tax liabilities.

The taxpayer has not appealed this decision. □

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 INCOME TAXES

1 Penalty Related to Sale or Distribution of Business Assets or Assets Used in Farming to a Related Person

Statutes: Sections 71.05(6)(b)25 and 71.83(1)(d), Wis. Stats. (1997-98)

Background: Section 71.05(6)(b)25, Wis. Stats. (1997-98), provides a subtraction from federal adjusted gross income when computing Wisconsin adjusted gross income for certain gain on the sale or other disposition of business assets or assets used in farming when such assets were sold or disposed of to a related person.

Section 71.83(1)(d), Wis. Stats. (1997-98), provides that if a person who purchases or otherwise receives business assets or assets used in farming, of which the gains realized by the transferor on the sale or disposition of such assets are exempt from taxation under sec. 71.05(6)(b)25, Wis. Stats. (1997-98), sells or otherwise disposes of the assets within two years after the person purchases or receives the assets, the person is subject to a penalty.

The penalty is equal to the amount of income tax that would have been imposed on the capital gains received by the transferor if the subtraction in sec. 71.05(6)(b)25, Wis. Stats. (1997-98), did not apply, multiplied by a fraction. The denominator of the fraction is 24 and the numerator is the difference between 24 and the number of months between the date on which the person purchased or otherwise received the assets and the month in which the person sells or otherwise disposes of the assets.

Question 1: Does the penalty in sec. 71.83(1)(d), Wis. Stats. (1997-98), apply when there has been an involuntary conversion of assets that were purchased or otherwise received from a related person within the two-year period? (An involuntary conversion occurs when your property is destroyed, stolen, condemned, or disposed of under the threat of condemnation, and you receive other property or money in payment, such as insurance or a condemnation award.)

Answer 1: No.

Example 1: Taxpayer A sells business assets to his son. Included in the assets was a building for which Taxpayer A claimed the subtraction in sec. 71.05(6)(b)25, Wis. Stats. (1997-98), on his 1998 Wisconsin income tax return for gain on the sale of a business asset to a related person. In 1999, a fire destroys the building. At the time of the fire, the son had held the building for 11 months. The building was insured, and the son built a new building with the insurance proceeds. The son is not subject to the penalty in sec. 71.83(1)(d), Wis. Stats. (1997-98).

Example 2: The facts are the same as in Example 1, except that the son did not replace the building. The son is still not subject to the penalty in sec. 71.83(1)(d), Wis. Stats. (1997-98). The penalty does not apply in the case of an involuntary conversion, regardless of whether or not any monies or insurance proceeds received are reinvested in similar property.

Question 2: Does the penalty in sec. 71.83(1)(d), Wis. Stats. (1997-98), apply when cows or other farm livestock die within the two-year period?

Answer 2: No.

Example 3: Taxpayer B sells 10 dairy cows to his son. Taxpayer B claimed the subtraction in sec. 71.05(6)(b)25, Wis. Stats. (1997-98), on his 1998 Wisconsin income tax return for gain on the sale of the cows to a related person. Two of the dairy cows die within six months of the purchase. The son is not subject to the penalty in sec. 71.83(1)(d), Wis. Stats. (1997-98).

Example 4: The facts are the same as in Example 3, except that the cows did not die. Instead, the son decided to cull his herd and sold two of the cows. The son is subject to the penalty in sec. 71.83(1)(d), Wis. Stats. (1997-98), as he sold the cows within two years of the date purchased from the related person. ☐

2 Thrift Savings Plan Distributions

Statutes: Section 71.05(1)(a), Wis. Stats. (1997-98)

Background: Section 71.05(1)(a), Wis. Stats. (1997-98), provides that all payments received from United States government civilian employe and military personnel retirement systems are exempt from Wisconsin income tax if the payments are paid on the account of any person who was a member of the retirement system as of December 31, 1963. The exemption does not apply to tax-sheltered annuity benefits.

One component of certain federal employe retirement systems is the Thrift Savings Plan. Federal employes may make contributions to the Thrift Savings Plan which may or may not be matched to some extent by the government. All contributions to the Thrift Savings Plan are made using *before* tax dollars.

Question: Do distributions from the federal Thrift Savings Plan to a person who was a member of a federal retirement system as of December 31, 1963, qualify for the exemption under sec. 71.05(1)(a), Wis. Stats. (1997-98)?

Answer: No. Distributions from the Thrift Savings Plan are tax-sheltered annuity benefits and are taxable in full by Wisconsin. ☐

3 Withholding Under an Adoption Assistance Program

Statutes: Sections 71.63(6) and 71.64, Wis. Stats. (1997-98)

Background: Federal law (sec. 137, Internal Revenue Code) provides an exclusion from an employe's gross income for amounts paid or expenses incurred by an employer for qualified adoption expenses in connection with the adoption of an eligible child by an employe if such amounts are furnished pursuant to an adoption assistance program. The maximum exclusion is $5,000 ($6,000 for the adoption of a child with special needs). The exclusion is phased out for taxpayers with modified adjusted gross income between $75,000 and $115,000. If a taxpayer's modified adjusted gross income is $115,000 or more, no exclusion is available.

The exclusion from gross income for the amounts paid or expenses incurred by an employer pursuant to an adoption assistance program applies for Wisconsin.

Section 71.64, Wis. Stats. (1997-98), requires an employer to withhold Wisconsin income tax from wages at the time of payment of such wages. "Wages" is defined in sec. 71.63(6), Wis. Stats. (1997-98), as all remuneration for services performed by an employe for an employer with certain exceptions. "Wages" does not include the amount of remuneration not subject to Wisconsin income tax.

Question 1: Is an employer required to withhold Wisconsin income tax for amounts paid or expenses incurred for qualified adoption expenses in connection with the adoption of an eligible child by an employe under an adoption assistance program?

Answer 1: No. Amounts paid or expenses incurred by an employer for qualified adoption expenses under an adoption assistance program that meets the requirements of sec. 137 of the Internal Revenue Code are not subject to Wisconsin income tax withholding. □

SALES AND USE TAXES

Note: The following tax release interprets the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county and 0.1% stadium sales and use taxes may also apply. For information on sales or purchases that are subject to the county or stadium sales and use tax, refer to Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information.*

4 Admissions — County Fairs

Statutes: Section 77.52(2)(a)2, Wis. Stats. (1997-98)

Background: Effective August 1, 1998, sec. 77.52(2)(a)2, Wis. Stats. (1997-98), provides that admissions to county fairs are not subject to Wisconsin sales or use tax. Questions have been raised as to what fairs and which admissions qualify for this exemption.

Question 1: Does "county fair" include the district fairs held annually in Marathon, Douglas, Wood, LaCrosse, and Chippewa counties?

Answer 1: Yes.

Question 2: Does the fact that a county fair is operated by a 4-H or non-county agricultural society eliminate the county fair from exemption?

Answer 2: No.

Question 3: Does "county fair" include the Wisconsin State Fair in Milwaukee County and the World Dairy Expo?

Answer 3: No.

Question 4: Does "county fair" include a community festival limited to amusement rides, musical performances, food stands, and other fund raising activities?

Answer 4: No.

Question 5: What "county fair" admissions are not subject to Wisconsin sales or use tax under sec. 77.53(2)(a)2, Wis. Stats. (1997-98)?

Answer 5: Admissions that grant access to the county fair grounds are not subject to Wisconsin sales tax under section 77.52(2)(a)2, Wis. Stats. (1997-98) (e.g., main gate admissions). Other admissions once admitted to the fairgrounds, such as charges to enter a beer tent, attend a grandstand entertainment performance, or have access to amusement games and rides are taxable, unless some other exemption or exclusion applies (e.g., occasional sale). □