STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 85-7 **September 17, 1985**

SUBJECT: Summary of Recent Significant Delaware Tax Case Decisions Issued by Tax Appeal Board and Appellate Courts.

1. George E. & Florence Lewis v. Director of Revenue, Tax Appeal Board, Dkt. No. 809 (January 25, 1985).

Personal Income Tax - Delaware Source Income. A non-resident had accumulated unused vacation time of four weeks in his employer's "Vacation Bank" at the time of his transfer to a facility of the same employer located in Delaware. The taxpayer continued to work for and accrue vacation time while employed at the Delaware facility. On retirement, the taxpayer had accumulated unused vacation time of eight weeks in the Bank. From the time of transfer until his retirement, the taxpayer used twenty weeks of vacation allowance. On retirement, petitioner received a lump sum payment for accrued and unused vacation time, and he attempted to exclude an amount equal to four weeks of that payment as non-Delaware source income. The Board held the entire lump sum payment taxable to petitioner as Delaware source income. When applied to the number of vacation weeks earned and the number of vacation weeks used while petitioner worked in Delaware, the FIFO inventory method left no doubt that all unused vacation had been attributable to Delaware employment. In reaching this conclusion, the Board relied particularly on the fact that petitioner was not entitled to payment for unused vacation time until he retired.

2. Director of Revenue v. Elmer T. & Theodosia H. Gove, Del. Super. CA No. 84A-SE-25, Balick J., (May 22, 1985).

Mercantile Taxes - Definition of Contractor's Gross Receipts. Reversing the Tax Appeal Board, the Superior Court held that money received by a contractor and used for the purchase of supplies is included in taxable gross receipts under 30 Del. C. §2501(2), even where the customer selected the supplies and applied them to the contractor's account, and where the contractor made no profit on furnishing the supplies.

3. Frank H. (Jr.) & Maryella C. Nickel v. Director of Revenue, Tax Appeal Board, (June 14, 1985).

Personal Income Tax - Penalty for Late Filing. Taxpayers were assessed a penalty based upon a late filed return in absence of an extension. Failure to file for an extension of time was ostensively based on taxpayers' receipt of a refund in earlier years and upon advice of a clerk in the Division's Taxpayer Assistance Unit that it was not necessary to file for an extension if a refund

was expected. The Division's issuance of a penalty assessment was affirmed based upon the fact that the petitioners owed tax, had not filed or obtained an extension, and had filed and paid their taxes late.

4. John S. & Mary Burpulis v. Director of Revenue, Del. Supr., No. 106 (June 26, 1985) Herrmann, C.J.

Personal Income Tax - Two Earner Deduction - Computation of Tax. The Supreme Court affirmed the Superior Court's earlier reversal of the Tax Appeal Board in this case. At issue was the availability of the two-earner deduction (available only to federal taxpayers filing joint returns) to married taxpayers filing separate Delaware returns. Based on the well-established concept of the marital taxable unit, its corollary distinction between aggregate and separate adjusted gross income, and on the Secretary of Finance's authority to promulgate regulations not inconsistent with Title 30, the Court held that the deduction was available only to taxpayers filing joint Delaware returns and hence not available to the petitioners in this case.

5. Paul O. Meder (Deceased) and Jane M. Meder v. Director of Revenue, Tax Appeal Board, Dkt # 829, (August 12, 1985).

Personal Income Tax - Marital Unit - Computation of Tax. Decedent was subject to forgiveness of personal income tax under 30 Del. C. §1204 (a) in that, for purposes of the litigation, he died as an active member of the Armed Forces during an induction period and in a combat zone. Decedent's wife claimed exemption under the same section in that husband and wife were eligible to file a joint return for the year in question. Relying on the principles enunciated by the Supreme Court in Burpulis v. Director, the Board held that the exemption extends only to the decedent individually, and not to the marital unit comprising decedent and his wife.

6. Franklin Fiber-Lamintex Corp. v. Director of Revenue, Del. Super., CA No.84-A-MY-2, Gebelein J., (August 28, 1985).

Mercantile Taxes - Definition of "Sale". The Superior Court affirmed the Tax Appeal Board's holding that the phrase "goods sold within the State" in the wholesalers' gross receipts law [30 Del. C. §2901 (b)(2)] as it existed prior to January 1, 1985, related to the passage of legal title within Delaware. The Court based its decision on the common law and Uniform Commercial Code definitions of "sale". It also rejected the petitioner's contention that the tax as so construed violated the Commerce Clause, noting particularly that the tax is apportioned exactly to the activities taxed. Petitioner has filed a motion for reargument.

Robert W. Chastant
Director of Revenue

WMR/bsk