

and Kimberly Jackson are the grandchildren of the claimant. During the years 1983 and 1984, Camille Jackson and Kimberly Jackson resided with their grandfather rather than with their mother, Pearl Mae Jackson.

The claimant applied for AFDC and received AFDC checks in the amounts of

\$5,120 in 1983 and \$5,334 in 1984 for the support of his granddaughters. The claimant did not report the AFDC payments as household income on his 1983 and 1984 Wisconsin homestead credit claims.

The Commission concluded that the claimant is required to report as income on his 1983 and 1984 Wisconsin home-

stead credit forms the AFDC checks received for the support of his granddaughters.

The claimant 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. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. 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. Credit for Income Taxes Paid to Other States (p. 12)
2. Depreciation of Luxury Automobiles (p. 14)
3. Filing Requirement for Dependents with Unearned Income (p. 14)
4. Interest Received from Student Loan Marketing Association Obligations (p. 15)
5. Itemized Deduction Credit-Interest Paid on a Loan to Purchase Stock in an Employee-Owned Business (p. 15)

Corporation Franchise or Income Taxes

1. Mortgage Banker's Apportionment Formula (p. 16)
2. Sales Factor: Treatment of Intangible Income (p. 17)

Sales/Use Taxes

1. Real vs. Personal Property-Service Station Canopies (p. 17)
2. Sales/Use Tax Due on the "Trade-In" of Motor Vehicles (p. 18)
3. Third Party Purchases Car Through Auto Manufacturer's Employee (p. 18)

County Sales/Use Taxes

1. Contracts Entered Into Before Effective Date of County Tax (p. 18)
2. County Tax: Location at Which Metered Gas and Electricity is Sold (p. 19)

INDIVIDUAL INCOME TAXES

1. Credit for Income Taxes Paid to Other States

Statutes: Section 71.09(8)(c), 1985 Wis. Stats., and section 71.60, 1983 Wis. Stats., 1985 Wis. Stats.

Note: This Tax Release supersedes the Tax Releases titled "Credit for Minimum Tax Paid to Other States" in *Wisconsin Tax Bulletin* 37 and "Credit for Taxes Paid to Other States - New York Minimum Income Tax" in *Wisconsin Tax Bulletin* 44.

Facts: Section 71.09(8)(c), Wis. Stats., provides for a credit against Wisconsin net income taxes for income taxes paid to other states. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

Question 1: If a taxpayer pays a minimum tax to another state based on tax preference items enumerated in section 57(a)(2) [accelerated depreciation on real property], (3) [accelerated depreciation on leased personal property], (6) [circulation and research and experimental expenditures], (8) [depletion], (9) [capital gains deductions], (11) [intangible drilling costs], and (12) [accelerated cost recovery deduction] of the Internal Revenue Code, may this minimum tax payment be claimed as a credit against Wisconsin net income taxes?

Answer 1: Yes, a minimum tax paid to another state which is based on the tax preference items enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

Example A: In 1985, a full-year Wisconsin resident sold real estate located in California and realized a \$60,000 long-term capital gain. Under California law, one-half of the gain on property held more than 5 years, or \$30,000, is reported as part of the computation of the California income tax. The other half of the gain is reported as a capital gain tax preference item in the computation of the California minimum tax. The taxpayer paid \$2,070 of California income tax and \$930 of California minimum tax, for a total of \$3,000.

Since the taxpayer was a full-year Wisconsin resident, the gain on the sale of California real estate is taxable by Wisconsin. Forty percent of the gain, or \$24,000, is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain, or \$36,000, is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The entire \$60,000 of gain is taxed by both California and Wisconsin. Therefore, the taxpayer may claim both the \$2,070 California income tax payment and the \$930 California minimum tax payment, for a total of \$3,000, as a credit against Wisconsin net income taxes.

Example B: Assume in Example A that the taxpayer had realized only a \$15,000 long-term capital gain. One-half of the gain, or \$7,500, is reported as part of the computation of the California income tax. The other half is reported as a capital gain tax preference item in the computation of the California minimum tax. The taxpayer paid \$300 of California income tax and \$10 of California minimum tax, for a total of \$310.

Forty percent of the gain, or \$6,000, is reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for Wisconsin minimum tax because the sum of the taxpayer's capital gain deduction and other tax preference items is below the \$10,000 Wisconsin minimum tax threshold for 1985. Only \$6,000 of the gain is taxed by both California and Wisconsin. Therefore, the taxpayer may claim only \$240 of the California income tax payment as a credit against Wisconsin income taxes. The \$240 credit is computed as follows:

$$\frac{\$6,000 \text{ taxed by both CA and WI}}{\$7,500 \text{ taxed for CA income tax purposes}} \times \$300 \text{ CA income tax paid} = \$240 \text{ credit for taxes paid to CA}$$

The taxpayer cannot claim credit for any part of the \$10 California minimum tax payment.

Question 2: If a taxpayer pays an income tax to another state on an item which is a tax preference item enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may this income tax payment be claimed as a credit against Wisconsin net income taxes?

Answer 2: Yes, an income tax paid to another state on an item which is a tax preference item enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

Example C: In 1985, a full-year Wisconsin resident sold real estate located in Illinois and realized a \$50,000 long-term capital gain. Under Illinois law, the entire gain is reported as part of the computation of the Illinois income tax. The taxpayer paid \$1,230 of Illinois income tax.

Since the taxpayer was a full-year Wisconsin resident, the gain on the sale of Illinois real estate is taxable by Wisconsin. Forty percent of the gain, or \$20,000, is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain, or

\$30,000, is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The entire \$50,000 of gain is taxed by both Illinois and Wisconsin. Therefore, the taxpayer may claim the entire \$1,230 Illinois income tax payment as a credit against Wisconsin net income taxes.

Example D: Assume in Example C that the taxpayer had realized only a \$10,000 long-term capital gain on the sale of Illinois real estate. The entire gain is reported as part of the computation of the Illinois income tax. The taxpayer paid \$240 of Illinois income tax.

Forty percent of the gain, or \$4,000, is reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for Wisconsin minimum tax because the sum of the taxpayer's capital gain deduction and other tax preference items is below the \$10,000 Wisconsin minimum tax threshold for 1985. Only \$4,000 of the gain is taxed by both Illinois and Wisconsin. Therefore, the taxpayer may claim only \$96 of the Illinois income tax payment as a credit against Wisconsin net income taxes. The \$96 credit is computed as follows:

$$\frac{\$4,000 \text{ taxed by both IL and WI}}{\$10,000 \text{ taxed for IL income tax purposes}} \times \$240 \text{ IL income tax paid} = \$96 \text{ credit for taxes paid to IL}$$

Question 3: May the credit for taxes paid to another state be offset against both the Wisconsin net income tax computed under s. 71.09, Wis. Stats., and the Wisconsin minimum tax computed under s. 71.60, Wis. Stats.?

Answer 3: For 1981 and subsequent taxable years, the credit allowable under s. 71.09(8)(c), Wis. Stats., may be offset against both the Wisconsin net income tax computed under s. 71.09 and the Wisconsin minimum tax computed under s. 71.60.

Example E: In 1985, a full-year Wisconsin resident sold Illinois real estate and paid \$1,230 of Illinois income tax on the gain realized. Forty percent of the gain is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The taxpayer owes \$850 of Wisconsin net income tax and \$1,000 of Wisconsin minimum tax. The taxpayer may claim the entire \$1,230 Illinois income tax payment as a credit against the Wisconsin net income tax of \$850 and Wisconsin minimum tax of \$1,000, resulting in net Wisconsin tax due of \$620.

Question 4: May a New York minimum income tax payment based on the 60% capital gain deduction (i.e., that portion of the capital gain which is not subject to the New York income tax) be claimed as a credit against Wisconsin net income taxes?

Answer 4: Yes, a New York minimum income tax paid which is based on the 60% capital gain deduction may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by New York is also taxed by Wisconsin.

For the 1982 taxable year, 80% of net long-term capital gains was reported as part of the computation of the Wisconsin income tax. If the sum of the taxpayer's 1982 capital gain deduction and other tax preference items was below the \$10,000 Wisconsin minimum tax threshold, 2/3 of the New York minimum income tax paid may be claimed as a credit against Wisconsin net income taxes.

For the 1983 taxable year, 60% of net long-term capital gains was reported as part of the computation of the Wisconsin income tax. If the sum of the taxpayer's 1983 capital gain deduction and other tax preference items was below the \$10,000 Wisconsin minimum tax threshold, 1/3 of the New York minimum income tax paid may be claimed as a credit against Wisconsin net income taxes.

For the 1984 taxable year and thereafter, the New York minimum income tax paid may be claimed as a credit only if the capital gain deduction is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax.

Example F: In 1985, a full-year Wisconsin resident sold real estate located in New York and realized a \$100,000 long-term capital gain. Forty percent of the gain, or \$40,000, is reported as part of the computation of the New York income tax. Sixty percent of the gain, or \$60,000, is reported as a capital gain tax preference item in the computation of the New York minimum income tax. The taxpayer paid \$3,700 of New York income tax and \$3,080 of New York minimum income tax.

Since the taxpayer was a full-year Wisconsin resident, the gain on the sale of New York real estate is taxable by Wisconsin. Forty percent of the gain is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The entire \$100,000 of gain is taxed by both New York and Wisconsin. Therefore, the taxpayer may claim both the \$3,700 New York income tax payment and the \$3,080 New York minimum income tax payment, for a total of \$6,780, as a credit against Wisconsin net income taxes.

Example G: Assume in Example F that the taxpayer had realized only a \$15,000 long-term capital gain on the sale of New York real estate. The taxpayer paid \$160 of New York income tax and \$230 of New York minimum income tax. Forty percent of the gain, or \$6,000, is reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for Wisconsin minimum tax because the sum of the taxpayer's capital gain deduction and other tax preference items is below the \$10,000 Wisconsin minimum tax threshold for 1985. Therefore, the taxpayer may claim only the \$160 New York income tax payment as a credit against net Wisconsin income taxes.

Example H: In 1986, a full-year Wisconsin resident sold New York real estate and realized a \$50,000 long-term capital gain. Forty percent of the gain is reported as part of the computation of the New York income tax. Sixty percent of the gain is reported as a capital gain tax preference item in the computation of the New York minimum income tax. Forty percent of the gain is also

reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for the Wisconsin minimum tax. Only \$20,000 of the gain is taxed by both New York and Wisconsin. Therefore, the taxpayer may claim only the New York income tax payment as a credit against Wisconsin net income taxes.



2. Depreciation of Luxury Automobiles

Statutes: Section 71.02(2)(d)11 and 12, 1985 Wis. Stats.

Background: Section 71.02(2)(d)11, 1985 Wis. Stats., provides that the Internal Revenue Code as of December 31, 1984 is to be used in determining Wisconsin adjusted gross income for the tax year 1985. Section 280F of the IRC as of December 31, 1984, provides that depreciation allowable on luxury automobiles in the first year placed in service is \$4,000 and the amount allowable in subsequent years is \$6,000. Federal law changed in regard to this depreciation deduction in 1985 as a result of an amendment by Public Law 99-44. This amendment provided that for the 1985 tax year the amount of depreciation deductible on luxury automobiles in the first year placed in service was \$3,200 and \$4,800 in subsequent years. This change takes effect for Wisconsin beginning with the 1986 tax year pursuant to s. 71.02(2)(d)12, 1985 Wis. Stats.

Question: A taxpayer places a luxury automobile in service in 1985. For Wisconsin tax purposes, the Internal Revenue Code as of December 31, 1984, applies and provides that the taxpayer may deduct \$4,000 of depreciation in regard to the automobile for the 1985 tax year. What depreciation may the taxpayer deduct in 1986 for Wisconsin purposes for this automobile?

Answer: The taxpayer may deduct \$6,000 of depreciation in 1986. The provisions of Internal Revenue Code section 280F which were in effect on the date the automobile was first placed in service apply for both the first year's and succeeding year's depreciation, even though depreciation limits changed for Wisconsin for the 1986 tax year. The new depreciation limits for luxury automobiles provided by s. 71.02(2)(d)12, 1985 Wis. Stats. (\$3,200 first year and \$4,800 subsequent year) apply only to those automobiles placed in service in the 1986 tax year and thereafter.



3. Filing Requirement for Dependents with Unearned Income

Statutes: Section 71.10(2)(a)5.d and (d), 1985 Wis. Stats.

Background: Section 71.10(2)(a)5.d, 1985 Wis. Stats., provides that every natural person who can be claimed as a dependent on another taxpayer's income tax return shall file a return if that natural person has gross income, not including earned income, of \$1,000 or more. Gross income is defined in s. 71.10(2)(d), 1985 Wis. Stats., as all income from whatever source whether in money, property or services, which is not exempt from Wisconsin income tax.

Question 1: In 1986, a dependent received dividend income of \$1,050. The dependent is entitled to the \$100 dividend exclusion. Is the dependent required to file a 1986 Wisconsin income tax return?

Answer 1: No. The dependent's gross income, not including earned income, is \$950. The first \$100 of dividends received by a dependent are excluded from gross income. Because gross income, not including earned income, is less than \$1,000, the dependent is not required to file a 1986 Wisconsin income tax return.

Question 2: In 1986, a dependent received interest income of \$800 and a nontaxable distribution which was a return of capital of \$400. Is the dependent required to file a 1986 Wisconsin income tax return?

Answer 2: No. A return of capital is exempt from Wisconsin income tax. Therefore, gross income, not including earned income, is \$800. Because gross income, not including earned income, is less than \$1,000, the dependent is not required to file a 1986 Wisconsin income tax return.

Question 3: A dependent received \$800 of interest income in 1986. In addition, the dependent incurred a short-term capital loss of \$500 from the sale of stock. The selling price of the stock was \$1,000. Is the dependent required to file a 1986 Wisconsin income tax return?

Answer 3: Yes. Gross income, not including earned income, is \$1,800, the amount of interest income (\$800) plus the selling price of the stock (\$1,000). Because gross income, not including earned income, is greater than \$1,000, the dependent must file a 1986 Wisconsin income tax return.



4. Interest Received From Student Loan Marketing Association Obligations

Statutes: Section 71.05(1)(b)1, 1985 Wis. Stats.

Facts and Question: A Wisconsin resident receives interest income from an obligation issued by the Student Loan Marketing Association (Sallie Mae). Is the interest income received from

this security considered to be income from an obligation of the United States government which is exempt from Wisconsin income tax under s. 71.05(1)(b)1, 1985 Wis. Stats.?

Answer: Yes. Interest income which an individual receives from a Sallie Mae obligation is exempt from Wisconsin income tax. Although Sallie Mae obligations are not direct obligations of the United States Government, federal law (Section 20 USCS 1087-2(l)) provides that for purposes of taxation by states, the obligations of Sallie Mae shall be deemed to be obligations of the United States.



5. Itemized Deduction Credit- Interest Paid on a Loan to Purchase Stock in an Employee-Owned Business

Statutes: Section 71.09(6r)(a), 1985 Wis. Stats.

Note: This Tax Release applies to the taxable year 1986.

Background: Persons filing a 1986 Wisconsin income tax return may claim a 5% credit against, but not to exceed the amount of, Wisconsin net income taxes due. The credit is based on certain expenses deductible as itemized deductions for federal income tax purposes. One such expense is interest paid on a loan to purchase stock in an employee-owned business from which the employee receives at least 50% of that employee's wage and salary income.

If the interest is paid by an employee on a loan to purchase stock in an employee-owned business from which the employee receives at least 50% of that employee's wage and salary income, the entire amount of interest may be used in computing the itemized deduction credit. If not, the interest that may be used in computing the itemized deduction credit is limited to \$1,200 of "other interest" (see the Tax Release titled "Interest Allowable in Computing the Wisconsin Itemized Deduction Credit" in Wisconsin Tax Bulletin 47).

Question 1: What is an "employee-owned business"?

Answer 1: An "employee owned business" is defined in s. 560.16(1)(c), 1985 Wis. Stats., as a business located in Wisconsin determined by the Department of Development to involve substantial employee participation or a cooperative organized under Chapter 185 of the statutes or a corporation in which employees own the stock of the corporation through an employee stock ownership plan as defined in 26 USC 4975(e)(7). In addition, all of the following conditions must exist.

1. A majority of the voting rights are held by employees of the business and all employees owning stock have a right to vote.