

substantial nexus test is satisfied by the fact that the taxpayer maintains offices, equipment, and personnel in Wisconsin and is incorporated in Wisconsin.

(C) The mere possibility of multiple taxation is insufficient to invalidate the tax.

(D) The United States Supreme Court has held that the "fairly related" prong is satisfied literally by the state providing "the advantages of a civilized society." *Exxon Corp. vs. Wisconsin Department of Revenue*, 447 U.S. 207, 228 (1980). Wisconsin has indeed provided Republic with such advantages, for example, the protection of Wisconsin's laws, opportunities for further commerce, the availability of fire and other emergency services, and ground preparation for emergency landings.

Pursuant to sec. 227.57(9), Wis. Stats., the Court also concluded that the complimentary snacks and peanuts provided by Republic are exempt from Wisconsin use tax under sec. 77.54(20), Wis. Stats.

The taxpayer and the department have appealed this decision to the Court of Appeals.

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Boats, vessels and barges—storage outside Wisconsin. *Leonard W. Vanasse vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 19, 1990). The issue in this case is whether the Department of Revenue correctly assessed a use tax against the taxpayer on the purchase of the boat in question, pursuant to sec. 77.53, Wis. Stats.

The taxpayer, a resident of Hudson, Wisconsin, entered into a purchase agreement regarding a 44 foot Trojan boat from a Minnesota resident. The closing on the sale occurred in August 1981, and the boat was delivered by a marina service to the taxpayer at a marina near Hudson, Wisconsin. No sales tax was paid to the state of Minnesota. On the first trip out with the boat, about 75

feet from the dock, the prop and other component parts were damaged by rocks. This necessitated towing the boat to the Hudson marina. The boat remained there for a few weeks while arrangements were made to take it to Stillwater, Minnesota for repairs. It was moved to Stillwater and remained there for the winter. The next season, in 1982, the boat was kept at dock in Stillwater, taken out once, and the taxpayer decided to sell the boat. Harris Yacht Sales of Prescott, Wisconsin handled the sale in July 1982. The boat, because of its type, was documented with the Coast Guard and not registered by the State of Wisconsin.

The Commission concluded that the taxpayer, a Wisconsin resident, did purchase the boat for use in Wisconsin, and that since the taxpayer did not pay a use tax on the boat, the department correctly assessed a use tax under Wisconsin Statutes.

The taxpayer has not appealed this decision.

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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. A Shareholder's Share of a Tax-Option (S) Corporation's Farm Income for Estimated Tax Purposes (p. 13)
2. Amortization of Bond Premium on State and Local Bonds (p. 13)
3. Credit for Taxes Paid to Other States on Tax-Option (S) Corporation and Partnership Income (p. 14)
4. Disability Income Exclusion (p. 15)
5. Exclusion of Capital Gains on Small Business Stock (p. 15)
6. Gain or Loss on the Sale of a Partnership Interest by a Nonresident (p. 22)

7. Penalties on Retirement Plans (p. 22)
8. Wisconsin Income Tax Treatment of Passive Activity Losses (p. 23)

Individual and Fiduciary Income Taxes

1. Wisconsin Filing Requirements for Qualified Subchapter S Trusts (p. 26)

Corporation Franchise or Income Taxes

1. Dividends Received Deduction - Requirement to Own Stock During Entire Taxable Year (p. 27)
2. Due Dates and Estimated Tax Payment Requirements for Short-Period Corporate Returns (p. 27)
3. Recognition of Adjustments Necessary as a Result of a Change in Method of Accounting (p. 29)
4. Return Requirements Under an "F" Reorganization (p. 29)
5. Wisconsin Research Facilities Credit (p. 30)
6. Wisconsin Tax Treatment of a Net Operating Loss Incurred in a Short Taxable Year Resulting From a Change in Accounting Period (p. 32)

7. Wisconsin Tax Treatment of Corporations With Net Operating Loss and Charitable Contribution Carryovers (p. 32)
8. Wisconsin Tax Treatment of Transactions Between Related Corporations (p. 33)

Farmland Tax Relief Credit

1. Land on Which Farmland Tax Relief Credit Is Based (p. 34)

Sales/Use Taxes

1. Nexus Standards for Foreign Corporations That Are Publishers (p. 34)

County Sales/Use Taxes

1. County Use Tax - Purchaser's Liability if Seller Fails to Charge Sales Tax (p. 35)
2. County Use Tax - Purchasing From a Wisconsin Seller (p. 36)

INDIVIDUAL INCOME TAXES

1. A Shareholder's Share of a Tax-Option (S) Corporation's Farm Income for Estimated Tax Purposes

Statutes: Sections 71.09(1), (3), and (4) and 71.36(1) and (1m), Wis. Stats. (1987-88).

Note: This tax release applies with respect to items passed through from a tax-option (S) corporation beginning with its 1987 taxable year and to the shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of tax-option items to the corporation's treatment.

Background: Generally, individuals deriving income subject to Wisconsin income tax, other than wages upon which taxes are withheld by the employer, must pay estimated taxes. Sec. 71.09, Wis. Stats. (1987-88). Individuals, other than farmers or fishers, who file returns on a calendar-year basis must pay estimated tax in 4 installments due April 15, June 15, and September 15 of the taxable year and January 15 of the following taxable year. A special rule applies to farmers and fishers.

Individuals who are farmers or fishers may either make only one installment payment due by January 15 or file a return and pay the tax due by March 1 of the following taxable year. Individuals are farmers or fishers if their gross income from farming or fishing for the taxable year is at least two-thirds of the total gross income from all sources shown on the income tax return for that year. Sec. 71.09(1)(a), (3), and (4), Wis. Stats. (1987-88).

Facts and Question: Taxpayer X, a Wisconsin resident individual who files income tax returns on a calendar-year basis, is a shareholder of Corporation S, a tax-option (S) corporation. All of Corporation S's gross income is from farming.

Is Taxpayer X's pro rata share of Corporation S's gross income from farming treated as gross income from farming for Wisconsin estimated tax purposes?

Answer: Yes. Taxpayer X's pro rata share of Corporation S's gross income from farming is treated as gross income from farming for Wisconsin estimated tax purposes. Shareholders of a tax-option (S) corporation must include in their Wisconsin adjusted gross income their pro rata share of the corporation's items of income, loss, and deduction. Sec. 71.36(1), Wis. Stats. (1987-88). Tax-option items included in a tax-option (S) corporation shareholder's income retain the character they would have if attributed to the corporation. Sec. 71.36(1m), Wis. Stats. (1987-88). Thus, tax-option items are included on the shareholder's return as if received or accrued, or paid or incurred, directly by the shareholder. Accordingly, Taxpayer X's pro rata share of the farm income from Corporation S is treated as gross income from farming.



2. Amortization of Bond Premium on State and Local Bonds

Statutes: Section 71.05(6)(a)1, Wis. Stats. (1987-88).

Facts and Question: An individual who is a full-year Wisconsin resident earns interest income from state or local bonds that had been purchased at a premium. The interest income is exempt from federal income tax under sec. 103 of the Internal Revenue Code (IRC). However, such interest is subject to Wisconsin income tax pursuant to sec. 71.05(6)(a)1, Wis. Stats. (1987-88), which requires the addition to federal adjusted gross income of any amount of interest, less related expenses, which is not included in federal adjusted gross income.

For federal purposes, IRC sec. 171(a)(2) prohibits the deduction of the amortizable bond premium on federally tax-exempt state and local bonds. However, IRC sec. 1016(a)(6) requires the basis of such a tax-exempt state or local bond to be reduced each year by the amortizable bond premium which is disallowed as a deduction. Therefore, if a tax-exempt state or local bond is purchased at a premium and held to maturity, the holder will not recognize any loss on the redemption of the bond for federal purposes.

What is the proper treatment of the bond premium on state and local bonds for Wisconsin income tax purposes?

Answer: The state and local bond premium should be amortized as provided in IRC sec. 171 and deducted from the interest income which must be added to federal adjusted gross income to arrive at Wisconsin adjusted gross income. The payment of bond premium is a cost of acquiring bonds that yield more than the going rate of interest. The amortization of bond premium is an expense directly related to the interest received on state and local bonds. Therefore, the addition modification for state and local bond interest is equal to the interest income earned reduced by the amortizable bond premium which is not deductible federally.

Although federal law permits individuals to elect whether or not to amortize premiums on federally taxable bonds, such an election is not provided under Wisconsin law with respect to bonds which are federally tax-exempt but taxable for Wisconsin purposes. Thus, an individual may not elect to deduct the bond premium as an adjustment to the federal gain or loss upon disposition of the bonds rather than amortizing the premium. Additionally, sec. 71.07(5)(a), Wis. Stats. (1987-88), does not permit an individual to use the bond premium on federally tax-exempt bonds in the computation of the Wisconsin itemized deduction credit.

The treatment of bond premium described above also applies to state and local bond interest income passed through to individuals from pass-through entities, including partnerships, tax-option (S) corporations, and trusts. Therefore, the pass-through entity should advise the partner, shareholder, or beneficiary, as appropriate, of the total amount of state and local interest income and the reduction required for any related bond premium.

Example: An individual purchased at a premium a federally tax-exempt state bond which pays \$600 of interest annually. The individual computed an amortizable bond premium of \$80 for 1989. Thus, the amount of interest income that the individual must report as an addition modification on his or her 1989 Wisconsin income tax return is \$520 (\$600 interest minus \$80 amortizable bond premium).



3. Credit for Taxes Paid to Other States on Tax-Option (S) Corporation and Partnership Income

Statutes: Section 71.07(7)(b), Wis. Stats. (1987-88), formerly section 71.09(8)(c), Wis. Stats. (1985-86).

Background: Section 71.07(7)(b), Wis. Stats. (1987-88), formerly numbered sec. 71.09(8)(c), provides that a Wisconsin resident who pays a net income tax to another state may claim a credit against tax otherwise payable to Wisconsin on income of the same year. The credit is allowed only if the income taxed by the other state is considered income for Wisconsin. In addition, the tax paid is deemed a net income tax paid to another state only in the year in which the income tax return for the other state was required to be filed.

If only part of the income taxed by the other state is considered taxable income for Wisconsin purposes, the allowable credit for taxes paid to other states is computed using the following formula:

$$\frac{\text{Income taxable by both states}}{\text{Income taxable by other state}} \times \text{Other state tax paid} = \text{Credit}$$

Facts and Question 1: Taxpayer A, a full-year Wisconsin resident, was a shareholder of ABC Corporation, a unitary, multistate corporation which elected to be treated as a tax-option (S) corporation for federal and state purposes. In 1985, ABC Corporation changed its method of

accounting. ABC Corporation was required to make an adjustment of \$3,000,000 in order to prevent amounts from being duplicated or omitted as a result of the change in method of accounting.

For federal purposes, ABC Corporation subtracted \$500,000 of this \$3,000,000 adjustment from its net income each year for the next 6 years beginning in 1985, as provided in sec. 481 of the Internal Revenue Code (IRC).

For states other than Wisconsin, ABC Corporation computed its income under the Internal Revenue Code and spread the \$3,000,000 adjustment over 6 years, as it did for federal purposes.

For Wisconsin purposes, ABC Corporation was required to subtract the entire \$3,000,000 adjustment from net income in the year of change pursuant to sec. 71.11(8)(b), Wis. Stats. (1985-86).

As a result of the difference in treatment of the \$3,000,000 adjustment, ABC Corporation realized net income for both federal and other state tax purposes but realized a net loss for Wisconsin for 1985.

Taxpayer A's pro rata share of ABC Corporation's 1985 federal ordinary income was \$610,000. His share of ABC Corporation's ordinary income that was taxable in states other than Wisconsin was \$200,000, and he paid \$20,000 of income taxes to other states on that income. His share of the total company net loss as computed under Wisconsin law was \$15,000. Since Taxpayer A was a full-year Wisconsin resident, he was required to include in the computation of his Wisconsin adjusted gross income his pro rata share of ABC Corporation's entire net income or net loss as computed under Wisconsin law, regardless of where it was earned or incurred.

In 1985, Taxpayer A received a \$175,000 salary from ABC Corporation for services performed in Wisconsin. The salary was taxable for federal and Wisconsin purposes but was not taxable by any other state. In addition, Taxpayer A received a \$125,000 distribution from ABC Corporation. The distribution was not taxable for federal and other state purposes but was a taxable dividend for Wisconsin.

Taxpayer A computed his adjusted gross income as follows:

	Federal	Wisconsin	Other States
Wages from ABC Corporation	\$175,000	\$175,000	\$ 0
Dividends from ABC Corporation	0	125,000	0
ABC Corporation income (loss)	610,000	(15,000)	200,000
Adjusted gross income	\$785,000	\$285,000	\$200,000

May Taxpayer A claim a credit on his Wisconsin income tax return for the \$20,000 of income taxes that he paid to other states?

Answer 1: No. Taxpayer A may not claim a credit on his Wisconsin income tax return for any part of the \$20,000 of income taxes he paid to other states. Section 71.09(8)(c), Wis. Stats. (1985-86), prohibits an individual from receiving a credit in excess of the tax due on the same income for that taxable year. Since ABC Corporation computed a total company net loss for 1985 under Wisconsin law, Taxpayer A did not pay any tax to Wisconsin on income that was taxable by other states.

Note: As a result of the federalization of Wisconsin's corporation and tax-option (S) corporation laws, IRC sec. 481 applies for Wisconsin purposes for the 1987 taxable year and thereafter.

Facts and Question 2: Taxpayer B, a full-year Wisconsin resident, was a general partner in XYZ Partnership, which had nonunitary operations in Wisconsin and Ohio. Since the Wisconsin and Ohio operations were nonunitary, the partnership determined its 1989 income or loss from Wisconsin operations and Ohio operations by means of separate accounting. The partnership had the following income (loss):

	Wisconsin Operations	Ohio Operations	Total Operations
Ordinary income (loss)	\$(1,500)	\$ 500	\$(1,000)
Capital gain	1,000	5,000	6,000

Taxpayer B reported to Ohio ordinary income of \$500 and capital gain income of \$5,000 and paid \$500 of income tax. Since Taxpayer B was a full-year Wisconsin resident, she was required to report on her Wisconsin income tax return her distributive share of XYZ Partnership's entire income or loss, regardless of where it was earned or incurred. On her Wisconsin income tax return, Taxpayer B reported an ordinary loss of \$1,000 and capital gain income of \$2,400 (40% of \$6,000).

What amount of credit may Taxpayer B claim on her Wisconsin income tax return for taxes paid to other states?

Answer 2: Taxpayer B may claim a credit of \$227 for income taxes paid to other states. This credit is computed as follows:

$$\frac{\$500 \text{ ordinary income} + \$2,000 \text{ capital gain}}{\$500 \text{ ordinary income} + \$5,000 \text{ capital gain}} \times \$500 = \$227$$

The \$500 of partnership ordinary income is considered taxable by both states, and included in the numerator of the formula, because the ordinary income or loss from both Wisconsin and Ohio operations is included in Wisconsin adjusted gross income. Since \$5,000 of the capital gain income passed through from the partnership was taxed by Ohio, and only 40% of the \$5,000 of capital gain income taxed by Ohio is taxable by Wisconsin, \$2,000 of capital gain income is included in the numerator of the formula. The denominator consists of the \$500 of ordinary income and \$5,000 of capital gain that was taxable by Ohio. This fraction establishes the percentage of the total tax of \$500 paid to Ohio that is a credit against Wisconsin income tax.

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4. Disability Income Exclusion

Statutes: Section 71.05(6)(b)4, Wis. Stats. (1987-88).

Background: Section 71.05(6)(b)4, Wis. Stats. (1987-88) provides that certain disability payments may be subtracted from federal adjusted gross income when computing Wisconsin taxable income.

The disability payments may be subtracted to the extent those payments are excludable under sec. 105(d) of the Internal Revenue Code (IRC) as it existed immediately prior to its repeal in 1983.

Under IRC sec. 105(d) an individual who qualifies for the disability income exclusion may claim the exclusion until the earliest of (a) the first day of the tax year in which he or she turns 65 years of age, (b) the first day of the tax year for which he or she chooses to treat the disability income as a pension, or (c) the day he or she reaches the age when the employer's retirement program would have required retirement (mandatory retirement age).

As a result of the repeal of IRC sec. 105(d), there no longer is a federal election to report disability income as either wages or as a pension. Disability income is reported on the federal income tax return as wages until the individual reaches minimum retirement age. Once the individual reaches minimum retirement age, disability income is reported as a pension.

Question: A taxpayer is totally and permanently disabled. For several years, the taxpayer has reported disability income as wages on his or her federal income tax return and qualified to claim the Wisconsin disability income exclusion. The employer's retirement program requires an employee to retire at age 64 and has a minimum retirement age of 62. The taxpayer became age 62 on January 1, 1989. For federal tax purposes, because the taxpayer has reached minimum retirement age, he or she must now report the disability income as a pension.

Since the taxpayer has not reached age 65 or mandatory retirement age under the employer's plan, can he or she claim the Wisconsin disability income exclusion on the 1989 Wisconsin return, even though the disability income is now reported as a pension on the federal return?

Answer: Yes, the taxpayer can claim the Wisconsin disability income exclusion for 1989 to the extent the payment is excludable under IRC sec. 105(d). The disability income exclusion is available for Wisconsin until the earliest of (a) the first day of the tax year in which a taxpayer turns 65 years of age, or (b) the day he or she reaches the age when the employer's retirement program would have required retirement (mandatory retirement age). The fact that the disability income is reported as a pension on the federal return has no effect on whether or not the exclusion may be claimed for Wisconsin.

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5. Exclusion of Capital Gains on Small Business Stock

Statutes: Sections 71.01(10) and 71.05(6)(b)6, Wis. Stats. (1987-88).

Note: This tax release supersedes the tax release titled "Small Business Stock" which appeared in *Wisconsin Tax Bulletin* 65, page 21.

Background: Under sec. 71.05(6)(b)6, Wis. Stats. (1987-88), capital gains from "small business stock" may be subtracted from federal

adjusted gross income when computing Wisconsin taxable income. The small business stock capital gains exclusion may be claimed only by a taxpayer who is an individual or a fiduciary. The exclusion is available if the taxpayer did not acquire the stock by gift, and the taxpayer submits with the Wisconsin income tax return a copy of a certification from the corporation issuing the stock. Section 71.01(10), Wis. Stats. (1987-88), defines "small business stock" and lists the items which must be included on the certification.

Under sec. 71.01(10), Wis. Stats. (1987-88), small business stock means an equitable security which the taxpayer has held for at least five years and which is issued by a corporation that meets certain requirements as of specific dates and so certifies to the taxpayer. The requirements and applicable dates are specified in sec. 71.01(10).

The small business stock capital gains exclusion is a result of 1985 Wisconsin Act 29, which created secs. 71.02(2)(fr) and 71.05(1)(b)12, Wis. Stats., effective with stock issued to a taxpayer on or after January 1, 1986. Sections 71.02(2)(fr) and 71.05(1)(b)12 were subsequently renumbered secs. 71.01(10) and 71.05(6)(b)6, Wis. Stats. (1987-88), respectively, effective January 1, 1989.

Question 1: What are the small business stock requirements under sec. 71.01(10), Wis. Stats. (1987-88), and what are the applicable dates on which those requirements must be met?

Answer 1: The answer depends on when the stock is issued to the taxpayer. The requirements and applicable dates for meeting the requirements were amended by 1987 Wisconsin Act 27, effective with stock issued on or after August 31, 1987. The requirements were again amended by 1987 Wisconsin Act 399, effective with stock issued in the corporation's taxable year 1988 and thereafter. The requirements and applicable dates for meeting them for the various dates of acquisition are as follows:

A. For stock issued from January 1, 1986 to August 30, 1987, the small business stock requirements and the applicable dates for meeting those requirements are as follows:

1. At least 50% of the corporation's property and at least 50% of its payroll were in Wisconsin on the December 31 before issuance of the stock.
2. The corporation had no more than 200 employees covered by Wisconsin unemployment insurance, including employees of any corporation that owned more than 50% of the issuing corporation's stock, on the December 31 before issuance of the stock.
3. The corporation derived no more than 25% of its gross receipts from rents, interest, dividends, and sales of assets combined in the calendar year prior to issuance of the stock.
4. The corporation had no stock listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers' Automated Quotation system on the December 31 before issuance of the stock.

5. The corporation had not conducted a trade or business in corporate or noncorporate form, or a combination thereof, for a period of more than five years prior to the December 31 before issuance of the stock.
6. The corporation had never liquidated its assets in whole or in part for tax purposes only in order to fulfill requirements 1 to 5 above and then reorganized, as of the December 31 before issuance of the stock.

B. For stock issued on August 31, 1987 or thereafter by a corporation incorporated prior to the calendar year in which the stock is issued, the small business stock requirements and the applicable dates for meeting those requirements are as follows:

1. At least 50% of the corporation's property and at least 50% of its payroll were in Wisconsin on the December 31 before issuance of the stock.
2. The corporation had no more than 500* employees covered by Wisconsin unemployment insurance, including employees of any corporation that owned more than 50% of the issuing corporation's stock, on the December 31 before issuance of the stock.

***Note:** For stock issued from August 31, 1987 to the end of the corporation's taxable year 1987, the number of employees is 200 rather than 500.

3. The corporation derived no more than 25% of its gross receipts from rent, interest, dividends, and sales of intangible investment assets combined in the calendar year prior to issuance of the stock. However, if the corporation had been incorporated for two calendar years or less as of the date the stock is issued and derived less than \$3,000 of that type of income during that time, the 25% gross receipts limitation does not apply.

Example 1: XYZ Corporation, incorporated prior to January 1, 1988, issues stock to a taxpayer on June 30, 1988. The 25% gross receipts limitation applies to XYZ's gross receipts for calendar year 1987. However, if XYZ was incorporated on or after June 30, 1986 (two years or less prior to the issuance of the stock), the 25% gross receipts limitation does not apply if XYZ derived less than \$3,000 of gross receipts from rents, interest, dividends, and sales of intangible investment assets combined from the date of incorporation to June 30, 1988.

4. The corporation had no stock listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers' Automated Quotation system on the December 31 before issuance of the stock.
5. The corporation had never liquidated its assets in whole or in part for tax purposes only in order to fulfill requirements 1 to 4 above and then reorganized, as of the December 31 before issuance of the stock.

C. For stock issued on August 31, 1987 or thereafter by a corporation incorporated during the calendar year in which the stock is issued, the small business stock requirements and the applicable dates for meeting those requirements are as follows:

1. At least 50% of the corporation's property and at least 50% of its payroll were in Wisconsin on the date the stock was issued.
2. The corporation had no more than 500* employees covered by Wisconsin unemployment insurance, including employees of any corporation that owned more than 50% of the issuing corporation's stock, on the date the stock was issued.

*Note: For stock issued from August 31, 1987 to the end of the corporation's taxable year 1987, the number of employees is 200 rather than 500.

3. The corporation derived no more than 25% of its gross receipts from rent, interest, dividends, and sales of intangible investment assets combined from the date of incorporation to the date the stock was issued. However, if the corporation derived less than \$3,000 of that type of income during that time, the 25% gross receipts limitation does not apply.

Example 2: RST Corporation, incorporated in 1988, issues stock to a taxpayer on June 30, 1988. The 25% gross receipts limitation applies to RST's gross receipts from the date of incorporation to June 30, 1988. However, if RST's gross receipts from rents, interest, dividends, and sales of intangible investment assets combined were less than \$3,000 for that time period, the 25% gross receipts limitation does not apply.

4. The corporation had no stock listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers' Automated Quotation system on the date the stock was issued.
5. The corporation had never liquidated its assets in whole or in part for tax purposes only in order to fulfill requirements 1 to 4 above and then reorganized, as of the date the stock was issued.

Question 2: With respect to stock issued from January 1, 1986 to August 30, 1987 (Part A of answer 1), how do the requirements apply for a corporation that was not yet incorporated as of the December 31 before issuance of the stock?

Answer 2: Requirements 1, 2, 3, 4, and 6 in Part A of answer 1 would automatically be met as of the December 31 before the stock issuance. Only failure to fulfill requirement 5 would preclude stock issued by such a corporation from qualifying as "small business stock."

Question 3: To which year's tax return must the certification be attached by the taxpayer?

Answer 3: The certification must be attached to the tax return on which the capital gains exclusion is claimed. Do not submit the certification with the tax return for the year in which the stock is acquired.

Question 4: To qualify for the capital gains exclusion in sec. 71.05(6)(b)6, Wis. Stats. (1987-88), must the certification required under sec. 71.01(10), Wis. Stats. (1987-88), be given by the issuing corporation to the taxpayer at the time of issuance of the stock?

Answer 4: No. However, since the taxpayer must include the certification with the income tax return, the certification must be given to the taxpayer prior to the time the taxpayer must include it with the tax return. The Department of Revenue prefers that it be given as soon as reasonably possible after the stock is issued.

Question 5: Is there a form on which the issuing corporation may make the required certification?

Answer 5: No, there is no prescribed form. However, for a guideline of what information to include on a certification, refer to the three samples at the end of this tax release. The three samples reflect the requirements and applicable dates for meeting them, as described in answer 1.

The issuing corporation must provide a separate certification for each separate block of stock issued.

Question 6: If a corporation meets the small business stock requirements as of the December 31 before the stock is issued (or as of the date of issuance, for stock issued by a new corporation after August 30, 1987) and the corporation so certifies, would the capital gains exclusion continue to apply if the corporation subsequently fails to meet all of the requirements?

Answer 6: Yes. If the corporation meets the requirements as of the applicable dates and so certifies, the fact that one or more of the requirements are subsequently not met does not alter the character of the stock as small business stock.

Question 7: Does the capital gains exclusion apply only to the original holder of the stock shares?

Answer 7: Yes. The capital gains exclusion applies only to the person who initially acquired the stock from the corporation. The stock must be issued directly by the corporation to the person claiming the capital gains exclusion. It cannot be acquired from a secondary source, such as through a purchase from a shareholder of a corporation rather than from the corporation itself.

The taxpayer's stock acquisition from the corporation may be by purchase or it may be by some other means, such as a stock dividend or a stock split; however, the acquisition may not be by gift.

Question 8: How does the capital gains exclusion for small business stock apply with respect to a merger of two or more corporations?