



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.

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Individual Income Taxes

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binning the corporation's federal ordinary income or loss and separately stated items of income, loss, and deduction and then making various Illinois additions and subtractions.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the Illinois replacement tax paid by a tax-option (S) corporation?

Answer 1: Yes, a Wisconsin resident shareholder may claim a credit for his or her pro rata share of the Illinois replacement tax paid by a tax-option (S) corporation, provided the income taxed by Illinois is also considered income for Wisconsin.

Facts and Question 2: The Michigan single business tax is imposed on the privilege of doing business in Michigan. The tax base is business income subject to certain modifications and adjustments. For tax-option (S) corporations, business income is federal ordinary income or loss combined with the separately stated items of income, loss, and deduction. Modifications and adjustments include the addition of compensation payments and depreciation deductions and the subtraction of the net capital asset deduction.

Michigan permits an alternate method, the gross receipts short method, to compute the single business tax. Under this method, the tax applies to 50% of the corporation's adjusted gross receipts.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the Michigan single business tax paid by a tax-option (S) corporation?

INDIVIDUAL INCOME TAXES

1 Credit for Taxes Paid to Other States by Tax-Option (S) Corporations

Statutes: Section 71.07(7), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 2.955, April 1993 Register

Note: For more information, see the tax releases titled "Credit for Taxes Paid to Other States on Tax-Option (S) Corporation and Partnership Income" in *Wisconsin Tax Bulletin* 68 (July 1990), page 14, and "Credit for Income Taxes Paid to Other States" in *Wisconsin Tax Bulletin* 53 (October 1987), page 12.

Background: Section 71.07(7)(b), Wis. Stats. (1991-92), 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 income tax purposes.

Income and franchise taxes paid to another state by a tax-option (S) corporation may be claimed as a credit by that corporation's shareholders who are Wisconsin residents and who otherwise qualify for the credit.

Facts and Question 1: The Illinois replacement tax is imposed on a tax-option (S) corporation's net income. The net income is computed by com-

Answer 2: If the Michigan single business tax is measured by net income that is also subject to Wisconsin income taxation, a Wisconsin resident shareholder may claim a credit for his or her pro rata share of the tax paid by the tax-option (S) corporation.

However, Michigan single business tax computed using the gross receipts short method does not qualify for the credit for taxes paid to other states.

Facts and Question 3: Minnesota imposes taxes based on the federal taxes for built-in gains, capital gains, and excess passive income of tax-option (S) corporations.

In addition, a minimum fee, based on the sum of the property, payroll, and sales attributable to Minnesota, applies to all tax-option (S) corporations.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the taxes paid to Minnesota by a tax-option (S) corporation?

Answer 3: No, a Wisconsin resident shareholder may not claim a credit for his or her pro rata share of the tax-option (S) corporation's built-in gains tax, capital gains tax, or excess passive income tax paid to Minnesota since these taxes are not imposed on the corporation's net income.

In addition, the Minnesota minimum fee does not qualify for the credit for taxes paid to other states.

Facts and Question 4: For taxable years beginning after 1989, New York imposes a corporate level tax on tax-option (S) corporations. The tax is equal to the greater of the tax that would be computed on the entire net income base or the fixed dollar minimum tax. The entire net income base is calculated by starting with the amount of federal taxable income that the corporation would have reported if it were a regular C corporation and

making New York additions and subtractions. The fixed dollar minimum tax is determined by the corporation's gross payroll.

Federal S corporations that do not elect New York S corporation status are subject to the New York corporation franchise tax which is imposed on subsidiary capital and whichever of the following bases results in the greatest franchise tax liability: (a) allocated net income, (b) allocated capital, (c) minimum taxable income, or (d) a flat fee minimum tax that varies based on the corporation's gross payroll. Corporations paying the franchise tax on net income start with federal taxable income (before the net operating loss deduction and special deductions) and make various New York modifications. Minimum taxable income is net income modified to reflect certain tax preferences and adjustments.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the taxes paid to New York by a tax-option (S) corporation?

Answer 4: A Wisconsin resident shareholder may claim a credit for his or her pro rata share of the tax-option (S) corporation's tax paid to New York if the tax is based on net income and the income is also considered income for Wisconsin income tax purposes.

The New York fixed dollar minimum tax paid by a tax-option (S) corporation does not qualify for credit for taxes paid to other states.

In addition, the New York tax imposed on subsidiary capital as well as the franchise tax based on allocated capital does not qualify for the tax credit provided by sec. 71.07(7)(b), Wis. Stats. (1992-92).

Facts and Question 5: Pennsylvania has a corporate net income tax, a capital stock tax, a franchise tax, and

a corporate loans tax. The corporate net income tax applies to certain domestic and foreign corporations, except federal S corporations that have qualified and elected to be treated as Pennsylvania S corporations. The net income tax is measured by net income calculated by using federal taxable income (before the net operating loss deduction and special deductions) and making Pennsylvania modifications.

The capital stock tax applies to domestic tax-option (S) corporations, while foreign corporations are subject to a franchise tax on the actual value of their capital stock. The actual stock value for both domestic and foreign corporations is based on the average net income and net worth.

The corporation loans tax applies to interest-bearing obligations issued by domestic and foreign subsidiaries doing business in Pennsylvania that are held by individual Pennsylvania residents and by certain fiduciaries.

May a Wisconsin resident shareholder claim credit for his or her pro rata share of the taxes paid to Pennsylvania by a tax-option (S) corporation?

Answer 5: A Wisconsin resident shareholder may not claim a credit for his or her pro rata share of the Pennsylvania capital stock tax, franchise tax, or corporation loans tax since these taxes are not based on net income.

If a tax-option (S) corporation pays the Pennsylvania net income tax because it is not treated as a Pennsylvania S corporation, a Wisconsin resident shareholder may claim a credit for his or her pro rata share of the tax, provided the income is also subject to Wisconsin income taxation.

Facts and Question 6: Washington imposes a business and occupation tax for the act or privilege of engaging in business activities within that state.

The tax is measured by the application of rates against the value of various bases, such as the value of products manufactured, gross proceeds of sales, or gross income.

If a tax-option (S) corporation pays the Washington business and occupation tax, may a Wisconsin resident shareholder claim a credit for his or her pro rata share of the amount paid?

Answer 6: No, a Wisconsin resident shareholder may not claim credit for the Washington business and occupation tax since it is not measured by net income.

Facts and Question 7: The Texas franchise tax applies to corporations, including tax-option (S) corporations, that do business in the state or that are chartered or authorized to do business in the state. Effective January 1, 1992, the tax is based, in part, on net taxable capital and, in part, on net taxable earned surplus. The net taxable earned surplus is calculated by making certain additions and subtractions to federal taxable income.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the Texas franchise tax paid by a tax-option (S) corporation?

Answer 7: A Wisconsin resident shareholder may claim a credit for his or her pro rata share of that portion of the Texas franchise tax based on earned surplus, provided the income is also considered income for Wisconsin income tax purposes. The tax based on earned surplus is computed by subtracting the tax on net taxable capital from the tax on net taxable earned surplus.

That portion of the tax based on net taxable capital does not qualify for the credit for taxes paid to other states. □

2 Extension of Time to File Franchise and Income Tax Returns

Statutes: Sections 71.03(7), 71.24(7), 71.44(3), 71.83(3), and 71.84(2), Wis. Stats. (1991-92)

Note: This tax release supersedes the tax release titled "Extension of Time to File Franchise and Income Tax Returns," which appeared in *Wisconsin Tax Bulletin* 80 (January 1993), page 28.

Wisconsin Law

A. Individuals, partnerships, and fiduciaries (estates and trusts)

Section 71.03(7), Wis. Stats. (1991-92), provides that any extension of time granted by federal law or by the Internal Revenue Service (IRS) for filing the federal income tax return extends the time for filing the Wisconsin income tax return, provided:

1. A copy of any request for an extension required by the IRS is filed with the Wisconsin return, and
2. Wisconsin tax estimated to be due on a return for which an extension is being obtained is paid by the original (unextended) due date, in the manner prescribed by federal law for federal income taxes. (**Note:** The IRS does not require individuals to make this advance payment in order to receive a federal extension. Therefore, individuals are also not required to make advance payment of Wisconsin tax in order to obtain an extension for Wisconsin purposes.)

To satisfy the payment requirement set forth in paragraph 2 above, fiduciaries must make a reasonable estimate of their tax for the year. An estimate will be considered reasonable

if it is based on all information available at the time the estimate is made, providing a bona fide attempt was made to locate and gather information needed to make a proper estimate of total tax liability. If a reasonable estimate of tax was made, an extension of time to file will be allowed even though the return may show a balance due when it is filed.

B. Corporations (including tax-option (S) corporations and insurance companies)

Section 71.24(7), Wis. Stats. (1991-92), and sec. 71.44(3), Wis. Stats. (1991-92) for insurance companies, provides that any extension of time granted by the IRS for filing a federal return extends the time for filing the Wisconsin franchise or income tax return if a copy of any extension requested of the IRS is filed with the return.

The department may also allow a corporation additional time for filing its franchise or income tax return. This Wisconsin extension granted by the department may not exceed 30 days, except for:

1. Cooperatives or domestic international sales corporations (DISCs) — an extension of up to 6 months may be allowed.
2. Foreign corporations that do not have an office or place of business in the United States — an extension of up to 3 months may be allowed.

(**Note:** Unlike fiduciaries, corporations are not required to pay the estimated balance due on a Wisconsin return as a condition of receiving an extension of time to file that return.)

Federal Law

Section 6081(a), Internal Revenue Code (IRC) as of December 31,

1992, provides that the IRS may grant a reasonable extension of time for filing a return. Except in the case of taxpayers who are abroad, an extension cannot be for more than 6 months.

Federal regulations give the conditions for extensions (Regs. § 1.6081-1 through 1.6081-5). The regulations indicate that taxpayers generally must make an estimate of tax and remit any unpaid amount, along with the extension form, by the original due date of the return. However, in Notice 93-22 dated April 26, 1993, the IRS advised that individuals can obtain an extension of time to file even though they do not pay, on or before the original due date, the tax expected to be due with their return.

The following extensions are available for filing federal income tax returns:

A. *Individuals*

1. Form 4868 — This is an automatic 4-month extension of time to file federal returns. Payment of federal tax is not required to obtain this extension.
2. Form 2688 — This is a 2-month extension of time to file federal returns which may be granted by the IRS in cases where the taxpayer has already obtained the automatic 4-month extension of time to file but still needs additional time. Payment of federal tax is not required to obtain this extension.
3. An automatic 2-month extension of time to file federal returns is allowed to:
 - U.S. citizens or residents living outside the United States and Puerto Rico whose main place of business or post of duty is outside the United States and Puerto Rico on April 15, and
 - U.S. citizens or residents in military or naval service who are on duty outside the United States and Puerto Rico on April 15.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension.
4. Form 2350 — The IRS may grant an extension of time to file federal returns until 30 days after meeting the bona fide residence or physical presence test to qualify for the foreign earned income exclusion and the foreign housing exclusion or deduction. Payment of federal tax is not required to obtain this extension.
5. Persons serving in a combat zone are allowed an automatic extension of time to file federal returns until 180 days after the later of:
 - The last day the taxpayer is in a combat zone (or the last day the area qualifies as a combat zone), or
 - The last day of any continuous qualified hospitalization for injury from service in a combat zone.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension. (This extension is provided by sec. 7508, IRC.)

B. *Partnerships, trusts (except trusts subject to tax on unrelated business income), and real estate mortgage investment conduits (REMICs)*

1. Form 8736 — This is an automatic 3-month extension of time to file federal returns. Payment of federal tax is required for trusts and REMICs.

2. Form 8800 — This is a 3-month extension of time to file federal returns which may be granted by the IRS in cases where the taxpayer has already obtained the automatic 3-month extension of time to file but still needs additional time.
3. An automatic 2-month extension of time to file federal returns is allowed to partnerships which are required to file returns on the 15th day of the fourth month following the close of the partnership's taxable year and which keep their records and books of the account outside the United States and Puerto Rico. No special form is required to apply for the extension. (Note: The automatic 2-month extension does not apply to trusts and REMICs.)

C. *Estates and trusts subject to tax on unrelated business income*

Form 2758 — This form is used to apply for an extension of time to file federal returns for up to 6 months. Sufficient need must be shown for requests of more than 60 days. Payment of federal tax is required.

D. *Corporations (not including REMICs)*

1. Form 7004 — This is an automatic 6-month extension of time to file a federal corporate return. Payment of federal tax is required.
2. An automatic 3-month extension of time to file federal returns is allowed to:
 - Domestic corporations which transact their business and keep their records and books of the account outside the United States and Puerto Rico,
 - Foreign corporations which maintain an office or place of

business within the United States, and

- Domestic corporations whose principal income is from sources within the possessions of the United States.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension.

Questions and Answers

Facts and Question 1: Taxpayer has an extension of time to file its federal return.

Does the federal extension extend the time for filing the Wisconsin franchise or income tax return?

Answer 1: Any extension of time granted for the filing of the federal income tax return extends the time for filing the Wisconsin franchise or income tax return provided:

- A copy of any request for the federal extension is filed with the Wisconsin return, and
- In the case of fiduciaries, a reasonable estimate of any Wisconsin tax to be due on the return is paid by the original due date of the return (see Part A under "Wisconsin Law" and the chart at the end of this tax release).

Any required payment of Wisconsin tax should be made using a Wisconsin estimated tax voucher, Form 1-ES (Form 4-ES for trusts subject to tax on unrelated business income). Payment should be sent to the address printed on the Form 1-ES (or Form 4-ES).

If the taxpayer is unable to obtain Form 1-ES (or Form 4-ES) by the original due date of the Wisconsin return, payment should be submitted with a letter giving the taxpayer's name, address, and social security number (federal employer identifica-

tion number for trusts). The letter should also clearly state that the payment is to meet the extension of time to file requirement.

Estates and trusts, except trusts with unrelated business income, should mail the estimated tax payment and letter to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903. The mailing address for trusts with unrelated business income is Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

Taxpayers should take credit for extension payments as estimated tax payments when the tax return is filed.

Facts and Question 2: The taxpayer will not be requesting an extension of time to file its federal return, but needs additional time to file its Wisconsin return.

What extensions are available for Wisconsin purposes?

Answer 2:

A. Individuals, partnerships, estates, and trusts

Any of the extensions of time available to individuals, partnerships, estates, and trusts for filing a federal return are available for Wisconsin, even if an extension is not requested for federal purposes.

To use a federal extension provision for Wisconsin purposes only, the taxpayer must:

- Make the required payment of Wisconsin tax by the original due date of the Wisconsin return, as indicated in the chart at the end of this tax release, and
- Attach the appropriate federal extension form or statement, as indicated in the chart, to the Wisconsin return when filed. In lieu of the federal form, the taxpayer may

attach a statement to the front of the return indicating that a federal extension provision is being used for Wisconsin purposes only.

(Note: When the federal extension form is submitted for Wisconsin purposes only, it is not necessary to complete the lines on the form that apply only to the federal return, such as lines for entering federal tax amounts or federal withholding.)

B. Corporations

A corporation may request a 30-day extension of time to file its franchise or income tax return by submitting Wisconsin Form IC-830, Application for Extension of Time to File, to the department on or before the original due date of the return. A cooperative or DISC may request a 6-month rather than a 30-day extension. A foreign corporation that does not have an office or place of business in the United States may request a 3-month extension.

Interest and Late Filing Fees

A. Interest

Provisions applicable to individuals, fiduciaries, and corporations — Franchise and income taxes do not become delinquent during an extension period, but are subject to 12% interest per year during the extension period (see "Exception" for certain corporations). Franchise and income taxes not paid by the extended due date are delinquent and subject to interest at the rate of 18% per year until paid.

Exception: A special provision applies to corporations which have a net tax of more than \$500 and have not paid at least 90% of the tax by the unextended due date. For these corporations, under sec. 71.84(2), Wis. Stats. (1991-92), the 12% interest rate during an extension period applies only to the 10% of the tax