

Facts and Question: Corporation C is a residential housing cooperative which owns 10 contiguous single-family owner-occupied residential units. The property is listed on the National Register of Historic Places. The cooperative had been formed 70 years ago by the 10 owners of the residential units for the purpose of ensuring that all exterior maintenance, preservation, and renovation would be determined by a 7/10 vote of the owners and would apply to all the units as a whole.

The sale and purchase of a unit is individually negotiated at market

price, at which time the purchaser receives one share of no-par value stock which entitles the owner to one vote on corporate matters and a renewable 3-year lease to occupy the purchased unit.

Corporation C has incurred more than \$10,000 of costs for rehabilitating the historic property.

Assuming the rehabilitation costs are qualifying expenditures, may the shareholders of Corporation C claim the state historic rehabilitation tax credit?

Answer: No, the shareholders of Corporation C may not claim the state historic rehabilitation tax credit. Since the shareholders only lease their residential units from Corporation C, which is the owner of the property, the shareholders are not entitled to the credit even though each owns a 1/10 interest in the corporation. Since Corporation C, the owner of the property, is not a "natural person," Corporation C may not claim the credit either.



Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.

The number assigned to each ruling is interpreted as follows: The "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings issued that year. The date following the 7-digit number is the date the ruling was mailed to the requestor.

Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter rulings are included:

Individual Income Taxes

Retirement pay — situs of income

Penalties — retirement plan distributions

W9431005, May 9, 1994

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Retirement pay — situs of income

W9431006, May 9, 1994

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Sales and Use Taxes

Exemptions — advertising materials used out-of-state

W9431004, May 5, 1994

(p. 19)

✻ W9431005, May 9, 1994

Type Tax: Individual Income

Issue: Retirement pay — situs of income; Penalties — retirement plan distributions

Statutes: Sections 71.04(1)(a) and 71.83(1)(a)6, Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 3.085, Wis. Adm. Code (June 1990 Register)

This letter is in response to your request for a private letter ruling regarding the Wisconsin taxability of and early withdrawal penalty for a distribution from a retirement plan, based on Mr. B's employment while he was not a legal resident of Wisconsin.

Facts

In September 1992, you relocated to Wisconsin from another state. Shortly after relocating to Wisconsin, Mr. B requested that the funds from his previous employer's retirement plan under Internal Revenue Code (IRC) §401(k) be distributed directly to him. The reason he withdrew the money was to enable you to purchase a home.

Even though the money was requested from Mr. B's previous employer in September 1992, he did not actual-

ly receive the check from the previous employer until January 1993.

The payment was reported as income on your joint 1993 Wisconsin income tax return. In addition to the Wisconsin income taxes you paid on that amount, you also paid to Wisconsin a penalty for the early withdrawal from an IRC sec. 401(k) plan. Mr. B's age at the time of the withdrawal was 27 years.

Until you began preparing your 1993 Wisconsin income tax return, you were not aware that the money would be considered taxable to Wisconsin, since none of the money was actually earned in Wisconsin. You were advised that the reason it was taxable income was because the income was received in 1993, when Mr. B was a full-year Wisconsin resident.

Ruling Request

You request a ruling that:

- A. The distribution from Mr. B's previous employer's IRC sec. 401(k) retirement plan is not taxable for Wisconsin income tax purposes.
- B. The distribution is not subject to a Wisconsin penalty for an early withdrawal from an IRC §401(k) plan.

Ruling

- A. Since Mr. B was a legal resident of Wisconsin at the time he received the distribution from his previous employer's retirement plan, and since the payment is presumably taxable for federal income tax purposes, the distribution is taxable for Wisconsin income tax purposes (sec. 71.01(6)(h), Wis. Stats., as created by 1993 Wisconsin Act 16, and sec. 71.04(1)(a), Wis. Stats. (1991-92)).

- B. Since the income Mr. B received is not exempt from Wisconsin taxation, the distribution is subject to a Wisconsin penalty of 33% of the federal early withdrawal penalty imposed under the Internal Revenue Code (sec. 71.83(1)(a)6, Wis. Stats. (1991-92)).

Analysis

A. Taxability

Section 71.04(1)(a), Wis. Stats. (1991-92), provides that all income or loss of resident individuals shall follow the residence of the individual. This statute is further interpreted in an administrative rule, sec. Tax 3.085, Wis. Adm. Code, June 1990 Register. This administrative rule provides that employe annuity, pension, profit-sharing, or stock bonus plan distributions, including distributions from qualified deferred compensation plans under sec. 401(k) and other sections of the Internal Revenue Code, received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, *regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin.*

Therefore, even though none of the funds came from earnings or employment within Wisconsin, Mr. B's retirement plan distribution is taxable to Wisconsin because the funds were received while he was a legal Wisconsin resident, and the funds were a distribution from a qualified deferred compensation plan under IRC sec. 401(k).

Wisconsin generally follows the federal Internal Revenue Code in determining what income is taxable to Wisconsin. While

your letter did not specifically state that the distribution is taxable for federal income tax purposes, it is presumed to be taxable federally, based on the facts presented in your letter. Therefore, the amount of the distribution from Mr. B's retirement plan which is presumably taxable on the 1993 federal income tax return is also taxable on the 1993 Wisconsin income tax return (sec. 71.01(6)(h), Wis. Stats., as created by 1993 Wisconsin Act 16).

Your statement that the distribution would not have been taxable to Wisconsin if Mr. B had received the payment prior to becoming a Wisconsin resident is correct. However, this is not the case since he received the distribution after he became a legal resident of Wisconsin.

Your statement that the distribution would not have been taxable to Wisconsin if Mr. B had received the payment in 1992 after becoming a legal Wisconsin resident, because he was not a full-year Wisconsin resident in 1992, is not correct. A taxpayer's Wisconsin residency status at the time income is received determines the Wisconsin taxability. A distribution received in 1992 after becoming a legal Wisconsin resident would be taxable in 1992.

The taxes you paid to the state you previously resided in (sales taxes, automobile license fees and taxes, etc.) have no bearing on your Wisconsin income tax liability. If that state had a state income tax and the distribution was subject to its income tax, you may have been eligible for a credit against Wisconsin income taxes for the other state's income taxes you paid. However, this is not the case.

B. Penalty

Section 71.83(1)(a)6, Wis. Stats. (1991-92), provides that individuals who are liable for a federal penalty for an early distribution from a qualified retirement plan are liable for 33% of the federal penalty for Wisconsin income tax purposes, unless the income is not taxable to Wisconsin. While your letter did not specifically state that you were liable for the federal penalty, the facts presented in your letter indicate that the federal penalty did apply, and based on that presumption the Wisconsin penalty also applies. The federal penalty is 10% of the distribution, and 33% of that amount is the Wisconsin penalty. □

✱ **W9431006**, May 9, 1994

Type Tax: Individual Income

Issue: Retirement pay — situs of income

Statutes: Section 71.04(1)(a), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 3.085, Wis. Adm. Code (June 1990 Register)

This letter is in response to your request for a private letter ruling regarding the Wisconsin taxability of a distribution from an employe stock ownership plan, based on employment while you were not a legal resident of Wisconsin.

Facts

For nine years, from 1983 to 1992, you worked as an editor for Company C, a division of TUV Corporation (TUV) located in another state. As an employe of TUV, you were a participant in that company's

employe stock ownership plan (ESOP). One provision of the ESOP is that TUV's annual ESOP contribution is made only if the employe is employed through the end of TUV's fiscal year, which is September 30.

For the entire period of your employment at TUV, you were a resident of another state. You terminated your employment at TUV as of October 9, 1992, sold your home, and moved to Wisconsin later that month to join your wife. She had moved to Wisconsin in 1991.

Although the date for determining your ESOP account balance was September 30, 1992, you did not actually receive your distribution until April 1993, since it takes TUV several months to perform necessary calculations and paper work and mail out the distribution checks. The amount of the distribution was reduced for "taxes," and the balance was issued to you by a check dated April 12, 1993. You realized when you began preparing your 1993 Wisconsin income tax return in April 1994, that you may be subject, at least by the letter of the law, to Wisconsin taxation on the ESOP distribution.

Ruling Request

You request a ruling that the distribution from your ESOP account with TUV is not taxable for Wisconsin income tax purposes, since it was entirely attributable to work done in another state while you were not a legal resident of Wisconsin.

Ruling

Since you were a legal resident of Wisconsin at the time you received the distribution from your previous employer's retirement plan, and since the amount is presumably taxable for federal income tax purposes, the distribution is taxable for Wisconsin income tax purposes (sec.

71.01(6)(h), Wis. Stats., as created by 1993 Wisconsin Act 16, and sec. 71.04(1)(a), Wis. Stats. (1991-92)).

Analysis

Section 71.04(1)(a), Wis. Stats. (1991-92), provides that all income or loss of resident individuals shall follow the residence of the individual. This statute is further interpreted in an administrative rule, sec. Tax 3.085, Wis. Adm. Code, June 1990 Register. This administrative rule provides that employe annuity, pension, profit-sharing, or stock bonus plan distributions, including distributions from qualified employe stock ownership plans under sec. 401 of the Internal Revenue Code, received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, *regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin.*

Therefore, even though none of your funds came from earnings or employment within Wisconsin, your retirement plan distribution is taxable to Wisconsin because you received the funds while you were a legal Wisconsin resident, and the funds were a distribution from a qualified plan under IRC sec. 401.

Wisconsin generally follows the federal Internal Revenue Code in determining what income is taxable to Wisconsin. While your letter did not specifically state that the distribution is taxable for federal income tax purposes, it is presumed to be taxable federally, based on the facts presented in your letter. Therefore, the amount of the distribution from your retirement plan which is presumably taxable on your 1993 federal income tax return is also taxable on your 1993 Wisconsin income tax return (sec. 71.01(6)(h), Wis. Stats., as created by 1993 Wisconsin Act 16).

Your statement that the distribution would not have been taxable to Wisconsin if you had received the payment prior to becoming a Wisconsin resident is correct. However, this is not the case since you received the distribution after you became a legal resident of Wisconsin.

The Wisconsin Tax Appeals Commission and Wisconsin Courts have ruled in a number of cases that income, including personal service income, pensions, deferred compensation, retirement plans, etc., received by Wisconsin residents is taxable to Wisconsin, regardless of where the services that generated the income were performed. In addition, a private letter ruling, #W9329003, was issued on April 28, 1993, affirming this position. □

✱ **W9431004**, May 5, 1994

Type Tax: Sales and Use

Issue: Exemptions — advertising materials used out-of-state

Statutes: Section 77.54(25), Wis. Stats. (1991-92)

This letter responds to your request for a private letter ruling regarding the sales and use tax treatment of advertising brochures.

Facts

XYZ Corporation (XYZ) contracted with Taxpayer A, a Wisconsin sole proprietorship, for the production and distribution of advertising brochures.

Taxpayer A contracted with Company W, an out-of-state company with a business location in Wisconsin, to print and distribute the advertising brochures. Company W had the brochures printed by both Wisconsin and

out-of-state printers which were combined with advertising materials of other persons to form a multiple page advertising "magazine." The printers delivered the advertising "magazine" to Company W outside Wisconsin. Company W mailed the advertising magazine from a location outside Wisconsin to XYZ customers outside Wisconsin.

Request

You ask the following:

1. Is the charge by Company W to Taxpayer A for the printing and distribution of advertising brochures which are mailed to XYZ customers outside Wisconsin subject to Wisconsin sales or use tax?
2. Is the charge by Taxpayer A to XYZ for the sale and distribution of the advertising brochures subject to Wisconsin sales or use tax?

Ruling

1. The charge by Company W to Taxpayer A for the printing and distribution of advertising brochures for XYZ is not subject to Wisconsin sales or use tax because the advertising brochures are for resale to Taxpayer A.
2. The charge by Taxpayer A to XYZ for the sale and distribution of the advertising brochures is not subject to Wisconsin sales or use tax because the advertising brochures, as part of an advertising "magazine" are distributed outside Wisconsin for use solely outside Wisconsin in advertising XYZ products.

Analysis

Section 77.51(14)(intro.), Wis. Stats. (1991-92), provides that sale at retail

for purposes of imposing Wisconsin sales or use tax includes the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services.

Company W is selling and distributing advertising brochures to Taxpayer A which Taxpayer A will resell to XYZ. The sale by Company W to Taxpayer A is not a sale at retail and, therefore, Wisconsin sales or use tax does not apply to the transaction. Taxpayer A should provide Company W with a properly completed resale certificate.

Section 77.54(25), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for gross receipts from the sale of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.

The advertising brochures sold by Taxpayer A to XYZ are designed to advertise the products of XYZ and are transported outside Wisconsin for use solely outside Wisconsin. Therefore, the charge by Taxpayer A for the advertising brochures is exempt from Wisconsin sales or use tax. XYZ should provide Taxpayer A with a Certificate of Exemption (Form S-207) indicating that all of the advertising brochures are exempt because they are transported outside Wisconsin for use solely outside Wisconsin in advertising XYZ products. □