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 Effect of a Capital Gain Exclusion and a Capital Loss Carryover on the Credit for Income Taxes Paid to Other States

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

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 the net income 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 also taxed by Wisconsin.

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: In 1993, a full-year Wisconsin resident sold real estate located in California and realized a $30,000 long-term capital gain. The entire gain is taxable to California. The taxpayer has no other income or loss allocable to California, and paid $1,950 of income tax to California for 1993.

For Wisconsin tax purposes, the taxpayer has a capital loss carryover of $13,000. The net capital gain taxable to Wisconsin is as follows:

Long-term capital gain from sale of California real estate	$30,000
Less capital loss carryover	-13,000
Net long-term capital gain	$17,000
Less 60% capital gain exclusion	-10,200
Amount taxable	$ 6,800

The taxpayer has other income taxable to Wisconsin and computes a Wisconsin net tax (before deducting a credit for income taxes paid to other states) of $2,350.

May the taxpayer claim a credit on his 1993 Wisconsin income tax return for the entire $1,950 of income tax paid to California?

Answer: No. Because of the capital gain exclusion, Wisconsin tax was not paid on a portion of the capital gain. Since Wisconsin did not tax the capital gain to the same extent as California, the credit for income taxes paid to other states must be computed using the above formula. The amount of capital gain taxable to Wisconsin is $19,800 ($13,000 which is offset by the capital loss carryover, plus $6,800 which is taxable after the capital gain exclusion is applied). The allowable credit for taxes paid to California is $1,287, computed as follows:

$$\frac{\$19{,}800}{\$30{,}000} \times \$1{,}950 = \$1{,}287$$

2 Eligibility for the State Historic Rehabilitation Tax Credit

Statutes: Section 71.07(9r), Wis. Stats. (1991-92), and as affected by 1993 Wisconsin Acts 16 and 471

Background: The state historic rehabilitation tax credit is available to natural persons for 25% of the costs of preserving or rehabilitating certain historic property located in Wisconsin. Sec. 71.07(9r)(a), Wis. Stats. The costs must be incurred and the claim must be submitted by the owner of the historic property. Sec. 71.07(9r)(b)1, Wis. Stats. The historic property must be an owner-occupied personal residence. Sec. 71.07(9r)(b)2, Wis. Stats. The expenditures for preservation or rehabilitation of the historic property must exceed $10,000. Sec. 71.07(9r)(b)5, Wis. Stats.

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:

* **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-