



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:

Homestead Credit

Property taxes accrued — sewer charges
W9541008 (p. 37)

Individual Income Taxes

Pensions — federal retirement
W9541009 (p. 38)

Corporation Franchise and Income Taxes

Business loss carryforward — merger
W9543010 (p. 38)

✱ W9541008, July 20, 1995

Type Tax: Homestead Credit

Issue: Property taxes accrued — sewer charges

Statutes: Section 71.52(7), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling, regarding the inclusion of sewer charges in determining allowable property taxes accrued for Wisconsin homestead credit purposes.

Facts

You and other residents of Village V in Wisconsin are charged a sewer charge of approximately \$X per quarter for each residence, by the ABC Sewer Authority. This charge by the ABC Sewer Authority is based on the total assessed valuation of property in Village V. The charge is in no way based upon water flow, and no water is provided in the charge.

Unlike Village V, in Milwaukee County the sewer charge is included on the property tax bill (for example, the City of Milwaukee assesses \$3.072041 per \$1,000 of assessed valuation of the property, and the Village of Fox Point assesses \$3.700584 per \$1,000 of assessed valuation). You assume that these residents get credit for their sewer charges in determining allowable property taxes accrued, when they submit Wisconsin homestead credit claims.

Request

You ask that you and all residents of Village V in Wisconsin be able to combine your real estate tax bill amounts with your annual sewer charges for purposes of any Wisconsin homestead credit claims.

Ruling

No portion of the sewer charges paid by you or any other resident of Village V in Wisconsin in the manner described in your request may be used for purposes of determining allowable property taxes accrued on a Wisconsin homestead credit claim.

Analysis

Under sec. 71.52(7), Wis. Stats. (1993-94), for Wisconsin homestead credit purposes "*Property taxes accrued*" means *real or personal property taxes ... exclusive of special assessments, delinquent interest and charges for service, levied on a homestead owned by the claimant or a member of the claimant's household. 'Real or personal property taxes' means those levied under ch. 70 ...*

The statutes do not permit any portion of a sewer charge imposed by a sewer authority for services it provides to a homeowner to be treated as property taxes for purposes of calculating a homestead credit. In fact, the statutory definition of "property taxes accrued" specifically excludes "charges for service" and further defines "real or personal property taxes" to mean those levied under ch. 70 of the Wisconsin statutes. The sewer charg-

es are not levied under ch. 70 of the Wisconsin statutes.

Residents of municipalities that include sewer charges as part of their determination of property taxes accrued, which the municipalities levy under ch. 70, Wis. Stats., may include the sewer charges as property taxes accrued in the calculation of their homestead credit.

The calculation of a Wisconsin homestead credit for an eligible claimant is based on two factors: 1) total household income; and 2) property taxes accrued and/or rent constituting property taxes accrued. Since the sewer charges imposed by ABC Sewer Authority are not includable as part of "property taxes accrued," those charges do not enter into the calculation of a claimant's allowable homestead credit. □

✳ **W9541009**, July 20, 1995

Type Tax: Individual Income

Issue: Pensions — federal retirement

Statutes: Section 71.05(1)(a), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling regarding the exclusion for benefits from certain retirement plans.

Facts

You work for the U.S. Postal Service in Milwaukee and will be eligible for retirement in 1996. Your employment with the Postal Service began in 1964.

You served in the U.S. Air Force from 1960 to 1964. You have taken the option of making a deposit into the Civil Service Retirement Fund for

retirement credit buyback which covers the wages earned for the four years of service you completed in the Air Force. As a result of this retirement credit buyback, your retirement computation date, including military service, is a date in 1960.

Request

You have requested a ruling as to whether your Civil Service Retirement System benefits will qualify as exempt from Wisconsin income tax. You indicated that since you made the deposit in the retirement system, your military time, which began in 1960, should qualify as your starting date in the federal Civil Service Retirement System.

Ruling

Payments you receive from the Civil Service Retirement System are subject to Wisconsin income tax. The fact that your military time is counted in the computation of the amount of your retirement benefit does not change the fact that you first became a member of the Civil Service Retirement System in 1964, when your employment began.

Analysis

Section 71.05(1)(a), Wis. Stats. (1993-94), provides that all payments received from the U.S. Civil Service Retirement System, the U.S. military employe retirement system, certain Milwaukee city and county retirement systems, and the Wisconsin State Teachers Retirement System are exempt from Wisconsin income tax if paid on the account of a person who was a member of the retirement system as of December 31, 1963.

Therefore, under sec. 71.05(1)(a), Wis. Stats. (1993-94), your Civil Service Retirement System benefits

will be exempt from Wisconsin tax only if you were a member of the Civil Service Retirement System as of December 31, 1963.

Your employment with the U.S. Postal Service began in 1964. Based on your date of employment, you were not a member of the federal Civil Service Retirement System as of December 31, 1963.

In addition, you exercised the option to make a deposit into the Civil Service Retirement Fund for retirement credit buyback. Your exercise of this option simply allowed recognition of your years of military service for calculating the amount of your retirement benefits. It did not retroactively establish membership status in the Civil Service Retirement System as of December 31, 1963.

Because you were not a member of the Civil Service Retirement System as of December 31, 1963, your Civil Service Retirement System benefits will be subject to Wisconsin income tax. □

✳ **W9543010**, August 3, 1995

Type Tax: Corporation Franchise and Income

Issue: Business loss carryforward — merger

Statutes: Sections 71.42(2) and 71.45(2) and (4), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling with respect to the proposed statutory merger transaction and its tax effect on the Wisconsin net business loss carryforwards and the future utilization of such carryforwards by the surviving corporation.

Facts

INS Corporation, a non-Wisconsin insurance corporation, is a mutual insurer with the following wholly owned subsidiaries: SUB 1 Company, a non-Wisconsin corporation, and SUB 2 Company, a Wisconsin corporation.

SUB 1 Company will change its name to New Sub Insurance Company (NSIC). Thereafter, NSIC will be redomesticated from the other state to Wisconsin.

After the redomestication of NSIC, INS Corporation will execute a plan of reorganization whereby SUB 2 Company will merge under Wisconsin law into NSIC in an "A" reorganization (statutory merger) under Internal Revenue Code (IRC) section 368(A)(1)(A). The proposed date of the merger is January 1, 1995. After the merger, SUB 2 Company will no longer exist as a separate legal entity. NSIC will continue the business operations of SUB 2 Company after the merger.

The corporations are all on the accrual basis of accounting and are included in the consolidated federal income tax return of INS Corporation.

SUB 2 Company has a Wisconsin net business loss carryforward as of December 31, 1993.

Request

You have requested that the following rulings be issued:

1. The proposed statutory mergers under the laws of the state of Wisconsin will qualify as "A" reorganizations under IRC section 368(a)(1)(A), and each of the three corporations qualifies as "a party to a reorganization" under IRC section 368(b).

2. No gain or loss will be recognized pursuant to IRC section 361(a) to INS Corporation or any other party to the reorganization as a result of the proposed statutory merger.
3. The assets and liabilities of SUB 2 Company to be transferred to NSIC will retain the same tax bases in the hands of NSIC as that of SUB 2 Company in accordance with the provisions of IRC section 362(b).
4. Pursuant to IRC section 358(a), the basis of the stock received by INS Corporation will equal the existing basis in SUB 2 Company immediately prior to the merger transaction and the holding period of such stock will continue pursuant to IRC section 1223(1).
5. The Wisconsin net business loss carryforwards of SUB 2 Company from the tax years 1989 through 1994 will be available to NSIC, including any operating loss of SUB 2 Company from January 1, 1995, until the date of the merger should such merger occur subsequent to the proposed merger date of January 1, 1995.
6. The losses of SUB 2 Company will not be subject to limitations under IRC section 382 and thus will be 100% available to NSIC in the year of the merger.

Ruling

1. If the proposed statutory mergers under the laws of the state of Wisconsin qualify as "A" reorganizations under IRC section 368(a)(1)(A) and each of the three corporations qualifies as "a party to a reorganization" under IRC section 368(b) for federal income tax purposes, IRC sections 368(a)(1)(A) and (b) will

also apply for Wisconsin franchise or income tax purposes.

2. If no gain or loss is recognized pursuant to IRC section 361(a) to INS Corporation or any other party to the reorganization for federal income tax purposes as a result of the proposed statutory merger, IRC section 361(a) will also apply for Wisconsin franchise or income tax purposes.
3. If the assets and liabilities of SUB 2 Company to be transferred to NSIC retain the same tax bases in the hands of NSIC as that of SUB 2 Company in accordance with the provisions of IRC section 362(b) for federal income tax purposes, IRC section 362(b) will also apply to their Wisconsin tax bases.
4. If, pursuant to IRC section 358(a), the basis of the stock received by INS Corporation equals the existing basis in SUB 2 Company immediately prior to the merger transaction and the holding period of such stock continues pursuant to IRC section 1223(1) for federal income tax purposes, IRC sections 358(a) and 1223(1) will also apply for Wisconsin franchise or income tax purposes.
5. The Wisconsin net business loss carryforwards of SUB 2 Company from the tax years 1989 through 1994 will be available to NSIC as provided by IRC sections 381 and 382, including any operating loss of SUB 2 Company from January 1, 1995, until the proposed date of the merger should such merger occur subsequent to the proposed merger date of January 1, 1995.
6. If the limitations under IRC section 382 do not apply for

federal income tax purposes because the merger does not constitute an ownership change under IRC section 382(g), the Wisconsin net business losses of SUB 2 Company will not be subject to limitations under IRC section 382 and thus will be 100% available to NSIC in the year of the merger.

Analysis

The Wisconsin net income of an insurance company is federal taxable income as determined under the Internal Revenue Code, with certain

adjustments prescribed in sec. 71.45(2), Wis. Stats. (1993-94). Internal Revenue Code sections 358, 361, 362, 368, and 1223 are not modified for Wisconsin purposes. However, sec. 71.45(2)(a)1, Wis. Stats. (1993-94), requires insurers to add back to federal taxable income the amount of any loss carryforward or carryback deducted in the calculation of federal taxable income. A deduction for the Wisconsin net business loss carryforward is permitted under sec. 71.45(4), Wis. Stats. (1993-94). When IRC section 381 applies for federal income tax purposes, the successor corporation may

utilize the predecessor corporation's unused Wisconsin net business loss carryforwards sustained in the 15 preceding taxable years.

Since the Wisconsin Department of Revenue will not issue private letter rulings involving interpretations of the Internal Revenue Code, the department will not rule that IRC sections 358(a), 361(a), 362(b), 368(a)(1)(A) and (b), and 1223(1) do apply, nor will the department rule that IRC section 382 does not apply to this transaction. □