



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

Marital property law — Keogh deduction

W9621001 (p. 34)

Withholding Taxes

Nonresident entertainer — deposit, bond, withholding requirements

W9626002 (p. 35)

✱ **W9621001**, March 6, 1996

Type Tax: Individual Income

Issue: Marital property law — Keogh deduction

Statutes: Section 71.01(16), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling regarding the proper allocation of a Keogh deduction.

Facts

Taxpayer A (the "taxpayer") was married through June 30, 1994. The taxpayer is a self-employed dentist.

For the year ending December 31, 1994, all income earned prior to the divorce was reported on the taxpayer's and his former spouse's income tax returns under the provisions of the Wisconsin Marital Property Act. The self-employment income and expenses for the first six months of 1994 were allocated to and reported equally, one-half by the taxpayer and one-half by his former spouse. The self-employment income and expenses for the remaining part of the year were reported by the taxpayer.

The taxpayer made a contribution to a Keogh retirement plan for 1994. The contribution was made during 1995, after the divorce date but before the due date of the 1994 income tax return.

The amount of the Keogh contribution was determined under the provisions of the Internal Revenue Code.

You indicated that this resulted in a contribution to the Keogh retirement plan for 1994 of \$14,211 with \$8,934 allocated to the first six months of 1994 and \$5,277 allocated to the remainder of 1994.

Request

The question you ask is who is allowed to claim the deduction for the 1994 Keogh contribution for the period of time that the parties were married in 1994.

Ruling

For Wisconsin income tax purposes, the deduction for contributions to a Keogh retirement plan is allocated to the taxpayer who is reporting the related self-employment income. In this instance, the taxpayer and his former spouse are each reporting one-half of the self-employment income earned prior to the divorce. Therefore, each may claim one-half of the Keogh deduction ($\frac{1}{2} \times \$8,934 = \$4,467$) attributable to self-employment income earned prior to the divorce.

Analysis

In this instance, the taxpayer and his former spouse are reporting their income for the period prior to their divorce in accordance with the Wisconsin Marital Property Act. That is, each is reporting one-half of the marital income earned prior to their divorce.

Section 71.01(16), Wis. Stats. (1993-94), provides that "'Wisconsin taxable income' of natural persons means Wisconsin adjusted gross

income less the Wisconsin standard deduction, with losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items determined according to the manner that income is or would be allocated,”

Based on this statute, because the former spouse is reporting one-half of the self-employment income earned prior to the divorce, she is also allowed one-half of the Keogh deduction attributable to that income.

You raised the issue that the payment into the Keogh account was made after the divorce, when marital property law no longer applied to the marriage. It is true that the presumption that marital property was used to make the payment ended with the June divorce. However, the amount of the Keogh deduction was based in part on marital property income, on which the former spouse is required to pay taxes. Section 71.01(16), Wis. Stats. (1993-94), provides that when a person is required to report marital property income, that same person is entitled to all the deductions associated with the income, which in this case would include the Keogh deduction. That provision is not premised on whether marital funds were used for the payment, or even whether the marriage exists at the time of the payment. It simply requires a matching of deductions to income to which the deductions relate. Here, the Keogh deduction is partly premised upon marital income, one-half of which the former spouse is reporting, and so the deduction must also be shared.

This ruling applies only for Wisconsin income tax purposes. The department does not issue private letter rulings on the federal tax treatment of any item. If the federal treatment

of the Keogh deduction is different than the Wisconsin treatment, sec. 71.05(10)(h), Wis. Stats. (1993-94), allows an adjustment for any difference through an addition or subtraction, as appropriate, from federal adjusted gross income when computing Wisconsin taxable income. □

✱ **W9626002**, April 9, 1996

Type Tax: Withholding

Issue: Nonresident entertainer — deposit, bond, withholding requirements

Statutes: Section 71.80(15), Wis. Stats. (1993-94)

This letter responds to your original request for a private letter ruling and your subsequent additional request. The requests relate to whether your client is subject to bond, deposit, or withholding requirements as they relate to nonresident entertainers, and how to compute the amounts subject to withholding if the withholding requirement applies.

Facts

Corporation ABC (the “taxpayer”) has an agreement with Corporation DEF (“DEF”) to sponsor a series of Broadway-type theatrical productions. DEF has operations in cities outside of Wisconsin. DEF directly negotiates and signs the actual production contracts with Broadway producers (the “producer”). Nearly all performers and production personnel will be nonresidents. They will be under contract to the producer.

Tickets for each production are sold primarily as part of a series subscription, with payment for the subscription made directly to one of DEF’s non-Wisconsin offices, which will control that revenue. Single

ticket sales are made through TicketMaster and at the taxpayer’s own box office. The taxpayer will control that ticket revenue. Some of the shows in the series will be presented at a theater other than the taxpayer’s. In those cases, single ticket revenue will be collected by that theater and the taxpayer will have control of no ticket revenue apart from that derived from group sales and from sales of extra single tickets to series subscribers.

Revenues are distributed to the various parties pursuant to the particular contract for each play. In general, the producer will receive a guaranteed amount plus a royalty (computed as a percent of gross receipts) and a percentage of the profit remaining after payment of the guarantee, royalty, and local production costs. Thus, DEF and the taxpayer receive payment for their local expenses and a percent of the overall profit, which is divided pursuant to their contract.

Request

The taxpayer requests a ruling as to what, if any, bond, deposit, or withholding requirements exist pursuant to sec. 71.80(15), Wis. Stats., based on the business arrangement described under “Facts” above. If the taxpayer is required to withhold taxes under sec. 71.80(15)(e), Wis. Stats., how should the amount subject to withholding be computed?

Ruling

The taxpayer is an employer with respect to the entertainment corporations (the producers), pursuant to sec. 71.80(15)(a), Wis. Stats. (1993-94). The taxpayer is required to withhold taxes under sec. 71.80(15)(e), Wis. Stats. (1993-94), if it does not receive proof that the entertainment corporations have provided the bonds or deposits that

they are required to provide under sec. 71.80(15)(b) or (c), Wis. Stats. (1993-94), or that those requirements have been waived under sec. 71.80(15)(d), Wis. Stats. (1993-94).

If the taxpayer is required to withhold taxes under sec. 71.80(15)(e), Wis. Stats., the amount subject to withholding is the total compensation payments made to the producer by the taxpayer under the terms of the contract. "Total compensation payments" includes, but is not limited to, the guaranteed amount, the royalty computed as a percentage of gross receipts, and the percentage of the profit remaining after payment of the guarantee, royalty, and local production costs.

Analysis

The agreement between the taxpayer and DEF establishes a joint venture between the two entities, to present a series of Broadway-type theatrical productions, to be held primarily on the premises of the taxpayer.

The producers that execute contracts to produce the theatrical productions are entertainment corporations as defined in sec. 71.22(2), Wis. Stats. (1993-94). As such, the producers are subject to the bond or deposit requirements of sec. 71.80(15)(b) or (c), Wis. Stats. (1993-94).

The taxpayer, in its capacity as coventurer in the joint venture between it and DEF, is an employer with respect to the producers, pursuant to sec. 71.80(15)(a), Wis. Stats. (1993-94). As such, the taxpayer is required to withhold taxes under sec. 71.80(15)(e), Wis. Stats. (1993-94), if the taxpayer does not receive proof that the entertainment corporation (the producer) has provided the bond or deposit as required of it under sec. 71.80(15)(b) or (c), Wis. Stats. (1993-94), or that the department has waived those requirements, as provided in sec. 71.80(15)(d), Wis. Stats. (1993-94). (Note: The taxpayer is not an employer with respect to the entertainers (the nonresident performers). The producer is the employer of the entertainers.) □