



## 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

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## INDIVIDUAL INCOME TAXES

### 1 Claim for Refund Filed for the Same Issues After Appeal Period Expires

**Statutes:** Section 71.88 (1)(a), Wis. Stats. (1999-00)

**Wis. Adm. Code:** Section Tax 2.12(4)(b)2 (May 1996 Register)

**Background:** Section 71.88(1)(a) Wis. Stats. (1999-00), reads in part “. . . any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination . . .”. If the taxpayer does not file a petition for redetermination to a notice of refund, the adjustments made in the notice are final and conclusive. The taxpayer is not entitled to a refund on any subsequent claim for refund based on the same adjustments as those in the notice of refund.

**Facts and Question 1:** Taxpayer files a timely 2000 Wisconsin individual income tax return. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a timely petition for redetermination. Is the taxpayer entitled to a refund on

any subsequent claim for refund for the disallowed business expenses?

**Answer 1:** No. The notice of refund is final; the taxpayer is not entitled to a refund on any subsequent claim for refund for the disallowed business expenses.

**Facts and Question 2:** Taxpayer files timely 1999 and 2000 Wisconsin individual income tax returns. The department completes an audit of the returns and issues a notice of refund dated March 30, 2004. The notice of refund allows an additional itemized deduction credit for each year but also disallows a portion of the claimed business expenses for each year, with the net result being a refund for each year. The taxpayer does not file a timely petition for redetermination. Can the taxpayer file a claim for refund for the disallowed business expenses?

**Answer 2:** No. The notice of refund is final; the taxpayer is not entitled to a refund on any subsequent claim for refund for the disallowed business expenses.

**Facts and Question 3:** Taxpayer files a timely 2000 Wisconsin individual income tax return. In December 2002, the taxpayer files an amended 2000 Wisconsin individual income tax return, Form 1X, to claim a refund as a result of claiming additional business expenses. The amended and original returns are office audited, and the department disallows a portion of the claimed additional expenses, based on a difference in interpretation of the law. A notice of reduced refund is issued March 1, 2003. The taxpayer does not file a timely petition for redetermination. In December 2003, the taxpayer files another amended return, claiming the same additional business deductions as those disallowed in the prior notice of reduced refund. Is the taxpayer entitled to a refund on any subsequent claim for refund for the disallowed business expenses?

**Answer 3:** No. The notice of reduced refund is final, the taxpayer is not entitled to a refund on any subsequent claim for refund for the disallowed business expenses.

**Facts and Question 4:** Taxpayer files an amended 2000 Wisconsin individual income tax return to claim additional business expenses. The department disallows a portion of the claimed additional expenses, due to lack of substantiation of the expenses as requested in a letter to the taxpayer. A notice of reduced refund is issued

March 1, 2003. The taxpayer does not file a timely petition for redetermination. In December 2003, the taxpayer submits adequate substantiation to support the full deduction. Is the taxpayer entitled to the refund once the substantiation is submitted?

**Answer 4:** No. The deduction is not allowed and no additional refund will be issued. Since no timely petition for redetermination was filed for the notice of reduced refund, the notice of reduced refund is final and conclusive.

**Facts and Question 5:** Taxpayer files a timely 1998 Wisconsin individual income tax return claiming a refund of earned income credit and excess income tax withheld. During the processing of the return, the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. The taxpayer does not respond to the request for additional information. A notice of reduced refund is issued in July 1999, which allows the refund of the excess income tax withheld only. The taxpayer does not file a timely petition for redetermination. The taxpayer files a timely 1999 income tax return claiming a refund of earned income credit and excess income tax withheld. During the processing of this return, the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. This letter requests the same information that was requested for the processing of the 1998 return. The taxpayer submits the additional information that was needed for both the 1998 and the 1999 returns. Is the taxpayer entitled to the additional earned income credit for 1998?

**Answer 5:** No. Since the taxpayer did not submit a timely petition for redetermination for the 1998 notice of reduced refund, that notice of reduced refund is final and conclusive. A notice of refund for the earned income credit is issued for 1999 only. [☞](#)

## 2 Claim for Refund of a Paid Assessment

**Statutes:** Section 71.75(5), Wis. Stats. (1999-00)

**Note:** The provisions in this tax release apply for individual income tax, corporation franchise or income tax, recycling surcharge, and homestead and farmland preservation credit purposes. The provisions do not apply for sales and use tax purposes.

**Background:** A claim for refund may be made after an assessment is issued by office audit or field audit, if the assessment is paid and it was not the subject of an appeal.

For tax years beginning on or after January 1, 2000, the claim for refund must be made within four years of the notice date of the assessment. No refund claim may be filed under this provision for any year that resulted in a refund or no change in the amount owed. However, if the net result of a multiple year office audit or field audit is a refund, a refund claim may be filed for any year included in the refund notice that resulted in an assessment.

For tax years beginning before January 1, 2000, a claim for refund must be made within two years of the notice date of the assessment. A claim for refund may only be made for an office audit or field audit that resulted in an assessment.

**Facts and Question 1:** The taxpayer files timely 1999 and 2000 Wisconsin individual income tax returns. The returns are subject to an office audit in January 2002. The office audit disallows a portion of the itemized deduction credit claimed on each return. The Notice of Additional Tax Due is dated February 4, 2002. The taxpayer does not file an appeal for this notice but pays the tax due. What is the latest date a claim for refund of the additional tax paid is allowed?

**Answer 1:** Section 71.75(5), Wis. Stats., provides for a four-year period to file a claim for a refund of a paid assessment due to an office audit for tax years beginning on or after January 1, 2000. The portion of the Notice of Amount Due that applies to tax year 2000 may be the subject of a claim for refund if filed on or before February 4, 2006.

Section 71.75(5), Wis. Stats., provides for a two-year period to file a claim for a refund of a paid assessment due to an office audit for tax years beginning before January 1, 2000. The portion of the Notice of Amount Due that applies to tax year 1999 may be the subject of a claim for refund if filed on or before February 4, 2004.

**Facts and Question 2:** The taxpayer files timely 2000 and 2001 Wisconsin individual income tax returns. The returns are subject to an office audit in January 2003. The office audit allows an additional itemized deduction credit for 2000 and disallows a dependent credit for 2001. The taxpayer receives a Notice of Refund dated February 7, 2003, explaining the refund for 2000 and the additional tax due for 2001. The taxpayer does not file an appeal for this notice. Does the taxpayer have any recourse to file a claim for refund for the dependent credit issue?

**Answer 2:** Yes. Section 71.75(5), Wis. Stats., provides for a four-year claim for refund of a paid assessment for tax years beginning on or after January 1, 2000, whether or not there is a net assessment or a net refund as a result of an audit for two or more tax years on the same notice. The taxpayer has until February 7, 2007, to file a claim for refund for the dependent credit issue in tax year 2001.

**Facts and Question 3:** The taxpayer files a timely 2000 Wisconsin individual income tax return. An adjustment is made to that return to correct a mathematical error when the return is processed by the department. The correction of the mathematical error results in reducing the refund the taxpayer claimed on the return. The taxpayer is issued a Notice of Refund explaining the correction and the amount of refund due, on May 1, 2001. The taxpayer does not file an appeal. Is the taxpayer allowed to file a claim for refund upon his discovery of a larger amount of a deduction claimed on the original return?

**Answer 3:** Yes. The deduction was not the issue in the prior adjustment. The taxpayer is permitted to file an amended return per sec. Tax 2.12, Wis. Adm. Code, to claim a larger amount of deduction on the original return and claim the additional refund that is properly due. The deadline for filing a claim for refund is the usual four-year period from the due date of the return, April 15, 2005.

Section 71.75(5), Wis. Stats., does not apply to the subsequent claim for refund in this example, since the claim for refund on a larger amount of deduction was not the issue in the prior adjustment. The issue in the prior adjustment was the mathematical error.

**Facts and Question 4:** The taxpayer files a timely 2000 Wisconsin individual income tax return. In December 2002, the taxpayer files an amended 2000 Wisconsin individual income tax return, Form 1X, to claim a refund as a result of claiming a deduction that was not reported on the original return. The original and amended returns are office audited, and the taxpayer is requested to submit documentation to substantiate the deduction. The taxpayer fails to submit the documentation. A notice of refund denial is issued on March 4, 2003. The taxpayer does not file an appeal within 60 days of the refund denial. Does the taxpayer have any recourse to present documentation for the issue and have the claim for refund reconsidered?

**Answer 4:** No. Section 71.75(5), Wis. Stats., provides for a four-year claim for refund of a paid assessment. In this instance there was no additional tax paid; the claim for refund was merely denied, and only one tax year was included in the notice of refund denial. Since the taxpayer did not file an appeal, the matter is closed. [☞](#)