



## 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 in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations in a tax release.)*

The following tax release is included:

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## INDIVIDUAL INCOME TAX AND CORPORATION FRANCHISE AND INCOME TAX

### 1 Wisconsin’s Treatment of Ohio’s Commercial Activity Tax

**Statutes:** Sections 71.07(7), 71.21(5), 71.26(3)(g), and 71.34(1)(ag), Wis. Stats. (2003-04)

**Wis. Adm. Code:** Section Tax 2.955, Wis. Adm. Code (April 1993 Register)

**Background:** Effective July 1, 2005, Ohio began imposing a new commercial activity tax (CAT). The CAT is an annual tax on the privilege of doing business in Ohio, measured by taxable gross receipts from most business activities. The CAT will be phased in over a five-year period. Businesses subject to the tax include sole proprietorships, partnerships, tax-option (S) corporations, and corporations, with certain exceptions. See chapter 5751, Ohio Revised Code (ORC).

Partnerships and corporations compute their Wisconsin income under the Internal Revenue Code (IRC) as defined for Wisconsin purposes, with certain

modifications. One of the modifications provides that IRC sec. 164(a)(3) is modified so that state taxes and taxes of the District of Columbia that are value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross income, gross receipts, or capital stock are not deductible. See secs. 71.21(5), 71.26(3)(g), and 71.34(1)(ag), Wis. Stats. (2003-04).

Section 71.07(7), Wis. Stats. (2003-04), provides that a Wisconsin resident who pays a net income tax to another state may claim a credit against 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 considered income for Wisconsin income tax purposes. Income and franchise taxes measured by net income paid to another state by a partnership or tax-option (S) corporation may be claimed as a credit by the partnership’s or corporation’s shareholders who are Wisconsin residents and who otherwise qualify for the credit.

**Question 1:** May a partnership or corporation deduct the Ohio CAT paid under ORC ch. 5751 for Wisconsin franchise and income tax purposes?

**Answer 1:** Generally the Ohio CAT is deductible for Wisconsin franchise and income tax purposes. It is essentially a deductible sales tax measured by gross receipts. A corporation that has deducted the CAT for federal income tax purposes is not required to add back the amount deducted to compute Wisconsin net income. However, if the expenditure must be capitalized for federal income tax purposes, it must be capitalized for Wisconsin purposes.

**Question 2:** May a Wisconsin resident claim a credit for his or her share of Ohio CAT paid by a partnership or tax-option (S) corporation or for Ohio CAT paid as a sole proprietor?

**Answer 2:** No, a Wisconsin resident may not claim credit for his or her share of Ohio CAT paid by a partnership or tax-option (S) corporation or for Ohio CAT paid as a sole proprietor. The Ohio CAT is not a net income tax and does not qualify for the credit for taxes paid to other states under sec. 71.07(7), Wis. Stats. (2003-04).