



## Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The following decision is included:

### Individual Income Taxes

#### Gambling losses

*Dennis C. and Jacqueline S. Mahoney*..... 20

### INDIVIDUAL INCOME TAXES

 **Gambling losses.** *Dennis C. and Jacqueline S. Mahoney vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 6, 2007). The issue in this case is whether the department properly disallowed the deduction for gambling losses claimed by the taxpayer.

The taxpayers filed a Wisconsin income tax return for 2003, which included the federal income tax return for the year at issue. The federal income tax return reported \$50,521 of winnings from gambling activities as “other income” on line 21 of Form 1040. \$50,521 of losses from gambling activities were reported as “other miscellaneous deductions...gambling losses” on line 27 of Schedule A. The Wisconsin Form 1 filed by the taxpayers reported the winnings from gambling activities as part of line 1, “Federal adjusted gross income,” and the losses from gambling activities as an “other subtraction” on line 11.

By notice dated December 21, 2004, the department issued an income tax assessment against the taxpayers disallowing the deduction for gambling losses claimed on the 2003 Wisconsin income tax return. The taxpayers filed a timely petition for redetermination of the department’s assessment, which was denied by the department by notice dated August 8, 2005. The taxpayers filed a timely petition for review with the Commission on September 20, 2005.

The taxpayers argued that although the gambling losses could not be deducted as a miscellaneous itemized deduction for Wisconsin income tax purposes, they could be subtracted from federal adjusted gross income under sec. 71.05(6)(b)5, Wis. Stats. This statute permits a tax-

payer to subtract from his or her federal adjusted gross income “[a]ny amounts that are recoveries of federal itemized deductions for which no tax benefit was received for Wisconsin purposes.”

The Commission concluded that the taxpayers failed to demonstrate that sec. 71.05(6)(b)5, Wis. Stats., allows a deduction for gambling losses and failed to show that the department’s assessment was in error. The plain meaning of sec. 71.05(6)(b)5, Wis. Stats., does not support the taxpayers interpretation. Under this statute, the recovery amount must be “included in federal taxable or adjusted gross income.” In other words, the taxpayer must already have recovered it, not simply be *seeking* to recover it. The taxpayer’s federal adjusted gross income does not include a recovery amount, as required by sec. 71.05(6)(b)5, Wis. Stats., because they have received no recovery amount to include.

The Internal Revenue Service also defines “recoveries,” and this definition does not include gambling losses for the current year. Viewed in this context, it is clear that sec. 71.05(6)(b)5, Wis. Stats., is designed to address a recovery amount received with respect to a prior tax year, not a recovery amount one is seeking for the same tax year during which the taxpayer took a federal deduction for that same item.

The taxpayers have appealed this decision to the Circuit Court. [↗](#)