



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:

Corporation Franchise and Income Taxes

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CORPORATION FRANCHISE AND INCOME TAXES

Gross income – membership pledges.
Minocqua Country Club, Inc. vs. Wisconsin Department of Revenue (Oneida County Circuit Court, April 1, 2009). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated November 7, 2007. See *Wisconsin Tax Bulletin* 155 (January 2008), page 24, for a summary of the Wisconsin Tax Appeals Commission’s decision.

Note: The Wisconsin Tax Appeals Commission decision in this case involved both franchise and sales tax. The Circuit Court’s review involves only franchise tax, as the taxpayer did not appeal the decision against it on the sales tax issue.

The issue in this case is whether Minocqua Country Club, Inc. (MCC) is liable for Wisconsin franchise tax on the amounts it received from pledges (deposits) its members were required to pay for membership to the club.

The Wisconsin Tax Appeals Commission determined the department correctly assessed franchise tax. In doing so, the Commission looked to the case of *Board of Trade of the City of Chicago v. Comm’r*, 106 T.C. 369 (1994). In this case, the Tax Court analyzed a number of prior cases that concern this issue. The Tax Court identified “three objective factors whose presence tends to support the existence of an investment motive: (1) the fee in question is earmarked for application to a capital acquisition or expenditure; (2) the payors are the equity owners of the corporation and there is an increase in the equity capital of the organization by virtue of the payment; and (3) the members have an opportunity to profit

from their investment in the corporation.” The Commission also looked to the language of the regulations under IRC § 118. The Commission determined the deposits at issue did not qualify as capital contributions and were includable in MCC’s gross income for the years at issue.

The Circuit Court reviewed the Commission’s decision under the de novo standard, giving no deference to the Commission’s decision. In examining the totality of the circumstances surrounding the deposits, the Circuit Court determined that MCC’s members did not make the deposits with an investment motive. Therefore, it concluded the Commission’s determination was correct and affirmed the Commission’s decision.

The taxpayer has not appealed this decision.