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 releases are included:

Corporation Franchise and IncomeTaxes

CORPORATION FRANCHISE AND INCOME TAXES

1 Claiming the Alternative Incremental Research Credit

Statutes: Sections 71.28(4) and 71.47(4), Wis. Stats. (2001-02)

Background: Corporations, except tax-option (S) corporations, that meet the requirements specified in sec. 71.28(4) or 71.47(4), Wis. Stats. (2001-02), may qualify for a tax credit for increasing research activities in Wisconsin. For taxable years beginning on or after January 1, 1997, corporations may elect to determine their research credit under either the regular rules or the alternative incremental research credit rules of Internal Revenue Code section 41(c)(4). Once a corporation makes the election to use the alternative computation, the election applies to that taxable year and all future taxable years, unless the Department of Revenue permits its revocation.

Question 1: How does a corporation make the election to claim the alternative incremental research credit?

Answer 1: A corporation makes the election to claim the alternative incremental research credit on Wisconsin Schedule R, *Wisconsin Research Credits*. The corporation must complete Part I, Section B, relating to the election of the alternative incremental credit, and attach the completed Schedule R to the Wisconsin franchise or income tax return, Form 4, 4I, 4T, or 5, that it files for the taxable year.

Question 2: May a corporation claim the alternative incremental research credit on its Wisconsin franchise or income tax return if it claimed the regular research credit on its federal income tax return?

Answer 2: Yes, a corporation may make different elections for Wisconsin and federal purposes. The corporation may claim the regular research credit on its federal return and the alternative incremental research credit on its Wisconsin return, or vice versa.

Question 3: If a corporation files its original Wisconsin franchise or income tax return after the due date, including extensions, may it still make the election to claim the alternative incremental research credit?

Answer 3: Yes, the corporation may elect the alternative incremental credit on a late-filed original Wisconsin franchise or income tax return.

Question 4: If a corporation claimed the regular research credit on its original Wisconsin franchise or income tax return, may it amend the return to claim the alternative incremental research credit?

Answer 4: No, once the corporation has filed a Wisconsin return on which it has claimed the regular research credit, it may not amend that return to claim the alternative incremental credit. This is the case even if the original Wisconsin return was filed before the original due date.

Question 5: If a corporation does not claim any research credit on its original Wisconsin franchise or income tax return, may it amend its return to claim the alternative incremental research credit?

Answer 5: Yes, the corporation may amend its Wisconsin return to claim the alternative incremental credit, provided it did not claim any research credit on its original return and the amended return is filed within four years of the unextended due date of its original return.

Question 6: How may a corporation revoke its election to claim the alternative incremental research credit?

Answer 6: A corporation must receive permission from the Department of Revenue to revoke its election to claim the alternative incremental credit. The corporation must send its request, in writing, to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8906, Madison, Wisconsin 53708-8906. The request must be submitted before the due date, including extensions, for the taxable year to which the revocation first applies, The corporation must attach a copy of the department's consent to revoke the election to claim the alternative incremental credit to its timely filed original return, including extensions, for the taxable year of the revocation.

2 Nondeductibility of State Taxes for Corporate Franchise and Income Tax Purposes

Statutes: Sections 71.26(3)(g), 71.34(1)(ag), and 71.45(2)(a)5, Wis. Stats. (2001-02)

Note: Also see the tax release titled "Deductibility of State and Local Taxes for Wisconsin Corporation Franchise and Income Tax Purposes" in *Wisconsin Tax Bulletin* 99 (October 1996), page 26.

Background: Corporations compute their Wisconsin net income under the Internal Revenue Code (IRC) as defined for Wisconsin purposes, with certain modifications. One of the modifications is sec. 71.26(3)(g), Wis. Stats. (2001-02), which provides that IRC sec. 164(3)(a) 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. Similar statutory language applies to tax-option (S) corporations and insurance companies.

Facts and Question 1: Kentucky imposes a corporation license tax based on the amount of "capital employed in the business." Capital includes capital stock, surplus, advances by affiliated companies, intercompany accounts, and borrowed moneys. See Kentucky Revised Statutes (KRS) §136.070.

May a corporation deduct the Kentucky corporation license tax paid under KRS §136.070(1) for Wisconsin franchise and income tax purposes?

Answer 1: No, the Kentucky corporation license tax is not deductible for Wisconsin franchise and income tax purposes.

Facts and Question 2: New Hampshire imposes a business profits tax on a percentage of the "taxable business profits" of every business organization. Taxable business profits are computed under the Internal Revenue Code with certain additions and subtractions. See New Hampshire Revised Statutes (RSA) chapter 77-A.

May a corporation deduct the New Hampshire business profits tax paid under N.H. RSA §77-A:2 for Wisconsin franchise and income tax purposes?

Answer 2: No, the New Hampshire business profits tax is not deductible for Wisconsin franchise and income tax purposes.

Facts and Question 3: Ohio imposes a franchise tax on corporations for the privilege of doing business, owning or using a part or all of its capital or property, holding a certificate of compliance authorizing it to do business, or otherwise having nexus with Ohio. The tax has a net income component based on federal taxable income with adjustments and a net worth component based on the value of the outstanding shares of stock. See Ohio Revised Code (ORC) chapter 5733.

May a corporation deduct either the net income component or the net worth component of the Ohio franchise tax paid under ORC §5733.06 for Wisconsin franchise and income tax purposes?

Answer 3: No, neither the net income component nor the net worth component of the Ohio franchise tax is deductible for Wisconsin franchise and income tax purposes.

Facts and Question 4: Texas imposes a franchise tax on corporations that do business or that are chartered or authorized to do business in Texas. The tax has a net worth component based on "net taxable capital" and a net income component based on "taxable earned surplus." A corporation's net taxable capital is its stated capital and surplus, as apportioned to Texas, less allowable deductions. Taxable earned surplus is reportable federal taxable income with adjustments. See chapter 171 of the Texas Tax Code.

May a corporation deduct either the net taxable capital component or the taxable earned surplus component of the Texas franchise tax paid under §171.001, Texas Tax Code, for Wisconsin franchise and income tax purposes?

Answer 4: No, neither the net taxable capital component nor the taxable earned surplus component of the Texas franchise tax is deductible for Wisconsin franchise and income tax purposes.

Facts and Question 5: West Virginia imposes a business and occupation tax on public service or utility businesses, taxpayers who generate electric power, the business of gas storage, and producers of synthetic fuels. See West Virginia Code §11-13-1 et seq. The measure of the tax and the tax rate vary, depending on the classification of the taxpayer's business activities. The tax is generally based on gross income (for certain public utilities), taxable generation capacity, or net dekatherms (for gas storage).

May a corporation deduct the West Virginia business and occupation tax paid under W.Va. Code §11-13-2 for Wisconsin franchise and income tax purposes?

Answer 5: Generally, the West Virginia business and occupation tax is deductible for Wisconsin franchise and income tax purposes. However, if the expenditure must be capitalized for federal income tax purposes, it must be capitalized for Wisconsin purposes.