

## TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. 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.)

## INCOME TAXES

### I. Determining Gain on Assets Acquired Prior to Becoming a Wisconsin Resident

A Tax Release in WTB #23 (July, 1981) indicated that when a resident of Wisconsin disposed of property which he or she had acquired prior to becoming a Wisconsin resident, both gains and losses on such property are generally determined in the same manner for Wisconsin as for federal purposes. That Tax Release on pages 9-11 in WTB #23 was prepared as a result of the Wisconsin Supreme Court decision in Romain A. Howick vs. Wisconsin Department of Revenue, 100 Wis. 2d 274.

The information in WTB #23 relating to computation of losses continues to apply; that is, the loss on the disposition of property acquired prior to becoming a Wisconsin resident must generally be determined in the same manner for Wisconsin as for federal purposes. However, the information relating to the computation of gains as stated in WTB #23 should not be followed until after rules Tax 2.30 and 2.97 have been repealed. Gains should be computed as explained below.

How to Compute Gains on Assets Acquired Prior to Becoming a Wisconsin Resident. Information in WTB #23 relating to the computation of gains should be disregarded. Rather, the computation of a gain on property which had been acquired while a nonresident of Wisconsin will be limited to the lesser of:

- (a) Gain reportable for federal income tax purposes; or
- (b) The gain determined by comparing the selling price with the fair market value of the property on the date Wisconsin residency was established. (Any depreciation allowed or allowable during the period of Wisconsin residency would first be subtracted from the fair market value.)

The portions of Wisconsin Administrative Code section Tax 2.30 and 2.97 relating to the computation of gains are still in effect; however, the provisions in the two rules relating to losses are invalid.

Example: Taxpayer purchased stock while a nonresident of Wisconsin for \$5,000. He later became a Wisconsin resident on which date the fair market value of the stock was \$7,000. In 1981 he sold the stock for \$9,000. The Wisconsin gain is \$2,000 which is computed by subtracting \$7,000 (the fair market value on the date Wisconsin residency was established) from the selling price of \$9,000. The federal gain would be \$4,000 (\$9,000 selling price less \$5,000 original cost).

Note: If a gain has been determined for federal purposes and a loss is determined by using the computation prescribed under method b, then no gain or loss on the transaction is reportable for Wisconsin purposes.

Example: Assume the same facts as in the example above, except change the selling price to \$6,500. A loss of \$500 (\$6,500 selling price less \$7,000, the fair market value on date Wisconsin residency was established) would then be determined under method "b". The federal gain would be \$1,500 (\$6,500 selling price less \$5,000 original cost). In this situation no gain or loss from the transaction should be included in Wisconsin taxable income.

The Department of Revenue is in the process of repealing rules Tax 2.30 and 2.97. Until these two rules are repealed, gains will be computed as explained above.

For transactions occurring after these two rules are repealed, the computation of gains will generally be determined in the same manner for Wisconsin as for federal purposes. The April, 1982 issue of the WTB will inform you of the status of the repeal of these two rules and when the new computation of gains will begin.

If a taxpayer was assessed by the Department of Revenue because the gain was computed as stated in WTB #23 (rather than computing gains under rules Tax 2.30 and 2.97), the taxpayer should file a claim for refund of the office audit assessment, provided the assessment was paid and not appealed. The claim for refund must be filed within 2 years of the date of the assessment notice. If the assessment was appealed and it has not yet been acted upon by the Appellate Bureau, the person should write to the Appellate Bureau, Wisconsin Department of Revenue, P.O. Box 8907, Madison, WI 53708 and request that the assessment be modified for the computation of the gain.

Anyone having questions regarding the computation of gains should write to the Technical Services Staff, Wisconsin Department of Revenue, P.O. Box 8910, Madison, WI 53708.

### II. Reporting Interest and Dividend Income on a 1981 Wisconsin Income Tax Return

For 1981 the Internal Revenue Code (IRC) provides two exclusion provisions relating to interest income received during 1981. One of the exclusion provisions also extends to dividend income. These provisions are:

1. A \$200 (\$400 on a joint federal return) exclusion for interest and dividend income provided by section 116 of the IRC.
2. A \$1,000 (\$2,000 on a joint federal return) lifetime exclusion for interest income received from All-Savers Certificates which is provided by section 128 of the IRC.

However, Wisconsin law for 1981 does not allow the use of both of these exclusions. Only the \$200 exclusion for interest and dividends (number 1 above) applies for Wisconsin purposes for 1981. The exclusion for All-Savers interest (number 2 above) was enacted after December 31, 1980 and, therefore, does not apply in determining Wisconsin taxable income for 1981.

The following rules must be followed when the \$200 interest and dividend income exclusion is claimed on a Wisconsin return:

- A. The maximum amount of exclusion which may be claimed by a single or married person is \$200. (Federal separate return provisions which provide a \$200 exclusion to each spouse must be followed for Wisconsin. If both spouses have interest and dividend income, each is entitled to a \$200 exclusion.)
- B. Any portion of the \$200 interest and dividend exclusion which is not used to offset other interest and dividend income may be used to offset amounts of All-Savers Certificate interest reportable to Wisconsin.
- C. The \$200 interest and dividend exclusion may not be used to offset interest which is received from state or municipal bonds. The entire amount of such interest income must be included in Wisconsin taxable income.

Since Wisconsin does not recognize the All-Savers Certificate interest exclusion for 1981 and because married persons must determine their income for Wisconsin by using the separate return (rather than joint return) provisions of federal law, the amount of interest and dividend income reportable to Wisconsin may differ from the amount reportable on a 1981 federal return. Both the Wisconsin Form 1 and Form 1A instructions for 1981 contain detailed information on how the proper amount of interest and dividend income is computed for Wisconsin. A worksheet which can be used to make the necessary calculations is provided as part of the instructions for both forms.

Persons filing Form 1 and having interest from United States Government securities may claim a subtract modification for only the net amount of U.S. interest included in federal income (i.e., the amount after application of the exclusion). For purposes of determining the "net amount", the \$200 exclusion is considered to first apply against other types of interest and dividends of the person. (Examples 6 and 7 below illustrate the proper method of determining a subtract modification for U.S. interest.)

As in prior years, Wisconsin Schedule I is used to adjust differences in income and deduction items which arise because Wisconsin does not allow the use of all current Internal Revenue Code provisions. However, if the only difference affecting a particular individual is the difference in the treatment of All-Savers Certificate interest, it is not necessary to complete Schedule I. In this instance the difference will be accounted for when line 7 of the Wisconsin Form 1 is completed.

The examples below illustrate how taxable interest and dividend income is to be determined on a Wisconsin Form 1 for 1981. For all examples involving married persons, it should be assumed that a joint federal income tax return is being filed.

- Example 1:** Husband-\$250 credit union interest income, wife-\$67 savings and loan association interest income.
- Federal - Report -0- interest (\$317 less \$400 interest and dividend exclusion)

Wisconsin - Husband-report \$50 interest (\$250 less \$200 interest and dividend exclusion)  
Wife-report -0- interest (\$67 less \$200 interest and dividend exclusion)

**Example 2:** Husband-\$250 corporate bond interest and \$150 dividend income, wife-\$40 bank interest income.

Federal - Report \$40 interest and dividends (\$440 less \$400 interest and dividend exclusion)

Wisconsin - Husband-report \$200 interest and dividends (\$400 less \$200 interest and dividend exclusion)  
Wife-report -0- interest (\$40 less \$200 interest and dividend exclusion)

**Example 3:** Husband-\$300 All-Savers Certificate interest income, wife-\$175 All-Savers Certificate interest income.

Federal - Report -0- interest (\$475 less \$2,000 All-Savers interest exclusion)

Wisconsin - Husband-report \$100 interest (\$300 less \$200 interest and dividend exclusion)  
Wife-report -0- interest (\$175 less \$200 interest and dividend exclusion)

**Example 4:** Husband-\$300 All-Savers Certificate interest and \$250 dividend income, wife-\$300 All-Savers Certificate interest and \$60 dividend income.

Federal - Report -0- interest and dividend income (\$310 less \$400 interest and dividend exclusion; \$600 less \$2,000 All-Savers interest exclusion)

Wisconsin - Husband-report \$350 interest and dividends (\$550 less \$200 interest and dividend exclusion)  
Wife-report \$160 interest and dividends (\$360 less \$200 interest and dividend exclusion)

**Example 5:** Husband-\$100 municipal bond interest and \$75 dividend income, wife-\$700 municipal bond interest income.

Federal - Report -0- interest and dividends (\$75 less \$400 interest and dividend exclusion; municipal bond interest is excludable from federal income)

Wisconsin - Husband-report -0- interest and dividends (\$75 less \$200 interest and dividend exclusion) on line 7, Form 1  
Husband-report \$100 addition to federal income for municipal bond interest on line 26, Form 1  
Wife-report -0- interest and dividends on line 7, Form 1  
Wife-report \$700 addition to federal income for municipal bond interest on line 26, Form 1

**NOTE:** The \$200 interest and dividend exclusion cannot be applied against state and municipal bond interest income.

**Example 6:** Husband-\$600 U.S. government interest income, wife \$175 U.S. government interest income.

Federal - Report-\$375 interest (\$775 less \$400 interest and dividend exclusion)

Wisconsin - Husband-report \$400 interest and dividends (\$600 less \$200 interest and dividend exclusion) on line 7, Form 1  
 Husband-report \$400 subtraction from federal income for U.S. government interest on line 33, Form 1  
 Wife-report -0- interest and dividends (\$175 less \$200 interest and dividend exclusion) on line 7, Form 1

**Example 7:** Husband-\$300 bank interest and \$700 U.S. government interest, wife received no interest or dividends.

Federal - Report-\$600 interest (\$1,000 less \$400 interest and dividend exclusion)

Wisconsin - Husband-report \$800 interest and dividends (\$1,000 less \$200 interest and dividend exclusion) on line 7, Form 1  
 Husband-report \$700 subtraction from federal income for U.S. government interest on line 33, Form 1

### III. Interest and Dividend Exclusion for Part-Year Residents and Nonresidents

**Question -** How is the \$200 interest and dividend exclusion provided by Wisconsin law for 1981 to be claimed by part-year residents and nonresidents?

**Answer - Nonresidents:** Interest and dividend income received by persons who were nonresidents of Wisconsin for the entire year 1981 is not taxable to Wisconsin. Therefore, the \$200 interest and dividend exclusion will not be claimed by a nonresident. All interest and dividend income included in federal adjusted gross income (the starting point for computing Wisconsin taxable income) will be removed.

**Part-year residents:** The full \$200 interest and dividend exclusion may be offset against the portion of a part-year resident's interest and dividend income which is taxable to Wisconsin. The exclusion does not have to be prorated. Also, the exclusion is not required to be applied against the first amounts of interest and dividend income received during the year.

**Example:** Taxpayers became Wisconsin residents on October 1, 1981. Husband received \$600 interest income from a bank and wife received \$400 interest income from a credit union prior to becoming Wisconsin residents. Husband received \$175 interest income from a bank and wife received \$75 dividend income after becoming Wisconsin residents. Taxpayers file a joint federal return.

Federal - Report \$850 interest and dividends. (\$1,250 less \$400 interest and dividend exclusion)

Wisconsin - Husband report \$575 interest (\$775 less \$200 interest and dividend exclusion) on line 7, Form 1.

- Husband report \$575 subtraction modification for interest which is included in federal income but was received before becoming Wisconsin resident.

- Wife report \$275 interest and dividends (\$475 less \$200 interest and dividend exclusion) on line 7, Form 1.

- Wife report \$275 subtraction modification for interest and dividends which are in-

cluded in federal income but were received before becoming Wisconsin resident.

### IV. Partnership Distributions of Interest on US Government Securities

**Facts and Question:** A Wisconsin individual taxpayer invests in a money market fund organized as a partnership. The taxpayer receives a distribution from the fund of interest income earned on investments in US government securities. Are the distributions considered income from a federal security which will be exempt from Wisconsin income tax under s. 71.05 (1) (b), Wis. Stats.?

**Answer:** Yes. The interest income has the same tax-exempt character when received by the partner (taxpayer) as it had in the hands of the partnership. A partner may claim a subtraction from federal adjusted gross income on his or her Wisconsin return (Form 1) for the distributive share of partnership interest income from US government securities (s. 71.05 (1) (e), Wis. Stats.). The interest income retains its tax exempt character whether received by a general or limited partner. (Note: As indicated in Wisconsin Tax Bulletin #23, a money market trust (mutual fund) *cannot* pass through to the investor the tax-exempt character of income it receives from federal securities.)

### V. Taxing Unemployment Compensation to Nonresident and Part-Year Residents

**Facts and Question:** In 1978 a federal law was enacted which taxed unemployment compensation in certain situations. Wisconsin follows the federal law regarding the taxation of unemployment compensation for the 1979 taxable year and thereafter.

For federal purposes, if unemployment benefit payments for the year and the recipient's adjusted gross income (including any disability payments excluded under Code sec. 105(d)) exceed a "base amount", the recipient must include in gross income the lesser of (1) the amount of unemployment compensation payments received, or (2) one-half of the amount of the excess of the sum of the recipient's unemployment benefit payments and other adjusted gross income over the base amount.

The federal "base amount" is (a) \$25,000 if the recipient is married filing a joint federal return, (b) zero if the recipient is married at the close of the tax year and lived with spouse at any time during the year, but is not filing a joint federal return, or (c) \$20,000 for all other taxpayers.

The base amounts are the same for Wisconsin as for federal. For purposes of determining the amount of taxable unemployment compensation to be included in Wisconsin income, married persons may elect to combine their federal adjusted gross incomes and compute the includable amount of unemployment compensation as persons filing a joint federal return, but each spouse must include in Wisconsin income her or his share of the taxable unemployment compensation (s. 71.05 (1) (k), Wis. Stats.).

**Questions:**

1. A nonresident taxpayer works in Wisconsin and received unemployment compensation relating to the Wisconsin employment. Is any part of the unemployment compensation taxable to Wisconsin?

2. A taxpayer who is a Wisconsin resident and works in Wisconsin becomes unemployed (collecting unemployment compensation) and then changes his or her residence to another state (continuing to collect unemployment compensation). Is any of this unemployment compensation taxable to Wisconsin?
3. A taxpayer lives and works in another state and then changes his or her residence to Wisconsin at which time the taxpayer starts collecting unemployment compensation based on out of state employment. Is any of this unemployment compensation taxable to Wisconsin?

Answer:

1. No part is taxable since the taxpayer was a nonresident. Unemployment compensation is not income from "services rendered" but is in the category of "all other income" which, under section 71.07 (1), Wisconsin Statutes, follows the residence of the recipient.
2. Since unemployment compensation follows the residence of the recipient, that part of the total unemployment compensation received while a resident of Wisconsin is taxable to Wisconsin if the total unemployment compensation received was entirely includable in federal adjusted gross income.

For example, if total unemployment compensation of \$4,000 was received in the year (\$1,500 while a Wisconsin resident) and the entire \$4,000 was included in federal adjusted gross income, then \$1,500 would be taxable for Wisconsin. If only a portion of the total unemployment compensation received was includable in federal adjusted gross income, then the amount taxable for Wisconsin must be prorated based on the following formula:

$$\frac{\text{U/C received while a Wis. resident}}{\text{Total U/C received}} \times \frac{\text{Federal amount of taxable U/C}}{\text{Wis. amount of taxable U/C}}$$

For example, a married taxpayer had \$27,000 total income, including unemployment compensation of \$4,000. The reportable unemployment compensation for federal tax purposes would be \$1,000 (1/2 x (27,000 total income less \$25,000 base amount)). Thus, the taxpayer's federal adjusted gross income would be \$24,000 (\$23,000 other income plus \$1,000 taxable unemployment compensation). If the taxpayer collected \$1,500 of the \$4,000 unemployment compensation while a Wisconsin resident and then became a resident of another state when the remaining \$2,500 was received, how much of the \$1,000 that was included for federal purposes would be included in Wisconsin income?

Using the above formula and substituting these dollar amounts, \$375 would be included in Wisconsin income.

$$\frac{\$1,500}{\$4,000} \times \$1,000 = \$375 = \text{(Amount of unemployment comp. included in Wisconsin income.)}$$

3. Since unemployment compensation follows the residence of the recipient and the taxpayer received all the unemployment compensation after becoming a

Wisconsin resident, the total amount taxable for federal purposes is also taxable for Wisconsin purposes.

## CORPORATION INCOME/FRANCHISE TAX

### I. Manufacturers' Credit for Sales or Use Taxes

Facts and Question: Section 71.043 (2) of the Wisconsin Statutes provides a credit against a corporation's Wisconsin income or franchise tax for Wisconsin sales and use taxes paid during the year on fuel and electricity consumed in manufacturing. Does this credit include all Wisconsin sales and use taxes paid during a taxable year on such fuel and electricity, whether or not the fuel and electricity is actually consumed in manufacturing during the same taxable year in which it is paid for?

Answer: Yes, the credit which may be offset against income or franchise taxes for a taxable year includes all Wisconsin sales and use taxes paid during that taxable year on fuel or electricity which has or will be consumed in manufacturing, even though some of the fuel or electricity may be actually consumed in manufacturing in a succeeding tax year.

### II. Corporation Income From Rentals and Subsequent Disposals of Property Rented

Facts and Questions: All income or loss from the rental of real estate or tangible personal property follows the situs of the property and is non-apportionable as provided by s. 71.07 (1m), Wis. Stats. This section further provides, however, that although the income or loss from the rental of property used in the production of business income is non-apportionable, income or loss from the disposal of such business property follows the situs of the business and is apportionable. Gain or loss from the disposition of property not used in the production of business income follows the situs of the property and is non-apportionable.

For example, consider the cases of three corporations each having income from the rental of property and from the subsequent sale of the property rented. Corporation X, a manufacturer of road building equipment, has income from the rental and subsequent sale of such equipment. Corporation Y, a distributor of computers, has income from the rental and subsequent sale of computers. Corporation Z, a manufacturer of office furniture, realizes non-business income from the rental of an apartment building and from its subsequent sale. How should the rental income of each of the three corporations be treated? How should the income realized upon the sales of the property previously rented be treated?

Answers: The rental income of all three corporations is non-apportionable income, without regard to whether the property rented is business property or non-business property, and follows the situs of the property. The gains realized by corporations X and Y on the disposition of "business" property are reportable as apportionable business income in accordance with s. 71.07 (1m), Wis. Stats. The gain realized by Corporation Z on the disposition of the apartment building is non-apportionable and follows the situs of the property since the apartment building was not used in the production of business income.

## SALES/USE TAXES

### I. Court Reporter Transcripts

**Facts and Question:** Upon the request of a party to an action or proceeding, a court reporter transcribes and makes a typewritten transcript of the testimony given. At the time the original is typed a number of carbon copies and photocopies also may be produced. Are the fees charged for the original transcript, the carbon copies and photocopies of the original subject to the sales tax?

**Answer:** The gross receipts of a court reporter from recording testimony and proceedings generally are considered receipts from a nontaxable court reporter service, including receipts for the original and copies of transcripts requested by any parties present or participating in an action or proceeding. However, in certain instances other persons may desire copies; and in these situations the court reporter's gross receipts from sales of copies are considered to be taxable receipts from the sale of tangible personal property. An example of a taxable sale is when a court reporter reproduces hundreds of copies of a transcript to the proceedings of a case which has attracted wide attention and sells them to persons who are not parties to or participants in the proceedings.

### II. Grain Bins

**Facts and Question:** A farmer purchases a grain bin and attaches the bin with bolts to a concrete foundation on land the farmer owns. The grain bin may be in either a "knocked-down" kit form or be assembled or prefabricated by the seller prior to purchase by the farmer. Is the

purchase of the grain bin by the farmer a taxable transaction?

**Answer:** No, the farmer may purchase a grain bin in "knocked-down" kit form or one that is prefabricated and fully assembled but not installed without tax under the grain container exemption in s. 77.54(3m), Wis. Stats. When sold in this form, the container is personal property and the farmer may give a farmer's exemption certificate to the seller. A dealer selling a bin to the farmer may purchase the bin exempt from tax with a resale certificate.

**Facts and Question:** A farmer enters into an agreement for the purchase of a grain bin which the seller is to install and attach to a concrete foundation on the farmer's land. The grain bin may be delivered to the job site in "knocked-down" kit form which the seller, or a subcontractor hired by the seller, erects on the farmer's land. Or, the bin may be prefabricated and delivered in tact to the job site by a truck and then attached to the realty by the seller or by a subcontractor hired by the seller. Is the sale of the installed grain bin to the farmer a taxable transaction?

**Answer:** The sale and installation by the seller of the grain bin, whether the bin is brought to the job site knocked-down or fully assembled, is a realty improvement, and therefore, there is no tax on this sale to the farmer. The seller-installer is the consumer of the materials and is liable for the tax on the cost of the materials used in this realty improvement.