

taxpayer did not provide drivers for the trucks as required by the rule is a reasonable interpretation—certainly not inconsistent with the language or clearly erroneous.

B. The Commission's determination that *Gensler* does not sanction the "primary business" test as controlling in deciding all questions of "exclusive use" is reasonable.

The taxpayer has not appealed this decision.

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## 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.)*

The following Tax Releases are included:

### Individual Income Taxes

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### Corporation Franchise or Income Taxes

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## INDIVIDUAL INCOME TAXES

1. Gross Income and Income Tax Return Filing Requirements

Statutes: Section 71.10(2)(a) and (d), 1985 Wis. Stats.

Background: Wisconsin income tax return filing requirements as provided in s. 71.10(2)(a)5, Wis. Stats., are based on filing status, age as of December 31, and gross income (or total gross income of husband and wife). Section 71.10(2)(d), Wis. Stats., defines gross income as "all income from whatever source derived and whatever form realized, whether in money, property, or services, which is not exempt from Wisconsin income tax."

Question 1: A full-year Wisconsin resident who is single and under age 65 operates a Wisconsin farm. This individual derives gross receipts of \$60,000, but also incurs expenses of \$59,000, for net farm income of \$1,000 in 1987. Is this individual required to file a 1987 Wisconsin tax return?

Answer 1: Yes. Section 71.10(2)(a)5a, Wis. Stats., provides that a full-year Wisconsin resident who is single and under age 65 must file a Wisconsin tax return if he or she has Wisconsin gross income of \$5,200 or more. Section 71.10(2)(d), Wis. Stats., provides that gross income from a business or farm consists of the total gross receipts without reduction for cost of goods sold, expenses, or any other amounts. Since this individual derived gross farm receipts of \$60,000, he is required to file a 1987 Wisconsin tax return.

Question 2: A nonresident of Wisconsin who is single and under age 65 sells Wisconsin real estate held for investment purposes on land contract in 1987. The selling price was \$50,000 and the selling expenses and basis totalled \$40,000. The individual received installment payments totalling \$5,000 in 1987. Is this individual required to file a 1987 Wisconsin tax return and pay the tax due thereon?

Answer 2: Yes. Section 71.10(2)(a)5b, Wis. Stats., provides that a nonresident must file a Wisconsin tax return if he or she has Wisconsin gross income of \$2,000 or more. Section 71.10(2)(d), Wis. Stats., provides that gross income from the sale of property consists of the gross selling price without reduction for the cost of the property, expenses of sale, or any other amounts. Since this individual received total installment payments of \$5,000 in 1987, he is required to file a 1987 Wisconsin tax return and pay any tax owing on that return.

Question 3: Nonresidents of Wisconsin who are married and under age 65 own Wisconsin rental property. They derive gross rental income of \$6,000 and incur rental expenses of \$7,000, for a net rental loss of \$1,000. Is this married couple required to file a 1987 Wisconsin tax return?

**Answer 3:** Yes. Section 71.10(2)(a)5b, Wis. Stats., provides that a nonresident must file a Wisconsin tax return if the combined gross income of the person and his or her spouse is \$2,000 or more. Section 71.10(2)(d), Wis. Stats., provides that gross income from rental property consists of gross rental amounts received without reduction for expenses or any other amounts. Since this married couple derived gross rental income of \$6,000, they are required to file a 1987 Wisconsin tax return.

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## CORPORATION FRANCHISE OR INCOME TAXES

### 1. Treatment of Capital Losses by Corporations for 1987

**Statutes:** Section 71.02(2)(bg), 1987 Wis. Stats.

**Background:** Beginning with the 1987 taxable year, corporations will compute net income under the Internal Revenue Code, with certain exceptions. Section 1212 of the IRC states that if a corporation has a net capital loss, the loss cannot be deducted in the current taxable year. The loss must be carried to other taxable years and deducted from capital gains that occur in those years. The net capital loss is first carried back three years, unless the loss is attributable to a foreign expropriation capital loss or the carry-back of such loss increases or produces a net operating loss. If the loss is not completely used up, it is carried forward to future taxable years, for up to five years.

**Question 1:** Can a corporation carry back a net capital loss incurred in the 1987 taxable year to a prior taxable year for Wisconsin tax purposes?

**Answer 1:** No. In order to claim a capital loss carryback, a prior year's return must be amended. Internal Revenue Code section 1212, which allows a capital loss carryback, first applies for Wisconsin for taxable year 1987. Therefore, 1987 taxable year net capital losses cannot be carried back to a prior year because the newly adopted Internal Revenue Code provisions do not apply to years prior to 1987. Instead, a net capital loss incurred in taxable year 1987 may only be carried forward for up to five years.

**Example:** In 1987 a corporation has a net capital loss of \$5,000. In 1984 the corporation had a net capital gain of \$9,000. For federal tax purposes, the corporation carries the \$5,000 net capital loss for 1987 back and subtracts it from the \$9,000 net capital gain for 1984. Thus, the corporation will report \$4,000 of net capital gain on its amended 1984 federal return.

For Wisconsin tax purposes, the corporation cannot carry back the loss. Instead, the corporation will carry forward the \$5,000 net capital loss to 1988 and succeeding taxable years.

**Question 2:** Will a corporation ever be able to use the carryback provision under IRC section 1212?

**Answer 2:** Yes, but taxable year 1987 is the earliest taxable year to which losses can be carried back.

**Example:** In 1988, a corporation has a net capital loss of \$10,000. The corporation had net capital gains of \$2,000 in 1985, \$10,000 in 1986, and \$7,000 in 1987. For federal tax purposes, the corporation carries the \$10,000 net capital loss for 1988 back and offsets the \$2,000 net capital gain for 1985 and \$8,000 of the \$10,000 net capital gain for 1986.

For Wisconsin tax purposes, the corporation carries \$7,000 of the \$10,000 net capital loss for 1988 back and offsets the \$7,000 net capital gain for 1987. The corporation will carry forward the remaining \$3,000 of 1988 net capital loss to 1989 and succeeding years.

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## SALES/USE TAXES

### 1. Taxable Lease vs. Nontaxable Service: Parent/Subsidiary Transactions

**Statute:** Sections 77.51(7) and (14), 77.52(1), and 77.54(5)(b), 1985 Wis. Stats.

**Wis. Adm. Code:** Section Tax 11.29(4), July 1977 Register

**Example 1:** A parent company (Company A) organized a wholly owned subsidiary (Company B) as a licensed common carrier. The subsidiary maintained its separateness from its parent. The subsidiary, Company B, purchased trucks from parent Company A. Company B has no employees and is not registered for withholding tax. Company B contracted with Company A for the use of Company A employees; that is, it used employees of Company A to drive the trucks of Company B and reimbursed Company A for the wages, salary and fringe benefits Company A paid such employees. Company B sets its own transportation rates competitive with other carriers and bills its customers, including Company A. Company B delivers Company A's finished product and picks up raw material for Company A, but it also provides transportation for third parties. Less than 10% of Company B's revenues are generated from hauling freight for parties other than Company A.

**Question:** Are the gross receipts received by Company B for transporting products of Company A considered (a) a lease or rental of trucks from Company B to Company A which is taxable under s. 77.52(1), 1985 Wis. Stats., or (b) a nontaxable transportation service?

Answer: Company B is providing a nontaxable transportation service. Even though Company B uses drivers who are employees of parent Company A, for which it reimburses Company A, Company B is still considered to be providing the drivers under Section Tax 11.29(4)(c).

the Oneida County tax applies to that purchase if the vehicle is to be customarily kept in that county.

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## HOMESTEAD CREDIT

### 1. Homestead Credit: Property Taxes on Property Used for Business Purposes

Statutes: Section 71.09(7)(a)7, 1987 Wis. Stats.

Background: Section 71.09(7)(a)7, 1987 Wis. Stats., provides that the property taxes accrued on multipurpose buildings shall be prorated to reflect only that part of the multipurpose building occupied by the household as a principal residence plus a similar percentage of the land surrounding it. When a portion of a property is used exclusively for business purposes, property taxes used in computing homestead credit may not include the portion of the property taxes that reflects business use. Therefore, if the property is used exclusively for business purposes for which a deduction is allowed or allowable for income tax purposes, the relating property taxes may not be used for homestead credit purposes.

Question 1: A person's 1987 property taxes on his or her principal residence are \$1,200. The person uses one room of a five-room home as an office. For income tax purposes, assume the person is not allowed an office in the home deduction because he or she does not use the office exclusively for business purposes. What portion of the 1987 property taxes may the person use in computing his or her 1987 homestead credit?

Answer 1: \$1,200. The entire home still serves primarily as a principal residence. The business use is incidental to the residential use of the property. Therefore, 100% of the property taxes may be used in computing the homestead credit.

Question 2: Assume the same facts as in Question 1 except that the office is used exclusively for business. The expenses of maintaining the office are allowed as a deduction for income tax purposes. In computing the deduction, the business portion was determined under one method allowed by the IRS which is to base the portion on the ratio of one room to total of five rooms. May 100% of the 1987 property taxes be used in computing a 1987 homestead credit?

Answer 2: No. The entire home no longer serves primarily as a principal residence because one room is used exclusively for business. Therefore, only 80% of the 1987 property taxes may be used in computing a 1987 homestead credit (four rooms not used for business purposes divided by five rooms).

Questions 3: The 1987 property taxes on a person's principal residence are \$1,000. One room of his or her ten-room residence

Example 2: Company C is authorized by the Transportation Commission to operate as a contract carrier. Company C hauls feed exclusively for Company D. Company C is a wholly-owned subsidiary of Company D. Company C has its own trucks. Company D pays Company C a reasonable fee for hauling Company D's feed. Company C leases drivers from Company D for which it pays Company D a reasonable fee. When drivers are not being paid by Company C, employees of Company D could not use the trucks in any way. The trucks could only be driven by those directed to do so and paid to do so by Company C.

Question 1: Were the charges made by Company C to Company D for hauling Company D's feed (a) a taxable lease or rental under s. 77.52(1), 1985 Wis. Stats., or (b) a nontaxable transportation service.

Answer 1: The charges are considered payment for a nontaxable transportation service. That fact that Company C leased drivers from Company D does not make it a rental of trucks under Section Tax 11.29(4).

Question 2: Were the trucks purchased by Company C exempt under the common or contract carrier exemption in s. 77.54(5)(b), 1985 Wis. Stats?

Answer 2: Yes, because Company C operates exclusively as a contract carrier.

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## COUNTY SALES/USE TAXES

### 1. County Tax - Motor Vehicle Purchased Before Tax was in Effect:

Statutes: Section 77.51(14r), 1985 Wis. Stats.

Facts and Question: The Oneida County sales and use tax went into effect on April 1, 1987. An Oneida County resident purchased a motor vehicle in Illinois on March 28, 1987, brought the car to Oneida County that same day, and registered the car with the Department of Transportation on April 9, 1987, after the tax was in effect. Is this transaction subject to the Oneida County tax?

Answer: No, the car was purchased prior to April 1, 1987, when the Oneida County tax went into effect. If a motor vehicle is purchased in Wisconsin or out-of-state on or after April 1, 1987,

is used exclusively for business purposes. Although an income tax deduction would be allowed for the business use, this person elects not to claim the deduction. May 100% of the property taxes be used in computing 1987 homestead credit?

Answer 3: No. Because the one room is used exclusively for business, the portion of the property taxes relating to that one

room may not be used in computing homestead credit. It does not matter that an income tax deduction was not claimed for expenses relating to that room, as long as the person **would** have been qualified to claim a deduction.

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