WISCONSIN TAX BULLETIN

October 1988
NUMBER 58

Subscription available from:

WISCONSIN DEPARTMENT OF ADMINISTRATION
Document Sales
P.O. Box 7840
Madison, WI 53707
Annual Cost - $5.00

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INCOME TAX FORMS TO INCLUDE LINE FOR WISCONSIN SALES/USE TAX ON OUT-OF-STATE PURCHASES

If a person makes any taxable purchases from out-of- state firms on which no sales tax is charged, that person must report Wisconsin sales/use tax on these purchases. The 1988 Wisconsin Forms 1, 1A, WI-Z, and 1NPR will include a line for such persons to report sales/use tax on out-of-state purchases.

For example, you order from C Company in Ohio a set of golf clubs for $500 plus a shipping charge of $25. The company does not charge Wisconsin sales tax on your purchase because it is not required to collect Wisconsin sales/use tax. You owe a Wisconsin sales/use tax on the out-of-state purchase equal to 5% of the purchase price plus shipping on the purchase. An additional 1/2% county tax is imposed if you obtain delivery of the golf clubs in a county that has adopted a county sales and use tax ordinance.

Although this method of collecting sales/use tax is new for Wisconsin for 1988, other states have had a similar line on their income tax forms in prior years.

IN THIS ISSUE

SCHEDULE WD TO BE INCLUDED IN 1988 FORM 1 AND 1NPR INCOME TAX BOOKLETS

A large number of taxpayers filed a Wisconsin Schedule WD with their 1987 Wisconsin income tax returns to report Wisconsin capital gains and losses. For the convenience of taxpayers, the 1988 Form 1 and Form 1NPR tax booklets will contain copies of Wisconsin Schedule WD for reporting Wisconsin capital gains and losses for 1988.

Note that for 1988, if a taxpayer's capital gain or loss reportable to Wisconsin consists only of a capital gain distribution from a mutual fund, the taxpayer does not have to complete Schedule WD. The 1988 instructions for Form 1 and Form 1NPR contain information about claiming an exclusion on a portion of the capital gain distribution.

DEPARTMENT TAKES ACTION AS A RESULT OF KUHNEN DECISION

In its decision dated January 14, 1988, the Wisconsin Court of Appeals, District IV, held that in the class action suit of *Michael W. Kuhnen, Cynthia J. Kuhnen, James J. Schmitz, Joanne E. Schmitz on behalf of themselves and all former residents of the State of Wisconsin in 1980, similarly situated v. Mark E. Musolf*, for the 1980 taxable year, sec. 71.05(1)(a)5, Stats. (1979-80), was unconstitutional and that the department could not impose an income tax on the gain from the sale in 1980 of a taxpayer's principal residence located in Wisconsin if the taxpayer purchased a qualified residence under section 1034 of the Internal Revenue Code outside of Wisconsin.

As a result of the *Kuhnen* decision, the department has notified, by letter, potential members of the class of their right to receive a refund of Wisconsin income tax, interest, and penalties paid on the gain from the 1980 sale of their principal residence located in Wisconsin when a qualified replacement residence was purchased outside Wisconsin. The department has also published legal notices describing the *Kuhnen* litigation in the *Wall Street Journal*, *Milwaukee Journal* and *Wisconsin State Journal*.

Note: A refund is only allowed for the **1980** sale of a personal residence located in Wisconsin. Sales in other years do not qualify.

FOR 1988 TAXABLE YEAR A 10% CREDIT OF FARM PROPERTY TAXES IS ALLOWED

As of October 1, 1988, the Director of the Agriculture Stabilization and Conservation Service certified that at least 40% of the crops in Wisconsin have been lost due to the drought. Therefore, sec. 71.09 (12fd), Stats., as created by 1987 Wisconsin Act 422 allows a 10% credit of farm property taxes to certain owners of farmland for the 1988 taxable year.

Who is eligible for the credit?

Any individual (including partners and shareholders of tax-option (S) corporations), corporation, trust, or estate is eligible for the drought credit, provided they own Wisconsin farmland of at least 35 acres and that farmland provided not less than $6,000 of gross farm profits in taxable year 1988 or not less than $18,000 of gross farm profits in taxable years 1986, 1987, and 1988. If the farmland is rented, the renter's gross farm profits are used to satisfy this requirement. The claimant need not be a resident of Wisconsin to be eligible for the credit. Only one claimant per household (husband, wife, and dependents while under age 18) may claim the credit.

How is the credit computed?

The credit is equal to 10% of Wisconsin farm real property taxes (up to $10,000) for the taxable year 1988. Therefore, the credit is limited to $1,000 (10% x $10,000). The credit is further limited in that the amount of farmland preservation credit plus the amount of the drought credit may not exceed 95% of the farm property taxes for taxable year 1988. If any reduction is necessary, it is made against the drought credit.

Example: A calendar year Wisconsin taxpayer has farm property taxes for 1988 of $2,000. The taxpayer computed a 1988 farmland preservation credit of $1,800 and a drought credit of $200 (10% x $2,000). Since the credits added together ($2,000) exceed 95% of property taxes for 1988 ($1,900), the taxpayer will be allowed a farmland preservation credit of $1,800 and a drought credit of $100 or a total credit of $1,900.

Example: A calendar year Wisconsin taxpayer has total farm property taxes of $2,500. However, only $2,000 of those taxes may be used for computing farmland preservation credit because only a portion of the land is zoned exclusively for agricultural use. The taxpayer computed a 1988 farmland preservation credit of $1,800 and a drought credit of $250. Since the credits added together ($2,050) do not exceed $2,375 (95% of **total** farm property taxes of $2,500), the taxpayer is allowed a farmland preseravation credit of $1,800 and a drought credit of $250 or total credits of $2,050.

What are property taxes for 1988?

Property taxes for 1988 are the real property taxes on the farm, including improvements, (exclusive of charges for special assessments, delinquent interest, and charges for service) that were levied during the taxpayer's 1988 taxable year. The taxes do not have to be paid to qualify for credit.

Example 1: A taxpayer has a calendar taxable year. Property taxes for 1988 are those taxes levied in December 1988 which are generally paid in 1989.

Example 2: A taxpayer has a 1988 taxable year that begins August 1, 1987, and ends July 31, 1988. Property taxes for 1988 are those taxes levied in December 1987, as this is the levy date that falls within the taxpayer's 1988 taxable year.

Example 3: A taxpayer has a 1988 taxable year that begins June 1, 1988, and ends May 31, 1989. Property taxes for 1988 are those taxes levied in December 1988, as this is the levy date that falls within the taxpayer's 1988 taxable year.

How is the credit claimed?

The credit will be claimed by individuals on 1988 Wisconsin Form 1 or 1NPR; by corporations on 1988 Wisconsin Form 4 or 5; and by trusts and estates on 1988 Wisconsin Form 2. The Forms 1, 1NPR, and 2 will have a separate line to claim the drought credit.

Because the Form 4 and Form 5 had been printed prior to October 1, corporations will be required to obtain a schedule from the department to compute the drought credit. The credit computed will be entered on the line for farmland preservation credit on Form 4 or 5.

The claim for credit must be made within 12 months following the close of the taxpayer's 1988 taxable year.

REMINDER: NEW EXEMPTION PROVISIONS FOR NONPROFIT ORGANIZATIONS TAKE EFFECT JANUARY 1, 1989

Effective January 1, 1989, sales of tangible personal property and services, including admissions or tickets to an event, conducted by a nonprofit organization are exempt from sales tax if:

1. There is no professional entertainment,

2. The organization is not engaged in a trade or business, and

3. The organization is not otherwise required to have a Wisconsin seller's permit.

An organization is deemed to be engaged in a trade or business if its sales of tangible personal property or services (not including sales of tickets to events), or its events occur on more than 20 days during the year. However, if an organization's receipts do not exceed $15,000 for the year, it is not considered to be engaged in a trade or business even if its sales and/or events exceed 20 days.

REMINDER: WISCONSIN FILING REQUIREMENTS FOR DEPENDENT CHILDREN DIFFERENT THAN FEDERAL

The Wisconsin filing requirements for dependent children are different than the federal filing requirements. For federal tax purposes, when a parent can claim a child as a dependent, that child may be required to file a federal income tax return when his or her gross income exceeds $500.

For Wisconsin tax purposes, a child who can be claimed as a dependent is not required to file a 1988 Wisconsin income tax return unless he or she has either $1,000 or more of nonwage income or $5,200 or more of gross income.

A dependent child required to file a 1988 Wisconsin income tax return must file on Form 1. A dependent child who is not required to file a Wisconsin return, but is doing so to obtain a refund of Wisconsin tax withheld from wages, will generally file a Form 1A or Form WI-Z.

REMINDER: TAX-EXEMPT ORGANIZATIONS MAY BE TAXED ON UNRELATED BUSINESS TAXABLE INCOME

Beginning with the 1988 taxable year, organizations filing federal Form 990-T that have $1,000 or more of gross income from an unrelated trade or business must report such income to Wisconsin if:

- The organization is exempt from Wisconsin taxation under sec. 71.01 (3)(a), Stats., or

- The organization is a trust exempt from taxation under section 501(a) of the Internal Revenue Code, or

- The organization is an individual retirement arrangement (IRA).

Wisconsin unrelated business income is reported and tax liability is computed on Wisconsin Form 4T.

Form 4T is due by the 15th day of the 5th month following the close of the organization's 1988 taxable year, except that an employe's trust defined in section 401(a) of the Internal Revenue Code and an IRA must file Form 4T by the 15th day of the 4th month following the close of their taxable year.

Most Wisconsin exempt organizations who filed a 1987 federal Form 990-T will be sent a 1988 Wisconsin Form 4T. If an organization does not receive a copy, one may be obtained by writing to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708 or by calling (608) 266-1961. Practitioners requesting Form 4T should call (608) 267-2025.

FORM CHANGES FOR 1988

Following is a brief description of major changes made to the income tax, homestead credit, and farmland preservation credit forms for 1988.

1. **Income Tax (Forms 1, 1A, WI-Z, and 1NPR)**

   - A line is added to report Wisconsin sales tax on out-of-state purchases (see article on page 1).

   - A line is added to Forms 1 and 1NPR for the 1988 farmers' drought credit (see article on page 2).

   - The format of the school property tax credit entry area on Form WI-Z is revised. Separate entry spaces are provided for amounts claimed by renters and homeowners.

   - A separate line for capital gain distributions and IRA distributions is added to Form 1NPR.

   - Check boxes for aliens and dependents are relocated on Form 1NPR .

   - A reminder to attach a Residence Questionnaire is added to Form 1NPR.

2. **Homestead Credit (Schedule H)**

   - Line 9 regarding reporting income from income tax returns is revised.
   - The rent certificate is revised by adding entry lines to report the value of medical and other personal services provided.

3. **Farmland Preservation Credit (Schedule FC)**

   - The entire Schedule FC is redesigned to conform more closely to the Schedule H.
   - Publicly traded partnerships are included for the corporation check box.
   - A question is added as to whether 1987 property taxes have been paid.
   - Only farm income of dependents is to be included on Schedule 1 on the back of Schedule FC.
   - The addback items to household income have been consolidated into one schedule on the back of Schedule FC (Schedule 2).

Proof copies of the 1988 Wisconsin Forms 1, 1A, WI-Z, and 1NPR are included on pages 23 through 31 of this issue.

CORRECTION TO SHAREHOLDERS' INSTRUCTIONS FOR 1988 SCHEDULE 5K-1

The 1988 Schedule 5K-1 (Form IC-156) instructions for shareholders contain an incorrect line reference. In the instructions for lines 14a through 14f, shareholders are instructed to carry the net amount from column C lines 14a through 14f of their 1988 Schedule 5K-1 to line 8 or 9 of their 1988 Schedule MT, as appropriate. The instructions should read that the shareholders should report the net amount from column C of lines 14a through 14f of Schedule 5K-1 on line 8 or 10 of their 1988 Schedule MT, as appropriate.

COMBINED WISCONSIN RETURN FOR NONRESIDENT TAX-OPTION (S) CORPORATION SHAREHOLDERS

A tax-option (S) corporation that does business in Wisconsin and has two or more nonresident shareholders who derive no taxable income from Wisconsin other than their distributive share of the Wisconsin tax-option (S) corporation income may file a combined individual income tax return on behalf of those shareholders, beginning in 1988. The tax-option (S) corporation files this return on Form 1CNS.

A shareholder may not participate in this combined return if:

- The shareholder is a trust or estate.
- The shareholder files his or her individual income tax return on a fiscal year basis.
- The shareholder is a Wisconsin resident during any part of 1988.
- The shareholder derives taxable income from Wisconsin in 1988 other than his or her distributive share of tax-option (S) corporation income.

Each qualifying and participating shareholder's distributive share of tax-option (S) corporation income for the corporation's taxable years ending during the period January 31, 1988, through December 31, 1988, is reported on a 1988 Form 1CNS. The combined return replaces the separate 1988 Wisconsin individual income tax return that otherwise would be filed by each of the qualifying and participating nonresident shareholders.

Form 1CNS will require the tax-option (S) corporation to compute the tax on the net Wisconsin tax-option (S) corporation income of each of the qualifying and participating shareholders. No deductions or credits will be allowed. The tax-option (S) corporation can make combined estimated tax payments of behalf of the nonresident shareholders. The shareholders' balances due or overpayments will be totaled on Form 1CNS, and one remittance will be submitted by the corporation or one refund check will be issued to the corporation.

The 1988 Form 1CNS is due on April 17, 1989. If the corporation is granted an extension by the Internal Revenue Service for filing its federal return, this automatically gives a Wisconsin extension to file Form 1CNS to the same extended due date. A copy of the federal extension must be attached to the Form 1CNS filed with the department.

Form 1CNS will be available in late December 1988 from any Department of Revenue office or by calling (608) 266-1961. Practitioners should call (608) 267-2025 to obtain copies of Form 1CNS. Additional information about the combined individual income tax return may be obtained by writing to Diane Hardt, Director, Tax Processing Bureau, Post Office Box 8903, Madison, Wisconsin 53708 or by calling (608) 267-5190.

WISCONSIN AND FEDERAL CAPITAL GAIN HOLDING PERIODS CONTINUE TO DIFFER FOR 1988

When the Wisconsin capital gain deduction was enacted for the 1987 taxable year and thereafter, a one-year holding period was established. Wisconsin law allows 60% of the net capital gain from assets held for **more than one year** to be deducted from Wisconsin taxable income.