



State of Wisconsin • DEPARTMENT OF REVENUE

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February 22, 2010

Neil Trautenberg
President
Tax Executives Institute, Inc.
1220 G St., N.W., Suite 300
Washington, DC 20005

Dear Mr. Trautenberg:

RE: Wisconsin Combined Reporting Administrative Rules

Dear Mr. Trautenberg:

Thank you for your letter to Wendy Miller dated October 15, 2009, regarding the Wisconsin Department of Revenue's administrative rules for combined reporting. In your letter you described several issues and concerns that TEI has about the emergency rules that were published on August 8, 2009.

I wanted to follow up on your letter and provide some additional information about the status of the rules and an upcoming public hearing.

Issues Raised by TEI

The issues that you described in your letter relate to the following areas:

- Initial basis of depreciable assets
- Research credits
- Net business losses
- Controlled group election
- Designated agent

We received comments from other interested parties on some of these same concerns as well as other issues. On our Combined Reporting web page, we've published a table summarizing all comments we received on the emergency rules and our response to each comment. You can find the summary at www.revenue.wi.gov/comb rept/rules.html.

On January 15, 2010, the Department published a revised version of the emergency rules. All revisions noted in the table of comments and responses are reflected in the January 15 version. The revised emergency rules are also available at www.revenue.wi.gov/comb rept/rules.html.

I will summarize the revisions that pertain to the issues described in your letter:

Initial Basis of Depreciable Assets. We amended s. Tax 2.61(6)(a)3., to specify that the Wisconsin basis of a corporation's depreciable property for the first year it is taxable in Wisconsin is its federal basis as computed under the "Internal Revenue Code" in effect for Wisconsin purposes (emphasis added). A note then explains that this means federal basis must be computed without regard to bonus depreciation. We've also provided an example on page 13 of the Form 4 Instructions for Combined Returns (and page 12 of the Form 4 Instructions for Separate Returns).

This amendment was necessary because s. Tax 2.30(3), Wisconsin Administrative Code (June 1990 Register), already provided that an individual, estate, or trust must compute asset basis under the "Internal Revenue Code" as defined for Wisconsin purposes, regardless of whether the property was acquired before the taxpayer became taxable in this state (emphasis added). Our amendment to s. Tax 2.61(6)(a)3. and the examples in the form instructions clarify that asset basis for previously nontaxable corporations is determined in the same way as for similarly situated individuals, estates, and trusts.

Research Credits. The revisions we made regarding research credits include:

- Added an example following s. Tax 2.61(10)(d) to demonstrate that when a combined group member performs research that is funded by another member of the same combined group, the member performing the research is considered to be funding its own research.
- Added the phrase "if any" to s. Tax 2.61(10)(c)1. to clarify that a combined group member may share its research credits regardless of whether it has tax liability of its own.
- Added a sentence to s. Tax 2.61(9)(h)2. to clarify that an election to share or not share qualifying losses or research credits is not binding on subsequent taxable years. In other words, each year the member may choose how much loss or research credit it wants to share, assuming the loss or credit qualifies for sharing. (Section Tax 2.61(10)(c)5. incorporates s. Tax 2.61(9)(h)2. by reference.)
- Amended s. Tax 2.61(10)(c)1., to be consistent with the Tax Release published in *Wisconsin Tax Bulletin* 138-24 (April 2004), which provides that for any credit except the manufacturer's sales tax credit, a corporation may elect to use unused carryovers of the credit before using the current year credit.

Net Business Losses. As mentioned above, we added a sentence to s. Tax 2.61(9)(h)2. to clarify that an election to share or not share qualifying losses is not binding on subsequent taxable years.

Controlled Group Election. We renumbered s. Tax 2.63(3) to 2.63(3)(a) and added par. (b) to explain how reorganizations affect the continuity of the controlled group election. In s. Tax 2.63, we also added language to address what happens when a commonly controlled group divests a subgroup of companies.

Designated Agent. We renumbered s. Tax 2.65(c)2. to 3. and added subd. 2. to state that if two combined groups merge together, the designated agent is the corporation that files the first combined return for the new group.

Status of Rules

As previously mentioned, on January 15, 2010, we published a revised version of the emergency rules for combined reporting, which consists of ss. Tax 2.60 to 2.67, Wisconsin Administrative Code. Additionally, on December 31, 2009, we published a second batch of emergency rules that are closely related to combined reporting. This second batch is separate from ss. Tax 2.60 to 2.67 and consists of amendments to previously existing rules for apportionment and nexus.

You can find the current language of both batches of rules on our Combined Reporting web page at <http://www.revenue.wi.gov/comb rept/rules.html>.

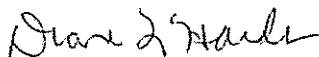
Public Hearing

There will be a public hearing on Thursday, February 25, 2010 regarding both the revised combined reporting rules (ss. Tax 2.60 to 2.67) and the amendments to previously existing apportionment and nexus rules. The hearing will be at 1:00 p.m. in the Events Room of the Department of Revenue Building located at 2135 Rimrock Road in Madison, Wisconsin.

At the hearing, participants may make an oral presentation but must provide written comments reflecting the oral presentation. However, you do not need to attend the hearing to submit written comments. For both batches of rules, all written comments submitted on or before **March 4, 2010** will be given the same consideration as testimony presented at the hearing. Submit written comments to Wendy Miller at P.O. Box 8933, Mail Stop 6-40, Madison, WI 53708-8933.

Again, I would like to thank TEI for their input and participation. I hope this information is helpful.

Sincerely,



Diane L. Hardt, Administrator
Division of Income, Sales & Excise Taxes