

CR 87-168

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

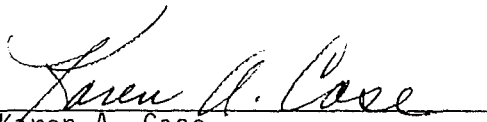
RECEIVED

MAR 24 1988
2:30 pm
Revisor of Statutes
Bureau

I, Karen A. Case, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to the taxation of interest earned on certain securities was duly approved and adopted by this department on March 23, 1988.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 23 day of March, 1988.


Karen A. Case
Secretary of Revenue

KAC:bet
430710

March 22, 1988

5-1-88

ORDER OF THE DEPARTMENT OF REVENUE
REPEALING AND RECREATING RULES

To repeal and recreate Tax 3.095 relating to the taxation of interest earned on certain securities.

Analysis Prepared by the Department of Revenue

The changes in this Order affect income tax rules.

SECTION 1. Tax 3.095 is repealed and recreated for the following reasons:

(1) The U.S. Supreme Court in the case of Rockford Life Insurance Company v. Illinois Department of Revenue ruled that interest income received from financial instruments issued by private financial institutions but guaranteed by the U.S. government for payment of principal and interest if the issuer defaults was not exempt from state taxation under U.S.C. § 3701 because the instruments were neither direct nor certain obligation of the United States. Therefore, interest from securities such as Government National Mortgage Association bonds previously thought to be exempt by the department is in fact taxable by Wisconsin. This applies to interest accrued on or after August 1, 1987.

(2) Section 71.05(1)(b)1, Stats., was amended by 1987 Wisconsin Act 27 to remove the term "related expenses"; therefore, this reference as it relates to federal securities was removed from the rule.

(3) Further study by the department in regard to Puerto Rico and certain other federal securities has led to the determination that the interest from these securities is exempt from state taxation as provided in the United States Code.

(4) Interest from certain state and municipal securities previously exempt from state taxation is now taxable for securities issued after January 28, 1987, as a result of an amendment to s. 71.05(1)(a)1, Stats., by 1987 Wisconsin Act 27.

SECTION 1. Tax 3.095 is repealed and recreated to read:

Tax 3.095 INCOME TAX STATUS OF INTEREST AND DIVIDENDS FROM MUNICIPAL, STATE AND FEDERAL OBLIGATIONS RECEIVED BY INDIVIDUALS AND FIDUCIARIES. (Sections 71.05(1)(a)1 and 71.05(1)(b)1, Wis. Stats.) (1) Interest and dividends, less related expenses, payable on the following securities shall be subject to state income tax on individuals and fiduciaries:

- (a) District of Columbia Development Land Agency bonds, 42 U.S.C. § 1452.
- (b) Export-Import Bank of the United States debentures, 12 U.S.C. § 635.
- (c) Farmer's Home Administration insured notes, 7 U.S.C. §§ 1928 and 1929.
- (d) Federal Home Loan Bank dividends, 12 U.S.C. §§ 1426 and 1436.
- (e) Federal National Mortgage Association certificates, 12 U.S.C. § 1718.

NOTE: In 1968, the Federal National Mortgage Association became two separate corporations. One corporation retained the original name and the other is known as the Government National Mortgage Association.

(f) Federal National Mortgage Association dividends, 12 U.S.C. § 1719.

(g) Government National Mortgage Association (Ginnie Mae) bonds, 12 U.S.C. §§ 1720 and 1721.

(h) Insured Merchant Marine bonds, 46 U.S.C. § 1273.

(i) Inter-American Development Bank bonds, 22 U.S.C. § 283.

(j) Interest paid on deposits in any federal bank or agency.

(k) International Bank for Reconstruction and Development bonds, 22 U.S.C. § 286.

(l) Small Business Investment Company debentures, 15 U.S.C. § 683 and 687.

(m) Tennessee Valley Authority bonds, 16 U.S.C. § 831n-3.

(n) Transit bonds of the Washington Metropolitan Area Transit Authority.

(2) Interest and dividends payable on the federal securities listed in pars. (a) to (zb) shall be exempt from state income tax on individuals and fiduciaries. For purposes of this subsection, the term "federal securities" means only securities which are direct and primary obligations of the United States and securities the interest of which federal law prohibits states from taxing. Federal securities do not include securities for which the United States is merely a guarantor and, therefore, has an obligation which is secondary and contingent to that of the issuer of the security.

(a) Bank for Cooperative debentures, 12 U.S.C. § 2134.

(b) Bank repurchase agreements for U.S. Government treasury bills, notes, and bonds, if interest is paid by the federal government directly to the taxpayer.

(c) Commonwealth of Puerto Rico public improvement bonds, 48 U.S.C. § 745.

- (d) Federal Farm Credit Banks Consolidated Systemwide Securities, 12 U.S.C. § 2055.
- (e) Federal Home Loan Bank bonds, debentures, and notes, 12 U.S.C. § 1433.
- (f) Federal Housing Authority debentures, 12 U.S.C. §§ 1710(d) and 1747g(g).
- (g) Federal Intermediate Credit Bank debentures, 12 U.S.C. § 2079.
- (h) Federal Land Bank bonds, 12 U.S.C. § 2055.
- (i) Federal Reserve Bank dividends, 12 U.S.C. § 531.
- (j) Production Credit Association debentures, 12 U.S.C. § 2098.
- (k) Puerto Rico Aqueduct and Sewer Authority revenue bonds, 48 U.S.C. § 745.
- (l) Puerto Rico Electric Power Authority electric revenue bonds, 48 U.S.C. § 745.
- (m) Puerto Rico Electric Power Authority power revenue bonds, 48 U.S.C. § 745.
- (n) Puerto Rico Highway Authority revenue bonds, 48 U.S.C. § 745.
- (o) Puerto Rico Industrial Development Company bonds, 48 U.S.C. § 745.
- (p) Puerto Rico Municipal Finance Agency 1974 Series A bonds, 48 U.S.C. § 745.
- (q) Puerto Rico Ports Authority revenue bonds, 48 U.S.C. § 745.
- (r) Puerto Rico Public Buildings Authority revenue bonds, 48 U.S.C. § 745.
- (s) Puerto Rico Public Buildings Authority public education and health facility bonds, 48 U.S.C. § 745.
- (t) Puerto Rico Telephone Authority revenue bonds, 48 U.S.C. § 745.
- (u) Student Loan Marketing Association obligations, 20 U.S.C. § 1087-21.
- (v) Tennessee Valley Authority bonds, 16 U.S.C. § 831n-4(d).
- (w) Territory of Hawaii bonds.
- (x) Territory of Puerto Rico bonds, 48 U.S.C. § 745.
- (y) United States Postal Service bonds, 39 U.S.C. § 2005.
- (z) United States Savings bonds, 31 U.S.C. § 3124.

(za) United States Treasury bills and notes, 31 U.S.C. § 3124.

(zb) University of Puerto Rico university system revenue bonds, 48 U.S.C. § 745.

(3) Interest and dividends, less related expenses, payable on the state, municipal, and other local government securities listed in pars. (a) to (f) shall be subject to the state income tax on individuals and fiduciaries.

(a) District of Columbia general obligation bonds issued after January 28, 1987, s. 47-33, District of Columbia Code.

(b) Municipal bonds.

(c) Public housing authority bonds issued by municipalities located outside Wisconsin.

(d) Virgin Islands Housing Authority bonds issued after January 28, 1987, 48 U.S.C. § 1408(a).

(e) Wisconsin Health Education Assistance Loan revenue obligation bonds, s. 39.374, Stats.

(f) Wisconsin Housing and Economic Development Authority bonds issued after January 28, 1987, s. 234, Stats.

(4) Interest and dividends payable on the housing authority bonds listed below shall be exempt from the state income tax on individuals and fiduciaries.

(a) Public housing authority bonds issued by municipalities located in Wisconsin, s. 66.40(14)(a), Stats.

(b) Wisconsin Public Housing Authority bonds, 42 U.S.C. § 1437i(b).

Note: This rule sets out examples of interest and dividends payable on state, municipal and federal obligations which are taxable and tax exempt.

Section 71.05(1)(a)1, Stats., provides for the inclusion in Wisconsin income of natural persons and fiduciaries of any interest, less related expenses, received on state and municipal obligations.

Section 71.05(1)(b)1, Stats., provides for the exclusion from Wisconsin income of natural persons and fiduciaries of any interest or dividend income which is by federal law exempt from taxation by Wisconsin.

For periods prior to August 1, 1987, interest accrued from District of Columbia Development Land Agency bonds, Export-Import Bank of the United States debentures, Farmer's Home Administration insured notes, Government National Mortgage Association bonds, Small Business Investment Company debentures and transit bonds of the Washington Metropolitan Area Transit Authority was not subject to the Wisconsin income tax if payment of principal and interest on such obligations was guaranteed by the United States. As a result of the U.S. Supreme Court decision in the case of Rockford Life Insurance Company v. Illinois Department of Revenue et al., the Department of Revenue does not consider these financial instruments to be direct and primary obligations of the United States so as to qualify for exemption from state income taxation. Therefore, by emergency rule effective August 1, 1987, the Department of Revenue amended this rule to reverse its prior interpretation and to provide that interest which accrues on these financial instruments on or after August 1, 1987 is subject to Wisconsin income tax.

Interest accrued on the following securities issued on or before January 28, 1987, is not subject to Wisconsin income tax because no modification is provided for in Wisconsin law that would add to federal adjusted gross income interest excluded from federal adjusted gross income by any reason other than section 103 of the Internal Revenue Code:

1. District of Columbia general obligation bonds.
2. Virgin Island Housing Authority bonds.
3. Wisconsin Housing and Economic Development Authority bonds.

Interest accruing on these securities is subject to Wisconsin income tax if

the security was issued after January 28, 1987. 1987 Wisconsin Act 27 amended s. 71.05(1)(a)1, Wis. Stats., to provide for the addition to federal adjusted gross income, of interest, less related expense, which is not included in federal adjusted gross income and not specifically exempted from state taxation. Previously this addition only applied to interest excluded from federal adjusted gross income by section 103 of the Internal Revenue Code.

Interest on Wisconsin Health Education Assistance Loan revenue obligation bonds is subject to Wisconsin income tax whether the security was issued before, on, or after January 28, 1987.

The repeals and recreations contained in this order shall take effect on the first day of the month following publication as provided in s. 227.22(2)(intro.), Wis. Stats.

Regulatory Flexibility Analysis

This order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: 3/23/88

By: Karen A. Case
Karen A. Case
Secretary of Revenue

RPT/M022457D

March 22, 1988



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

Tommy G. Thompson
Governor

March 24, 1988

Karen A. Case
Secretary of Revenue

Mark D. Bugher
Deputy Secretary

James R. Behrend
Executive Assistant

Douglas LaFollette
Secretary of State
Room 271, GEF-1
Madison, WI 53702

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 87-168.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

Karen A. Case
Secretary of Revenue

KAC:TAR:bet
Enclosure
LTR/M020828H

✓cc: Revisor of Statutes