

1999 DRAFTING REQUEST**Bill**Received: **10/13/98**Received By: **shoveme**Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-1805**By/Representing: **Gates-Hendrix**This file may be shown to any legislator: **NO**Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Tax - individual income**

Extra Copies:

Topic:

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC compensation by nonresidents

Instructions:

See Attached. Conform s.71.05 (6) (a) 12 to reflect current law in light of US Supreme Court's decision in "Lunding, Et. Ux. v. NY Tax Appeals Tribunal"; s. 71.05 (6) (a) 12 is unconstitutional in light of "Lunding."

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	shoveme 10/22/98	gilfokm 10/22/98	jfrantze 10/26/98	_____	lrb_docadmin 10/26/98		Tax
/P2	shoveme 01/18/99	gilfokm 01/18/99	hhagen 01/19/99	_____	lrb_docadmin 01/19/99		Tax
/P3	shoveme 01/20/99	gilfokm 01/20/99	jfrantze 01/20/99	_____	lrb_docadmin 01/20/99		Tax

FE Sent For:

<END>

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/P2	shoveme 01/18/99	gilfokm 01/18/99	hhagen 01/19/99	_____	lrb_docadmin 01/19/99		Tax

1/P 3 MES 1/2 1/20-99
 FE Sent For: *img* *1/20* *1/20*
 <END>
 1/20

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May Contact:

Alt. Drafters:

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/P1	shoveme 10/22/98	gilfokm 10/22/98	jfrantz 10/26/98	_____	lrb_docadmin 10/26/98		Tax

1P2 1/16/99/pa-1-18-99
FE Sent For: *king* *1/15* *1/15*
<END>

1999 DRAFTING REQUEST

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Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-1805**

By/Representing: **Gates-Hendrix**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Tax - individual income**

Extra Copies:

Topic:

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC compensation by nonresidents, part-year residents

Instructions:

See Attached. Conform s.71.05 (6) (a) 12 to reflect current law in light of US Supreme Court's decision in "Lunding, Et. Ux. v. NY Tax Appeals Tribunal"; s. 71.05 (6) (a) 12 is unconstitutional in light of "Lunding."

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1?	shoveme	P1-10-22 KMG	JB 10/26	JB/KH 10/26			

1/P1 NES 10/22

FE Sent For:

<END>

Wisconsin Department of Revenue
IS&E Division
September 15, 1998

TITLE: Change Treatment of Deductions for Alimony and Supplemental Unemployment Compensation for Nonresident and Part-Year Resident Taxpayers

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Section 71.05(6)(a)12 provides, in part, that alimony and supplemental unemployment compensation deducted for federal income tax purposes and paid while the individual is a nonresident of Wisconsin must be added back to the individual's federal adjusted gross income when computing Wisconsin taxable income. In other words, alimony and supplemental unemployment compensation paid while an individual is not a resident may not be claimed as a deduction for Wisconsin income tax purposes.

On January 21, 1998, the United States Supreme Court in *Christopher H. Lunding, Et Ux., v. New York Tax Appeals Tribunal Et Al.* ruled that a provision of New York's income tax law which denies nonresident taxpayers an income tax deduction for alimony violates the Privileges and Immunities Clause of the U. S. Constitution. A review of the Lunding case by the department's legal staff indicates that the provisions in sec. 71.05(6)(a)12 would also be found unconstitutional. Thus, a change must be made to bring Wisconsin law into compliance with the Supreme Court's decision. (Note: The Governor recognized the need for this legislation in his June 2, 1998 veto message pertaining to sections 282 and 9342(6) of 1997 Assembly Bill 768, copy attached.)

RECOMMENDATION FOR ACTION:

Change Wisconsin law to provide that nonresident and part-year taxpayers may deduct the same amount of alimony and supplemental unemployment compensation for Wisconsin purposes as they deduct for federal purposes. (Note: Since federal adjusted gross income is used as the starting point for computing Wisconsin taxable income and alimony and supplemental unemployment compensation are deducted in computing federal adjusted gross income, no adjustment would be required on an individual's Wisconsin return.)

FISCAL/ADMINISTRATIVE IMPACT:

None. Removal of the language in sec. 71.05(6)(a)12 that denies nonresidents a deduction for alimony and repayments of supplemental unemployment compensation has no fiscal effect, because this language has already been rendered invalid by the United States Supreme Court decision cited above.

DRAFTING INSTRUCTIONS:

Amend sec. 71.05(6)(a)12.

EFFECTIVE DATE OR INITIAL APPLICABILITY:

Taxable years beginning after December 31, 1998

PERSON TO CONTACT:

Tom Reid (608) 266-8474

PREPARED BY:

**Tom Reid
September 15, 1998**



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0575/P1

MES... King

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC compensation by nonresidents, ~~part-year residents~~

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

D-note

SOON

1 AN ACT ^{Don't Gen Cat}; relating to: the treatment of individual income tax deductions for
2 alimony and supplemental unemployment compensation for nonresident
3 taxpayers.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Currently, Wisconsin statutes provide that alimony and supplemental unemployment compensation that ~~is~~ deducted for federal income tax purposes and paid while the individual is a nonresident of Wisconsin must be added back to the individual's federal adjusted gross income when computing Wisconsin taxable income. This means that alimony and supplemental unemployment compensation that is paid while an individual is not a resident of this state may not be claimed as a deduction for Wisconsin income tax purposes.

In the case of *Christopher H. Lunding, Et. Ux., v. New York Tax Appeals Tribunal Et Al.*, the United States Supreme Court ruled that a New York law which denies nonresident taxpayers an income tax deduction for alimony violates the Privileges and Immunities clause of the U.S. Constitution.

This bill changes the Wisconsin statutes to conform to the Supreme Court's decision in the *Lunding* case.

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U.S.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

~~For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 12. of the statutes is amended to read:

2 71.05 (6) (a) 12. ~~All alimony deducted for federal income tax purposes and paid~~
3 ~~while the individual paying the alimony was a nonresident of this state; all~~ All
4 penalties for early withdrawals from time savings accounts and deposits deducted
5 for federal income tax purposes and paid while the individual charged with the
6 penalty was a nonresident of this state; ~~all repayments of supplemental~~
7 ~~unemployment benefit plan payments deducted for federal income tax purposes and~~
8 ~~made while the individual making the repayment was a nonresident of this state; all~~
9 reforestation expenses related to property not in this state, deducted for federal
10 income tax purposes and paid while the individual paying the expense was not a
11 resident of this state; all contributions to individual retirement accounts, simplified
12 employe pension plans and self-employment retirement plans and all deductible
13 employe contributions, deducted for federal income tax purposes and in excess of that
14 amount multiplied by a fraction the numerator of which is the individual's wages and
15 net earnings from a trade or business taxable by this state and the denominator of
16 which is the individual's total wages and net earnings from a trade or business; the
17 contributions to a Keogh plan deducted for federal income tax purposes and in excess
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19 earnings from a trade or business, taxable by this state, and the denominator of
20 which is the individual's total net earnings from a trade or business; the amount of

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 2 of the internal revenue code for federal income tax purposes and in excess of that
 3 amount multiplied by a fraction the numerator of which is the individual's net
 4 earnings from a trade or business, taxable by this state, and the denominator of
 5 which is the individual's total net earnings from a trade or business; and the amount
 6 of self-employment taxes deducted under section 164 (f) of the internal revenue code
 7 for federal income tax purposes and in excess of that amount multiplied by a fraction
 8 the numerator of which is the individual's net earnings from a trade or business,
 9 taxable by this state, and the denominator of which is the individual's total net
 10 earnings from a trade or a business.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237. History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237.

11 **SECTION 9343. Initial applicability; revenue.**

12 (1) TREATMENT OF DEDUCTIONS FOR ALIMONY AND SUPPLEMENTAL UNEMPLOYMENT
 13 COMPENSATION FOR NONRESIDENTS AND ~~PARTY YEAR RESIDENTS~~. The treatment of section
 14 71.05 (6) (a) 12. of the statutes first applies to taxable years beginning on January
 15 1 of the year in which this subsection takes effect, except that if this subsection takes
 16 effect after July 31 the treatment of section 71.05 (6) (a) 12. of the statutes first
 17 applies to taxable years beginning on January 1 of the year following the year in
 18 which this subsection takes effect.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0575/P1dn

MES.....

The department's instructions state that the requested changes to s. 71.05 (6) (a) 12. apply both to nonresidents (who are specified in the statute) and part-year residents (who are not specified in the statute). Since part-year residents are not required by s. 71.05 (6) (a) 12. to add back alimony or supplemental UC, is it necessary to refer to them in the initial applicability provision? Should they be mentioned in the relating clause and the analysis?

Marc E. Shovers
Senior Legislative Attorney
266-0129

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0575/P1dn
MES:kmg:jf

October 26, 1998

The department's instructions state that the requested changes to s. 71.05 (6) (a) 12. apply both to nonresidents (who are specified in the statute) and part-year residents (who are not specified in the statute). Since part-year residents are not required by s. 71.05 (6) (a) 12. to add back alimony or supplemental UC, is it necessary to refer to them in the initial applicability provision? Should they be mentioned in the relating clause and the analysis?

Marc E. Shovers
Senior Legislative Attorney
266-0129

Department of Revenue Comments
LRB Draft 0575/P1
Treatment of Deductions for Alimony and Supplemental UC Compensation

The following change is needed to the draft:

1. The initial applicability provision should apply only with respect to the change being made in the treatment of deductions for repayments of supplemental unemployment compensation. The change made in the treatment of deductions for alimony should become effective on the day after publication. This is because the Department of Revenue has already changed the instructions in the Wisconsin income tax booklets for 1998 to allow alimony payments made at a time when an individual is a nonresident to be claimed as a deduction for Wisconsin purposes. (Note: The change to the 1998 instructions related only to alimony deductions because that was the sole issue involved in the U.S. Supreme Court's decision in the New York case. The department subsequently determined that the limitation on deductions for repayments of supplemental unemployment compensation was also likely to be affected by that court decision.)

Prepared by: Tom Reid
 Staff Specialist
 IS&E Division
 January 12, 1999
 (608) 266-8474

Approved by:

Legal	<u>John R. Curran</u>	Date	<u>1/13/99</u>
Research and Analysis	<u>Daniel J. Ulin</u>	Date	<u>1/13/99</u>
IS&E	<u>Thomas Reid</u>	Date	<u>1/12/99</u>



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0575/P1

MES:kmg

R-MNR

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC
compensation by nonresidents

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not
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- 1 AN ACT **relating to:** the treatment of individual income tax deductions for
2 alimony and supplemental unemployment compensation for nonresident
3 taxpayers.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Currently, Wisconsin Statutes provide that alimony and supplemental unemployment compensation that are deducted for federal income tax purposes and paid while the individual is a nonresident of Wisconsin must be added back to the individual's federal adjusted gross income when computing Wisconsin taxable income. This means that alimony and supplemental unemployment compensation that is paid while an individual is not a resident of this state may not be claimed as a deduction for Wisconsin income tax purposes.

In the case of *Christopher H. Lunding, Et. Ux., v. New York Tax Appeals Tribunal Et Al.*, the U.S. Supreme Court ruled that a New York law which denies nonresident taxpayers an income tax deduction for alimony violates the Privileges and Immunities clause of the U.S. Constitution.

This bill changes the Wisconsin Statutes to conform to the U.S. Supreme Court's decision in the *Lunding* case.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 12. of the statutes is amended to read:
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8 made while the individual making the repayment was a nonresident of this state; all
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18 of that amount multiplied by a fraction the numerator of which is the individual's net
19 earnings from a trade or business, taxable by this state, and the denominator of
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10 **SECTION 9343. Initial applicability; revenue.**

11 (1) TREATMENT OF DEDUCTIONS FOR ALIMONY AND SUPPLEMENTAL UNEMPLOYMENT
12 COMPENSATION FOR NONRESIDENTS. The treatment of section 71.05 (6) (a) 12. of the
13 statutes first applies to taxable years beginning on January 1 of the year in which
14 this subsection takes effect, except that if this subsection takes effect after July 31
15 the treatment of section 71.05 (6) (a) 12. of the statutes first applies to taxable years
16 beginning on January 1 of the year following the year in which this subsection takes
17 effect.

18 (END)

*into the extent that (as it relates to repayments
of supplemental unemployment compensation)*



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0575/P23
MES:kmg:hrh

RM

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC
compensation by nonresidents

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

NO net
gen

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This bill changes the Wisconsin Statutes to conform to the U.S. Supreme Court's decision in the *Lunding* case.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0575/P3
MES:kmg:jf

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC
compensation by nonresidents

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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17 supplemental unemployment compensation) first applies to taxable years beginning
18 on January 1 of the year following the year in which this subsection takes effect.

19

(END)

NOTE TO DRAFTING FILE for LRB-0575:

Per the drafter, this draft has been redrafted to a “/1” as no problems remain in the draft that require resolution before introduction of the budget bill. There are no changes between the “/PX” and the “/1.”

DOA:.....Gates-Hendrix - Treatment of alimony and supplemental UC
compensation by nonresidents

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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This bill changes the Wisconsin Statutes to conform to the U.S. Supreme Court's decision in the *Lunding* case.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 12. of the statutes is amended to read:
2 71.05 (6) (a) 12. ~~All alimony deducted for federal income tax purposes and paid~~
3 ~~while the individual paying the alimony was a nonresident of this state; all~~ All
4 penalties for early withdrawals from time savings accounts and deposits deducted
5 for federal income tax purposes and paid while the individual charged with the
6 penalty was a nonresident of this state; ~~all repayments of supplemental~~
7 ~~unemployment benefit plan payments deducted for federal income tax purposes and~~
8 ~~made while the individual making the repayment was a nonresident of this state; all~~
9 reforestation expenses related to property not in this state, deducted for federal
10 income tax purposes and paid while the individual paying the expense was not a
11 resident of this state; all contributions to individual retirement accounts, simplified
12 employe pension plans and self-employment retirement plans and all deductible
13 employe contributions, deducted for federal income tax purposes and in excess of that
14 amount multiplied by a fraction the numerator of which is the individual's wages and
15 net earnings from a trade or business taxable by this state and the denominator of
16 which is the individual's total wages and net earnings from a trade or business; the
17 contributions to a Keogh plan deducted for federal income tax purposes and in excess
18 of that amount multiplied by a fraction the numerator of which is the individual's net
19 earnings from a trade or business, taxable by this state, and the denominator of
20 which is the individual's total net earnings from a trade or business; the amount of
21 health insurance costs of self-employed individuals deducted under section 162 (L)

1 of the internal revenue code for federal income tax purposes and in excess of that
2 amount multiplied by a fraction the numerator of which is the individual's net
3 earnings from a trade or business, taxable by this state, and the denominator of
4 which is the individual's total net earnings from a trade or business; and the amount
5 of self-employment taxes deducted under section 164 (f) of the internal revenue code
6 for federal income tax purposes and in excess of that amount multiplied by a fraction
7 the numerator of which is the individual's net earnings from a trade or business,
8 taxable by this state, and the denominator of which is the individual's total net
9 earnings from a trade or a business.

10 **SECTION 9343. Initial applicability; revenue.**

11 (1) TREATMENT OF DEDUCTIONS FOR REPAYMENTS OF SUPPLEMENTAL UNEMPLOYMENT
12 COMPENSATION FOR NONRESIDENTS. The treatment of section 71.05 (6) (a) 12. of the
13 statutes (as it relates to repayments of supplemental unemployment compensation)
14 first applies to taxable years beginning on January 1 of the year in which this
15 subsection takes effect, except that if this subsection takes effect after July 31 the
16 treatment of section 71.05 (6) (a) 12. of the statutes (as it relates to repayments of
17 supplemental unemployment compensation) first applies to taxable years beginning
18 on January 1 of the year following the year in which this subsection takes effect.

19 (END)