

CR 81-238

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

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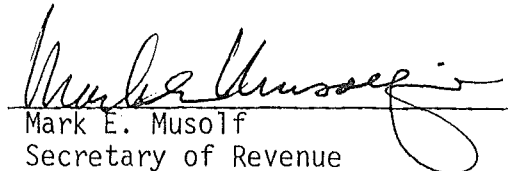
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Statistical
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mark E. Musolf, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed repeals and recreation of rules relating to gain on sale of assets acquired before becoming a Wisconsin resident, was duly approved and adopted by this department on June 2, 1982.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 2nd day of June 1982.



Mark E. Musolf
Secretary of Revenue

ORDER OF THE DEPARTMENT
OF REVENUE REPEALING AND RECREATING RULES

To repeal Tax 2.97 and to repeal and recreate Tax 2.30(3) relating to gains and losses on sales of assets acquired prior to becoming a Wisconsin resident.

Analysis by the Department of Revenue

This order repeals and recreates a portion of rule Tax 2.30 and repeals all of Tax 2.97 which interpret ss. 71.02(2)(d) and (e) and 71.05(1)(a)3, (b)3 and (j), (2)(a)5 and (b), and (4), Stats. These rules set forth the amount of gain which is taxable and the amount of loss deductible upon the sale of an asset which was acquired prior to the seller becoming a Wisconsin resident.

The rules require that in computing gain or loss the basis of an asset shall be adjusted to its market value at the date the seller became a Wisconsin resident, but limits the gain or loss to the lesser of the difference between the asset's selling price and either its federal adjusted basis or its market value on the date Wisconsin residence was established (reduced by any depreciation allowed or allowable since Wisconsin residency was established). However, an exception provides that if one computation results in a gain and the other computation a loss, then no gain or loss is recognized for Wisconsin tax purposes.

The purpose of the rules is to limit the amount of taxable gain or deductible loss to that realized while the seller was a Wisconsin resident. The rules are based on two Wisconsin Supreme Court cases cited in subsection (2) of rule Tax 2.97 which were decided in 1930 and 1935. However, the same court's ruling on February 2, 1981 in the case of Wisconsin Department of Revenue vs. Romain A. Howick (100 Wis 2d 274) invalidated the rules with respect to losses deductible, but did not rule on the treatment of gains. The court ruled that under Wisconsin law losses in the situation described here cannot be limited to the amount realized while the seller was a Wisconsin resident and that, in computing such losses, the asset's federal adjusted basis must be used.

Based on the Wisconsin Supreme Court's 1981 decision in Wisconsin Department of Revenue vs. Romain A. Howick, the Department of Revenue believes rules Tax 2.30(3)(b)2 and 3 and Tax 2.97 are invalid and that the principles of the Romain A. Howick case should be applied to gains as well as losses.

Pursuant to the authority vested in the Department of Revenue by s. 71.11(24)(a), Stats., the Department of Revenue hereby repeals rules interpreting sections 71.02(2)(d) and (e) and 71.05(1)(a)3, (b)3 and (j), (2)(a)5 and (b), and (4), Stats., as follows:

SECTION 1. Tax 2.30(3) of the Wis. Adm. Code is repealed and recreated to read:

Tax 2.30(3) TREATMENT IN 1975 AND SUBSEQUENT YEARS FOR RESIDENT INDIVIDUALS, ESTATES AND TRUSTS. For tax year 1975 and thereafter, income or loss from property and business located outside Wisconsin, received by resident individuals, estates and trusts, is taxable. The basis for depreciation and for determining gain or loss on disposition of property for such taxpayers is the same as the basis determined under the internal revenue code, whether the property was acquired before becoming or while a resident of this state.

Note to Revisor: Delete the "Note" following section Tax 2.30 and replace it with the following:

NOTE: In the case of Wisconsin Department of Revenue vs. Romain A. Howick, 100 Wis. 2d 274 (1981), the Wisconsin Supreme Court held that for the purpose of determining a loss on sale the basis of property located outside Wisconsin acquired before the owner became a Wisconsin resident is the basis determined under the Internal Revenue Code. In this rule, the same principle is applied to gains realized upon the disposition of such property.

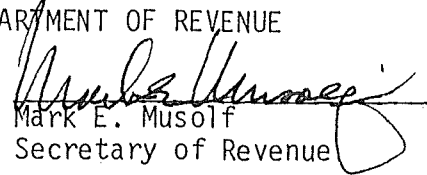
SECTION 2. Tax 2.97 of the Wis. Adm. Code is repealed.

The repeals and creations contained in this order pertaining to the computation of gains shall take effect as provided in s. 227.026(1)(intro.), Stats. The treatment of losses is controlled by the February 2, 1981 decision of the Wisconsin Supreme Court in the case of Wisconsin Department of Revenue vs. Romain A. Howick, 100 Wis. 2d 274 (1981).

Dated: June 2, 1982

DEPARTMENT OF REVENUE

By:


Mark E. Musolf

Secretary of Revenue