

STATE OF WISCONSIN  
TAX APPEALS COMMISSION

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DEERE & COMPANY,

DOCKET NO. 18-I-135

Petitioner,

vs.

WISCONSIN DEPARTMENT OF REVENUE,

Department.

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**RULING AND ORDER**

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**LORNA HEMP BOLL, COMMISSIONER:**

This case comes before the Commission for decision on a Stipulation of Facts submitted by the parties and cross motions for summary judgment. The Petitioner, Deere & Co., is represented by John T. Barry and James E. Goldschmidt, Quarles & Brady, LLP, of Milwaukee, WI. The Wisconsin Department of Revenue (“the Department”) is represented by Attorney Mark S. Zimmer. Both parties have submitted briefs in support of their respective positions. For the reasons set forth below, we hold in favor of the Petitioner.

**FACTS**

1. Petitioner is a Delaware corporation that manufactures and markets agricultural equipment, consumer/commercial lawn equipment, engines, and drive trains used in heavy equipment. (Stip. ¶ 1.)

2. As early as 2011 and during the taxable years ending October 31, 2013, October 31, 2014, and October 31, 2015 (the "Audit Period"), Petitioner owned the sole membership interest of John Deere Holding LLC, a Delaware limited liability company ("JDH-US"), which was treated as a disregarded entity for federal and Wisconsin income and franchise tax purposes. (Stip. ¶ 2.)

3. On October 26, 2011, Petitioner and JDH-US formed John Deere Holding LLC 1 S.C.S. ("JDH-Lux"), a "société en commandite simple," which is a form of limited partnership created under the laws of Luxembourg. (Stip. ¶ 3.)

4. Through a Partnership Agreement entered into by Petitioner and JDH-US, JDH-Lux issued partnership interests to JDH-US and Petitioner. JDH-Lux has issued no other ownership interests. (Stip. ¶ 4, Ex. A.)

5. Petitioner filed Internal Revenue Service ("IRS") Form 8832 (Entity Classification Election) with the IRS to treat JDH-Lux as an association taxable as a corporation for federal income tax purposes. (Stip. ¶ 5, Ex. B.)

6. By notice dated February 6, 2012, the IRS notified JDH-Lux that it had approved the Entity Classification Election to treat JDH-Lux as an association taxable as a corporation for federal income tax purposes, effective October 23, 2011. (Stip. ¶ 6, Ex. C.)

7. As a result of JDH-US being a disregarded entity for federal and Wisconsin income and franchise tax purposes, Petitioner is treated as the sole owner of all the assets and liabilities of JDH-US, including JDH-US's interest as a General Partner

of JDH-Lux. Therefore, Petitioner is treated as the sole owner of JDH-Lux for federal and Wisconsin income and franchise tax purposes. (Stip. ¶ 7.)

8. Prior to the Audit Period, the Department issued Publication 119, which stated that “[i]f an LLC [(a limited liability company)] is classified as a corporation, an LLC interest is treated in the same manner as stock.” Throughout the Audit Period, Publication 119 was published guidance of the Department and such guidance was not retracted, altered, or amended in any relevant way. (Stip. ¶ 8.)

9. During the taxable years ending October 31, 2013 and October 31, 2014, Petitioner and JDH-US received distributions of cash from JDH-Lux. (Stip. ¶ 9.)

10. Petitioner filed a Wisconsin combined franchise tax return for the years ending October 31, 2013, and October 31, 2014, and included in income the distributions that Petitioner had received from JDH-Lux. (Stip. ¶ 10.)

11. Because JDH-US was a disregarded entity for federal income and Wisconsin income and franchise tax purposes during the Audit Period, Petitioner also included in income the distributions that were received by JDH-US. (Stip. ¶ 11.)

12. Petitioner also claimed on its Wisconsin franchise tax returns a “dividends received deduction” pursuant to Wis. Stat. § 71.26(3)(j) for the full amount of the distributions. (Stip. ¶ 12.)

13. Petitioner declared on its federal forms 5471 during the Audit Period that its ownership interest in JDH-Lux was a “partnership capital interest.” (Stip. ¶ 13, Exs. G, H, and I.)

14. Petitioner received a Notice of Office Audit Amount Due dated October 16, 2017, for corporate franchise taxes for the Audit Period in the amount of \$151,937 in additional tax and \$57,064.35 in interest (“Notice”). (Stip. ¶ 14, Ex. D.)

15. In the Notice, the Department determined that additional franchise tax was due as a result of the distributions received from JDH-Lux not qualifying for the Dividends Received Deduction. (Stip. ¶ 15.)

16. By letter dated December 15, 2017, Petitioner filed with the Department a timely Petition for Redetermination objecting to the denial of the Dividends Received Deduction and requesting that the Department redetermine the amount of any additional Wisconsin franchise tax and interest due without any such adjustments. (Stip. ¶ 16, Ex. E.)

17. By Notice of Action dated March 22, 2018, the Department denied Petitioner’s Petition for Redetermination. (Stip. ¶ 17, Ex. F.)

18. On May 21, 2018, Petitioner timely filed a Petition for Review with the Wisconsin Tax Appeals Commission. (Commission file.)

### DECISION<sup>1</sup>

This case involves a taxpayer corporation’s claim of a Dividends Received Deduction (DRD) relating to distributions received from an affiliated foreign entity which has elected to be treated as a corporation for federal tax purposes. The taxpayer was allowed a federal DRD but has been denied a similar deduction in Wisconsin.

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<sup>1</sup> Petitioner begins its arguments by announcing on page one of its brief the potential financial impact on Petitioner should the Commission rule against it. The Commission assures the parties that the dollar figure does not influence our consideration of this question of law.

**ISSUE: Petitioner received distributions from a foreign limited partnership that has elected, via IRS Form 8832 (aka "Check-the-Box"), to be treated as an association taxable as a corporation for federal tax purposes. May Petitioner claim a Wisconsin Dividends Received Deduction under Wis. Stat. § 71.26(3)(j) for those distributions?**

The parties agree to the basic facts. JDH-Lux is a foreign limited partnership. Its partners are Petitioner and JDH-US. Because JDH-US is a disregarded entity, its income flows through to Petitioner, the sole owner for all intents and purposes.

Prior to the audit period, JDH-Lux elected "to be classified as an association taxable as a corporation;" that is, JDH-Lux "checked the box" on Form 8832. That election to be treated as a corporation for federal tax purposes was approved prior to the Audit Period. Subsequent to the election, JDH-Lux made cash distributions to Petitioner and the disregarded entity, JDH-US. Petitioner included all JDH-Lux distributions in its taxable income for the Audit Period and took corresponding state and federal "Dividends Received Deductions." The Department denied the Wisconsin deductions citing the statute's use of the wording "dividends received from a corporation with respect to common stock."

### *Applicable Law<sup>2</sup>*

Treas. Reg. § 301.7701-3 Classification of certain business entities.

(a) In general. A business entity that is not classified as a corporation under § 301.7701-2(b) (1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section.

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<sup>2</sup> Although this decision may at times use present tense, all references to the Wisconsin Statutes and federal regulations refer to those in effect during the Audit Period.

Under federal law, the following transactions are deemed to occur when a partnership elects to be treated as a corporation for federal tax purposes:

Treas. Reg. 301.7701-3(g) Elective changes in classification

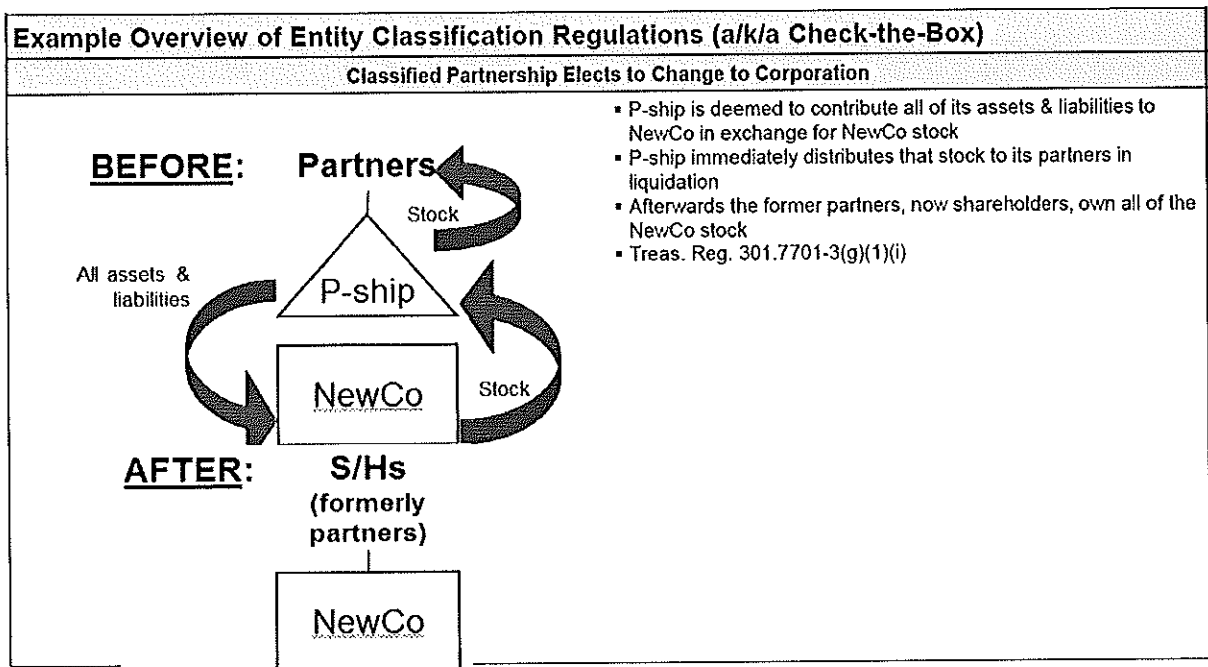
(1) Deemed treatment of elective change

(i): Partnership to association [“and thus a corporation under § 301.7701-2(b)(2)” per Treas. Reg. 301.7701-3(a)]

The partnership contributes all of its assets and liabilities to the association [taxable as a corporation] in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.

The Internal Revenue Service also provides an illustration of the ramifications of a partnership’s Check-the-Box election:

### Examples of the Concept



[https://www.irs.gov/pub/int\\_practice\\_units/ore\\_c\\_19\\_02\\_01.pdf](https://www.irs.gov/pub/int_practice_units/ore_c_19_02_01.pdf).

Wisconsin has expanded its definition of corporation for tax purposes in Wis. Stat. § 71.22 to include entities which have chosen the Check-the-Box election:

Wis. Stat. § 71.22(1k): "Corporation" includes corporations, . . . limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts and all other entities treated as corporations under section 7701 of the Internal Revenue Code, unless the context requires otherwise. . . . . (emphasis added)

Under the federal Code, I.R.C. §§ 243-246, a federal Dividends Received Deduction (DRD) is allowed for "qualifying dividends."

I.R.C. § 243(b) Qualifying dividends.

(1) In general.

For purposes of this section, the term "qualifying dividend" means any dividend received by a corporation-  
(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

(B) if such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group.

I.R.C. § 243(b)(1)(A)&(B).

Similarly, Wisconsin also has established a Dividends Received Deduction.

However, rather than adopting the federal language, Wisconsin has chosen to eliminate the federal language and craft its own version of the DRD:

Wis. Stat. § 71.26(3)(j): Sections 243, 244, 245, 245A, 246 and 246A are excluded and replaced by the rule that corporations may deduct from income dividends received from a corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70 percent of the total combined voting stock of the payor corporation. In this paragraph, "dividends received" means gross dividends

minus taxes on those dividends paid to a foreign nation and claimed as a deduction under this chapter. The same dividends may not be deducted more than once. (emphasis added)

### *Legal Standards*

Summary judgment is granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2). Here, the parties have stipulated to the material facts and have both moved for summary judgment. The effect of simultaneous motions for summary judgment is an assertion that the facts presented are not in dispute and only questions of law remain for determination. *Healthcare Services, Inc. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-085 (WTAC 2016).

The Department's determinations are presumed to be correct, and it is Petitioner's burden to prove by clear and convincing evidence that the Department erred in its determination. *Puissant v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

When interpreting a statute, we assume that the legislature's intent is expressed in the statutory language. Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). The *Kalal* court explained, "Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity." Therefore, Wisconsin courts ordinarily do not consult



extrinsic sources of statutory interpretation unless the language of the statute is ambiguous. Courts have referred to “extrinsic sources” to mean interpretive resources outside the statutory text, such as items of legislative history. *Id.*

### ANALYSIS

The parties recognize that JDH-Lux is a foreign association which is “a form of limited partnership created under the laws of Luxembourg.” The parties also agree that JDH-Lux elected to be “classified an association taxable as a corporation for federal income tax purposes” through the Check-the-Box election of Treas. Reg. § 301.7701-3(g)(1)(i), and the IRS approved the election. It is at this point that the parties part ways.

Petitioner argues that JDH-Lux, by its election to be classified as an entity taxed as a corporation for federal tax purposes, has been transformed into a corporation for tax purposes such that, for tax purposes, its ownership interests are now in the form of common stock. It then reasons that the distributions are dividends relative to that common stock.

The Department contends that JDH-Lux is not a corporation at all or at least not in this case “because the context requires otherwise,” but remains comprised of partnership capital interests so it cannot have issued common stock. The Department therefore argues, because no common stock exists, the distributions from JDH-Lux are not dividends but simply distributions to its partners with respect to their partnership interests. In the alternative, the Department argues that, even if JDH-Lux is a corporation, the dividends are not deductible either because its stock is somehow not “common.”

Wisconsin has generally adopted the federal tax code.<sup>3</sup> However, the two systems are not identical. The relevant state tax statutes are found in Chapter 71 of the Wisconsin Statutes. For Wisconsin tax purposes, Wis. Stat. 71.01(6) defines the “internal revenue code,” outlining which provisions, laws, and amendments do and do not apply in Wisconsin.

The IRS adopted regulations establishing Check-the-Box elections effective as of January 1, 1997, through Treas. Reg. 301.7701-3(h)(1). Under these regulations, entities may choose either to be taxed in a default manner or to elect to be treated as though they were different types of entities for tax purposes. Specifically, the Check-the-Box regulation allows partnerships such as JDH-Lux to elect, via Form 8832, to be “classified as an association taxed as a corporation for federal tax purposes.”

Wisconsin’s adoption of the federal tax code includes the Check-the-Box election. Wisconsin’s definition of “corporation” includes “entities treated as corporations . . . unless the context requires otherwise.” Wis. Stat. § 71.22(1k). Thus, entities which have checked the box and elected to be treated as corporations for federal tax purposes are generally treated as corporations for Wisconsin tax purposes as well.

**Department’s Contention #1 – JDH-Lux is not a corporation.**

The Department takes the position that JDH-Lux is taxed as a corporation but remains in all other ways a partnership. This argument views the federal election too narrowly. While it is accurate to say that JDH-Lux remains a partnership for non-tax

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<sup>3</sup> See *Colton v Dep’t of Revenue*, Wis. Tax Rptr. (CCH) ¶ 402-076 (WTAC 2016).

purposes,<sup>4</sup> its election to be “classified as an association taxable as a corporation” has broad ramifications.

Under federal law, the entity, regardless of its original legal form for non-tax purposes, is treated as the type of entity elected for tax purposes. Pertinent to this case, a partnership which has chosen the corporate classification will be taxed as a corporation because it is treated as having exchanged its partnership interests for stock and as having dissolved as a partnership, becoming instead a stock corporation.

The Wisconsin definition of a corporation in Wis. Stat. § 71.22(1k) includes entities treated as a corporation for tax purposes under federal law. In light of the deemed transactions that occur under federal law, we find that, for purposes of Chapter 71 of the Wisconsin Statutes, JDH-Lux is not only taxed as a corporation, it is a corporation.

**The Department’s Contention #2 - Despite its Form 8832 election, JDH-Lux does not actually have stock and therefore cannot pay dividends from common stock.**

The federal regulations explain the ramifications of the Check-the-Box election: For tax purposes, the partnership is effectively dissolved and the partners (now shareholders) retain stock in the new association. Because Wisconsin has adopted the Check-the-Box regulations, it must, for tax purposes, accept the deemed transactions which facilitate that deemed transformation.

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<sup>4</sup> Checking the box does not convert a partnership into a corporation in non-tax circumstances. Its partners are still considered to own partnership property in accordance with their percentage interests, general partners can contractually bind the partnership, and partners remain personally liable for all of the debts and obligations of the partnership. The partnership remains a partnership for all non-tax state law purposes.

The Department continues to contend that JDH-Lux is not really a corporation, at least for this tax purpose, because it is not a corporation under local law for other purposes. No one disputes that JDH-Lux was formed as a partnership under local law. JDH-Lux is a partnership but, for tax purposes, it has elected to be treated as a corporation. JDH-Lux checked the box on Form 8832. The IRS approved the election. As this case involves a tax issue, we must, therefore, treat this partnership as a corporation. Following the IRS's guidance, the Petitioner now owns the stock of the payor corporation. By virtue of that stock ownership, the Petitioner received dividends, which it properly included in income and for which it may claim a DRD. The Department's second contention fails.

**The Department's Contention #3 - JDH-Lux does not fall within the definition of "corporation" because the "context requires otherwise."**

The federal tax code allows a corporation to deduct dividends received from another corporation provided specified ownership requirements are met and provided that the earnings and/or profits comprising the dividends were earned in a tax year after 1963. I.R.C. § 243.<sup>5</sup>

Wisconsin has chosen to replace the federal Dividends Received Deduction language with its own. The deduction language of Wis. Stat. 71.26(3)(j) begins: "Sections 243 [et. seq.] are excluded." The Wisconsin Statutes replace the federal language with "the rule that corporations may deduct from income dividends received from a

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<sup>5</sup> The Commission is unaware of any dispute as to Petitioner's entitlement to the federal Dividends Received Deduction.

corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70 percent of the total combined voting stock of the payor corporation.”

The language of the Wisconsin DRD differs from the federal wording in several respects. During the Audit Period, Wisconsin’s standard for ownership is 70% while the federal DRD requires 80%. In this case, that difference is of no consequence because Petitioner owns 99.9%<sup>6</sup> of the payor entity.

A second difference involves the required timing of when that ownership must exist. Under I.R.C. § 243(b)(1), the recipient corporation must satisfy the 80% ownership requirement (A) on the date the distribution is made, and (B) during the entire tax year in which the funds used for the distribution are earned. Wisconsin requires 70% ownership during the entire taxable year in which the dividend is received, rather than the date on which the dividend is received, and Wisconsin’s ownership requirement is not tied to the tax year in which the distributed funds used were earned. This distinction also has no bearing on this case because ownership is not at issue.

Finally, the Wisconsin deduction uses the wording “with respect to its common stock.” The Department hangs its hat on this reference to common stock, a term not found in the federal provision. The Department sees this phrase as a significant indicator that Wisconsin requires actual stock, not stock merely deemed to exist by operation of the 8832 Election. As further support, the Department points to the federal

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<sup>6</sup> JDU-US owns the remaining 0.1%, but as noted Petitioner owns JDH-US, so Petitioner reports 100% of the dividends.

deduction's contrasting language describing dividends "distributed out of earnings and profits." The Department then reasons that, because the payor entity does not actually have common stock, this must be a situation where the payor entity does not fall within the definition of corporation – i.e., the context requires otherwise.

However, these phrases need to be read in their complete contexts. The full wordings of both the state and federal versions reveal that the Department's focus is misplaced. The federal "earnings and profits" phrase is part of the timing requirement as to when the funds used to pay the dividend were earned. (" . . . such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, . . .") Wisconsin has crafted its own DRD which includes no such timing restriction on the source of funds used for the dividend. Wisconsin's chosen wording refers to dividends as simply from common stock as opposed to being from earnings and profits earned in a particular time period.

In the context of the Wisconsin DRD, Petitioner has elected to be treated as a corporation for tax purposes. Following the federal ramifications of the Check-the-Box elections, for tax purposes, Petitioner's ownership interests are stock. The JDH-Lux stock paid dividends to the Petitioner. The Wisconsin deduction applies to stock dividends.

The Department's own guidance supports this conclusion. Publication 119 addresses various issues related to LLCs.<sup>7</sup> The following excerpts are relevant:

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<sup>7</sup> The parties have stipulated that the 1/13 and 2/14 versions of Publication 119 were in effect during the Audit Period. The current online version, dated 6/19, no longer contains the language of Section IX regarding the treatment of LLC ownership interests.

See <https://www.revenue.wi.gov/DOR%20Publications/pb119.pdf>

Section VI. CLASSIFICATION OF AN LLC FOR WISCONSIN FRANCHISE AND INCOME TAX PURPOSES.

(A). An LLC that is treated as a corporation under the IRC is treated as a corporation for Wisconsin purposes. [§71.22(1k), Wis. Stats.]

Section VII. WISCONSIN TAX TREATMENT OF LLCs.

(A)(1). If a corporation: An LLC classified as a corporation files federal Form 1120, U.S. Corporation Income Tax Return, and Wisconsin Form 4 or 6<sup>8</sup>, Wisconsin Corporation Franchise or Income Tax Return.

(A)(2). If a corporation: An LLC treated as a corporation may compute the same tax credits as a regular (C) corporation, unless the LLC has elected to be treated as a tax-option (S) corporation.

Section IX. TAX TREATMENT OF MEMBERS OF LLCs CLASSIFIED AS CORPORATIONS.

If an LLC is classified as a corporation, an LLC interest is treated in the same manner as stock.

Publication 119 explains that an LLC treated as a corporation files its taxes as though it is a corporation. The parties do not dispute that an LLP treated as a corporation also files its taxes using the federal Corporate Income Tax Return and Wisconsin's Corporation Franchise and Income Tax Return.

Publication 119 further explains an LLC that is treated as a corporation for federal tax purposes is treated as a corporation for Wisconsin purposes. Likewise, it follows that an LLP is also treated as a corporation for state tax purposes.

According to the guidance in Publication 119, a member's interest in an LLC classified as a corporation is treated as though it is stock. Because, here, LLCs and LLPs are not dissimilar in any relevant aspect, we find that an interest in an LLP which is

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<sup>8</sup> Reads "Form 4 or 5" in the 2/14 version.

classified as a corporation under the federal Check-the-Box election is likewise to be treated in the same manner as stock. As payments relative to stock, the distributions from JDH-Lux should be included in income, and the recipient should be allowed a corresponding deduction provided certain ownership requirements are met, as they are in this case.

We hold that Publication 119 applies to LLPs treated as corporations just as it applies to LLCs treated as corporations. There is no basis for treating these two types of entities differently in this context. The Department must adhere to its own guidance in effect during the Audit Period. Wis. Stat. § 73.16(2)(a).<sup>9</sup>

**Department's Contention #4 - Petitioner's ownership interest is not common stock.**

Finally, the Department argues that, even if for tax purposes JDH-Lux is a corporation and Petitioner's ownership interests are considered stock, that stock is somehow not "common stock." However, there is no indication that there is more than one type of ownership interest contemplated by the federal regulation. If there is only one type of stock ownership, it certainly cannot be preferred stock as there is no other stock over which it would be given preference. Hence, Petitioner's shares of JDH-Lux must be common stock.

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<sup>9</sup> [I]n the course of any determination, or in the course of any proceeding appealing any determination, the department shall not take a position that is contrary to any rule promulgated by the department that was in effect during the period related to the determination or that is contrary to any guidance published by the department prior to that period and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts.



Wisconsin's use of the term "from common stock" logically serves as a clarification that the deduction is not allowed for dividends related to preferred stock. Here, again, the Department's argument fails.

### **Summary**

When JDH-Lux checked the box, its partnership interests were, for tax purposes, exchanged for stock. JDH-Lux is to be treated as a corporation for Wisconsin tax purposes. For tax purposes, the Petitioner is the owner of the stock. Nothing in this context requires us to say that a company with stock and shareholders should fall outside the definition of "corporation."

There is no indication that more than one class of stock was created, so we conclude that the stock is common. Thus, the distributions JDH-Lux made to Petitioner were, for tax purposes, dividends made with respect to common stock. Petitioner must include the distributions in income and may claim a Dividends Received Deduction.

### **CONCLUSIONS OF LAW**

1. The parties have stipulated to facts sufficient to allow for a determination regarding the issues of law in dispute. No issues of material fact exist, so this matter is ripe for summary judgment.
2. JDH-Lux elected to and was approved to be treated as a corporation for federal tax purposes. JDH-Lux is also to be treated as a corporation for Wisconsin tax purposes.

3. The Department's guidance at the time, Publication 119, regarding LLCs treated as corporations also applies to LLPs. The Department must respect its own guidance in effect during the Audit Period.

4. Petitioner is entitled to the Wisconsin Dividend Received Deduction.

5. Petitioner's Motion for Summary Judgment is granted; its motion for costs is denied.

6. The Department's Motion for Summary Judgment is denied.

7. The Commission denies Petitioner's claim for costs and attorney fees.

Dated in Madison, Wisconsin, this 21st day of August, 2019.

WISCONSIN TAX APPEALS COMMISSION



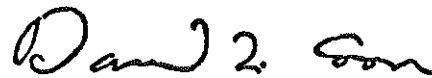
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Elizabeth Kessler, Chair



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Lorna Hemp Boll, Commissioner



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David L. Coon, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION  
5005 University Avenue – Suite 110  
Madison, Wisconsin 53705

**NOTICE OF APPEAL INFORMATION**

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

***Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION***

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

**AND/OR**

***Option 2: PETITION FOR JUDICIAL REVIEW***

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is <https://wicourts.gov>.

This notice is part of the decision and incorporated therein.