

**STATE OF WISCONSIN**  
**TAX APPEALS COMMISSION**

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**DANIEL W. DETTWILER**  
1136 W. Brown Deer Road  
River Hills, WI 53217,

**DOCKET NO. 04-I-157**

Petitioner,

vs.

**DECISION AND ORDER**

**WISCONSIN DEPARTMENT OF REVENUE**  
P.O. Box 8907  
Madison, WI 53708-8907,

Respondent.

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**JENNIFER E. NASHOLD, CHAIRPERSON:**

The above-entitled matter comes before the Commission on stipulated facts. Petitioner, Daniel W. Dettwiler, represents himself. Respondent, Wisconsin Department of Revenue (Department), appears by Attorney Michael J. Buchanan. Both parties filed briefs.

Having considered the entire record before it, the Commission finds, concludes, and orders as follows:

**STIPULATED FACTS**

As and for its Findings of Fact, the Commission adopts the Stipulation of Facts filed by the parties, making non-substantive changes and incorporating information from the exhibits but omitting references to specific exhibits.

1. Under date of April 14, 2003, petitioner filed an original 2002 Wisconsin income tax return with supporting schedules.

2. Under date of July 1, 2003, petitioner filed a Form 1X Wisconsin amended income tax return for the year 2002, along with the supporting "revised" Form 1 Wisconsin income tax return for the year 2002.

3. During the year 2002, petitioner claims that he had income from gambling winnings in the amount of \$99,252.60. Petitioner further claims that during the year 2002, he had gambling losses in the amount of \$41,637. According to petitioner's revised Form 1, the gambling losses of \$41,637 were reported on Line 11 as "Other subtractions" from his Line 1 federal adjusted gross income of \$99,718.

4. On his 2002 federal individual income tax return, petitioner identified his occupation for that year as "retired."

5. By Notice of Amount Due dated November 24, 2003, the Department issued an income tax assessment against petitioner for the year 2002.

6. By a communication dated December 1, 2003, which the Department construed as a petition for redetermination, petitioner objected to the Department's assessment.

7. By Notice of Action dated April 26, 2004, the Department informed petitioner that his petition for redetermination had been denied.

#### **ADDITIONAL JURISDICTIONAL FACT**

8. Petitioner filed a timely petition for review with the Commission on June 14, 2004.

#### **CONCLUSION OF LAW**

Petitioner has failed to establish that his gambling losses should have been subtracted from his 2002 federal adjusted gross income pursuant to Wis. Stat. §

71.05(6)(b)5., § 71.02(1) or § 71.01(16).

## OPINION

Under Wisconsin law, tax exemptions, deductions, and privileges are a matter of legislative grace and are to be strictly construed against the granting of the same. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958). Furthermore, assessments made by the Department are presumed to be correct, and the burden is upon the petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984).

Petitioner has not demonstrated that he is entitled to a deduction for gambling losses, nor has he shown by clear and satisfactory evidence that the Department has erred in its assessment against him.

**Petitioner has not shown that Wis. Stat. § 71.05(6)(b)5. allows him to subtract gambling losses in calculating his Wisconsin taxable income.**

Petitioner's primary contention is that, in determining Wisconsin taxable income, gambling losses may be subtracted from federal adjusted gross income under Wis. Stat. § 71.05(6)(b)5. This provision states:

(b) From federal adjusted gross income subtract to the extent included in federal taxable or adjusted gross income . . .

\* \* \*

5. Any amounts that are recoveries of federal itemized deductions for which no tax benefit was received for Wisconsin purposes.

The Department argues that this provision is inapplicable to petitioner's situation and that clarification of the statutory language is provided in the Instructions for the Wisconsin Form 1 income tax return, which state:

**(h) Recoveries of Federal Itemized Deductions** Fill in any amount included as income on your federal tax return that is a recovery of a federal itemized deduction from a prior year for which you did not receive a Wisconsin tax benefit.

**Example** You claimed an itemized deduction on your 2001 federal tax return for a casualty loss of \$2,000. You could not claim the casualty loss for the itemized deduction credit on your 2001 Wisconsin income tax return. During 2002 you received a reimbursement of \$1,000 from your insurance company for part of the casualty loss. The \$1,000 reimbursement is included on your 2002 federal tax return as a recovery of an amount previously claimed as an itemized deduction. Because you did not claim the casualty loss for the itemized deduction credit for Wisconsin for 2001, the \$1,000 is not taxable to Wisconsin for 2002. Fill in the \$1,000 recovery on line 11.

We agree with the Department that § 71.05(6)(b)5. does not permit petitioner to deduct gambling losses from his federal adjusted gross income for Wisconsin income tax purposes.

The purpose of statutory interpretation is to discern the intent of the legislature. *State v. Setagord*, 211 Wis. 2d 397, 406, 565 N.W.2d 506 (1997) (citation omitted). Interpretation of statutes begins with the language of the statute itself. *Peterson v. Volkswagen of America*, 2005 WI 61, ¶19, 281 Wis. 2d 39, 697 N.W.2d 61. Nontechnical words and phrases are given their common, everyday meaning. *Id.* citing Wis. Stat. § 990.01(1). Context, scope, and purpose are relevant in ascertaining the plain meaning of a statute. *State v. Denis L.R.*, 2005 WI 110, ¶35, 281 Wis. 2d 39, 699 N.W.2d 154. Accordingly, statutory language is not interpreted in isolation, but as a part of a whole statutory scheme that may address a particular topic, giving proper accord to closely-related statutes. *Id.* Statutes relating to the same subject matter are to be construed together and harmonized, and a construction which will defeat the manifest object of the act is disfavored. *Kerkoliet v. Kerkoliet*, 166 Wis. 2d 930, 939-940, 480

N.W.2d 823 (Ct. App. 1992). "If a statute is ambiguous — that is, if the statute is capable of being understood by reasonably well-informed persons in two or more senses — then extrinsic sources such as legislative history may be consulted." *James Cape & Sons Co. v. Mulcahy*, 2005 WI 128, ¶ 23, \_\_ Wis. 2d \_\_, 700 N.W.2d 243.

The plain meaning of Wis. Stat. § 71.05(6)(b)5. does not support petitioner's interpretation. This provision states: "[f]rom federal adjusted gross income subtract *to the extent included in federal taxable or adjusted gross income* . . . [a]ny amounts that are recoveries of federal itemized deductions for which no tax benefit was received for Wisconsin purposes." [Emphasis added.] Petitioner asserts that his gambling losses represent "amounts that are recoveries of federal itemized deductions" because he is seeking to recover the gambling losses that he took as a federal itemized deduction. He further contends that he received no tax benefit for Wisconsin purposes for the gambling losses. However, under the plain language of § 71.05(6)(b)5., the recovery amount must be "included in federal taxable or adjusted gross income." In other words, the taxpayer must already have recovered it, not simply be *seeking* to recover it. Petitioner's federal adjusted gross income does not include a recovery amount, as required by § 71.05(6)(b)5., because he has received no recovery amount to include.

The Department's interpretation of § 71.05(6)(b)5. is also supported by looking at the federal form used to arrive at federal adjusted gross income, which is the starting point for the subtractions listed in § 71.05(6)(b)5. In arriving at federal adjusted gross income on line 35 of the 2002 federal Form 1040, a taxpayer must include on line 21 "Other income." One of the examples listed in the Instructions to Form 1040, Line 21, is as follows:

Reimbursements or other amounts received for items deducted in an earlier year, such as medical expenses, real estate taxes, or home mortgage interest. See **Recoveries** in Pub. 525 for details on how to figure the amount to report.

I.R.S. 2002 1040 Instructions, p. 29.

I.R.S. Publication 525 (2002), p. 18 states:

**Recoveries**

A recovery is a return of an amount you deducted or took a credit for in an earlier year. The most common recoveries are refunds, reimbursements, and rebates of deductions itemized on Schedule A (Form 1040). . . .

Viewed from this context, it is clear that § 71.05(6)(b)5. is designed to address a recovery amount received with respect to a prior tax year, not a recovery amount one is seeking for the same tax year during which the taxpayer took a federal deduction for that same item. Therefore, the example provided in the Department's Instructions regarding § 71.05(6)(b)5., previously discussed, represents a proper construction of this statute, whereas petitioner's interpretation does not.

The Department's interpretation of § 71.05(6)(b)5. is also supported by an examination of related statutes and their legislative history, which demonstrate the legislature's deliberate decision not to allow a deduction for federal miscellaneous itemized deductions, including gambling losses.

Prior to 1986, Wisconsin allowed itemized deductions, although there were certain exclusions for items that were allowed as itemized deductions for federal income tax purposes which were not allowed for Wisconsin purposes. See Wis. Stat. § 71.02(2)(d) (1983-84) ("Wisconsin taxable income' of natural persons means Wisconsin adjusted gross income less itemized deductions or less the Wisconsin standard

deduction."); Wis. Stat. § 71.02(2)(f) (1983-84) ("Itemized deductions' means deductions from federal adjusted gross income allowable under the internal revenue code in determining federal taxable income, other than [certain delineated exceptions]. . . .").

Beginning in 1986, the Wisconsin legislature abandoned the use of itemized deductions for Wisconsin income tax purposes and created an itemized deduction credit under Wis. Stat. § 71.09(6r). *See* Laws of Wisconsin, Act 29, § 1250m (Wis. Stat. § 71.02(2)(d) renumbered to § 71.02(2)(me) and amended as follows: "Wisconsin taxable income' of natural persons means Wisconsin adjusted gross income less ~~itemized deductions or less~~ the Wisconsin standard deduction, with losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items determined according to the manner that income is or would be allocated."); Laws of Wisconsin 1985, Act 29, § 1255 ("71.02(2)(f) of the statutes is repealed."); and Laws of Wisconsin 1985, Act 29, § 1329m (creating Wis. Stat. 71.09(6r), the provision establishing the itemized deduction credit). The itemized deduction credit provision, § 71.09(6r), was renumbered to § 71.07(5) pursuant to Laws of Wisconsin 1987, Act 312.

The Wisconsin legislature has amended its itemized deduction credit several times over the years. Prior to the year 2000, Wisconsin's itemized deduction credit allowed taxpayers to add the amounts allowed as itemized deductions under the Internal Revenue Code (I.R.C.), with certain exceptions, in calculating the credit. *See* Wis. Stat. § 71.07(5) (1987-88)-(1997-98). At that time, no exception existed for federal miscellaneous itemized deductions. *Id.* Miscellaneous itemized deductions, including gambling losses, were allowed under I.R.C. § 165(d), and they were not one of the

exceptions delineated under § 71.07(5). They were therefore allowed in the computation of Wisconsin's itemized deduction credit at that time.

However, effective January 1, 2000, the legislature chose to except from its itemized deduction credit the miscellaneous itemized deductions that a taxpayer may claim under the I.R.C. See Laws of Wisconsin 1999, Act 9, § 1711. Thus, as of January 1, 2000, gambling losses, one of the federal miscellaneous itemized deductions, are not allowed in computing the Wisconsin itemized deduction credit.

Petitioner's interpretation of § 71.05(6)(b)5. would eviscerate most of the legislative activity regarding itemized deductions from 1986 forward, essentially placing taxpayers in the position they would have been had the legislature never replaced itemized deductions with the itemized deduction credit. His interpretation would not be limited to gambling losses; it would allow taxpayers to claim a subtraction modification on their Wisconsin individual income tax return for *every* item they include in their itemized deductions on federal Form 1040 Schedule A that would otherwise be excluded from the computation of the Wisconsin itemized deduction credit. This interpretation would transform the subsection of Wisconsin's subtraction modification into a recreation of §§ 71.02(2)(d) and (f) (1983-84) – the former Wisconsin itemized deductions provisions – when, in fact, the legislature eliminated itemized deductions beginning with the 1986 tax year.

Moreover, the Department's interpretation is bolstered by the fact that none of the other delineated items a taxpayer may seek to recover under § 71.05(6)(b) are referred to as "recoveries," even though, under petitioner's interpretation, they would be recoveries just as much as gambling losses would be – *i.e.*, amounts sought to

be subtracted from federal adjusted gross income.

The Commission also notes that for several years, the provision petitioner relies upon, § 71.05(6)(b)5., coexisted with a version of the itemized deduction credit which, as previously stated, included gambling losses in its calculations. *See* Wis. Stat. § 71.05(6)(b)5. (1987-88)-(1997-98); Wis. Stat. § 71.07(5) (1987-88)-(1997-98). Under petitioner's interpretation, therefore, had gambling losses occurred during that time period, a taxpayer would have been allowed to subtract the gambling losses from the taxpayer's federal taxable or adjusted gross income and then include gambling losses when computing the Wisconsin itemized deduction credit, thereby using gambling losses for two separate credits or subtractions. There is no reason to believe the legislature would intend such a consequence.

Petitioner argues that the legislature did not intend to eliminate all federal itemized deductions for purposes of computing Wisconsin taxable income. In support of this assertion, he relies on the legislature's enactment of Wis. Stat. § 71.05(1)(b)11. (later renumbered to § 71.05(6)(b)5.) at the same time that the legislature repealed the provision allowing for federal itemized deductions in computing Wisconsin's taxable income. He argues that "the straight-forward and logical interpretation of this is to allow the recovery of some of the federal deductions lost." (Petitioner's Reply Brief, p. 4.) Petitioner cites no legislative history in support of this contention.

While the Commission did not uncover any legislative history specifically indicating what § 71.05(6)(b)5. was designed to address, petitioner's assertion is undermined by the legislative history pertaining to Assembly Bill 85, the bill which, when enacted, repealed the provision allowing for itemized deductions. According to

the Analysis by the Legislative Reference Bureau: "This bill changes the individual income tax in the following ways: . . . 2. *The bill eliminates all itemized deductions.*" Legislative Reference Bureau Drafting File for 1985 Wis. Act 29, Analysis by the Legislative Reference Bureau of 1985 Assembly Bill 85 (emphasis added). See *Milwaukee v. Kilgore*, 193 Wis. 2d 168, 184, 532 N.W.2d 690 (1995) (analysis by the Legislative Reference Bureau "is significant in determining legislative intent.") (citation omitted). Earlier drafts of the Legislative Reference Bureau's analysis contained certain exceptions to the elimination of itemized deductions. *Id.* Gambling losses were not included in the listed exceptions, which, in any event, were subsequently deleted. *Id.*

For the reasons stated above, petitioner has failed to demonstrate that § 71.05(6)(b)5. creates a deduction for gambling losses.

**Petitioner has not demonstrated that Wis. Stat. § 71.02(1), which imposes tax on "net incomes of individuals," permits him to subtract his gambling losses in calculating his Wisconsin taxable income.**

Wisconsin Statutes § 71.02(1) (2001-02) states, in relevant part:

**71.02 Imposition of tax.**

(1) For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax on all *net incomes* of individuals and fiduciaries . . . by every natural person residing within the state . . . . (Emphasis added.)

The Department contends that "net income[]" means nothing more than gross income minus *allowable* deductions, and is synonymous with Wisconsin taxable income. As such, it is a statutory rather than an economic concept.

Petitioner fails to provide any authority to the contrary and has not persuaded the Commission that "net income[]," as used in § 71.02(1), contemplates subtraction of gambling losses from federal adjusted gross income. Accordingly,

petitioner has failed to meet his burden of establishing that the Department's assessment was incorrect under § 71.02(1).

**Petitioner has not shown that Wis. Stat. § 71.01(16), which defines "Wisconsin taxable income," allows him to subtract his gambling losses in calculating his Wisconsin taxable income.**

The parties stipulated that an issue before the Commission is whether Wis. Stat. § 71.01(16) (2001-02), which defines "Wisconsin taxable income," permits petitioner to deduct gambling losses in computing Wisconsin taxable income. This provision states, in pertinent part:

**(16)** "Wisconsin taxable income" of natural persons means Wisconsin adjusted gross income less the Wisconsin standard deduction, less the personal exemption described under s. 71.05(23), with losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items determined according to the manner that income is or would be allocated . . . .

Although stipulated as an issue, petitioner's brief-in-chief quotes the statute, but does not advance an argument as to what language in the statute, if any, supports his position. The Department asserts that the statute is not a grant of authority for a taxpayer to take "losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items . . . ." Rather, the statute merely means that when such subtractions are granted by some other statutory section, there is a restriction on those subtractions, namely, that they must be "determined according to the manner that income is or would be allocated . . . ." (Respondent's Brief, p. 11.)

In his reply brief, petitioner appears to concede that § 71.01(16) does not directly permit the subtraction of gambling losses. He states that § 71.01(16) is relevant

only in that "the definition of taxable income for natural persons is not simply adjusted gross income, but has negative income items deducted from it. . . ." He contends that this provision "helps to set the stage for the subtractions section of the statute", and that "this definition is a generality while specific permission is given under [§] 71.05(6)(b)5." (Petitioner's Reply Brief, p. 11.) Thus, petitioner appears to acknowledge that § 71.01(16) does not assist him unless § 71.05(6)(b)5. allows him to deduct his gambling expenses. The Commission has already determined that petitioner has not shown that § 71.05(6)(b)5. permits him to subtract gambling losses in arriving at his Wisconsin taxable income. Because petitioner has not shown that § 71.01(16) provides any further basis for subtraction of his gambling losses, he has not met his burden of establishing that the assessment was incorrect under § 71.01(16).

In view of the foregoing, petitioner has not demonstrated that the Department's assessment was in error under Wis. Stat. § 71.05(6)(b)5., § 71.02(1) or § 71.01(16).

**IT IS ORDERED**

The Department's action on petitioner's petition for redetermination is affirmed.

Dated at Madison, Wisconsin, this 29th day of September, 2005.

**WISCONSIN TAX APPEALS COMMISSION**

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Jennifer E. Nashold, Chairperson

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Diane E. Norman, Commissioner

**ATTACHMENT: "NOTICE  
OF APPEAL INFORMATION"**

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David C. Swanson, Commissioner