

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

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Tax 2.01 Residence. (Section 71.01, Wis. Stats.) (1) The residence of a wife is that of her husband unless there is affirmative evidence to

the contrary or unless the husband and wife are permanently separated. The residence of a minor child, unless emancipated, is that of its father, or of the mother, if the father is deceased.

(2) Individuals claiming a change of residence (domicile) from Wisconsin to another state shall file a "declaration of residence" with the Central Audit section of the Department of Taxation by delivery to 4638 University Avenue, Madison, Wisconsin, or by mailing to Post Office Box 80, Madison, Wisconsin 53701, and shall furnish such other information as the department may require.

History: 1-2-56; r. (1); renum. (2) to be (1); renum. (3) to be (2) and am., Register, September, 1964, No. 105, eff. 10-1-64.

Tax 2.02 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.021 History: Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. Register, September, 1964, No. 105, eff. 10-1-64.

Tax 2.03 Corporation returns. For the purpose of filing franchise or income tax returns, the tax commissioner has designated the following forms for the use of corporations:

Form 4. Return of income for the calendar or fiscal year.

Form 4A. Balance sheets as of beginning and end of taxable year; analysis of surplus account; reconciliation of book income with net income reported.

Form 4B. Apportionment data (when applicable to the corporation).

Form 4C. Separate accounting data (when applicable to the corporation).

All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivered to the Corporation Section at 4638 University Avenue, Madison, Wisconsin.

Note: Blank forms may be obtained from the department at the Processing Center, 4638 University Avenue, Madison, or by mail request to P. O. Box 98, Madison, Wisconsin 53701.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.04 Information returns; forms WT-9, 9b and 9X for corporations. (Sections 71.04 (1) and (2), 71.10 (1), (8m) and (8n) Wis. Stats.). All corporations carrying on activities within this state, whether taxable or not under this chapter, shall file with the department of taxation, on or before January 31 of each year on forms WT-9 or 9b statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, provided that salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in section 71.19 (1) Wis. Stats. Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax

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Withheld from Wages) should accompany forms WT-9. Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments to residents and non-residents of Wisconsin of rents and royalties on property in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b. The forms herein referred to must be filed on the date indicated regardless of the fact that the corporation keeps its records on a fiscal year other than the calendar year. No one of interest, dividends, rents or royalties needs to be reported if it is less than \$100.00. Each corporation must file with forms 8 or 9b, forms 9X showing the number of reports made on forms 8 or 9b. (See also Wis. Adm. Code section Tax 2.05). Items required to be reported on forms WT-9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin 53701.

(Corporations failing to file forms WT-9 or 9b as prescribed by law shall be subject to fine of not less than \$50.00 nor more than \$500.00. See section 71.11 (45), Wis. Stats.)

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64.

Tax 2.05 Information returns, forms 8 for corporations, (Section 71.10 (1), Wis. Stats.) All corporations doing business within this state, whether subject to the franchise or income tax or not, are required to file with the department of taxation by mailing to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivery to the Corporation Section at The Wisconsin Taxation Building, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8 as prescribed by the tax commissioner, statements of such transfers of capital stock as have been made by residents of Wisconsin during the preceding calendar year.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin, 53701.

(Corporations failing to file such statements shall be subject to a fine of not less than \$50 or more than \$500. See section 71.11 (45), Wis. Stats.)

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.06 Information returns required of partnerships and persons other than corporations. (Sections 71.10 (8m) and 71.10 (8n), 71.10 (15) and 71.11 (25), Wis. Stats.) Informational returns reporting remuneration paid for services, whether or not within the definition of "wages" in section 71.19 (1), Wis. Stats., must be filed on or before January 31 of each year on forms WT-9 or 9b. Form WT-7 (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages) should accompany forms WT-9. Informational returns reporting other items such as interest paid or rent paid must be filed on or before April 15 of each year on forms 9b. Items required to be reported on informational returns will be disallowed as deductions from gross income if not properly reported. Such returns should be mailed to the Department of Taxation, P. O. Box 59,

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Madison, Wisconsin 53701 or delivered at The Wisconsin Taxation Building, 4638 University Avenue, Madison.

Note: Blank forms may be obtained by writing the Department of Taxation, Central Processing Center, P. O. Box 58, Madison, Wisconsin 53701 4638 University Avenue.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.07 Income tax returns of dissolved corporations. (Section 71.10 (1), Wis. Stats.) The officers of a corporation which has been dissolved during the income year must file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The final return must indicate the disposition of all corporate assets.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.08 Returns of persons other than corporations. (1) For the purpose of filing income tax returns, the commissioner of taxation has designated the following forms for the use of persons other than corporations:

Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.

Form 1A. (Short form).

Form 2. For trustees, executors, administrators, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on form 1).

Form 3. For partnerships and joint ventures.

(2) Information returns required of persons other than corporations are specified in Wis. Adm. Code sections Tax 2.06 and Tax 3.63. See also Tax 3.07.

(3) Returns required to be filed by persons other than corporations shall be filed by mailing to P. O. Box 59, Madison, Wisconsin 53701, or delivery to Processing Center, Department of Taxation, Madison.

Note: Blank forms may be obtained by mail request to Wisconsin Department of Taxation, Processing Center, P. O. Box 58, Madison, Wisconsin 53701.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.09 Reproduction of forms. Subject to the conditions set forth under this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions filed with the department in lieu of the corresponding official forms:

(1) The reproductions must be made by photo-offset, photo-engraving or by some similar photographic process. They may be reproduced on one side or both sides of the paper.

(2) The reproductions must be on paper of substantially the same color, weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may not, therefore, be reproduced on white paper.

(3) Since all of the official forms are printed in black ink, such printing must be reproduced in black.

(4) The size of the reproductions, both as to dimensions of the paper and image reproduced thereon, must be the same as that of the official form.

(5) All signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (Section 71.10 (6), Wis. Stats.) It is deemed necessary for the administration of the tax imposed by chapter 71, Wis. Stats., that at the time of filing Wisconsin income tax returns for the taxable year 1965 and for taxable years thereafter by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year (including all schedules, statements, documents and computations) should be included and filed with the Wisconsin return. Accordingly, such complete copies of federal income tax returns are directed to be so filed except copies of the short form federal return which, at the time of adoption of this rule is designated as federal form 1040A.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Tax 2.11 Tax table (Section 71.09 (3), Wis. Stats., applicable to the calendar year 1966 and corresponding fiscal years, and subsequent years).

To find your gross normal tax read down income columns until you find the line covering the net taxable income:

If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is
At Least	But Less Than										
\$ 0	\$ 50	\$.70	\$3,720	\$3,760	\$119.60	\$6,270	\$6,300	\$245.70	\$8,325	\$8,350	\$377.80
50	100	2.00	3,760	3,800	121.30	6,300	6,330	247.50	8,350	8,375	379.60
100	150	3.40	3,800	3,840	122.90	6,330	6,360	249.20	8,375	8,400	381.40
150	200	4.70	3,840	3,880	124.60	6,360	6,390	250.90	8,400	8,425	383.20
200	250	6.10	3,880	3,920	126.30	6,390	6,420	252.60	8,425	8,450	385.00
250	300	7.40	3,920	3,960	128.00	6,420	6,450	254.30	8,450	8,475	386.80
300	350	8.80	3,960	4,000	129.70	6,450	6,480	256.00	8,475	8,500	388.60
350	400	10.10	4,000	4,035	131.30	6,480	6,510	257.70	8,500	8,525	390.40
400	450	11.50	4,035	4,070	133.00	6,510	6,540	259.40	8,525	8,550	392.20
450	500	12.80	4,070	4,105	134.60	6,540	6,570	261.10	8,550	8,575	394.00
500	550	14.20	4,105	4,140	136.30	6,570	6,600	262.80	8,575	8,600	395.80
550	600	15.60	4,140	4,175	137.90	6,600	6,630	264.60	8,600	8,625	397.60
600	650	16.90	4,175	4,210	139.50	6,630	6,660	266.30	8,625	8,650	399.40
650	700	18.20	4,210	4,245	141.20	6,660	6,690	268.00	8,650	8,675	401.20
700	750	19.60	4,245	4,280	142.80	6,690	6,720	269.70	8,675	8,700	403.00
750	800	20.90	4,280	4,315	144.50	6,720	6,750	271.40	8,700	8,725	404.80
800	850	22.30	4,315	4,350	146.10	6,750	6,780	273.10	8,725	8,750	406.60
850	900	23.60	4,350	4,385	147.80	6,780	6,810	274.80	8,750	8,775	408.40
900	950	25.00	4,385	4,420	149.40	6,810	6,840	276.50	8,775	8,800	410.20
950	1,000	26.30	4,420	4,455	151.10	6,840	6,870	278.20	8,800	8,825	412.00
1,000	1,050	27.70	4,455	4,490	152.70	6,870	6,900	279.90	8,825	8,850	413.80
1,050	1,100	29.20	4,490	4,525	154.40	6,900	6,930	281.70	8,850	8,875	415.60
1,100	1,150	30.70	4,525	4,560	156.00	6,930	6,960	283.40	8,875	8,900	417.40
1,150	1,200	32.20	4,560	4,595	157.60	6,960	6,990	284.80	8,900	8,925	419.20
1,200	1,250	33.60	4,595	4,630	159.30	6,990	7,000	285.90	8,925	8,950	421.00
1,250	1,300	35.10	4,630	4,665	160.90	7,000	7,025	287.30	8,950	8,975	422.80
1,300	1,350	36.60	4,665	4,700	162.60	7,025	7,050	289.00	8,975	9,000	424.60
1,350	1,400	38.10	4,700	4,735	164.20	7,050	7,075	290.70	9,000	9,025	426.30
1,400	1,450	39.50	4,735	4,770	165.90	7,075	7,100	292.40	9,025	9,040	427.80
1,450	1,500	41.00	4,770	4,805	167.50	7,100	7,125	294.00	9,040	9,060	429.40
1,500	1,550	42.50	4,805	4,840	169.20	7,125	7,150	295.70	9,060	9,080	430.90
1,550	1,600	44.00	4,840	4,875	170.80	7,150	7,175	297.40	9,080	9,100	432.40
1,600	1,650	45.40	4,875	4,910	172.40	7,175	7,200	299.10	9,100	9,120	434.00
1,650	1,700	46.90	4,910	4,945	174.10	7,200	7,225	300.70	9,120	9,140	435.50
1,700	1,750	48.40	4,945	4,980	175.70	7,225	7,250	302.40	9,140	9,160	437.10
1,750	1,800	49.90	4,980	5,015	177.30	7,250	7,275	304.10	9,160	9,180	438.60
1,800	1,850	51.30	5,015	5,040	178.80	7,275	7,300	305.80	9,180	9,200	440.10
1,850	1,900	52.80	5,040	5,070	180.40	7,300	7,325	307.40	9,200	9,220	441.70
1,900	1,950	54.30	5,070	5,100	181.90	7,325	7,350	309.10	9,220	9,240	443.20
1,950	2,000	55.80	5,100	5,130	183.50	7,350	7,375	310.80	9,240	9,260	444.80
2,000	2,050	57.30	5,130	5,160	185.00	7,375	7,400	312.50	9,260	9,280	446.30
2,050	2,100	58.90	5,160	5,190	186.60	7,400	7,425	314.10	9,280	9,300	447.80
2,100	2,150	60.50	5,190	5,220	188.20	7,425	7,450	315.80	9,300	9,320	449.40
2,150	2,200	62.10	5,220	5,250	189.70	7,450	7,475	317.50	9,320	9,340	450.90
2,200	2,250	63.70	5,250	5,280	191.30	7,475	7,500	319.20	9,340	9,360	452.50
2,250	2,300	65.30	5,280	5,310	192.80	7,500	7,525	320.80	9,360	9,380	454.00
2,300	2,350	66.90	5,310	5,340	194.40	7,525	7,550	322.50	9,380	9,400	455.50
2,350	2,400	68.50	5,340	5,370	196.00	7,550	7,575	324.20	9,400	9,420	457.10
2,400	2,450	70.10	5,370	5,400	197.50	7,575	7,600	325.90	9,420	9,440	458.60
2,450	2,500	71.70	5,400	5,430	199.10	7,600	7,625	327.50	9,440	9,460	460.20
2,500	2,550	73.30	5,430	5,460	200.60	7,625	7,650	329.20	9,460	9,480	461.70
2,550	2,600	74.90	5,460	5,490	202.20	7,650	7,675	330.90	9,480	9,500	463.20
2,600	2,650	76.50	5,490	5,520	203.80	7,675	7,700	332.60	9,500	9,520	464.80
2,650	2,700	78.10	5,520	5,550	205.30	7,700	7,725	334.20	9,520	9,540	466.30
2,700	2,750	79.70	5,550	5,580	206.90	7,725	7,750	335.90	9,540	9,560	467.90
2,750	2,800	81.30	5,580	5,610	208.40	7,750	7,775	337.60	9,560	9,580	469.40
2,800	2,850	82.90	5,610	5,640	210.00	7,775	7,800	339.30	9,580	9,600	470.90
2,850	2,900	84.50	5,640	5,670	211.60	7,800	7,825	340.90	9,600	9,620	472.50
2,900	2,950	86.10	5,670	5,700	213.10	7,825	7,850	342.60	9,620	9,640	474.00
2,950	3,000	87.70	5,700	5,730	214.70	7,850	7,875	344.30	9,640	9,660	475.60
3,000	3,040	89.30	5,730	5,760	216.20	7,875	7,900	346.00	9,660	9,680	477.10
3,040	3,080	91.00	5,760	5,790	217.80	7,900	7,925	347.60	9,680	9,700	478.60
3,080	3,120	92.70	5,790	5,820	219.40	7,925	7,950	349.30	9,700	9,720	480.20
3,120	3,160	94.40	5,820	5,850	220.90	7,950	7,975	351.00	9,720	9,740	481.70
3,160	3,200	96.10	5,850	5,880	222.50	7,975	8,000	352.70	9,740	9,760	483.30
3,200	3,240	97.70	5,880	5,910	224.00	8,000	8,025	354.40	9,760	9,780	484.80
3,240	3,280	99.40	5,910	5,940	225.60	8,025	8,050	356.20	9,780	9,800	486.30
3,280	3,320	101.10	5,940	5,970	227.20	8,050	8,075	358.00	9,800	9,820	487.90
3,320	3,360	102.80	5,970	6,000	228.70	8,075	8,100	359.80	9,820	9,840	489.40
3,360	3,400	104.50	6,000	6,030	230.40	8,100	8,125	361.60	9,840	9,860	491.00
3,400	3,440	106.10	6,030	6,060	232.10	8,125	8,150	363.40	9,860	9,880	492.50
3,440	3,480	107.80	6,060	6,090	233.80	8,150	8,175	365.20	9,880	9,900	494.00
3,480	3,520	109.50	6,090	6,120	235.50	8,175	8,200	367.00	9,900	9,920	495.60
3,520	3,560	111.20	6,120	6,150	237.20	8,200	8,225	368.80	9,920	9,940	497.10
3,560	3,600	112.90	6,150	6,180	238.90	8,225	8,250	370.60	9,940	9,960	498.70
3,600	3,640	114.50	6,180	6,210	240.60	8,250	8,275	372.40	9,960	9,980	500.20
3,640	3,680	116.20	6,210	6,240	242.30	8,275	8,300	374.20	9,980	10,000	501.70
3,680	3,720	117.90	6,240	6,270	244.00	8,300	8,325	376.00			

(6) Except as provided in subsection (7), any corporation which has been computing its inventory for Wisconsin income tax purposes in accordance with section 472 of the United States internal revenue code and which has been authorized or directed by the United States commissioner of internal revenue to change its method of inventory valuation for federal income tax purposes shall also change its method of inventory valuation for Wisconsin income tax purposes. To correlate its Wisconsin basis with the federal basis, the opening inventory for the income year in which the change is made shall be reported on the basis previously accepted and approved whereas the closing inventory shall be on the new method of valuation. No adjustment is to be made to the closing inventory of the preceding taxable year. Notice of the change in method shall be filed with the return on which it is effective and shall be supported by a copy of the authorization or order to change inventory method for federal income tax purposes.

(7) Any corporation which has been authorized or directed by the United States Commissioner of Internal Revenue to treat the cutting of timber as a sale or exchange of timber for purposes of computing its federal income tax liability and has included in its inventory for federal income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, may exclude from its inventory, for Wisconsin income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of taxation, include such excess in its inventory for Wisconsin income tax purposes subject to such conditions as said department may prescribe.

History: 1-2-56; am. (2) and (6), and cr. (7), Register, March, 1960, No. 51, eff. 4-1-60; am. intro. par., (6) and (7), Register, March, 1966, No. 123, eff. 4-1-66.

DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS

Tax 2.39 Apportionment method. (Section 71.07 (2), Wis. Stats.)

(1) For the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, the factors used in the apportionment method for all businesses except "financial organizations" and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., are the property factor, the payroll factor and the sales factor. Property, payroll or sales related to the production of nonapportionable income under Section 71.07 (1), Wis. Stats., shall not be included in either the numerator or the denominator of any of the apportionment factors.

(1m) Beginning with calendar year 1974, or corresponding fiscal year, and thereafter, in lieu of the equally weighted 3-factor apportionment fraction based on property, payroll and sales, there shall be used an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. If one of these factors is omitted pursuant to section 71.07 (3), Wis. Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

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(a) If either the property factor or payroll factor is omitted, the other of such factors shall represent 33 $\frac{1}{3}$ % of the fraction and the sales factor shall represent 66% of the fraction.

(b) If the sales factor is omitted, the property factor and the payroll factor shall each represent 50% of the fraction.

(2) In order to use the apportionment method the taxpayer must have income from business activity subject to taxation by this state and at least one other state or foreign country. Income from business activity includes only business (apportionable) income. As used in this rule a taxpayer is subject to taxation or taxable in a state or foreign country if the state or foreign country has jurisdiction to impose an income tax or a franchise tax measured by net income.

(3) (a) *Property factor; numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer in this state and used by the taxpayer in the production of business (apportionable) income during the tax period. The denominator shall include the average value of all of such property located everywhere. Property in transit on the date or dates for determining the average value shall be considered to be at the destination for purposes of the property factor. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which is located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of a ratio of time used within the state to total time used during the tax period. However, an automobile assigned to a traveling employe shall be included in the numerator of the factor if the employe's compensation is assigned to this state under the payroll factor.

(b) *Property factor; owned property.* Property owned by the taxpayer is valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes.

(c) *Property factor; rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined as at arm's length. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this may result in a negative value or clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the taxpayer, but in no case shall the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the value of the part of the property used by the taxpayer bears to the total value of the same rental property. The "annual rental" is the amount paid

as rental for the property for a 12 month period. Where property is rented for less than a 12 month period, the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall be adjusted accordingly. Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property, and includes: 1. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items. "Annual rental" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(d) *Property factor; leasehold improvements.* Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of leasehold improvements shall be included in the factor.

(e) *Property factor; construction in progress.* Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used by the taxpayer in the regular course of his trade or business. If the property is partially used by the taxpayer in the regular course of his trade or business while under construction, the value of the property to the extent used shall be included in the property factor.

(f) *Property factor; averaging property values.* As a general rule the "average value" of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department of revenue may require or allow the averaging of monthly values during the tax period if reasonably required to properly reflect the average value of the taxpayer's property. Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period, or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(4) **PAYROLL FACTOR; WHAT IS COMPENSATION.** The term "compensation" includes wages, salaries, commissions and any other form of remuneration paid to employes for personal services. Compensation includes the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal internal revenue code. In the case

of employees not subject to the federal internal revenue code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal internal revenue code. Compensation includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employees with respect to such personal services in either the numerator or denominator of its payroll factor. Except for such management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

(5) (a) *Sales factor; sales made in general business operations.*

1. For the purposes of the sales factor, the term "sales" means generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations which produce business (apportionable) income.

2. In the case of a taxpayer whose business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) *Sales factor; sales made in other types of business activity.*

As applied to a taxpayer engaged in business activity other than or in addition to the manufacturing and selling or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity.

1. If the business activity consists of providing services, such as the operation of an advertising agency or the performance of equipment service contracts or the performance of research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

2. If the business activity consists of performing cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts includes the taxpayer's reimbursed cost plus the fee.

3. If the business activity is the renting of real or tangible personal property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

4. If the business activity is the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(c) *Sales factor; what sales of tangible personal property are in this state.* 1. Gross receipts from the sales of tangible personal prop-

erty (except sales to the United States Government: see Tax 2.39 (5) (d)) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale, or if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of destination.

2. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is in this state, even though the property is ordered from outside this state.

3. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

4. The term "purchaser within this state" shall include a recipient other than the purchaser if the taxpayer, at the designation of the purchaser, delivers to or has the property shipped to such a recipient within this state.

5. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, or the designee of a purchaser who is in this state, the sale is in this state.

6. If the taxpayer is not taxable in the state of destination for lack of sufficient nexus or by operation of Public Law 86-272, 15 U.S.C.A., Section 381-385, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

7. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchasers, the following rules apply:

a. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

b. If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

(d) *Sales factor; sales to the United States Government.* Gross receipts from the sales of tangible personal property to the United States Government, including its agencies and instrumentalities, are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States Government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(e) *Sales factor; numerator.* The numerator of the sales factor will include the gross receipts from sales which are attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(f) *Sales factor; numerator; sales other than sales of tangible personal property.* 1. In General: Section 71.07 (2) (c) 3, Wis. Stats., contains provisions for including gross receipts from transac-

tions other than sales of tangible personal property in the numerator of the sales factor.

2. Under this section gross receipts are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. If the income producing activity is performed within and without this state such receipts are attributed to this state in accordance with Subdivision 5 of this paragraph.

3. Income producing activity; defined. The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes but is not limited to the following:

a. The rendering of personal services by employes or the utilization of tangible and intangible property by the taxpayer in performing a service.

b. The sale, rental, leasing, or licensing the use of or other use of real property.

c. The rental, leasing, licensing the use of or other use of tangible personal property.

d. The sale, licensing the use of or other use of intangible personal property such as patents, copyrights, trademarks, trade names, etc.

4. Costs of performance; defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

5. Application. a. Receipts from sales, other than sales of tangible personal property, are in this state if the income producing activity is performed wholly within this state. If the income producing activity is performed partly within and partly without this state, receipts shall be assigned to this state based upon the ratio of direct costs of performing such services in this state to the direct costs of performing such services in all states having jurisdiction to tax such business.

b. The following are special rules for determining when receipts from the income producing activities described below are in this state during the taxable year:

(i) Gross receipts from the sale, lease, rental or other use of real property are in this state if the real property is located in this state.

(ii) Gross receipts from the rental, lease, licensing the use or other use of tangible personal property shall be assigned to this state if the property is within this state during the entire period of rental, lease, license or other use. If the property is within and without this state during such year, gross receipts attributable to this state shall be based upon the ratio which the time the property was used in this state bears to the total time the property was used in all states having jurisdiction to tax such business during such year.

(iii) Gross receipts from the performance of personal services are attributable to this state if the services are performed entirely in this state. If the services are performed partly within and partly without his state, gross receipts shall be attributable to this state based upon the ratio which compensation and other direct costs of performing such services in this state bear to total compensation and other direct

costs of performing such services in all states having jurisdiction to tax such business. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to this state if the compensation related to performing such services is allocated to this state by section 71.07 (2) (b) 4, Wis. Stats.

c. The provisions of sections Tax 2.39 (5) (b) 2 and (5) (f) shall also apply to sales, other than sales of tangible personal property, to the United States Government.

(6) "BUSINESS (APPORTIONABLE) INCOME" DEFINED. "Business (apportionable) income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(7) "STATE" DEFINED. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12-1-73.

Tax 2.40 Nonapportionable income. (Section 71.07 (1) and (2), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. Directly related expenses must be deducted in full, whereas expenses related to both business income and nonapportionable income shall be prorated in a manner which fairly distributes the deduction between such incomes.

(2) For all businesses which apportion their income to Wisconsin, other than "financial organizations" and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., nonapportionable dividends and interest received which follow the residence of the recipient shall first be reduced by deductible dividends received, and the balance shall be limited to the amount by which total apportionable and nonapportionable interest and non-deductible dividends received exceeds the sum of the expenses related thereto and deductible interest paid. If the latter sum exceeds such total interest and non-deductible dividends received, no deduction from total net income can be made for nonapportionable interest and dividends received. In no event can dividends and interest received which follow the residence of the recipient exceed the total amount of such nonapportionable interest and dividends received.

(3) For "financial organizations" (except insurance companies) and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., dividends and interest received which follow the residence of the recipient must be reduced by related expenses and deductible dividends received. Interest paid and deductible is deemed to be related expense in an amount determined by multiplying the total of such interest paid by a fraction, the numerator of which is the average tax basis of the intangible property producing, or capable of producing, such income and the denominator of which is the depreciated average tax basis of the total property owned and used in the production of all income during the year. This paragraph shall also apply to all other businesses not covered by (2) above.

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(4) Total nonapportionable income or loss and Wisconsin non-apportionable income or loss must be adjusted for federal income taxes if federal income taxes are deductible in determining total company net income.

(5) The total net income or loss of the business must be adjusted to eliminate all of the net nonapportionable income or loss to determine the apportionable income or loss to which the apportionment percentage is applied. The resulting income or loss apportioned to Wisconsin must then be adjusted to include the Wisconsin net non-apportionable income or loss.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.41 Separate accounting method. (Section 71.07 (2), Wis. Stats.) (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: The ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business. Federal income taxes are based upon income and should, therefore, be allocated to Wisconsin business on the basis of income. Federal income taxes are deductible only on the cash basis, and the allocation to Wisconsin business for any year, therefore, must be based upon the ratio of income within Wisconsin to the total income of the year on which the federal income taxes are assessed, even though that ratio differs from the ratio of the year in which the taxes are actually paid.

(a) The relationship of the general overhead items to Wisconsin operations will determine whether the home office income and expense should be allocated to the Wisconsin business. Such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation. All expenses connected with the interest, dividends and rentals realized from investments such as the above are not subject to allocation but must be applied against the investment income. The taxability of the net investment income depends upon the situs of the investment property or the residence of the recipient.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58.

Tax 2.42 Apportionment method. (Section 71.07 (2), Wis. Stats.) Any person engaged in business within and without the state must report by the statutory apportionment method when the business of such person within the state is an integral part of a unitary business, unless the department of taxation expressly permits reporting on a different basis. The factors used in the apportionment method are as follows:

(1) Tangible property includes land, buildings, machinery and equipment, inventories and other tangible personal property actually owned and used in producing apportionable income. Tangible property

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which is used in producing nonapportionable or nontaxable income cannot be included in the property factor. The value at which tangible property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

(2) The cost of manufacturing, collecting, assembling or processing within Wisconsin must be determined in all cases in the same manner and under the same rules as the cost for the entire business within and without Wisconsin is determined. When a product is partially completed outside of the state and then shipped into the state for further processing or completion, only the labor and manufacturing expense incurred from the time that the product is brought into the state becomes a part of the cost within Wisconsin, and the total material used in manufacturing both within and without the state shall be allocated on some equitable basis such as the ratio of direct labor and manufacturing expense within Wisconsin to the total thereof. Unless inconsistent with the best accounting practice in the trade or business, amounts realized on the sale of scrap produced in the manufacturing process shall be treated as a recovery of, and in reduction of, cost of manufacturing, for purposes of the cost of manufacturing factor.

(3) Sales are made in Wisconsin if made through or by offices, agencies or branches located within the state, regardless of the location of the purchaser. Sales made by a foreign corporation to customers in Wisconsin through the medium of solicitors or traveling salesmen are not Wisconsin sales unless such salesmen are identified with offices, agencies or branches located within Wisconsin. Sales made by a sales office in Wisconsin to customers located outside of Wisconsin are Wisconsin sales for purposes of apportionment. Goods sold through a sales office in Wisconsin may be shipped direct from a factory located outside the state to a customer located outside the state and still be Wisconsin sales. Goods sold through a sales office located outside of the state without the intervention of any Wisconsin office, branch or agency but shipped from a factory located in Wisconsin to a Wisconsin customer are not Wisconsin sales. As used in section 71.07 (2) (c), Wis. Stats., and in this regulation, the term "sales" shall extend to and include by-product sales, but shall not include scrap sales treated as a reduction of cost of manufacturing pursuant to subsection (2) hereof.

(4) This rule is superseded by Wis. Adm. Code section Tax 2.39 with respect to the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter.

History: 1-2-56; am. (2) and (3), Register, January, 1968, No. 145, eff. 2-1-68; cr. (4), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.43 Nonapportionable income. (Section 71.07 (2), Wis. Stats.)

(1) The expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. In the case of dividends and interest received which follows the residence of the recipient, only the excess of the amounts received over the sum

of interest paid and dividends deducted plus other related expenses can be considered as nonapportionable income. If the interest paid, deductible dividends received and related expenses exceed the total interest and dividends received, no deduction from total net income can be made for nonapportionable interest and dividends. All of the nonapportionable income must be deducted from the total net income of the business to determine the apportionable income to which the apportionment percentage is applied. Any nonapportionable income attributable to Wisconsin must be added to the apportionable income allocated to Wisconsin to determine the total Wisconsin net income.

(2) This rule is superseded by Wis. Adm. Code section Tax 2.40 with respect to the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter.

History: 1-2-56; r. (1) (a), Register, August, 1960, No. 56, eff. 8-1-60; cr. (2), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.44 Permission to change basis of allocation. (Section 71.07 (2) Wis. Stats.) Except when income must be reported on the apportionment basis, permission to make a change either from separate accounting to apportionment, or vice versa, must be obtained in writing from the commissioner of taxation upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application must be filed before the end of the income year for which the change is desired.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

Tax 2.45 Apportionment in special cases. (Section 71.07 (5), Wis. Stats.) When the business of any person, other than a "financial organization" or "public utility," as defined in section 71.07 (2) (d), Wis. Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in section 71.07 (2), Wis. Stats., (or by separate accounting in view of the unitary nature of the business), the department will substitute in the place of some or all of the statutory apportionment factors such other factor or factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation, the taxpayer, at the time of the assessment, will be apprised of the factors used in the formula adopted.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.46 Apportionment of business income of interstate air carriers. (Section 71.07 (2) (e), Wis. Stats.) The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios: (1) The ratio which the aircraft arrivals and departures within this state scheduled by such carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period; provided that in the case of nonscheduled operations all arrivals and departures shall be substi-

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tuted for scheduled arrivals and departures; (2) The ratio which the revenue tons handled by such carrier at airports within this state during the calendar or fiscal year bears to the total revenue tons handled at airports within and without this state during the same period; (3) The ratio which such air carrier's originating revenue within this state for the calendar or fiscal year bears to the total originating revenue within and without this state for the same period.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.47 Apportionment of net business income of interstate motor carriers of property. (1) (Section 71.07 (2) (e), Wis. Stats.) The apportionable income of an interstate motor carrier of property, doing business in Wisconsin, shall be apportioned to Wisconsin, on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere;

(b) The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

(2) Whenever gross receipts' data is not available, the department may authorize or direct substitution of a similar factor (e.g. gross tonnage) and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor (e.g. revenue miles).

(3) For purposes of this regulation a "ton mile" reflects the movement of one ton of freight for the distance of one mile.

(4) This regulation shall not apply to mercantile or manufacturing businesses which engage in some interstate hauling as an incident of such mercantile or manufacturing businesses.

(5) This regulation shall apply with respect to the determination of income tax or franchise tax liability for any income year open to assessment or refund on the effective date hereof.

History: Cr. Register, April, 1966, No. 124, eff. 5-1-66; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.48 Apportionment of net business incomes of interstate pipeline companies. (Section 71.07 (2) (e), Wis. Stats.) (1) With respect to the imposition of the Wisconsin income or franchise tax on or measured by income of the calendar year 1969, or corresponding fiscal year, and thereafter, the apportionable income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 3 ratios:

(a) The ratio of tangible property owned, and used by the taxpayer in Wisconsin to produce apportionable income, to the total of such property owned and used by him to produce apportionable income everywhere. The amount of such property for purposes of both the numerator and denominator shall be Wisconsin income tax net cost. In any case in which the property factor is distorted by reason of the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, or in any case in which Wisconsin income tax net cost cannot be ascertained, the department may authorize or direct such

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other method of determining the property fraction as will produce an equitable result.

(b) The ratio of traffic units (e.g. barrel miles, cubic foot miles or other appropriate measure of product movement) in Wisconsin to the total of such units everywhere.

(c) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere. An employe shall be deemed located in Wisconsin if his services are performed entirely within Wisconsin, or if services performed without the state are incidental to services within Wisconsin, or if some of the service is performed in Wisconsin and the base of operations is in Wisconsin, or if there is no base of operations and the place from which the service is directed and controlled is in Wisconsin, or if the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. Compensation paid to retired employes shall be excluded from both the numerator and the denominator.

(2) In any case in which the company has no employes or in which the department determines that employes are not a substantial income producing factor, it may order or permit the elimination of the compensation factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.49 Apportionment of net business incomes of interstate finance companies. (Section 71.07 (2) (e), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and thereafter, the business (apportionable) income of a finance company engaged in business within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of gross receipts in Wisconsin to the total gross receipts everywhere. "Gross receipts" includes all business income associated with the lending of money in the normal course of business such as interest, discounts, finance charges or fees and service charges or fees. Gains from sales of assets, charges to a related corporation for personal services of employes and miscellaneous income are not includable in "gross receipts" for the purpose of computing this factor. "Gross receipts" will be assigned as income to this state if the transaction producing the income was principally negotiated in this state.

(b) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere, determined in accordance with the provisions of section 71.07 (2) (b), Wis. Stats., and Wis. Adm. Code section Tax 2.39 (2). "Compensation paid to employes" includes deductible management or service fees paid to a related corporation directly or indirectly for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor.

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(2) If the leasing of tangible personal property represents a substantial source of business (apportionable) income, in addition to the "gross receipts" described in subsection (1) (a), the department may authorize or direct the use of any other method to effect an equitable apportionment of the taxpayer's income.

(3) The term "finance company" means any "financial organization" defined in section 71.07 (2) (d), Wis. Stats., except any type of insurance company.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.50 Apportionment of net business income of interstate public utilities. (Section 71.07 (2) (e), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except as provided in subsection (2) below, the business income of "public utilities", as defined in section 71.07 (2) (d) 2, Wis. Stats., operating within and without Wisconsin, shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the 3 ratios provided in subsections 71.07 (2) (a), (b) and (c), Wis. Stats., and Wis. Adm. Code section Tax 2.39.

(2) The apportionable income of interstate air carriers, interstate motor carriers and interstate pipeline companies shall be apportioned to Wisconsin as provided in Wis. Adm. Code sections Tax 2.46, Tax 2.47 and Tax 2.48, respectively.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73.

GROSS INCOME

Tax 2.51 Rent received by corporations from Wisconsin real estate. (Section 71.03 (1) (b), Wis. Stats.) Rentals must be included in the gross income when they accrue or are actually received by the taxpayer, depending upon the method of accounting used in reporting income. Rentals which have not actually been received in cash will be treated as received if available to or subject to the disposal of the landlord.

Tax 2.53 Stock dividends and stock rights received by corporations.

(1) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305, Wis. Stats., such distribution is not includable in gross income then, except as provided in section 71.307 (2), Wis. Stats., the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305 (1), Wis. Stats., a part of the distribution is not includable in gross income (except as provided in 71.307 (2), Wis. Stats.), the basis of the stock with respect to which the distribution is made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution without regard to the fair market value of any part of such distribution which is includable in gross income pursuant to section 71.305 (2), Wis. Stats. The date of distribution in each case shall be the date the stock or the rights are actually distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

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(a) *Exception.* The basis of rights to buy stock which are excluded from gross income under section 71.305 (1) Wis. Stats., shall be zero if the fair market value of such rights on the date of distribution is less than 15% of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights. The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. Such statement shall disclose the number of shares of the old stock by the shareholder on the date of distribution, the basis of such shares, and the fair market value of the old shares and of the rights on the date of distribution. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

Tax 2.56 Insurance proceeds received by corporations. (Section 71.03 (1) (d), Wis. Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is taxable income.

(a) Under an interest option under which all the principal proceeds are retained and interest paid thereon periodically, the interest is taxable income.

(b) Under an income option under which the principal proceeds and interest thereon are paid in periodical instalments to the policy owner, the interest so paid is taxable income.

(c) When, under the same option, payments are made to the beneficiary (the option having been selected by the beneficiary), the interest so paid is taxable income.

(d) When, under the same option, payments are made to the beneficiary (the option having been designated by the insured), the instalment payments are made under the insurance contract, and no part of the payment is taxable income.

History: 1-2-56, r. (1), (3) (b), (3) (c) and (3) (d) and renum. (2) to be (1) and (3) (a) to be (1) (d), Register, March, 1966, No. 123, eff. 4-1-66.