

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS
INCOME

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Tax 2.01 Residence. (s. 71.01, 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 Revenue by delivery to 4638 University Avenue, Madison, Wisconsin, or by mailing to P. O. Box 8906, Madison, Wisconsin 53708, 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. am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.02 Reciprocity. (s. 71.03(2)(c), Stats.) (1) GENERAL. (a) In this rule, "residence" and "resident" are synonymous with "domicile" and "domiciliary", respectively, except when referring to the reciprocity agreement with Illinois. A person may be a resident of Illinois while domiciled in Wisconsin or a person may be domiciled in Illinois but not be a resident of Illinois. The Illinois Income Tax Act defines a resident as "an individual (i) who is in this state for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year".

(b) Income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on such personal service income if that state allows:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; or
2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on such income.

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(c) A Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement need not withhold Wisconsin income tax from personal service income earned in Wisconsin by such nonresidents.

(2) **PERSONAL SERVICE INCOME DEFINED.** Income from personal services includes all salaries, wages, commissions and fees earned by an employe and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Income from personal services does not include income derived from activities involving the substantial use of capital or labor of others.

(3) **CURRENT RECIPROCITY.** (a) Wisconsin currently practices some form of income tax reciprocity with Illinois, Indiana, Kentucky, Maryland, Michigan and Minnesota. Formal agreements have been signed with Illinois, Kentucky, Michigan and Minnesota. Reciprocity with Indiana and Maryland is based on informal agreements and acquiescence by both states.

(b) Wisconsin's formal reciprocity agreements are effective for the following years:

1. Kentucky: for the years beginning on and after January 1, 1961.
2. Illinois: for the years beginning on and after January 1, 1971.
3. Michigan: for income earned after October 1, 1967 and years beginning on or after January 1, 1968.
4. Minnesota: for the years beginning on and after January 1, 1968.

(e) The informal agreements with Indiana and Maryland have been in effect since prior to 1960.

(4) **EFFECT OF RECIPROCITY.** (a) Personal service income included under reciprocity agreements shall be taxed by an employe's state of residence rather than by an employe's state of employment. Wisconsin shall not tax personal service income earned in Wisconsin by a resident of states with which Wisconsin has reciprocity and such states shall not tax personal service income which a Wisconsin resident earns in their states, except as described in subs. (5) and (6).

(b) An employer need only withhold income tax for the state of residence of an employe. However, federal law regulates withholding on wages earned by employes engaged in interstate transportation activities. (Additional information may be obtained by contacting the Wisconsin department of revenue, compliance section, P.O. Box 8902, Madison, Wisconsin 53708.

(5) **PROVISIONS OF AGREEMENT WITH ILLINOIS.** (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to *employes* for personal services" (emphasis added). The agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income.

(b) The agreement does not apply to compensation paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of such a person is taxable by Wisconsin. However, a credit may be

claimed for income tax paid to Illinois on personal service income earned outside Wisconsin.

(c) An individual who is domiciled in Illinois but is not a resident of Illinois is subject to the Wisconsin income tax on income earned in Wisconsin.

(6) PROVISIONS OF AGREEMENT WITH MICHIGAN. The reciprocity agreement with Michigan is limited to income from "personal services, including salaries, wages or commissions". The agreement does not include income which Michigan considers to be "business income", such as fees of self-employed persons such as professionals.

(7) PROCEDURE FOR NONRESIDENTS. Nonresident persons employed in Wisconsin and residing in a state with which Wisconsin has reciprocity may file Form W-220 ("Nonresident Employee's Withholding Reciprocity Declaration") with their Wisconsin employers. Upon receipt of this form, Wisconsin employers shall not withhold Wisconsin income tax from Wisconsin personal service income of such employees.

(8) PROCEDURE FOR WISCONSIN RESIDENTS. (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity (as well as those employed in other states) shall file Form 1-ES ("Wisconsin Declaration of Estimated Tax") with the Wisconsin department of revenue if their out-of-state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to file a declaration.

(b) Such Wisconsin residents may have their employers cease withholding the other state's income tax from their personal service income and may claim a refund from such state if income taxes are withheld from such income after the effective date of a reciprocity agreement.

(c) Wisconsin residents earning personal service income in states where it is taxable by the other state may claim a credit on their Wisconsin tax returns for net income taxes paid to such states.

(9) DELINQUENT TAXES. Reciprocal agreements shall not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.135, Stats.

Note: Forms 1-ES and W-220 and their instructions may be obtained by writing the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from such employee's incomes may contact the department's compliance bureau, P.O. Box 8902, Madison, Wisconsin 53708.

The term "temporary or transitory" as used in the definition of an Illinois resident set forth in subsection (1) is not defined in either Illinois law or regulations. Therefore, whether or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Tax 2.03 Corporation returns. (s. 71.10 (1), Stats.) (1) For the purpose of filing franchise or income tax returns, the secretary of revenue has designated the following forms for the use of corporations:

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

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

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

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

(e) Form 4-ES. Declaration of estimated tax by corporations.

(f) Form 4I. Return of income for insurance company.

(g) Form 4S. Shareholders' tax-option (subchapter S) corporation modifications or share of income (loss).

(h) Form 4U. Underpayment of estimated tax by corporations.

(i) Form 4X. Amended corporation franchise or income tax return.

(j) Form 5. Optional return of income for the calendar or fiscal year. This return is to be used only by corporations whose entire net income is taxable in Wisconsin or by those reporting on the apportionment method.

(2) All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708 or delivered to the department's Audit Bureau at 4638 University Avenue, Madison, Wisconsin.

Note: Blank forms may be obtained from the department at 4638 University Avenue, Madison, or by mail request to P. O. Box 8903, Madison, Wisconsin 53708.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. Register, September, 1983, No. 333, eff. 10-1-82.

Tax 2.04 Information returns and wage statements. (ss. 71.04 (1) and 71.10 (1), (8m) and (8n), Stats.) (1) All corporations carrying on activities within this state, whether taxable or not under ch. 71, Stats., shall file with the department of revenue, on or before January 31 of each year on federal form W-2 or Wisconsin form 9b or on other forms approved by the department, 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. A copy of federal form 1087 or 1099, as appropriate, may be filed in lieu of Wisconsin form 9b.

(2) 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 s. 71.19 (1), Stats.

(3) Form WT-7, Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages, shall accompany the wage statements submitted.

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(4) Except as provided in sub. (7), statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments of all rents and royalties on property regardless of location, and payments to residents and non-residents of Wisconsin of rents and royalties on property located in Wisconsin shall be filed on or before March 15 of each year on forms 9b or other approved forms. The forms must be filed on the date indicated even if the corporation keeps its records on a fiscal year other than a calendar year.

(5) Payments of interest, dividends, rents or royalties of less than \$100 to any one individual need not be reported.

(6) Items required to be reported on wage statements or forms 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

(7) Corporations which elect to file a combined federal and state information return with the internal revenue service reporting items enumerated in sub. (4) will not be required to file a separate information return with the Wisconsin department of revenue. Under the combined federal and state reporting system, the internal revenue service will forward this information to the department of revenue.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64, am. Register, February, 1976, No. 230, eff. 3-1-76; am. Register, September, 1977, No. 261, eff. 10-1-77; am. (1), (3), (4) and (6), cr. (7), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.045 Information returns; form 9c for employers of nonresident entertainers, entertainment corporations or athletes. History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. Register, September, 1983, No. 333, eff. 10-1-83; r. Register, December, 1985, No. 360, eff. 1-1-86.

Tax 2.05 Information returns, forms 8 for corporations. (s. 71.10 (1), 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 revenue by mailing to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708 or delivery to the Audit Bureau, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8, or other approved forms, as prescribed by the