

CR 89-104

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STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to income and franchise tax administrative provisions, residency, moving expenses, IRA deductions and manufacturer's sales tax credit was duly approved and adopted by this department on December 18, 1989.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 14th day of December, 1989.



Mark D. Bugher
Secretary of Revenue

LEG/M023459N

December 11, 1989

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DEC 19 1989

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RULE ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING
AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal Tax 2.081, 2.105(2), (4) and (5)(d) and 2.945; to renumber Tax 2.085(2); to renumber and amend Tax 2.105(1), (3), (5)(intro.), (a), (b) and (c) and (6) and 2.11(1)(a), (b) and (c); to amend Tax 1.13(title), (1)(a)2 and (b), (2)(b), (3)(a) and (4)(b), 2.01, 2.085(title), 2.105(title), 2.11(title), (1)(intro.) and (3), 2.12(title), (1)(a) and (b) and 2.31(title); to repeal and recreate Tax 2.05, 2.11(2) and (4) and 2.12(1)(c) and (2); and to create Tax 2.085(2), 2.105(1), (3) and (5), 2.11(1)(c) and 2.13(3) relating to income and franchise tax administrative provisions, residency, moving expenses, IRA deductions, and manufacturer's sales tax credit.

Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c), Stats.

Statutes interpreted: ss. 71.02, 71.26(2), 71.28(3), 71.34(1)(e), 71.69, 71.75, 71.76, 71.77(2) and (7), 71.78(4)(e), 72.06, 77.61(5)(b)5a., 77.76(3), 78.80(3), 139.11(4), 139.38(6) and 139.82(6), Stats.; s. 71.05(1)(a)7 and (b)4, 1985 Stats.; and 71.05(3)(h), 1983 Stats.

The changes in this Order affect income and franchise tax rules.

SECTION 1. Tax 1.13(title), (1)(a)2 and (b), (2)(b), (3)(a) and (4)(b) are amended to include additional taxes to which the power of attorney applies and to update language and format of this section.

SECTION 2. The Form 1NPR income tax return was introduced for tax year 1986 for use by nonresidents and part-year residents of Wisconsin. A "Residence Questionnaire" is included as part of the Form 1NPR. Tax 2.01 is amended to provide that either Form I-827 or the "Residence Questionnaire" which is part of Form 1NPR can be filed when an individual claims a change of residence from Wisconsin to another state.

SECTION 3. Tax 2.05 is repealed and recreated to provide additional information in regard to capital stock transfers in a clearer format.

SECTION 4. Tax 2.081 is repealed. This rule is obsolete as a result of the repeal of the indexing provisions in the individual income tax law by 1987 Wisconsin Act 27.

SECTIONS 5 through 7. Effective for the 1986 tax year, s. 71.10(19), 1985 Stats., as recreated by 1985 Wisconsin Act 29, permits the filing of a joint income tax return. A surviving spouse may file a joint return with the deceased spouse for the year of death. The personal representative, if any, is also required to sign the joint return. Section 71.10(10)(i) provides that a decedent's tax refund is to go first to the personal representative, then if there is no personal representative to the surviving spouse, and then to child, parent, etc. Form I-804 is no longer needed to determine who is entitled to the

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decendent's refund when a joint return is filed. Section Tax 2.085 is amended to reflect this fact and to provide a more specific reference to the Wisconsin Statutes.

SECTIONS 8 through 18. Tax 2.105 is revised to reflect the renumbering of Chapter 71 by 1987 Wisconsin Act 312, to somewhat reformat the rule and conform language with new standards, to delete unnecessary quotations of statutory language, to expand notes and examples, and to reflect changes to assessment and refund periods in s. 71.11(21)(g)2, Stats., (currently s. 71.77(7)(b), Stats.) by 1983 Wisconsin Act 27 and 1987 Wisconsin Act 27.

SECTIONS 19 and 23. Tax 2.11(title), (1)(intro.) and (3) are amended to delete obsolete language and correct statutory references.

SECTION 20. Tax 2.11(a), (b) and (c) are renumbered and amended to provide better order, update statutory references and to clarify the definition of "consumed in manufacturing" and to reorganize some of the interpretations in the rule.

SECTION 21. Tax 2.11(1)(c) is created to provide a definition of "paid."

SECTIONS 22 and 24. Tax 2.11(2) and (4) are repealed and recreated to delete obsolete language, correct statutory references, recognize 1985 Wisconsin Act 29 which increased the carry forward period from 5 to 15 years, recognize the decisions in the recent court cases of Streets and Roads Construction Corporation (WTAC, 7/28/81) and Fort Howard Paper Company (WTAC, 11/1/83), which held that the credit be based on amounts paid for fuel and electricity rather than on actual fuel and electricity consumed, recognize the creation of the county sales and use taxes and that they also qualify for credit and recognize 1987 Wisconsin Act 27 which requires the credit to be included in income in the year computed rather than be a reduction in the deduction for sales and use taxes.

SECTION 25. Tax 2.12(title) and (1)(a) and (b) are amended to clarify language, update statutory references and recognize s. 71.75(5), Stats., in the title which allows a refund to be claimed during a limited period of time for tax previously assessed and paid as the result of a field audit and is addressed in s. Tax 2.12(1)(c).

SECTION 26. Tax 2.12(1)(c) and (2) are repealed and recreated for readability and to include the provision that an amended return may be filed within 90 days after a federal audit is complete.

SECTION 27. Tax 2.13 refers to moving expenses which qualify for a deduction in arriving at federal adjusted gross income. As a result of the federal Tax Reform Act of 1986, moving expenses are no longer a deduction in arriving at federal adjusted gross income. Instead, moving expenses are an itemized deduction. Since Wisconsin no longer has itemized deductions, the rule is "capped" so that it does not apply after the federal legislation became effective.

SECTION 28. Rule Tax 2.31 is amended to update statutory references because of the renumbering of chapter 71 by 1987 Wisconsin Act 312.

SECTION 29. Tax 2.945 is repealed. The information it contains regarding deductions for amounts contributed to individual retirement accounts (IRAs) of spouses is obsolete. Section 71.05(3)(h), 1983 Stats., as created by 1983 Wisconsin Act 27, had the effect of voiding this rule.

SECTION 1. Tax 1.13(title), (1)(a)2. and (b), (2)(b), (3)(a), and (4)(b) are amended to read:

Tax 1.13 (title) POWER OF ATTORNEY. (ss. 71.78(4)(e), 72.06, 77.61(5)(b)5a, 77.76(3), 78.80(3), 139.11(4), 139.38(6) and 139.82(6), Stats.)

(1)(a)2. Receive notices, assessments, determinations, redeterminations, tax forms, billings, refunds, communications and correspondence containing confidential information.

(b) The power of attorney requirement applies to income, franchise, alternative minimum, withholding, gift, sales and use, county sales and use, inheritance, estate, motor fuel, general aviation fuel, special fuel, fermented malt beverage, intoxicating liquor, cigarette and tobacco products tax matters of individuals, partnerships and corporations, including (S) corporations, and homestead and farmland preservation credit matters.

(2)(b) Generally a power of attorney is not required in the case of a trustee, receiver, guardian, ~~personal-representative-or-special~~ administrator or executor of an estate, or a representative appointed by a court.

(3)(a) One power of attorney form shall be filed with the Wisconsin department of revenue, with one additional copy for each additional tax matter. ~~For-example,~~ ~~if-a-power-of-attorney-covers-2-tax-matters,-e.g.,-income-tax-and-sales-tax,-2~~ ~~power-of-attorney-forms-shall-be-filed.~~

Note to Revisor: Insert the following example after paragraph (a) of subsection (3):

Example. If a power of attorney covers 2 tax matters, e.g., income tax and sales tax, 2 power of attorney forms shall be filed.

(4)(b) Use of the Wisconsin power of attorney form is not mandatory. However, the department prefers that this form or another similar form be used.

The Wisconsin power of attorney form or substitute form shall clearly express the scope of the authority granted the taxpayer's representative, the Wisconsin tax matters, e.g., income, sales, or gift tax, covered and the tax year or period to which it relates.

SECTION 2. Tax 2.01 is amended to read:

Tax 2.01(title) RESIDENCE. (s. 71.02, Stats.) Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file form I-827, "Residence Questionnaire", or the "Residence Questionnaire" which is a part of the 1NPR income tax form, with the Wisconsin department of revenue by attaching it to their Wisconsin income tax return for the year they claim to have changed residence, and shall furnish other information the department may require.

Note to Revisor: Replace the note at the end of Tax 2.01 with the following:

Note: Form I-827 or form 1NPR may be obtained from the Department of Revenue at 4638 University Avenue, Madison, or from any other Department of Revenue office located throughout the state, or by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

SECTION 3. Tax 2.05 is repealed and recreated to read:

Tax 2.05 TRANSFERS OF CAPITAL STOCK, INFORMATION RETURN. (s. 71.69, Stats.) (1) All corporations doing business within this state, whether subject to the franchise or income tax or not, shall file with the department of revenue on or before March 15 of each year reports of transfers of capital stock, including disposals, by individuals who were residents of Wisconsin during the preceding calendar year.

(2) Transfers of capital stock shall be reported on Wisconsin form 8 or on other substitute forms approved by the department and shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

Note to Revisor: Insert the following note:

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin, 53708.

SECTION 4. Tax 2.081 is repealed.

SECTION 5. Tax 2.085(title) is amended to read:

Tax 2.085(title) CLAIM FOR REFUND ON BEHALF OF A DECEASED TAXPAYER.

(s. 71.75(10), Stats.)

SECTION 6. Tax 2.085(2) is renumbered Tax 2.085(3).

SECTION 7. Tax 2.085(2) is created to read:

(2) Form I-804 does not have to be filed if the refund is claimed on a joint Wisconsin income tax return of the surviving spouse and the decedent. The surviving spouse shall write "filing as surviving spouse" in the signature area of the return. If someone other than the surviving spouse is the personal representative, the personal representative shall also sign the joint return.

SECTION 8. Tax 2.105(title) is amended to read:

Tax 2.105(title) NOTICE BY TAXPAYER OF FEDERAL AUDIT ADJUSTMENTS AND AMENDED RETURNS. (ss. 71.75(2), 71.76, and 71.77(2) and (7), Stats.)

SECTION 9. Tax 2.105(1) is renumbered Tax 2.105(2) and amended to read:

Tax 2.105(2) DEFINITION. In this ~~rule~~ section, "taxpayer" includes individuals, estates, trusts and corporations.

SECTION 10. Tax 2.105(1) is created to read:

Tax 2.105(1) PURPOSE. This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin income or franchise tax purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

SECTION 11. Tax 2.105(2) before renumbering is repealed.

SECTION 12. Tax 2.105(3) is renumbered Tax 2.105(4) and Tax 2.105(4)(a)1.b., c., and e. and (b) as renumbered are amended to read:

Tax 2.105(4)(a)1.b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment (~~ordinarily federal Form .~~ Federal form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", or 870-AD, ~~both entitled~~ "Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", ~~is used~~ are the forms prescribed for this purpose).

c. Expiration of the 90-day time period (, or the 150-day period in the case of a notice addressed to a person outside the United States), within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within ~~such~~ that time.

e. A decision by the United States tax court or a judgment, decree or other order by a court of competent jurisdiction (~~e.g., a United States district court, court of appeals, court of claims or the United States supreme court~~) which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. A court of competent jurisdiction includes a United States district court, a court of appeals, a court of claims, or the United States supreme court. ~~See the note following this rule for the time when such actions ordinarily become final.~~

Note to Revisor: Insert the following Note after subpar. e. of Tax 2.105(4)(a)1.:

Note: Refer to the Note following this section for the time when the federal actions ordinarily become final.

(b) Amended returns. If a taxpayer files an amended federal tax return and the changes ~~therein~~ on the amended federal tax return affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, an amended Wisconsin return reflecting the same changes shall be filed with the

department. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

SECTION 13. Tax 2.105(3) is created to read:

Tax 2.105(3) GENERAL. (a) Section 71.76, Stats., provides that a taxpayer shall report to the department changes made to a tax return by the internal revenue service, or file with the department amended Wisconsin income tax returns reporting any information contained in amended returns filed with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state.

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within 90 days of the date the department receives the taxpayer's report of federal adjustment or amended return described in par. (a). The limitations referred to in this paragraph do not apply to instances where the taxpayer files an incorrect income or franchise tax return with intent to defeat or evade the income or franchise tax assessment.

SECTION 14. Tax 2.105(4) before renumbering is repealed.

SECTION 15. Tax 2.105(5)(intro.), (a), (b) and (c) are renumbered Tax 2.105(6)(intro.)(a), (b) and (c) and Tax 2.105(6)(intro.), (a), (b) and (c) are amended to read:

Tax 2.105(6)(intro.) If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after an amended return is filed with the internal revenue service or another state, the department may make an assessment or refund relating to such the report or amended return as follows:

(a) Assessments. ~~An~~ Under s. 71.77(2), Stats., an assessment may be made within 4 years from the date the original Wisconsin income or franchise tax return was filed. ~~{s. 71.11(2)}(b), Stats.~~ However, under s. 71.77(7)(a), Stats., if the taxpayer reported less than 75% of the correct income and the additional tax for ~~such~~ the year exceeds \$100 for an individual return or a married filing separate return, or \$200 for a joint return, an assessment may be made within 6 years after the return was filed. ~~{s. 71.11(2)}(g), Stats.~~

(b) Refunds. ~~-A-~~ Under s. 71.75(2), Stats., a refund may be made if claims are filed within 4 years of the unextended date the original Wisconsin income or franchise tax return was ~~filed~~ due. ~~{s. 71.10(10)}(b), Stats.~~

(c) Exceptions. 1. An assessment may be made later than the 4 and 6 year periods mentioned in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report from the taxpayer of federal adjustments or an amended Wisconsin return. However, ~~such-an~~ the assessment made after the expiration of the 4 and 6 year periods may only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department ~~or-files-with~~ ~~the-department-an-amended-Wisconsin-return~~ after the expiration of the 4-year period for filing claims for refund as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax liability, may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustment ~~or-an-amended Wisconsin-return-from-the-taxpayer~~.

3. The 90-day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of ~~such~~ the 90 days.

Note to Revisor: Insert the following Note after subd. 3 of par. (c) of Tax 2.105(6):

Examples. 1) Federal adjustments were made to an individual's 1983 federal income tax return; the adjustments became final on June 1, 1988. On August 15, 1988, within 90 days after the adjustments became final, the department received the taxpayer's report of the adjustments. Although the 4-year period provided by s. 71.11(21)(bm), 1985 Stats., (renumbered s. 71.77(2), 1987 Stats.) for making adjustments to the 1983 Wisconsin return expired on April 15, 1988, the department had until November 13, 1988, 90 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) A taxpayer filed an amended 1985 New York return on June 1, 1986. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 1, 1986. Under the 4-year assessment period in s. 71.77(2) (formerly s. 71.11(21)(bm)), Stats., the department has 4 years from April 15, 1986, the due date of 1985 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

SECTION 16. Tax 2.105(5)(d) is repealed.

SECTION 17. Tax 2.105(5) is created to read:

Tax 2.105(5) TAXPAYER'S FAILURE TO REPORT OR FILE ADJUSTMENTS AND AMENDED WISCONSIN RETURNS. (a) Adjustments and amended returns relating to taxable year 1987 and thereafter. If a taxpayer fails to report federal adjustments or the filing of an amended other state or federal return, relating to the taxable year 1987 and thereafter, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 4 years after discovery by the department.

Example. An individual taxpayer filed a 1987 Wisconsin income tax return on April 15, 1988. Adjustments were made by the internal revenue service to the 1987 federal income tax return which the taxpayer did not report to the department within 90 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on June 1, 1990. The department may issue an assessment for the adjustments any time on or before June 1, 1994.

(b) Adjustments and amended returns relating to 1986 and prior taxable years.

1. 'Adjustment became final or amended return filed after July 1, 1983'.

If a taxpayer fails to report federal adjustments which became final after July 1, 1983 and relate to 1986 or prior taxable years, or the filing of an amended other state or federal return filed after July 1, 1983 which relates to 1986 or

prior taxable years, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed or within 2 years after the date when the federal determination of tax becomes final, whichever is later. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar year basis, is considered as filed on the last date prescribed by law under s. 71.77(8), Stats.

2. 'Adjustment made and became final or amended return filed after May 4, 1976 and before July 2, 1983'. If a taxpayer fails to report federal adjustments which were made and became final during the period of May 5, 1976 through July 1, 1983 or the filing of an amended other state or federal return during the period of May 5, 1976 through July 1, 1983, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar year basis, is considered as filed on the last date prescribed by law under s. 71.77(8), Stats.

Examples. 1) A taxpayer filed a 1983 income tax return on April 15, 1984. The taxpayer filed an amended return with Ohio on January 1, 1985. The result of the amended return was a reduction in the net tax paid to Ohio on income also reported to Wisconsin. The taxpayer did not notify the department within 90 days of filing the amended Ohio return. The department has until April 15, 1994 to issue an assessment for the Ohio amended return's effect on the Wisconsin credit for taxes paid to other states.

2) An individual taxpayer filed a 1980 Wisconsin income tax return by April 15, 1981. Adjustments were made by the internal revenue service to the individual's 1980 federal income tax return and the adjustments became final on July 1, 1982. The taxpayer either failed to notify the department of the adjustments or notified the department more than 90 days after they became final. The department of revenue may issue an assessment for the adjustments any time on or before April 15, 1991, 10 years from the due date of the 1980 Wisconsin return.

SECTION 18. Tax 2.105(6) is renumbered Tax 2.105(7) and is amended to read:

Tax 2.105(7) PRIOR FIELD AUDIT BY DEPARTMENT. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and ~~such~~ the field audit has been finalized, an assessment or refund nevertheless may be made. However, ~~such-an~~ the assessment or refund may only relate to those federal adjustments or the changes on ~~such~~ the amended return. Notice of the assessment or refund must be given to the taxpayer within 90 days of the date the department received the report of federal adjustment or an amended Wisconsin return from the taxpayer.

Note to Revisor: Replace the Note at the end of Tax 2.105 with the following:

Note: 1) Decisions of the United States tax court and other courts ordinarily become final as follows:

a. If no appeal is made of a United States tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable small cases involving deficiencies of \$1,500 or less heard by the United States tax court under section 7463 of the internal revenue code become final 90 days after they are entered.

b. Appealed decisions of the United States tax court become final as set forth in section 7481 of the internal revenue code.

c. A decision of a United States district court normally becomes final if not appealed to the United States court of appeals within 60 days of the judgment, decree or order.

d. A decision of the United States court of claims or the United States court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the United States supreme court within 90 days of the judgment or decree.

e. A decision of the United States supreme court is normally final upon the expiration of a period of 25 days from the date such decision is rendered, if a motion for reconsideration or rehearing is not filed within that time.

2) In the case of Bacon v. Wisconsin Department of Revenue, Wis. Court of Appeals, No. 83-497, March 23, 1984, it was held that a federal assessment occurring prior to the effective date of s. 71.11(21)(g)2 and (21m), 1985 Stats., (May 5, 1976) relieves a taxpayer of notifying the department of the federal assessment in absence of legislative intent of retroactivity, regardless of when the assessment became final as a result of an appeal.

SECTION 19. Tax 2.11(title) and (1)(intro.) are amended to read:

Tax 2.11(title) CREDIT FOR SALES AND USE TAX PAID ON FUEL AND ELECTRICITY.

(ss. 71.26(2), 71.28(3) and 71.34(1)(e), Stats.) (1) DEFINITIONS. In this ~~rule~~ section:

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SECTION 20. Tax 2.11(1)(a), (b) and (c) are renumbered Tax 2.11(1)(d), (b) and (a) and amended to read:

Tax 2.11(1)(a) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising and or administrative department activities. ~~If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.~~ However, fuel and electricity used directly in manufacturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

(b) "Manufacturing" has the meaning ~~designated~~ specified in s. ~~77.51(27)~~ 77.54(6m), Stats., by virtue of s. ~~71.043(4)(b)~~ 71.28(3)(a)(1), Stats.

(d) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. ~~71.043(4)(a)~~ 71.28(3)(a)(2), Stats.

SECTION 21. Tax 2.11(1)(c) is created to read:

Tax 2.11(1)(c) "Paid" has the meaning specified in s. 71.22(8), Stats.

SECTION 22. Tax 2.11(2) is repealed and recreated to read.

Tax 2.11(2) CREDIT ALLOWABLE. (a) Under s. 71.28(3), Stats., a corporation may reduce its income or franchise tax liability for the year by an amount equal to the Wisconsin state and county sales and use taxes it has paid on fuel and electricity consumed in manufacturing personal property within Wisconsin.

(b) If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(c) The credit is allowable for all Wisconsin and Wisconsin county sales and use taxes paid during the taxable year on fuel or electricity destined for manufacturing purposes, regardless of when the fuel or electricity was or is to be consumed.

Note: Refer to Streets and Roads Construction Corporation v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-6239, July 28, 1981, and Fort Howard Paper Company v. Wisconsin Department of Revenue, Wisconsin Tax Appeals Commission, Docket No. I-8266, November 1, 1983.

SECTION 23. Tax 2.11(3) is amended to read:

Tax 2.11(3) CARRY FORWARD OF UNUSED CREDIT. (a) If a corporation is entitled to a sales and use tax credit ~~for 1973 and subsequent tax years~~ under s. ~~71.043(2)~~ 71.28(3), Stats., ~~such~~ the credit, to the extent not offset by the tax liability of the same year, may be offset against the tax liability of the subsequent year and each succeeding year up to a total of ~~5~~ 15 years ~~or when~~ until the credit has been completely offset, ~~whichever occurs first.~~

Note to Revisor: The following note should be added after par. (a).

Note: The carry forward of the sales tax credit was increased from 5 to 15 years by 1985 Wisconsin Act 29, and the 15 year carryforward first applies to credits carried forward from the 1980 taxable year.

(b) The sales tax credit ~~computed for 1973 and subsequent tax years~~ shall first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied.

SECTION 24. Tax 2.11(4) is repealed and recreated to read:

Tax 2.11(4) CREDIT INCLUDABLE IN NET INCOME. Under s. 71.26(2), Stats., the credit computed for sales and use taxes paid on fuel and electricity consumed in manufacturing under s. 71.28(3), Stats., shall be included in net income for the tax year. Except for tax-option corporations, the entire credit computed for

the tax year is includable in net income, even though the credit is not entirely used or no income or franchise tax liability exists. Under s. 71.34(1)(e), Stats., tax-option corporations shall only include in net income the amount of credit computed under s. 71.28(3), Stats., and used to offset the income or franchise tax liability of the current year.

Note to Revisor: Eliminate the note after sub. (4).

SECTION 25. Tax 2.12(title) and (1)(a) and (b) are amended to read:

Tax 2.12(title) AMENDED INCOME AND FRANCHISE TAX RETURNS. (ss. 71.74, 71.75 and 71.76, Stats.) (1) GENERAL. (a) The department shall accept amended returns to correct Wisconsin franchise or income tax returns previously filed. Amended Wisconsin returns also shall be filed with the department if either amended federal returns are filed and the changes ~~therein~~ affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, or amended returns are filed with another state and a credit has been allowed against Wisconsin taxes for taxes paid to the state and the changes affect the amount of income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin returns shall be filed within 90 days after the date the amended federal returns or amended returns of other states are filed with those agencies.

Note to Revisor: Substitute the following note for the note currently following par. (a):

Note: Refer to s. Tax 2.105 for additional information regarding amended Wisconsin returns required as a result of filing amended federal returns or amended returns of other states and amended Wisconsin returns required as a result of adjustments made to a federal return by the Internal Revenue Service.

(b) Because an amended return is not the original return, it shall not begin or extend the statute of limitation periods for ~~the assessment of~~ assessing additional tax or ~~the claim of~~ claiming a refund.

SECTION 26. Tax 2.12(1)(c) and (2) are repealed and recreated to read:

Tax 2.12(1)(c) If an amended return shows a refund, it shall be filed within 4 years of the unextended due date of the original return. However, there are 2 exceptions, as follows:

1. A claim for refund of the tax paid as a result of an office audit or field audit may be filed within 2 years of the date the tax was assessed if no petition for redetermination was filed.

2. A claim for refund of the tax paid as a result of a federal audit adjustment may be filed within 90 days of the date on which the federal audit adjustment became final.

Note to Revisor: Insert the following note following subd. 2 of par. (c).

Note: Refer to s. Tax 2.105(4)(a)1 for information regarding when a federal audit adjustment is final.

(2) FORMS. Amended returns may be filed using form 1X for individuals and form 4X for corporations. Other forms may be used, but such forms shall be clearly marked "AMENDED RETURN" across the top of the first page.

Note to Revisor: Substitute the following note for the note at the end of Tax 2.12:

Note: The department accepts amended individual income tax and corporate franchise and income tax returns to allow taxpayers to correct overstatements or understatements of net income and computations of tax contained on their original, previously amended, or previously adjusted return.

Although the use of forms 1X and 4X is not mandatory, the department prefers that they be used. They are designed to simplify the filing and expedite the processing of the information. Copies may be obtained from any Wisconsin Department of Revenue office.

SECTION 27. Tax 2.13(3) is created to read:

(3) APPLICABILITY. As a result of the federal Tax Reform Act of 1986, which provides that moving expenses are deductible as an itemized deduction rather than as an adjustment to income, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

SECTION 28. Tax 2.31(title) is amended to read:

Tax 2.31 (title) TAXATION OF PERSONAL SERVICE INCOME OF NONRESIDENT PROFESSIONAL ATHLETES. (ss.71.02, 71.04(1)(a), (4) and (11), 71.23(1), 71.25 (5), (6), (7), (8), (9) and (12), and 71.362(1), Stats.).

SECTION 29. Tax 2.945 is repealed.

The rules contained in this Order shall take affect on the first day of the month following publication as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule Order does not have a significant economic impact on a substantial number of small businesses.

WISCONSIN DEPARTMENT OF REVENUE

Dated: _____

By: _____
Mark D. Bugher
Secretary of Revenue



State of Wisconsin ● **DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

December 18, 1989

RECEIVED

DEC 19 1989

Orlan L. Prestegard
Revisor of Statutes
30 West Mifflin Street, Suite 702
Madison, Wisconsin 53703

Revisor of Statutes
Bureau

Re: Clearinghouse Rule 89-104

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to income and franchise tax administrative provisions, residency, moving expenses, IRA deductions and manufacturer's sales tax credit.

These materials are filed with you pursuant to s. 227.20 (1), Wis. Stats.

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:VLG:bem
Enclosure
LEG/M023459M

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

December 18, 1989.

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Bureau

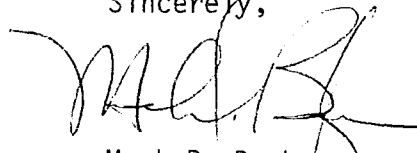
Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 89-104.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:VLG:bem
Enclosure
LEG/M023459L

cc: Revisor of Statutes