

CR 89-105

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

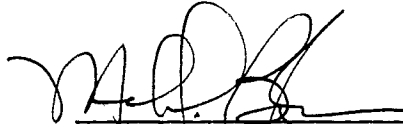
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DEC 22 1989
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Revisor of Statutes
Bureau

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to corporation income and franchise tax income and deductions 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 18th day of December, 1989.



Mark D. Bugher
Secretary of Revenue

LEG/M023459Q

December 11, 1989

✓ 3-1-90

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

The Wisconsin Department of Revenue adopts an order to repeal Tax 2.07, 2.17, 2.18, 2.74, 2.96(2)(c), 2.98(2)(a)(title) and (b), 3.24 and 3.55; to renumber Tax 2.96(2)(d); to renumber and amend Tax 2.15, 2.51, 2.75, 2.76, 2.80, 2.81, 2.86 and 2.98(2)(a)1 and 2; and to create Tax 2.15(2), 2.51(2), 2.73(4), 2.75(2), 2.76(2), 2.80(2), 2.81(2) and 2.86(2) relating to corporation income and franchise tax income and deductions.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 71.01(6), 71.04(8)(c), 71.22(4), 71.24(7), 71.25(10)(c), 71.26(2) and (3) and 71.44, Stats.

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

SECTION 1. Tax 2.07 is repealed since it is no longer applicable as a result of the creation of a special franchise tax for a corporation's final year by 1985 Wisconsin Act 261 and the federalization of the Wisconsin corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTION 2. Tax 2.15 is renumbered Tax 2.15(1) and amended to reflect the correct statutory reference and make a grammatical correction.

SECTIONS 3, 7, 9, 12, 13, 16, 18 and 20. Tax 2.15(2), 2.51(2), 2.73(4), 2.75(2), 2.76(2), 2.80(2), 2.81(2) and 2.86(2) are created to recognize the federalization of the corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTION 4. Because of federalization of the corporation statutes regarding determination of a corporation's net income and Tax Appeals Commission decisions (i.e., J.J. Security, Inc. v. W.D.O.R. (9-2-88), Streets and Roads Construction Corp. v. W.D.O.R. (7-28-81), and Tony Pelliteri Trucking Service, Inc. v. W.D.O.R. (1-25-72)), Tax 2.17 and 2.18 no longer have general applicability.

SECTION 5. Tax 2.50(title) and (1) are amended to delete obsolete language and to reflect the updated statutory references due to the renumbering of Chapter 71 by 1987 Wisconsin Act 312.

SECTIONS 6 and 19. Tax 2.51 and 2.86 are renumbered Tax 2.51(1) and 2.86(1) and Tax 2.51(title) and 2.86(title) are amended to update the statutory references.

SECTION 8. Tax 2.73(title) is amended to update the statutory reference.

SECTION 10. Tax 2.74 is repealed since it is outdated due to various law changes, including the federalization of corporate franchise and income law by 1987 Wisconsin Act 27.

SECTIONS 11, 13, 15 and 17. Tax 2.75, 2.76, 2.80 and 2.81 are renumbered Tax 2.75(1), 2.76(1), 2.80(1) and 2.81(1) and amended to update the statutory references and to clarify language so as to make it more applicable to franchise taxation.

SECTIONS 21 to 24. Tax 2.96(title) is amended to update the statutory reference to the renumbered statutes as affected by 1987 Wisconsin Act 312. Tax 2.96(1) is amended to include Form 4T which will be filed, beginning with 1988 taxable years, by exempt organizations taxable as corporations on their unrelated business taxable income and to include Form 5S filed by tax-option corporations. Tax 2.96(2)(a) is amended to include reference to estimated tax payments. Tax 2.96(2)(b) and (4) are amended, (2)(c) is repealed, and (2)(d) is renumbered because the federal Form 7005 has been eliminated and the Internal Revenue Service only grants 6-month extensions. Tax 2.96(5) is amended because federal Form 1120 DISC has been retitled.

SECTIONS 25 to 28. Tax 2.98 is revised to update the rule with respect to law changes, including allowing disaster area losses to corporations because of adopting the federal treatment by the creation of s. 71.02(1)(bg) by 1987 Wisconsin Act 27, effective with the 1987 taxable year, and no longer allowing personal disaster area losses to individuals as an itemized deduction because of the elimination of itemized deductions due to the amendment to s. 71.02(2)(me) by 1985 Wisconsin Act 29, effective with the 1986 taxable year.

SECTION 29. Tax 3.24 is repealed as it is clear in the Wisconsin statutes what taxes are deductible for income and franchise tax purposes and the rule provides nothing more than a restatement of the statutes.

SECTION 30. Tax 3.55 is repealed since it only applies to 1979 and prior tax years.

SECTION 1. Tax 2.07 is repealed.

SECTION 2. Tax 2.15 is renumbered Tax 2.15(1) and amended to read:

Tax 2.15 (title) METHODS OF ACCOUNTING FOR CORPORATIONS. (s. 71.11(8), 1985 Stats.) (1) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may ~~return~~ report its income in accordance with the method of accounting regularly employed in keeping its books. If no method of accounting is regularly employed or if the method employed does not clearly reflect the income, the department of revenue may prescribe the method to be used. A method of accounting will not be regarded as clearly reflecting the income unless all items of gross income and all deductions are treated with reasonable consistency.

SECTION 3. Tax 2.15(2) is created to read:

Tax 2.15(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 4. Tax 2.17 and 2.18 are repealed.

SECTION 5. Tax 2.50(title) and (1) are amended to read:

Tax 2.50(title) APPORTIONMENT OF NET BUSINESS INCOME OF INTERSTATE PUBLIC UTILITIES. (ss. 71.04(8)(c) and 71.25(10)(c), Stats.) (1) ~~For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except~~ Except as provided in sub. (2), the business apportionable income of "public utilities", as defined in ~~s. 71.07(2)(d)~~ ss. 71.04(8)(b) or 71.25(10)(b), 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 ~~s. 71.07(2)(a), (b) and (c)~~ ss. 71.04(5), (6) and (7) or 71.25(7), (8) and (9), Stats., and s. Tax 2.39.

SECTION 6. Tax 2.51 is renumbered Tax 2.51(1) and Tax 2.51(title) is amended to read:

Tax 2.51 (title) RENT RECEIVED BY CORPORATIONS FROM WISCONSIN REAL ESTATE. (s. 71.03(1)(b), 1985 Stats.)

SECTION 7. Tax 2.51 (2) is created to read:

Tax 2.51(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 8. Tax 2.73 (title) is amended to read:

Tax 2.73 (title) INVOLUNTARY CONVERSION BY CORPORATIONS. (s. 71.03(1)(g)3, 1985 Stats.)

SECTION 9. Tax 2.73(4) is created to read:

Tax 2.73(4) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1), (2) and (3) do not apply to taxable year 1987 or to taxable years thereafter.

SECTION 10. Tax 2.74 is repealed.

SECTION 11. Tax 2.75 is renumbered Tax 2.75(1) and amended to read:

Tax 2.75 (title) RECOVERIES BY CORPORATIONS. (s. 71.03(1)(k), 1985 Stats.) (1) Recoveries of items previously charged off as loss or as expense are ~~taxable~~ income in the year of recovery.

SECTION 12. Tax 2.75(2) is created to read:

Tax 2.75(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 13. Tax 2.76 is renumbered Tax 2.76(1) and amended to read:

Tax 2.76 (title) REFUNDS OF TAXES TO CORPORATIONS. (s. 71.03(1)(k), 1985 Stats.) (1) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are ~~taxable~~ includable in net income.

SECTION 14. Tax 2.76(2) is created to read:

Tax 2.76(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 15. Tax 2.80 is renumbered Tax 2.80(1) and amended to read:

Tax 2.80 (title) IMPROVEMENTS ON LEASED REAL ESTATE, INCOME TO CORPORATE LESSOR. (s. 71.03(1)(k), 1985 Stats.) (1) If improvements are made on leased property and the life of such improvements extends beyond the terms of the lease, the lessor derives ~~taxable~~ income at the expiration of the lease, ~~the amount-of-which-is-represented~~ measured by the fair market value of the improvements at the that time.

December 15, 1989

SECTION 16. Tax 2.80(2) is created to read:

Tax 2.80(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable year's thereafter.

SECTION 17. Tax 2.81 is renumbered Tax 2.81(1) and amended to read:

Tax 2.81 (title) DAMAGES RECEIVED BY CORPORATIONS. (s. 71.03(1)(k), 1985 Stats.) (1) Damages may result in ~~taxable~~ income when recovered on account of injury to property, or interference with property rights ~~or breach of contract~~, when the amounts received as damages are in excess of the ~~income-tax-cost~~ adjusted basis of the property destroyed. Damages, including punitive damages, recovered for libel of business reputation, breach of contract, or antitrust injury, are ~~taxable~~ includable in income.

SECTION 18. Tax 2.81(2) is created to read:

Tax 2.81(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 19. Tax 2.86 is renumbered Tax 2.86(1) and amended to read:

Tax 2.86 (title) INCOME TO CORPORATIONS FROM CANCELLATION OF GOVERNMENT CONTRACTS. (s. 71.03(1)(k), 1985 Stats.) (1) Amounts claimed under cancelled government contracts not reported in the return for the year in which the claim ~~therefor~~ was filed ~~must~~ shall be included as income in the year in which ~~such~~ the claim is allowed.

SECTION 20. Tax 2.86(2) is created to read:

Tax 2.86(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 21. Tax 2.96(title), (1), and (2)(a) and (b) are amended to read:

Tax 2.96(title) EXTENSIONS OF TIME TO FILE CORPORATION FRANCHISE OR INCOME TAX RETURNS. (ss. 71.24(7) and 71.44(3), Stats.)

(1) GENERAL. Corporation franchise or income tax returns, forms 4 ~~and~~, 5, and 5S are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year and form 4T is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted. The returns may be filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return.

(2)(a) The 30-day or 6-month extension from department. A request for a 30-day or 6-month extension, ~~Form~~ form IC-830, from the department shall be filed ~~in duplicate~~ by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged ~~on the copy of~~ when the extension request ~~which~~ is returned to the taxpayer. The payment shall be processed by the department as an estimated tax payment.

(b)(title) The 6-month federal extension. 1. A copy of federal extension ~~Form~~ form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic ~~3-month~~ 6-month extension provision for the Wisconsin return to be considered timely filed.

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay an estimated tax liability on or before the 15th day of the 3rd month following the taxable year original due date of the franchise or income tax return. This may be done by attaching a remittance

~~either to an amended "Wisconsin Declaration of Estimated Corporation Franchise or Income Tax" form or~~ to a corporation estimated tax voucher, form 4-ES, and a copy of the federal extension (~~Form , form~~ 7004), and mailing them to the department of revenue.

SECTION 22. Tax 2.96(2)(c) is repealed.

SECTION 23. Tax 2.96(2)(d) is renumbered Tax 2.96(2)(c).

SECTION 24. Tax 2.96(4) and (5) are amended to read:

Tax 2.96(4) CONSOLIDATED RETURNS. Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, ~~and any additional federal extension, form 7005,~~ shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

(5) DOMESTIC INTERNATIONAL SALES CORPORATIONS. Since a ~~Domestic International Sales Corporation's~~ domestic international sales corporation's (DISC's) federal annual information return, ~~Form 1120-DISC~~ form 1120-IC-DISC, is not due for federal purposes until the 15th day of the 9th month following the end of the taxable year and the DISC's Wisconsin return, ~~Form~~ form 4 or 5, is due on or before the 15th day of the 3rd month following the end of the taxable year, a federal extension for a DISC cannot apply to the Wisconsin return. If a complete Wisconsin return cannot be filed by the due date, the corporation may obtain an extension from the department for a period not to exceed 6 months, if the extension is requested prior to the original due date of the return.

SECTION 25. Tax 2.98(title) and (1)(a) are amended to read:

Tax 2.98(title) DISASTER AREA LOSSES. (s. 71.01(6) and 71.22(4), Stats.)

(1)(a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used ~~for personal~~ in a trade or business or for income-producing purposes for which insurance coverage

is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

SECTION 26. Tax 2.98(2)(a)(title) is repealed.

SECTION 27. Tax 2.98(2)(a)1. and 2. are renumbered 2.98(2)(a) and (b) and amended to read:

Tax 2.98(2)(a) The Wisconsin income tax treatment ~~for individuals~~ is determined under the federal internal revenue code in effect under s. ~~71.02(2)(b)~~ 71.22(4), Stats., for corporations and s. 71.01(6), Stats., for individuals.

(b) If a corporation or an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin Form ~~1X~~ 4X may be used by corporations and Wisconsin Form 1X may be used by individuals.

SECTION 28. Tax 2.98(2)(b) is repealed.

Note to Revisor: The "Note" at the end of s. Tax 2.98 should be replaced with the following:

Note: 1) For taxable years prior to 1987, the Wisconsin corporation tax law was contained in chapter 71, Stats., and was not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the internal revenue code were not available to corporations for Wisconsin franchise and income tax purposes for those years. The amendment allowing disaster losses for corporations was enacted by 1987 Wisconsin Act 27.

2) Section 71.02(2)(d), 1983 Stats., which defines "Wisconsin taxable income," was renumbered 71.02(2)(me), 1985 Stats., and amended by 1985 Wisconsin Act 29, effective with 1986 individual income tax returns filed in taxable year 1987. This amendment is reflected in s. Tax 2.98. Section 71.02(2)(me), 1985 Stats., was again renumbered, s. 71.01(16), Stats., by 1987 Wisconsin Act 312. For 1985 and prior year income tax returns filed in 1986 and prior taxable years, disaster area losses from damage to property used for personal purposes were also allowed, as an itemized deduction, using the provisions in sub. (1)(b) and the individual treatment in sub. (2)(b).

3) As an example of Note 2) above, on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

Calumet	Iowa	Rock
Columbia	Jefferson	Sauk
Crawford	LaFayette	Sheboygan
Dane	Manitowoc	Vernon
Dodge	Milwaukee	Walworth
Fond du Lac	Ozaukee	Washington
Grant	Richland	Waukesha
Green		

An individual who sustained a casualty loss from this disaster in any of these 22 counties, regardless of where that individual resided, could have elected to deduct the loss on the individual's 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers, assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977. If the election was not made, the loss was deductible on the taxpayer's 1976 return.

4) Tax 2.98 explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law, however, it does not explain all the details regarding casualty losses. Internal Revenue Service Publication 549, entitled "Condemnations and Business Casualties and Thefts," may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources, and related casualty loss problems.

SECTION 29. Tax 3.24 is repealed.

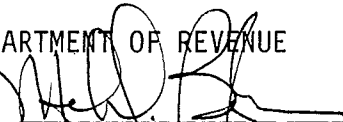
SECTION 30. Tax 3.55 is repealed.

The rules contained in this Order shall take effect 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.

Dated: December 18, 1989

DEPARTMENT OF REVENUE
 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

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

Re: Clearinghouse Rule 89-105

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to corporation income and franchise tax income and deductions.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Bugher', written over a horizontal line.

Mark D. Bugher
Secretary of Revenue

MDB:VLG:bem
Enclosure
LEG/M023459R

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

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 89-105.

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/M023459S

✓ cc: Revisor of Statutes