

## Chapter Tax 3

## INCOME TAXATION, DEDUCTIONS FROM GROSS INCOME, EXCLUSIONS AND EXEMPTIONS, ETC.

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**Tax 3.01 Rents paid.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Rents paid on property used in producing taxable income are deductible from gross income. The cost of leaseholds, acquired for cash or property, represents rent paid in advance and as such is deductible from gross income in equal amounts over the life of the leaseholds. Taxes paid by the lessee for the lessor are to be treated as additional rent paid and are a deductible expense.

**Tax 3.03 Dividends received, deductibility of.** (Section 71.04 (4), Wis. Stats.) (1) In determining whether 50% or more of the net income or loss for the preceding year of the corporation paying the dividend was used in computing taxable income, nontaxable income from United States interest and deductible dividends must be disregarded.

(2) When a corporation keeps its records on the basis of a fiscal year ending not later than June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending within the calendar year when such dividends are paid. When a corporation keeps its records on the basis of a fiscal year ending subsequent to June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending in the year prior to the calendar year when such dividends are paid.

(3) All dividends must be reported in full on the income tax return of the person receiving them, regardless of the deductibility of certain dividends received by corporations. Corporate taxpayers should deduct such dividends as they believe to be deductible. Whether or not the dividends are deductible will be determined in accordance with the records on file with the department of taxation, and proper adjustment will be made.

(4) All corporations doing business within Wisconsin must report the dividends paid to residents of Wisconsin on Forms 9. (See Tax 2.04).

**Tax 3.05 Profit-sharing distributions.** (Sections 71.04 (1) and 71.05 (1), Wis. Stats.) (1) Payments made to officers and employes for services rendered under the terms of a profit-sharing agreement, in lieu of or in addition to fixed salaries or other compensation, are proper deductions from gross income. Payments made to the stockholders of a corporation who are not actively engaged in the business are not allowable deductions. If profit-sharing distributions are based on stock holdings, they will be treated as dividends and, therefore, are not allowable deductions.

(a) The form or method of fixing compensation is not decisive as to the deductibility thereof. If payments are made pursuant to a profit-sharing agreement entered into between employer and employe before services are rendered, which is not influenced by any consideration on the part of the employer other than that of securing the services of the employe on fair and advantageous terms, they will be allowable as deductions from gross income even though in the actual working out of the contract such payments may prove to be greater than the amounts which would ordinarily be paid.

**Tax 3.06 Compensation paid in capital stock.** (Sections 71.04 (1) and 71.05 (1), Wis. Stats.) Payments of salaries, wages and other compensation in the capital stock of a corporation for services actually rendered are deductible to the extent of the fair market value of such stock.

**Tax 3.07 Bonuses and retroactive wage adjustments.** (Sections 71.04 (1) and 71.05 (1), Wis. Stats.) Bonuses for services actually rendered but not based upon a prearranged bonus agreement or established policy are allowable when actually paid, provided such payments when added to the stipulated salaries or other compensation do not exceed a reasonable compensation for the services rendered. Bonuses paid to employes and others which do not have in them the element of compensation or are excessive in comparison to the services rendered are not deductible from gross income. Christmas bonuses, if

paid as additional compensation, are proper deductions from gross income if included on forms 9 as a part of the compensation paid.

Retroactive wage adjustments, if reasonable in amount, may be taken as a deduction from gross income in the year in which they are finally determined to be payable. Such adjustments are to be reported on forms 9.

**Tax 3.08 Retirement and profit sharing payments.** (Sections 71.04 and 71.05, Wis. Stats.) (1) Retirement payments to retired officers or employes or to their families or dependents, to be deductible from gross income must:

- (a) Qualify as ordinary and necessary expense.
- (b) Be made pursuant to a retirement plan agreement.
- (c) Be reasonable in amount.
- (d) Have been reported on informational returns when required by Tax 2.04 or Tax 2.06.

Credits to retirement reserves are not deductible, but actual retirement payments made and charged against such reserves may be deductible in the year made.

(2) Payments to an employe retirement or profit-sharing trust are deductible if:

- (a) Such payments qualify as ordinary and necessary expense.
- (b) The trust is an irrevocable trust and no part of its funds may revert to the employer.
- (c) Payments to the trust are made in accordance with an established policy or agreement.
- (d) The trust is established for the benefit of officers or employes.
- (e) Such payments are reasonable in amount.

**Tax 3.10 Salesmen's and officers' commissions, travel and entertainment expense.** (Sections 71.04 (1) and 71.05 (1), Wis. Stats.) Commissions, lump sum and per diem allowances for travel, entertainment and other expenses, or allowances for the use of automobiles, are deductible from gross income, provided that such commissions and allowances are reported on forms 9. Reimbursements of amounts actually expended by officers, employes or others for the benefit of a taxpayer are deductible if it is proven that the amounts thus reimbursed were actually so expended.

**Tax 3.11 Compensation paid to household servants.** (Section 71.05 (1), Wis. Stats.) Wages, salaries and other compensation paid to household servants are not deductible from the gross income of the person employing them.

**Tax 3.12 Losses on account of wash sales.** (Section 71.04 (7) and 71.05 (8), Wis. Stats.) The provision for the disallowance of losses from so-called "wash sales" is not applicable to dealers in securities or to persons who continually deal in securities on the stock market and who do not retain possession of their securities for any substantial period of time.

**Tax 3.14 Losses from bad debts.** (Sections 71.04 (7) and 71.05 (8), Wis. Stats.) (1) Where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient

evidence of the worthlessness of the debt for the purpose of deduction.

(2) Bad debts arising from items of income are not deductible unless the items in question have been reported for taxation. For example, bad debts arising from unpaid wages, salaries, rents and similar items of taxable income will not be allowed as a deduction unless the income such items represent has been included in the return of income for the year for which the deduction as a bad debt is sought to be made or for a previous year.

(3) Any amount subsequently received on account of a bad debt previously allowed as a deduction for income tax purposes, must be included in gross income for the taxable year in which received.

(4) There should accompany the return a statement of facts substantiating any deduction claimed for bad debts.

**Tax 3.16 Losses on involuntary conversion.** (Sections 71.04 (7) and 71.05 (8), Wis. Stats.) In all cases of involuntary conversion which result in losses, such losses are deductible in the year in which the conversion takes place.

**Tax 3.17 Losses, miscellaneous.** (Sections 71.04 (7) and 71.05 (8), Wis. Stats.) (1) Premiums paid on bonds purchased are part of the cost of such bonds, and no portion of such premiums will be allowed as deductions from gross income until the bonds are sold or redeemed.

(2) Losses sustained from illegal transactions are not deductible.

(3) Anticipated losses set up on the books through reserves for contingencies, etc., are not deductible.

**Tax 3.20 Interest paid.** (Sections 71.04 (2) and 71.05 (3), Wis. Stats.) (1) In general, interest paid on existing indebtedness is deductible, except interest paid on indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, the income from which is not taxable under the provisions of chapter 71, Wis. Stats.

(2) Interest paid on money borrowed by a corporation to purchase its own capital stock is not deductible.

**Tax 3.22 Real estate and personal property taxes.** (Sections 71.04 (3) and 71.05 (4), Wis. Stats.) (1) No accrual for Wisconsin real or personal property taxes may be deducted on any return for a fiscal year ending prior to November 30. Accrual of real or personal property taxes levied in other states is governed by the laws of such states.

(2) Except in the case of corporations, taxes on non-income producing property, such as vacant lots held for future sale or for future business expansion, should be added to the cost of such property and taken as a deduction at the time of sale rather than at the time the taxes are paid.

(3) Real estate taxes on residence property occupied by the taxpayer are not deductible and may not be included in the cost of the property when it is sold.

**Tax 3.23 Federal income and excess profits taxes.** (Sections 71.04 (3), 71.04 (3a), 71.05 (4) and 71.05 (4a), Wis. Stats.) The limitations provided in subsections 71.04 (3a) and 71.05 (4a), Wis. Stats., are based upon the income which is being reported and not upon the income upon which the federal tax sought to be deducted was paid.

**Tax 3.24 Taxes, miscellaneous.** (Sections 71.04 (3) and 71.05 (4), Wis. Stats.) (1) Import or tariff duties and business, license, privilege, excise and stamp taxes, are deductible if incurred in connection with the operation of the taxpayer's trade or business.

(2) Fees or taxes paid in connection with the organization of corporations, or the increase of capital stock after organization, are not deductible in the year of payment. Such fees and taxes are part of the organization expense and must be capitalized. (See Tax 3.44)

**Tax 3.28 Depreciation, basis for allowance.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) To be allowable for income tax purposes, depreciation must be charged off on the taxpayer's books, or suitable subsidiary records must be kept to show the facts relating to the depreciation deducted on the tax returns.

(2) After depreciation to the extent of 100% of the cost or other income tax basis of the depreciable assets has been allowed, no further deduction will be permitted.

(3) Land is not subject to a deduction for depreciation.

**Tax 3.29 Depreciation, computation of allowance.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) (1) Ordinarily, a capital investment should be charged off over the estimated physical life of the property, either in equal annual instalments on the "straight line" method, or in accordance with the recognized practice in the trade or business. Whatever method is adopted must be reasonable and must have due regard to operating conditions during the taxable period, and must be consistently followed from year to year.

(2) Depreciation is deductible only in the year in which it is sustained, regardless of the result of the operations for that year.

**Tax 3.30 Depreciation and amortization, leasehold improvements.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) (1) Buildings erected on leased land and equipment or improvements permanently attached to leased property, title to which passes to the lessor, the physical life of which is less than the term of the lease, should be written off by the lessee through depreciation charges over the depreciable life of the property, regardless of the term of the lease. In case the life of the property extends beyond the term of the lease, the income tax cost of the property normally should be written off over the term of the lease. If a lease is renewed before the end of the amortization period, the lessee must write off the unamortized leasehold improvements as of the date of renewal over the remaining life of the property or the term of the lease, whichever is shorter. In cases in which the lease contains an unexercised option of renewal, the matter of amortizing the income tax cost over the term of the original lease plus the renewal period or periods, depends upon the facts in the particular case. When the facts show with reasonable certainty that the lease will be renewed, the income tax cost of improvements should be amortized over the term of the original lease plus the term of the renewal period or periods, except in cases where the physical life of the property would be less than such combined terms.

(2) When on termination of the lease the lessor has reported the fair market value of the improvements made by the lessee as taxable income as required by Tax 2.80, the lessor is entitled to deduct, be-

ginning with the date of acquisition of title to the improvements, a pro rata amount of depreciation based upon the estimated remaining life of the depreciable property.

**Tax 3.31 Depreciation of personal property.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) The depreciation of personal property that is used partly for business and partly for personal purposes, such as automobiles, will be allowed only to the extent that such property is used directly in the production of taxable income. The use of an automobile for the purpose of driving between the home or residence and the office of a taxpayer is not for business purposes. In all cases, the burden of proof that personal property is used for business purposes is on the taxpayer.

**Tax 3.32 Depreciation rates.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) (1) Fixed rates of depreciation that may be used for income tax purposes are not prescribed by the tax commissioner. The rates used by taxpayers should be based on their own experience or the experience of the industry or trade in which they are engaged, as modified by circumstances peculiar to the taxpayer, but such rates must be based solely on use, wear and tear and may not be based on obsolescence.

(2) Rates of depreciation once established must be adhered to unless conditions warrant a change. If changes in rates are deemed necessary, such changes must be fully explained in the returns in which the changes first appear.

**Tax 3.35 Depletion, basis for allowance.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) The capital sum recoverable through depletion allowances is the income tax cost of the depletable property. In the absence of competent evidence to the contrary, it will be assumed that the fair market value at January 1, 1911, is represented by the actual cost less depletion sustained to that date. To be allowed for income tax purposes, depletion must be charged off on the taxpayer's books, or suitable subsidiary records must be kept to show the basis of depletion. No depletion is deductible on property acquired subsequent to January 1, 1911, the cost of which was deducted as current expense at the time of purchase and allowed for income tax purposes. After depletion of the income tax cost to the extent of 100% has been allowed, no further deduction is permissible.

**Tax 3.36 Depletion of timber.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) The computation of the allowance for depletion of timber for a given year shall be based upon the number of units of timber cut during the year and the income tax cost of each unit. The unit cost is determined by dividing the sum of the income tax cost at the beginning of the taxable period and the additions at cost during the period by the sum of the units on hand at the beginning of the taxable period and the number of units acquired during such period.

**Tax 3.37 Depletion of mineral deposits.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) The computation of the allowance for depletion of mineral deposits for a given year shall be based upon the number of units of ore or other deposits extracted during the year and the income tax cost per unit.

**Tax 3.38 Depletion allowance to mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron.** (Section 71.046) Section 71.046 created by chapter 370, laws of 1947 and amended by chapter 438, laws of 1953, provides for a deduction of prescribed percentages of gross income from sales of the ore or ore products of lead, zinc, copper or other mines, (except iron mines) and of mills finishing the products of such mines for the smelter.

(1) This depletion deduction may be taken only if the savings in tax due to such deduction is used by the taxpayer in prospecting for ore and duly verified proof thereof is furnished the tax commissioner or the assessor of incomes.

(2) Only expenditures in prospecting for ore made during or within 12 months after the close of the year for which the depletion deduction is taken will serve to fulfill the requirement that the tax savings be so used. Unless proof of expenditure is furnished within 24 months after the close of the income year for which the deduction for depletion was made, the taxpayer will be subject to an additional assessment based on the disallowance of the deduction taken.

**Tax 3.39 Depletion, records required.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Every taxpayer claiming depletion deductions must keep accurate ledger accounts as a prerequisite to the allowance of a deduction for depletion. In such accounts there shall be set up separately the quantity of land, the quantity of timber, and the quantity of other natural resources, if any, and a proper part of the total cost or January 1, 1911, value shall be allocated to each. Against these timber or other natural resources accounts or to separate reserve accounts there shall be credited the annual depletion deductions. When the sum of the depletion credits equals the income tax cost, no further deduction for depletion will be allowed.

**Tax 3.42 Amortization of defense facilities.** (Sections 71.04 (2a) and 71.05 (2a), Wis. Stats.) (1) Any person who, in lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1949, elects to take amortization of any emergency facility as provided in sections 71.04 (2a) or 71.05 (2a) of the statutes, must file written notice of such election with the Department of Taxation at Madison in the case of corporations and with the district assessor of incomes in the case of persons other than corporations, within the time provided by law, and, with such notice, must file a copy of the certificate of necessity for such emergency facility issued by the appropriate federal certifying authority, together with a copy of the "Appendix A—Summary Sheet" filed by such person in support of its or his application for said certificate of necessity. Additional data need not be submitted except upon specific request of the department or assessor of incomes as the case may be.

(2) Once a taxpayer has fulfilled the conditions for an election to deduct amortization of an emergency facility, such election shall be deemed in effect in subsequent income years or parts thereof, consistent with the applicable statutes, unless and until terminated by operation of law or by prior written notice by the taxpayer to the department or assessor.

**Tax 3.44 Organization and financing expenses.** (Sections 71.04 (7) and 71.05 (8), Wis. Stats.) Expenses in connection with the organization or reorganization of a business enterprise, such as fees for incorporating, attorneys', accountants' and appraisers' charges, and commissions and other expenses in the issuance or sale of capital stock, are properly capitalized when incurred or paid. Such expenses are not deductible from gross income until the business for which the expenses were incurred is abandoned and the business organization itself, or, in the case of reorganization, the successor to the business organization, has been dissolved, or has completely wound up its affairs, whichever is later.

**Tax 3.45 Bond premium, discount and expense.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) If bonds are issued at a discount or premium, the net amount of such discount or premium should be amortized over the life of the bonds. If bonds are retired at a price in excess of or less than the issuing price, the profit or loss resulting is taxable income or deductible expense in the year in which such bonds are retired, provided proper adjustment is made for the discount or premium previously reflected in income and in all cases bond expense should be amortized over the life of the bonds. If a bond issue is refunded with another bond issue before the first issue matures, any unamortized discount or expense that is applicable to the first issue must be deducted as current expense in the year that the refinancing takes place and any unamortized premium must be taken up as income in such year.

**Tax 3.47 Legal expenses and fines.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Legal expenses incurred in connection with the operation of a taxpayer's business are proper deductions, unless such business is conducted in violation of law. Fines are not deductible.

**Tax 3.49 Professional expenses.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) (1) Professional men may claim as a deduction the cost of supplies used by them in their practice, expenses paid in the operation or repair of an automobile used in making professional calls, dues to professional societies, subscriptions to professional journals, expenses incurred in attending professional conventions, rent paid for office rooms, fuel, light and heat, water, telephone, etc. Costs of attending professional conventions must be limited to the necessary costs and expenses directly attendant upon such conventions. The type of professional convention contemplated by this section is confined to those ordinarily and generally attended by persons of the same professional standing as the taxpayer as necessary to the maintenance of their regular trade or practice.

(2) Amounts paid for professional equipment and instruments, the life of which does not extend beyond one year, may be deducted from gross income in the year of purchase.

**Tax 3.51 Traveling expenses.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Necessary traveling expenses, including transportation, meals and lodging, incurred while away from home in the pursuit of the trade or business, or vocation, from which the income subject to tax is derived, are proper deductions from gross income. An individual whose business requires him to travel and who receives a salary



as full compensation for his services without reimbursement for traveling expenses, or who is employed on a commission basis with no expense allowance, may deduct expenses incurred in such travel, including transportation, meals and lodging. When a salary is paid to an individual and in addition thereto a fixed per diem allowance in lieu of actual traveling expenses, the taxpayer must include the salary and per diem allowances in his income, and may deduct therefrom the actual traveling expenses incurred, including transportation, meals and lodging.

**Tax 3.52 Automobile expenses.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) If an automobile is used exclusively for business purposes, the actual expenses of operation, including gasoline, oil, license fees, insurance premiums and depreciation, are deductible from gross income. If the automobile is used partly for business and partly for personal purposes, the expenses of operation, including gasoline, oil, license fees, insurance premiums, depreciation, chauffeur's salary, etc., may be apportioned on the basis of the mileage devoted to business and personal uses, and the amount allocated to business purposes will constitute an allowable deduction from the taxable income derived therefrom.

**Tax 3.53 Miscellaneous expenses deductible.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Expenditures for the purchase and maintenance of uniforms are deductible if (1) the uniforms are specifically required as a condition of employment, and (2) are not of a type adaptable to general or continued usage to the extent that they take the place of ordinary clothing. Other expenditures which are ordinary and necessary in carrying on a profession, trade, or business from which income is derived, may be deducted.

*See Reg. 301.1502*

**Tax 3.54 Miscellaneous expenses not deductible.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following: Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employes, unless reported as compensation paid on forms 9; rent of living quarters or residence; repairs to a residence; insurance premiums on residence or household goods; expense of transportation from residence to place of employment; living and traveling expenses of teachers and others employed at a distance from their homes at a fixed place where their vocation or occupation is exercised; expenses of teachers in attending summer schools; election and campaign expenses of candidates for office; dues to fraternal orders, social clubs and luncheon clubs; the cost of raising products consumed by the producer and his family. If no accurate account of the cost of raising farm products consumed is kept, the taxpayer shall deduct from total farm expenses \$90 for each adult and \$60 for each child under 18 years of age in the family, as representing the cost of raising farm products consumed.

**Tax 3.55 Donations and contributions.** (Sections 71.04 (5) and 71.05 (6), Wis. Stats.) (1) Contributions by persons other than corporations to corporations and associations organized and operated exclusively for religious purposes may be deducted regardless of

whether the recipient is operating within Wisconsin, but such contributions by corporations may be deducted only if the recipient is operating within Wisconsin.

(2) No deduction for contributions, donations or gifts is allowable if the income tax return of the taxpayer before deducting such contributions, donations or gifts shows a loss.

(3) Deductions for contributions, donations or gifts are not allowable unless the name and address of each recipient and the amount given each recipient is listed in the income tax return of the taxpayer.

### EXCLUSIONS AND EXEMPTIONS

**Tax 3.61 Exempt income.** (Section 71.03 (2), Wis. Stats.) (1) Payments made to workmen under the workmen's compensation act of Wisconsin are not taxable income to the recipients. Benefits received as compensation from insurance companies on health and accident policies are not taxable income except as provided in Tax 2.75.

(2) Pensions received by retired teachers from the Wisconsin teachers' retirement fund, by veterans of the Civil, Spanish and World Wars, and from the United States government are not taxable income.

**Tax 3.62 Inheritances, devises, bequests and gifts.** (Section 71.03 (2), Wis. Stats.) (1) Money or property which is acquired by inheritance, bequest, devise or gift is not taxable income but any income which may be subsequently derived from, or through the sale of, such property is taxable income. The profit or loss resulting from the subsequent sale of property acquired by gift or inheritance is determined in accordance with section 71.03 (1) (g), Wis. Stats.

(2) Bequests to executors in lieu of commissions are not taxable income in all cases where the probate court administering the estate has subjected such bequests to the inheritance tax. Therefore, if such bequests have not been taxed for inheritance tax purposes, the executor receiving the bequests must include them as taxable income in his return.

**Tax 3.63 Pension and profit-sharing trusts.** (Section 71.01 (3) (e), Wis. Stats.) (1) On or before the first day of the sixth month following the close of its calendar or fiscal year, every trust claiming exemption under section 71.01 (3) (e), Wis. Stats., must file with the assessor of incomes of the district with whom it would file were it not exempt from taxation by virtue of said section:

(a) A copy of the trust instrument and of the employer's plan.

(b) Certification that the plan has qualified for exemption under section 401 of the federal code.

(c) Financial and operating statements showing the assets, liabilities, receipts and disbursements of the trust.

(The information required by (a) and (b) need be filed only for the first taxable year, except when necessary to show changes occurring since the last filing.)

(2) Every such trust shall file with the aforesaid assessor of incomes before March 15 of each year, on forms 9 as prescribed by the commissioner of taxation, statements of payments made within the preceding calendar year to beneficiaries of said trust.

(3) There shall also be filed in the same manner and at the same time prescribed in the preceding paragraph, statements of the amount of premiums paid out of said trust funds and allocable to life insurance purchased for each employe. If, under the plan, the trust purchases retirement income insurance with life insurance protection, then so much of the premiums as was paid from the employer's contributions, or earnings thereon, constitutes income for the employe in the year in which those contributions were applied toward the purchase of life insurance. If the amount payable upon death at any time during the year exceeds the cash value (or if no cash value, then the reserve) of the insurance policy at the end of the year, the entire amount of such excess will be considered current life insurance protection. The cost of such insurance will be considered to be the one-year term premium for such amount based upon the rates of the company issuing the annuity contract (or if no one-year term policy is issued, the cost of such one-year term computed by using the same mortality table and rate of interest and rate of loading as was used in determining the rates for the annuity contract).

**Tax 3.64 Personal exemption proration.** Personal exemptions are to be prorated in cases of persons moving into or out of the state within the income year, as provided in section 71.07 (6), Wis. Stats. Such proration is to be made on the basis of the time of residence within and without the state. A fractional part of a month is to be disregarded unless such fraction amounts to more than half a month and then it shall be considered a month.

### *ESTATES AND FIDUCIARIES*

√ **Tax 3.71 Income of estate of decedent.** (Section 71.08 (1) and (3), Wis. Stats.) (1) If a decedent computed his income on an accrual basis of accounting, any income accrued, but not collected during the period from January 1 of the year of death to the date of death must be included in the return of the fiduciary for the year of decedent's death. If the decedent computed his income on a cash basis of accounting, income accrued but uncollected as of the date of death which has been inventoried as part of the estate for inheritance tax purposes, then becomes part of the corpus of the estate and is not taxable as income when collected.

(2) If the decedent was reporting income from the sale of real estate upon the deferred basis, the executor or administrator of the estate shall account for all income arising from instalments collected prior to the date of death in the same manner as the income would have been accounted for had the decedent lived. The present value of the instalment sale contract as of the date of death is inventoried as part of the estate for inheritance tax purposes. No portion of the instalments collected subsequent to the date of death shall be included in taxable income until the cumulative total of such instalments equals the appraised value of the contract for inheritance tax purposes. All instalments collected after that time are taxable in their entirety in the year received in the same manner that liquidating distributions are taxed after the taxpayer has had his capital returned to him. (See *Norris v. Wisconsin Tax Commission*, 205 W 626; *Smart v. Wisconsin Tax Commission*, 205 W 632; *Herzberg v. Wisconsin Tax Commission*, 194 W 126.)

(3) If the decedent was a member of a partnership his distributive share of the partnership profits for the period from the beginning of the partnership's fiscal year to the date of death, whether distributed or not, must be included as income in the return of the fiduciary for the year of death.

**Tax 3.72 Executors and administrators, income received after final account.** (Section 71.08, Wis. Stats.) When an executor or administrator receives income after he has filed his final account but before the court has accepted such report and the estate has been distributed, the executor or administrator will be treated as agent for the persons entitled to receive the income and such persons will include the income in their personal income tax returns.

**Tax 3.73 Trustees, when taxable period covered by a trust differs from distributee's taxable period.** (Section 71.08 (8), Wis. Stats.) If the taxable year of a beneficiary is different from the taxable year of the trust, the amount which the distributee shall include in computing his net income shall be based upon the net income of the trust for its taxable year ending within the taxable year of the beneficiary.

**Tax 3.74 Trustees, separate trusts, each taxed as an entity.** (Section 71.08 (8), Wis. Stats.) When the same trustee is designated in a will to administer several trusts, the accumulated income of each trust is taxable as a separate entity and the income of the several trusts is not to be combined.

#### MISCELLANEOUS

**Tax 3.81 Offset of occupational taxes paid against normal income taxes.** (Sections 70.41 (1), (3) and 70.42 (1), (3), Wis. Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The taxpayer may present his receipt showing payment of such tax to the department of taxation or assessor of incomes as so much cash in payment of normal income tax assessed against him in the following year on the tax roll for the same district. If the normal income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.

(2) If the taxpayer neglects to present his occupational tax receipt at the proper time and pays his entire normal income tax in cash, he cannot present the receipt at a later date and secure a refund of the normal income tax paid. A taxpayer cannot tender in payment of an additional normal income tax assessed at a later date an occupational tax receipt that might have been used had the proper income tax assessment been made in the first place. If the occupational tax receipt tendered in payment of a normal income tax exceeds the normal income tax, such excess cannot be applied in payment of additional normal income tax for the same year assessed at a later date. Occupational tax receipts issued in one taxing district cannot be offset against normal income tax appearing on the roll for another district.

**Tax 3.82 Evasion of tax through affiliated interests.** (Section 71.11 (7) (a) and (b), Wis. Stats.) In administering this section the department of taxation will apply the statute as interpreted by the following cases:

- (1) Cliffs Chemical Co. v. Tax Commission, 193 W 295
- (2) Buick Motor Co. v. Milwaukee, 43 F (2d) 385
- (3) Curtis Companies v. Tax Commission, 214 W 85
- (4) Palmolive Co. v. Conway, 37 F (2d) 114; 43 F (2d) 226; 56 F (2d) 83
- (5) Burroughs Adding Machine Co. v. Tax Commission, 237 W 423
- (6) Northern States Power Co. v. Tax Commission, 237 W 423

**Tax 3.83 Proration of 20% surtax.** (Section 71.17 (4), Wis. Stats.) When by reason of a change in the income year of a taxpayer it becomes necessary to compute the 20 per cent surtax (provided for in chapter 335 of the Laws of 1955) on only a portion of the taxable income of an income year, such surtax shall first be computed on the basis of the total normal income tax of such income year and the result then multiplied by a fraction the denominator of which is the number of months in the income year, and the numerator of which is 24 minus the number of months in prior income years during which said 20 per cent surtax was applicable.

*Examples*

- (1) Returns for the periods:
- |                                        |    |       |
|----------------------------------------|----|-------|
| January 1, 1955 to July 31, 1955 ----- | 7  |       |
| August 1, 1955 to July 31, 1956 -----  | 12 |       |
|                                        | 19 | total |
| August 1, 1956 to July 31, 1957 -----  | 12 |       |
| Numerator 24 — 19 = 5                  |    |       |
| Denominator = 12                       |    |       |

Surtax for period August 1, 1956 to July 31, 1957 is  $\frac{5}{12}$  x 20% of normal tax for such period.

- (2) Returns for the periods:
- |                                            |    |       |
|--------------------------------------------|----|-------|
| January 1, 1955 to December 31, 1955 ----- | 12 |       |
| January 1, 1956 to March 31, 1956 -----    | 3  |       |
|                                            | 15 | total |
| April 1, 1956 to March 31, 1957 -----      | 12 |       |
| Numerator 24 — 15 = 9                      |    |       |
| Denominator = 12                           |    |       |

Surtax for period April 1, 1956 to March 31, 1957 is  $\frac{9}{12}$  x 20% of normal tax for such period.

**ASSESSMENT, ABATEMENT AND REFUND PROCEDURE**

**Tax 3.91 Application for abatement.** (Sections 71.10 (13) and 71.12 (1), Wis. Stats.) (1) The application for abatement specified in section 71.12 (1), Wis. Stats., must be written, preferably on typewriter, on only one side of plain white paper not more than 8½

inches wide by 11 inches long and must be filed in duplicate. It must set forth clearly and concisely the specific grievances to the additional assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every application must be signed by the taxpayer or by his duly authorized representative.

(2) An application for abatement is not "filed" within the proper time to meet the requirements of section 71.12 (1), Wis. Stats., unless it is actually received within the 30-day period, or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the thirtieth day of the period provided in section 71.12 (1), Wis. Stats., and actually received by the department of taxation within 5 days of such 30-day period.

**Tax 3.92 Informal conference.** The taxpayer may request in said application, or at any time before the tax commissioner or assessor of incomes has acted thereon, an informal conference at which the facts and issues involved in the assessment may be discussed. Said conferences will be held at the office of the department, in the case of corporations, of the assessor of incomes, in the case of individuals.

**Tax 3.93 Closing stipulations.** If the informal conference results in an agreement as to facts and issues and the law applicable thereto the taxpayer and the department of taxation, or assessor of incomes, may enter into a closing stipulation.

**Tax 3.94 Claims for refund.** (1) Claims for refund may be filed as provided in section 71.10 (10), Wis. Stats., and shall be in the same form as applications for abatement under Tax 3.91. A claim for refund is not "filed" within the proper time to meet the requirements of section 71.10 (10), Wis. Stats., unless it is actually received in the office of the department of taxation or assessor of incomes prior to the expiration of the limitation period provided in section 71.10 (10), Wis. Stats.

(2) Under section 71.10 (11), Wis. Stats., the reduction of income resulting from the renegotiation of war contracts is allowable as a deduction from the taxable income of the year in which such income was reported for taxation. A claim for refund filed under this subsection must be accompanied by a verified or photostatic copy of the renegotiation agreement. No interest is payable on such refund.

(3) When by reason of the allowance of amortization of war facilities over a period shorter than computed in arriving at the original renegotiation adjustment, or for any other reason, a portion of the profits originally determined to be excessive are rebated to the taxpayer by the federal government, such rebate is to be treated as a further renegotiation adjustment, and should be allocated back to the year of the income which was adjusted. Where a refund of Wisconsin income taxes (due to renegotiation) has previously been made, the additional taxes payable by reason of a renegotiation rebate are to be assessed without interest for the reason that such taxes constitute a return to the state of a portion of the previous refund.