

## Chapter Tax 2

## INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

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**Tax 2.01 Residence.** (Section 71.01, Wis. Stats.) (1) The residence of a wife is that of her husband unless there is affirmative evidence to the contrary or unless the husband and wife are permanently separated. The residence of a minor child, unless emancipated, is that of its father, or of the mother, if the father is deceased.

(2) Individuals claiming a change of residence (domicile) from Wisconsin to another state shall file a "declaration of residence" with

the Central Audit section of the Department of Revenue by delivery to 4638 University Avenue, Madison, Wisconsin, or by mailing to Post Office Box 80, Madison, Wisconsin 53701, and shall furnish such other information as the department may require.

**History:** 1-2-56; r. (1); renum. (2) to be (1); renum. (3) to be (2) and am., Register, September, 1964, No. 105, eff. 10-1-64. Am. Register, February, 1975, No. 230, eff. 3-1-75.

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

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

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

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

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

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

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

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

*Note:* Blank forms may be obtained from the department 4638 University Avenue, Madison, or by mail request to P. O. Box 58, Madison, Wisconsin 53701.

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

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

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Wisconsin of rents and royalties on property in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b. The forms herein referred to must be filed on the date indicated regardless of the fact that the corporation keeps its records on a fiscal year other than the calendar year. Payments of interest, dividends, rents or royalties of less than \$100 to any one individual need not be reported. Each corporation must file with forms 8 or 9b, forms 9X showing the number of reports made on forms 8 or 9b. (See also Wis. Adm. Code section Tax 2.05). Items required to be reported on forms WT-9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

*Note:* Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, P. O. Box 58, Madison, Wisconsin 53701.

*History:* 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64, am. Register, February, 1975, No. 230, eff. 3-1-75.

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

*Note:* Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, P. O. Box 58, Madison, Wisconsin, 53701.

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

**Tax 2.06 Information returns required of partnerships and persons other than corporations.** (Sections 71.10 (8m) and 71.10 (8n), 71.10 (15) and 71.11 (25), Wis. Stats.) Informational returns reporting remuneration paid for services, whether or not within the definition of "wages" in section 71.19 (1), Wis. Stats., must be filed on or before January 31 of each year on forms WT-9 or 9b. Form WT-7 (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9. Informational returns reporting other items such as interest paid or rent paid must be filed on or before April 15 of each year on forms 9b. Items required to be reported on informational returns will be disallowed as deductions from gross income if not properly reported. Such returns should be mailed to the Department of Revenue, P. O. Box 59, Madison, Wisconsin 53701 or delivered at 4638 University Avenue, Madison.

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

*History:* 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr. Register, September, 1964, No. 105, 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

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there is corporate income. The final return must indicate the disposition of all corporate assets.

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

**Tax 2.08 Returns of persons other than corporations.** (1) For the purpose of filing income tax returns, the secretary of revenue has designated the following form for the use of persons other than corporations:

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

Form 1A. (Short form).

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

Form 3. For partnerships and joint ventures.

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

(3) Returns required to be filed by persons other than corporations shall be filed by mailing to P. O. Box 59, Madison, Wisconsin 53701, or delivery to 4638 University Avenue, Madison.

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

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

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

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

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

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

(5) Except for returns executed by fiduciaries as provided in (6) below, all signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

(6) A fiduciary or his agent may use a facsimile signature in filing a tax return on form 2, subject to the following conditions:

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(a) Each group of returns forwarded to the department shall be accompanied by a letter signed by the person authorized to sign such returns declaring, under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by him to sign the returns filed and that such signature was affixed to the returns by him or at his direction. The letter shall also list each return by name and identifying number.

(b) A signed copy of the letter must be retained by the person filing the returns and must be available for inspection by the department.

(c) Where the returns are reproduced by photocopying or similar reproductive methods, the facsimile signature must be affixed subsequent to the reproduction process.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9-1-74.

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

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

**Tax 2.11 Tax table.** (Section 71.09 (3), Wis. Stats., applicable to the calendar year 1972 and corresponding fiscal years, and subsequent years).

**History:** Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. and recr. Register, May, 1964, No. 101; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, December, 1966, No. 132, eff. 1-1-67; am. Register, February, 1975, No. 230, eff. 3-1-75.

WISCONSIN ADMINISTRATIVE CODE

TAX TABLE

If Net Taxable Income is		GROSS TAX IS	If Net Taxable Income is		GROSS TAX IS	If Net Taxable Income is		GROSS TAX IS	If Net Taxable Income is		GROSS TAX IS
AT LEAST	BUT LESS THAN		AT LEAST	BUT LESS THAN		AT LEAST	BUT LESS THAN		AT LEAST	BUT LESS THAN	
\$ 0	\$ 50	\$ 80	\$ 3,720	\$ 3,780	\$ 138.50	\$ 8,270	\$ 8,300	\$ 280.50	\$ 8,325	\$ 8,350	\$ 430.70
50	100	2.30	3,760	3,800	138.40	8,300	8,330	282.50	8,350	8,375	432.70
100	150	3.90	3,800	3,840	140.40	8,330	8,360	284.40	8,375	8,400	434.80
150	200	5.40	3,840	3,880	142.30	8,360	8,390	288.40	8,400	8,425	437.00
200	250	7.00	3,880	3,920	144.20	8,390	8,420	288.30	8,425	8,450	439.20
250	300	8.50	3,920	3,950	146.10	8,420	8,450	290.30	8,450	8,475	441.40
300	350	10.10	3,950	4,000	148.00	8,450	8,480	282.20	8,475	8,500	443.60
350	400	11.60	4,000	4,035	149.90	8,480	8,510	284.20	8,500	8,525	445.80
400	450	13.20	4,035	4,070	151.80	8,510	8,540	286.10	8,525	8,550	448.00
450	500	14.70	4,070	4,105	153.70	8,540	8,570	288.10	8,550	8,575	450.20
500	550	16.30	4,105	4,140	155.60	8,570	8,600	300.00	8,575	8,600	451.20
550	600	17.80	4,140	4,175	157.50	8,600	8,630	302.00	8,600	8,625	453.20
600	650	19.40	4,175	4,210	159.40	8,630	8,660	303.90	8,625	8,650	455.30
650	700	20.90	4,210	4,245	161.30	8,660	8,690	305.90	8,650	8,675	457.30
700	750	22.50	4,245	4,280	163.20	8,690	8,720	307.80	8,675	8,700	459.40
750	800	24.00	4,280	4,315	165.10	8,720	8,750	309.80	8,700	8,725	461.40
800	850	25.60	4,315	4,350	167.00	8,750	8,780	311.70	8,725	8,750	463.50
850	900	27.10	4,350	4,385	168.90	8,780	8,810	313.70	8,750	8,775	465.50
900	950	28.70	4,385	4,420	170.70	8,810	8,840	315.60	8,775	8,800	467.50
950	1,000	30.20	4,420	4,455	172.60	8,840	8,870	317.60	8,800	8,825	469.60
1,000	1,050	31.80	4,455	4,490	174.50	8,870	8,900	319.50	8,825	8,850	471.70
1,050	1,100	33.60	4,490	4,525	176.40	8,900	8,930	321.50	8,850	8,875	473.70
1,100	1,150	35.30	4,525	4,560	178.30	8,930	8,960	323.40	8,875	8,900	475.80
1,150	1,200	37.00	4,560	4,595	180.20	8,960	8,990	325.10	8,900	8,925	477.80
1,200	1,250	38.70	4,595	4,630	182.10	8,990	9,020	326.40	8,925	8,950	479.90
1,250	1,300	40.40	4,630	4,665	184.00	9,020	9,050	328.00	8,950	8,975	481.90
1,300	1,350	42.10	4,665	4,700	185.90	9,050	9,080	329.90	8,975	9,000	484.00
1,350	1,400	43.80	4,700	4,735	187.70	9,080	9,110	331.60	9,000	9,025	485.30
1,400	1,450	45.50	4,735	4,770	189.60	9,110	9,140	333.00	9,025	9,040	487.70
1,450	1,500	47.20	4,770	4,805	191.50	9,140	9,170	335.60	9,040	9,060	489.40
1,500	1,550	48.90	4,805	4,840	193.40	9,170	9,200	337.50	9,060	9,080	491.20
1,550	1,600	50.60	4,840	4,875	195.30	9,200	9,230	339.40	9,080	9,100	492.90
1,600	1,650	52.30	4,875	4,910	197.20	9,230	9,260	341.30	9,100	9,120	494.70
1,650	1,700	54.00	4,910	4,945	199.10	9,260	9,290	343.20	9,120	9,140	496.40
1,700	1,750	55.70	4,945	4,980	201.00	9,290	9,320	345.10	9,140	9,160	498.20
1,750	1,800	57.40	4,980	5,015	202.90	9,320	9,350	347.00	9,160	9,180	500.00
1,800	1,850	59.10	5,015	5,050	204.80	9,350	9,380	348.90	9,180	9,200	501.70
1,850	1,900	60.80	5,050	5,070	206.20	9,380	9,410	350.80	9,200	9,220	503.50
1,900	1,950	62.50	5,070	5,100	208.00	9,410	9,440	352.70	9,220	9,240	505.20
1,950	2,000	64.20	5,100	5,130	209.80	9,440	9,470	354.60	9,240	9,260	507.00
2,000	2,050	65.90	5,130	5,160	211.60	9,470	9,500	356.50	9,260	9,280	508.80
2,050	2,100	67.70	5,160	5,190	213.30	9,500	9,530	358.40	9,280	9,300	510.50
2,100	2,150	69.50	5,190	5,220	215.10	9,530	9,560	360.30	9,300	9,320	512.30
2,150	2,200	71.30	5,220	5,250	216.90	9,560	9,590	362.20	9,320	9,340	514.00
2,200	2,250	73.10	5,250	5,280	218.60	9,590	9,620	364.10	9,340	9,360	515.80
2,250	2,300	74.90	5,280	5,310	220.40	9,620	9,650	366.00	9,360	9,380	517.60
2,300	2,350	76.70	5,310	5,340	222.20	9,650	9,680	367.90	9,380	9,400	519.30
2,350	2,400	78.50	5,340	5,370	223.90	9,680	9,710	369.80	9,400	9,420	521.10
2,400	2,450	80.30	5,370	5,400	225.70	9,710	9,740	371.70	9,420	9,440	522.80
2,450	2,500	82.10	5,400	5,430	227.50	9,740	9,770	373.60	9,440	9,460	524.60
2,500	2,550	83.90	5,430	5,460	229.30	9,770	9,800	375.50	9,460	9,480	526.40
2,550	2,600	85.70	5,460	5,490	231.00	9,800	9,830	377.40	9,480	9,500	528.10
2,600	2,650	87.50	5,490	5,520	232.80	9,830	9,860	379.30	9,500	9,520	529.90
2,650	2,700	89.30	5,520	5,550	234.60	9,860	9,890	381.20	9,520	9,540	531.60
2,700	2,750	91.10	5,550	5,580	236.30	9,890	9,920	383.10	9,540	9,560	533.40
2,750	2,800	92.90	5,580	5,610	238.10	9,920	9,950	385.00	9,560	9,580	535.20
2,800	2,850	94.70	5,610	5,640	239.90	9,950	9,980	386.90	9,580	9,600	536.90
2,850	2,900	96.50	5,640	5,670	241.60	9,980	10,010	388.80	9,600	9,620	538.70
2,900	2,950	98.30	5,670	5,700	243.40	10,010	10,040	390.70	9,620	9,640	540.40
2,950	3,000	100.10	5,700	5,730	245.20	10,040	10,070	392.60	9,640	9,660	542.20
3,000	3,040	102.00	5,730	5,760	247.00	10,070	10,100	394.50	9,660	9,680	544.00
3,040	3,080	103.90	5,760	5,790	248.70	10,100	10,130	396.40	9,680	9,700	545.70
3,080	3,120	105.80	5,790	5,820	250.50	10,130	10,160	398.30	9,700	9,720	547.50
3,120	3,160	107.70	5,820	5,850	252.30	10,160	10,190	400.20	9,720	9,740	549.20
3,160	3,200	109.60	5,850	5,880	254.00	10,190	10,220	402.10	9,740	9,760	551.00
3,200	3,240	111.50	5,880	5,910	255.80	10,220	10,250	404.00	9,760	9,780	552.80
3,240	3,280	113.50	5,910	5,940	257.60	10,250	10,280	406.10	9,780	9,800	554.50
3,280	3,320	115.40	5,940	5,970	259.30	10,280	10,310	408.10	9,800	9,820	556.30
3,320	3,360	117.30	5,970	6,000	261.10	10,310	10,340	410.20	9,820	9,840	558.00
3,360	3,400	119.20	6,000	6,030	263.00	10,340	10,370	412.20	9,840	9,860	559.80
3,400	3,440	121.20	6,030	6,060	264.90	10,370	10,400	414.30	9,860	9,880	561.60
3,440	3,480	123.10	6,060	6,090	266.90	10,400	10,430	416.30	9,880	9,900	563.30
3,480	3,520	125.00	6,090	6,120	268.80	10,430	10,460	418.40	9,900	9,920	565.10
3,520	3,560	126.90	6,120	6,150	270.80	10,460	10,490	420.40	9,920	9,940	566.90
3,560	3,600	128.80	6,150	6,180	272.70	10,490	10,520	422.50	9,940	9,960	568.70
3,600	3,640	130.80	6,180	6,210	274.60	10,520	10,550	424.60	9,960	9,980	570.50
3,640	3,680	132.70	6,210	6,240	276.60	10,550	10,580	426.60	9,980	10,000	572.30
3,680	3,720	134.60	6,240	6,270	278.60	10,580	10,610	428.60			

Tax on incomes of \$10,000 and over

If Net Taxable Income is		Gross Tax is	This amt. + this % on excess over
At Least	But Less Than		
\$ 10,000-	\$ 11,000	\$ 573.00 plus 9.3% -	\$ 10,000
11,000-	12,000	666.00 plus 9.9% -	11,000
12,000-	13,000	765.00 plus 10.5% -	12,000
13,000-	14,000	870.00 plus 11.1% -	13,000
14,000	- - -	981.00 plus 11.4% -	14,000

**History:** Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. and recr. Register, May, 1964, No. 101; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, December, 1966, No. 132, eff. 1-1-67; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.14 Aggregate personal exemption of husband and wife.** The aggregate personal exemption allowable to a husband and wife pursuant to section 71.09 (6) (a), Wis. Stats., when each files a return, may be divided between them according to their choice.

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

**Tax 2.15 Methods of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may return 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.16 Changes in method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department of revenue. Applications for such change must set forth clearly the nature of the business, the method of accounting used in keeping the books, and the reasons for changing the method of reporting. In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.17 Cash method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) The use of the cash method of accounting and reporting does not properly reflect taxable income in cases where, at the end of the taxable year, the records reflect accounts receivable, accounts payable, or inventories.

**Tax 2.18 Accrual method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor, inventories are necessary, and no accounting method in regard to purchases and sales will correctly reflect the income except the accrual method. Special methods of accounting employed in special trades or businesses may, with the written approval of the department of revenue, be used in reporting income.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.19 Installment method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.). (1) Subject to the approval of the department of revenue, a sale or other disposition by a corporation of

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real property, or a casual sale or other casual disposition of personal property (other than personal property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year) for a price exceeding \$1000, may be returned on the instalment basis in the case of a sale or other disposition in an income year beginning on or after January 1, 1967, provided that in the income year of the sale or other disposition there are no payments or the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30% of the selling price. On the instalment basis there shall be returned as income from the installment sale in any income year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(2) Use of the instalment method, in each instance, shall be conditional upon the implied agreement of the corporation to take into income in any year in which it distributes the instalment obligation, the unreported balance of gain on the installment sale or exchange.

(3) The instalment method shall not be permitted with respect to any instalment sale or exchange made subsequent to adoption of a plan of liquidation to which section 71.337, Wis. Stats., applies.

(4) Corporations regularly engaged in the business of selling personal property and keeping records on the instalment basis will be required to report for franchise or income tax purposes on the accrual basis.

(5) The expenses incident to each instalment sale or exchange must be deferred on the same basis that the profit arising from the sale or exchange is deferred.

(6) When property is sold or exchanged on the instalment basis at a loss, the loss may not be deferred beyond the income year in which the sale or exchange takes place.

**History:** 1-2-66; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies.** (Section 71.11 (8), Wis. Stats.) (1) Except as otherwise provided in subsection (3) hereof, acceptance corporations and dealers in commercial paper must report the discount on the purchase of paper as income in the year of such purchase.

(2) Where the records of such acceptance corporations and dealers in commercial paper are kept upon the deferred profit basis, schedules should be attached to the tax returns clearly setting forth the unrealized profit accounts and reconciling the income and surplus per books with the taxable net income.

(3) Acceptance corporations and dealers in commercial paper may elect to report their taxable income on the deferred profit basis, provided that their books and records are kept on that basis and provided further that both the deferment of income, and the expenses incurred in producing said income is made in accordance with accepted accounting principles and practice. The election to so report

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

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

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

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

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

(4) **PAYROLL FACTOR; WHAT IS COMPENSATION.** The term "compensation" includes wages, salaries, commissions and any other form of remuneration paid to employes for personal services. Compensation includes the value of board, rent, housing, lodging, and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal internal revenue code. In the case of employes not subject to the federal internal revenue code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employes shall be

made as though such employes were subject to the federal internal revenue code. Compensation includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor. Except for such management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employe are excluded.

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

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

(b) *Sales factor; sales made in other types of business activity.* As applied to a taxpayer engaged in business activity other than or in addition to the manufacturing and selling or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity.

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

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

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

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

(c) *Sales factor; what sales of tangible personal property are in this state.* 1. Gross receipts from the sales of tangible personal property (except sales to the United States government: see Tax 2.39 Register, February, 1975, No. 230

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

state bears to the total time the property was used in all states having jurisdiction to tax such business during such year.

(iii) Gross receipts from the performance of personal services are attributable to this state if the services are performed entirely in this state. If the services are performed partly within and partly without this state, gross receipts shall be attributable to this state based upon the ratio which compensation and other direct costs of performing such services in this state bear to total compensation and other direct costs of performing such services in all states having jurisdiction to tax such business. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to this state if the compensation related to performing such services is allocated to this state by section 71.07 (2) (b) 4, Wis. Stats.

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

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

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

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

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

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

(3) For "financial organizations" (except insurance companies) and "public utilities" as defined in section 71.07 (2) (d), Wis. Stats., dividends and interest received which follow the residence of the

recipient must be reduced by related expenses and deductible dividends received. Interest paid and deductible is deemed to be related expense in an amount determined by multiplying the total of such interest paid by a fraction, the numerator of which is the average tax basis of the intangible property producing, or capable of producing, such income and the denominator of which is the depreciated average tax basis of the total property owned and used in the production of all income during the year. This paragraph shall also apply to all other businesses not covered by (2) above.

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

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

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

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

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

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

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58.  
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**Tax 2.42 Apportionment method.** (Section 71.07 (2), Wis. Stats.) Any person engaged in business within and without the state must report by the statutory apportionment method when the business of such person within the state is an integral part of a unitary business, unless the department of revenue expressly permits reporting on a different basis. The factors used in the apportionment method are as follows:

(1) Tangible property includes land, buildings, machinery and equipment, inventories and other tangible personal property actually owned and used in producing apportionable income. Tangible property which is used in producing nonapportionable or nontaxable income cannot be included in the property factor. The value at which tangible property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

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

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

(4) This rule is superseded by Wis. Adm. Code section Tax 2.39 with respect to the reporting of income for the purposes of franchise

or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter.

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

**Tax. 2.43 Nonapportionable income. (Section 71.07 (2), Wis. Stats.)** (1) The expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. In the case of dividends and interest received which follows the residence of the recipient, only the excess of the amounts received over the sum of interest paid and dividends deducted plus other related expenses can be considered as nonapportionable income. If the interest paid, deductible dividends received and related expenses exceed the total interest and dividends received, no deduction from total net income can be made for nonapportionable interest and dividends. All of the nonapportionable income must be deducted from the total net income of the business to determine the apportionable income to which the apportionment percentage is applied. Any nonapportionable income attributable to Wisconsin must be added to the apportionable income allocated to Wisconsin to determine the total Wisconsin net income.

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

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

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

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.45 Apportionment in special cases. (Section 71.07 (5), Wis. Stats.)** When the business of any person, other than a "financial organization" or "public utility," as defined in section 71.07 (2) (d), Wis. Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in section 71.07 (2), Wis. Stats., (or by separate accounting in view of the unitary nature of the business), the department will substitute in the place of some or all of the statutory apportionment factors such other factor or factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation the taxpayer, at the time of the Register, February, 1975, No. 230

over the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such case the reduction in basis required would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent of the remainder of such excess. In such a case the reduction in basis required would be the amount of the tax-benefit amount allowed.

(6) For the purpose of determining the tax-benefit amount allowed, the only adjustments made in determining whether there would be an increase in tax shall be those resulting from the disallowance of the amount allowed. The taxable years for which the determination is made shall be the taxable year for which the deduction was allowed and any other taxable year which would be affected by the disallowance of such deduction. Examples of such other taxable years are taxable years to which there was a carry-over of a net business loss for the taxable year for which the deduction was allowed. In determining whether the disallowance of any part of the deduction would not have resulted in an increase in any tax previously determined, proper adjustment must be made for previous determinations under chapter 71, Wis. Stats.

(7) If a determination must be made with respect to several properties for each of which the amount allowed for the taxable year exceeded the amount allowable, the tax benefit amount allowed with respect to each of such properties shall be an allocated portion of the tax-benefit amount allowed determined by reference to the sum of the amounts allowed and the sum of the amounts allowable with respect to such several properties.

(8) A corporation seeking to limit the adjustment to basis to the tax-benefit amount allowed for any period, in lieu of the amount allowed, must establish the tax benefit amount allowed. A failure of adequate proof as to the tax benefit amount allowed with respect to one period does not preclude the corporation from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

(9) The amount allowable for prior periods is determined under the law applicable to such prior periods.

(10) Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization and depletion to the extent actually sustained in respect of (a) any period during which the corporation was engaged in business entirely outside of Wisconsin, or (b) any period during which the property was held by a person or organization not subject to income taxation under chapter 71, Wis. Stats. The amount actually sustained is that amount charged off on the books of the corporation where such amount is considered by the secretary of revenue to be reasonable. Otherwise the amount actually sustained will be the amount that would have been allowed as a deduction had

the corporation been subject to income tax during those periods, determined by the straight line method.

**History:** Cr. Register, February, 1965, No. 110 eff. 3-1-65; am. (1) (a), (2), (3), (4), (5), and r. (8), renum. (9) to be (8) and am., renum. (10) to be (9) and (11) to be (10) and am., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.75 Recoveries by corporations.** (Section 71.03 (1) (k), Wis. Stats.) Recoveries of items previously charged off as loss or as expense are taxable income in the year of recovery.

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

**Tax 2.76 Refunds of taxes to corporations.** (Section 71.03 (1) (k), Wis. Stats.) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are taxable income.

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

**Tax 2.77 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.78 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.79 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.80 Improvements on leased real estate, income to corporate lessor.** (Section 71.03 (1) (k), Wis. Stats.) 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 by the fair market value of the improvements at the time.

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

**Tax 2.81 Damages received by corporations.** (Section 71.03 (1) (k), Wis. Stats.) Damages may result in taxable income when recovered on account of injury to property, interference with property rights or breach of contract, when the amounts received as damages are in excess of the income tax cost of the property destroyed. Damages recovered for libel of business reputation are taxable income.

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

**Tax 2.82 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.83 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.84 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.85 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.86 Income to corporations from cancellation of government contracts.** (Section 71.03 (1) (k), Wis. Stats.) Amounts claimed under cancelled government contracts not reported in the return for the year in which claim therefore was filed must be included as income in the year in which such claim is allowed.

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

**Tax 2.87 Contributions for line extension.** (Section 71.03 (1) (k), Wis. Stats.) Amounts received by a public utility corporation from its customers in consideration of the extension of its service lines are taxable income. If and when such amounts are subsequently refunded, they are valid deductions in the year of refund.

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

Register, February, 1975, No. 230

**Tax 2.90 Withholding; wages.** (Section 71.19 Wis. Stats.) (1) The term "wages" means all remuneration for services performed by an employe for his employer unless specifically excepted under section 71.19, Wis. Stats.

(2) The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales, commissions on insurance premiums, pensions and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employe for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may be paid on the basis of piecework, or a percentage of the profits, and may be paid hourly, daily, weekly, monthly or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. (See however section 71.19 (1) (i), Wis. Stats., relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business). If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employe its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe no longer exists between the person in whose employ the services were performed and the individual who performed them.

(6) In general, pensions and retired pay are wages subject to withholding. So called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

(7) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(8) Amounts of so-called "vacation allowances" paid to an employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding his absence from work, constitutes wages.

(9) Any payments made by an employer to an employe on account of dismissal, that is, involuntary separation from the service of the employer, constitutes wages regardless of whether the employer is

legally bound by contract, statute or otherwise to make such payments.

(10) Any amount deducted by an employer from the remuneration of an employe is considered to be a part of the employe's remuneration and is considered to be paid to the employe as remuneration at the time the deduction is made. It is immaterial that any act or law requires or permits such deductions.

(11) The term "wages" includes the amount paid by an employer on behalf of an employe, without deduction from the remuneration of or other reimbursement from the employe, on account of any tax imposed upon the employe by any taxing authority.

(12) The value of any meals or lodging furnished to an employe by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employe under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. Stats.

(13) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases) furnished or offered by an employer to his employes generally, are not considered as wages subject to withholding, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment or efficiency of his employes.

(14) Tips or gratuities paid directly to an employe by a customer of an employer, and not accounted for by the employe to the employer, are not subject to withholding.

(15) Withholding is not required upon amounts paid to an employe by his employer under a wage continuation plan for a period during which the employe is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. Stats.

**History:** Cr. Register, January 1963, No. 85, eff. 2-1-63; r. and recr. (12), cr. (15), Register, March, 1966, No. 123 eff. 4-1-66.

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in subsection (2) hereof, amounts withheld pursuant to section 71.20, Wis. Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(2) Any employe who reports his income for taxation to the state of Wisconsin on an income year other than the calendar year shall be allowed as a credit for any such fiscal year amounts withheld by his employer in such fiscal year provided his employer, on or before the end of the first month following the close of such fiscal year, shall voluntarily furnish such employe with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in section 71.10 (8) (a), Wis. Stats., and the Register, February, 1975, No. 230

employe files a copy of such statement along with his fiscal year return.

**History** Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.