

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND
GROSS INCOME

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|-----------|---|-----------|--|
| Tax 2.01 | Residence (p. 10) | Tax 2.46 | Apportionment of business income of interstate air carriers (p. 48) |
| Tax 2.02 | Reciprocity (p. 10) | Tax 2.47 | Apportionment of net business income of interstate motor carriers of property (p. 49) |
| Tax 2.03 | Corporation returns (p. 13) | Tax 2.48 | Apportionment of net business incomes of interstate pipeline companies (p. 49) |
| Tax 2.04 | Information returns and wage statements (p. 14) | Tax 2.49 | Apportionment of net business incomes of interstate finance companies (p. 53) |
| Tax 2.05 | Transfers of capital stock, information return (p. 16) | Tax 2.50 | Apportionment of net business income of interstate public utilities (p. 53) |
| Tax 2.08 | Returns of persons other than corporations (p. 16) | Tax 2.505 | Apportionment of net business income of interstate professional sports clubs (p. 54) |
| Tax 2.085 | Claim for refund on behalf of a deceased taxpayer (p. 18) | Tax 2.51 | Rent received by corporations from Wisconsin real estate (p. 55) |
| Tax 2.09 | Reproduction of income tax forms (p. 18) | Tax 2.53 | Stock dividends and stock rights received by corporations (p. 55) |
| Tax 2.10 | Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns (p. 19) | Tax 2.56 | Insurance proceeds received by corporations (p. 56) |
| Tax 2.105 | Notice by taxpayer of federal audit adjustments and amended returns (p. 19) | Tax 2.57 | Annuity payments received by corporations (p. 56) |
| Tax 2.11 | Credit for sales and use tax paid on fuel and electricity (p. 23) | Tax 2.60 | Dividends on stock sold "short" by corporations (p. 56) |
| Tax 2.12 | Amended income and franchise tax returns (p. 24) | Tax 2.63 | Dividends accrued on stock (p. 57) |
| Tax 2.13 | Moving expenses (p. 25) | Tax 2.65 | Interest received by corporations (p. 57) |
| Tax 2.14 | Aggregate personal exemptions (p. 26) | Tax 2.70 | Gain or loss on capital assets of corporations; basis of determining (p. 57) |
| Tax 2.15 | Methods of accounting for corporations (p. 26) | Tax 2.72 | Exchanges of property by corporations generally (p. 58) |
| Tax 2.16 | Change in method of accounting for corporations (p. 27) | Tax 2.721 | Exchanges of property held for productive use or investment by corporations (p. 59) |
| Tax 2.165 | Change in taxable year (p. 28) | Tax 2.73 | Involuntary conversion by corporations (p. 59) |
| Tax 2.19 | Instalment method of accounting for corporations (p. 30) | Tax 2.75 | Recoveries by corporations (p. 60) |
| Tax 2.20 | Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies (p. 31) | Tax 2.76 | Refunds of taxes to corporations (p. 60) |
| Tax 2.21 | Accounting for incorporated contractors (p. 32) | Tax 2.80 | Improvements on leased real estate, income to corporate lessor (p. 60) |
| Tax 2.22 | Accounting for incorporated dealers in securities (p. 32) | Tax 2.81 | Damages received by corporations (p. 61) |
| Tax 2.24 | Accounting for incorporated retail merchants (p. 32) | Tax 2.82 | Nexus (p. 61) |
| Tax 2.25 | Corporation accounting generally (p. 33) | Tax 2.83 | Requirements for written elections as to recognition of gain in certain corporation liquidations (p. 63) |
| Tax 2.26 | "Last in, first out" method of computing inventory for corporations (p. 33) | Tax 2.86 | Income to corporations from cancellation of government contracts (p. 64) |
| Tax 2.30 | Property located outside Wisconsin—depreciation and sale (p. 34) | Tax 2.87 | Reduction of delinquent interest rate under s. 71.13 (1) (b), Stats. (p. 64) |
| Tax 2.31 | Taxation of personal service income of nonresident professional athletes (p. 36) | | |
| Tax 2.39 | Apportionment method (p. 37) | | |
| Tax 2.41 | Separate accounting method (p. 47) | | |
| Tax 2.44 | Permission to change basis of allocation (p. 48) | | |
| Tax 2.45 | Apportionment in special cases (p. 48) | | |

Tax 2

Tax 2.88	Interest rates (p. 65)	Tax 2.95	Reporting of instalment sales by natural persons and fiduciaries (p. 71)
Tax 2.90	Withholding; wages (p. 66)	Tax 2.955	Credit for taxes paid to other states (p. 73)
Tax 2.91	Withholding; fiscal year taxpayers (p. 67)	Tax 2.956	Historic structure and rehabilitation of nondepreciable historic property credits. (p. 75)
Tax 2.92	Withholding tax exemptions (p. 68)	Tax 2.96	Extensions of time to file corporation franchise or income tax returns (p. 76)
Tax 2.93	Withholding from wages of a deceased employe and from death benefit payments (p. 69)	Tax 2.98	Disaster area losses (p. 77)
Tax 2.935	Reduction of delinquent interest rate under s. 71.20 (5) (c), Stats. (p. 69)		
Tax 2.94	Tax-sheltered annuities (p. 70)		

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

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

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; r. (1), renum. (2) and am., Register, July, 1987, No. 379, eff. 8-1-87; am. Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.02 Reciprocity. (ss. 71.05 (2) and 71.64 (8), Stats.) (1) **PURPOSE.** This section explains the reciprocity agreements between Wisconsin and other states.

(2) **DEFINITIONS.** The following definitions pertain only to Wisconsin. Definitions of the same terms in other states may vary. In this section:

(a) "Personal service income" means all salaries, wages, commissions and fees earned by an employe and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Personal service income does not include income derived from activities involving the substantial use of capital or labor of others.

(b) "Resident" means a natural person who is domiciled in this state.

(3) **WISCONSIN LAW.** (a) Under s. 71.05 (2), Stats., income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on the personal service income, if the state of residence allows:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; or

2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on the personal service income.

(b) Under s. 71.64 (8), Stats., a Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement under sub. (4) need not withhold Wisconsin income tax from personal service income earned in Wisconsin by the nonresident.

(2) The ratio which the revenue tons handled by such carrier at airports within this state during the calendar or fiscal year bears to the total revenue tons handled at airports within and without this state during the same period;

(3) The ratio which such air carrier's originating revenue within this state for the calendar or fiscal year bears to the total originating revenue within and without this state for the same period.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. (intro.). Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.47 Apportionment of net business income of interstate motor carriers of property. (1) (s. 71.07 (2) (e), Stats.) The apportionable income of an interstate motor carrier of property, doing business in Wisconsin, shall be apportioned to Wisconsin, on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere;

(b) The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

(2) Whenever gross receipts' data is not available, the department may authorize or direct substitution of a similar factor (e.g. gross tonnage) and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor (e.g. revenue miles).

(3) For purposes of this regulation a "ton mile" reflects the movement of one ton of freight for the distance of one mile.

(4) This regulation shall not apply to mercantile or manufacturing businesses which engage in some interstate hauling as an incident of such mercantile or manufacturing businesses.

(5) This regulation shall apply with respect to the determination of income tax or franchise tax liability for any income year open to assessment or refund on the effective date hereof.

History: Cr. Register, April, 1966, No. 124, eff. 5-1-66; am. (intro.). Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.48 Apportionment of net business incomes of interstate pipeline companies. (s. 71.25 (10) (c), Stats.) (1) GENERAL. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income, the income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the 3 factors in subs. (3), (4) and (5).

(2) DEFINITIONS. In this section:

(a) "Compensation" includes:

1. Wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

2. 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 these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll

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factor is computed. In the case of employes not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employes shall be made as though the employes are subject to the federal internal revenue code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., to a related corporation, as defined in s. 267 (f) (1) of the internal revenue code, as consideration for the performance of personal services. The recipient of these fees may not include the compensation paid to its employes with respect to the personal services in either the numerator or denominator of its payroll factor.

(b) "Traffic unit" means the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, or other appropriate measure of product.

(3) PROPERTY FACTOR. (a) *Numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned and used by the taxpayer in Wisconsin in the production of apportionable income during the tax period. The denominator shall include average value of all of the real and tangible personal property located everywhere owned and used by the taxpayer in the production of apportionable income during the tax period. Property in transit on the date or dates for determining its average value, as described in par. (e), shall be considered to be at its destination, for purposes of computing the property factor. The value of mobile or movable property such as construction equipment, trucks or airplanes which is located within and without Wisconsin during the tax period shall be determined for purposes of the numerator of the factor on the basis of a ratio of time used, serviced or stored within Wisconsin to total time used, serviced or stored during the tax period. However, an automobile assigned to a traveling employe shall be included in the numerator of the factor if the employe's compensation is assigned to Wisconsin under the payroll factor.

(b) *Valuation.* Property owned by the taxpayer is generally valued at its cost net of depreciation and write-offs as determined for Wisconsin franchise or income tax purposes. Any adjustments to net income which affect property, such as capitalizations of repairs, depreciation or amortization adjustments and adjustments to inventory, shall also be included in the property factor. The value of depletable property, such as mines, oil and gas wells and timber, shall be original cost reduced by any extraction to the extent that depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin franchise or income tax purposes. In any case in which the property factor is distorted by reason of the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, or in any case in which the Wisconsin net cost cannot be ascertained, the department shall authorize or direct some other method of determining the property fraction that will produce an equitable result.

(c) *Leasehold improvements.* Leasehold improvements shall, for 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