CHAPTER 71.

INCOME TAX ACT.

71.01 Imposition of tax; exempt income. (1) NORMAL TAX. There shall be assessed, levied, collected and paid a tax on all net incomes as hereinafter provided, by every person residing within the state or by his personal representative in case of death; and by every nonresident of the state, upon such income as is derived from property located or business transacted within the state, except as hereinafter exempted. Every natural person domiciled in the state of Wisconsin, and every other natural person who maintains a permanent place of abode within the state or spends in the aggregate more than 7 months of the income year within the state, shall be deemed to be residing within the state for the purposes of determining liability for income taxes and surtaxes. This section shall not be construed to prevent or affect the correction of errors or omissions in the assessment of income for former years in the manner provided in sections 71.11 (16) and 71.11 (20).

(2) TEACHERS' RETIREMENT FUND SURTAX. (a) In addition to any other taxes imposed by ch. 71, there shall be levied, collected, and paid upon the incomes of all persons other than corporations for calendar years prior to and including the calendar year 1952, and corresponding fiscal years, but not thereafter, except as otherwise provided by law, a surtax on taxable income assessable under the provisions of ch. 71 or any amendment that may hereinafter be made to ch. 71, computed as provided in s. 71.09 (3).

(b) In addition to any other taxes imposed by ch. 71, there shall be levied, collected, and paid upon the incomes of corporations, as defined in s. 71.02 (2), for calendar years prior to and including the calendar year 1952, and corresponding fiscal years, but not thereafter, except as otherwise provided by law, a surtax on taxable income assessable under the provisions of ch. 71 or any amendment that may hereinafter be made to ch. 71, computed as provided in s. 71.09 (4).

(c) The surtax provided for herein shall be based upon the taxable income assessable as hereinafter defined, and shall apply to the income received during the calendar year ending December 31, 1920, or corresponding fiscal year, and to the taxable income assessable annually thereafter, until terminated pursuant to pars. (a) and (b), and shall be assessed and collected in the same manner as the income taxes provided for in ch. 71, except as otherwise herein provided.

(d) The term "taxable income assessable" as used in this section shall be construed to mean the amount to which the rates provided for in section 71.09 (1) and (2) are applied in the computation of the income taxes provided for in chapter 71.

(3) EXEMPT INCOME. There shall be exempt from taxation under this chapter income as follows, to wit:

(a) Income of mutual savings banks, mutual loan corporations, savings and loan associations, insurance companies, steam railroad corporations, sleeping car companies, freight line companies as defined in section 76.39, and corporations organized under sections 185.01 to 185.22, and of all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit.

(b) Income received by the United States, the state and all counties, cities, villages, school districts or other political units of this state.

(c) Income of co-operative associations or corporations engaged in marketing farm products for producers, which turn back to such producers the net proceeds of the sales

of their products; provided, that such corporations or associations have at least 25 stockholders or members delivering such products and that their dividends have not, during the preceding 5 years, exceeded 8 per cent per annum; also income of associations and corporations engaged solely in processing and marketing farm products for one such cooperative association or corporation and which do not charge for such marketing and processing more than a sufficient amount to pay the cost of such marketing and processing and 8 per cent dividends on their capital stock and to add 5 per cent to their surplus.

(d) All income received during the years 1942 to 1948, inclusive, from the United States for service as a member of the armed forces thereof including therein members of women's auxiliary organizations created by congress.

(dm) Compensation received from the United States for active service as a member of the armed forces thereof and compensation received from the United States for service as a reserve member of the armed forces thereof in the years 1950, 1951 and 1952, and the first $1,500 of such compensation received in 1953 and 1954.

(e) A trust created by any employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his employes, to which contributions are made by such employer, or employes or both, for the purpose of distributing to such employes the earnings and principal of the fund accumulated by the trust, or investing said funds in various forms of insurance or annuity contracts for the benefits of participants, in accordance with such plan, shall not be taxable under this chapter, but any amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amount paid in by him; provided, however, that this exemption shall not apply if the employer's contribution under such plan is not deductible under this chapter. This subsection shall be applicable to the calendar year 1944, or the corresponding fiscal year, and each such year thereafter.

(f) Whenever any bank has been placed in the hands of the commissioner of banks for liquidation under the provisions of section 220.08, no tax under this chapter shall be levied, assessed or collected on account of such bank, which shall diminish the assets thereof so that full payment of all depositors cannot be made. Whenever the commissioner of banks certifies to the department of taxation that the tax or any part thereof levied and assessed under this chapter against any such bank will so diminish the assets thereof that full payment of all depositors cannot be made, the said department shall cancel and abate such tax or part thereof, together with any penalty thereon. This subsection shall apply to taxes levied and assessed subsequent to the time the bank was taken over by the commissioner of banks, which taxes have not been paid.

History: 1947 c. 411 s. 6 (215.30 (5)); 1947 c. 612 s. 1; 1951 c. 685; 1953 c. 364, 614, 648.

Cross Reference: See secs. 2 to 5, ch. 293, laws of 1939, as to assessment of taxes on income derived from United States or any agency thereof prior to 1939.

The plaintiff, who spent most of the weekdays, Monday to Friday, except his vacation periods, in a place in Wisconsin where he had all of his business activities, spent in the aggregate more than 7 months of each of the years in question in Wisconsin. He waived his right to raise the constitutionality of the provision where he did not raise the question by pleadings or otherwise in the trial of an action in circuit court to enjoin the collection of income taxes assessed against him, and attempted to raise the question for the first time on his motion for a rehearing in the same court. Baker v. Leenhouts, 257 W 584, 44 NW (2d) 544.

In 71.01, Stats. 1943-1945, "income as is derived from . . . business transacted within the state," had reference to income of a type made taxable by ensuing statutory provisions, and hence, in respect to a personal holding corporation organized under the laws of Delaware, the holding of meetings by it, collecting dividends, and looking after investments, in Wisconsin, were not in themselves activities which produced income which was taxable in Wisconsin if such ensuing statutory provisions then in effect imposed no income tax on the income received by such corporation on its investments. Cudahy v. Dept. of Taxation, 261 W 126, 52 NW (2d) 467.

71.02 Definitions. (1) The term "net income" as used in this chapter shall mean "gross income" less allowable deductions.

(2) The term "person", as used in this chapter, shall mean and include natural persons, fiduciaries and corporations, and the word "corporation" shall mean and include corporations, joint stock companies, associations or common law trusts organized or conducted for profit, unless otherwise expressly stated.

(3) The terms "paid" or "actually paid", as used in this chapter, are to be construed in each instance in the light of the method used in computing taxable income whether on the accrual or receipt basis; provided, that the deduction for federal income and excess profits taxes shall be confined to cash payments made within the year covered by the income tax return.

(4) All fiscal years ending between the June thirtieth preceding and the July first following the close of a calendar year shall correspond to such calendar year for the

purposes of this chapter, and no fiscal year shall end on any date other than the last day of any month.

History: 1953 c. 61, 540.

Where certain sales of a product manufactured by a manufacturer in another state were effected through the solicitation of customers in other states than Wisconsin by salesmen of a Wisconsin corporation and the shipment of such product directly to such customers by the manufacturer, but the practice otherwise followed was that the customer directed his order to the Wisconsin corporation at its home office in Wisconsin and received confirmation that it had there sold him a quantity of such product, that the manufacturer billed the Wisconsin corporation, and that the Wisconsin corporation remitted to the manufacturer regardless of whether the customer had paid the bill which the Wisconsin corporation had sent to him in its own name, such sales were by the Wisconsin corporation as vendor, rather than by the manufacturer through the Wisconsin corporation as its agent, and the Wisconsin corporation was "transacting business in Wisconsin" in respect to such sales, so that its income derived therefrom, although not wholly taxable in Wisconsin because it was engaged in business both within and without the state, was apportionable to Wisconsin for taxation pursuant to (3) (d) 3. (United States Glue Co. v. Oak Creek, 161 W 211, distinguished.) Dept. of Taxation v. Ansul Chemical Co. 260 W 96, 49 NW (2d) 893.

71.03 Gross income; inclusions, exclusions, reorganizations. (1) INCLUSIONS. The term "gross income", as used in this chapter, shall include:

(a) All wages, salaries or fees derived from services, including services performed for the United States or any agency or instrumentality thereof.

(b) All rent of Wisconsin real estate.

(c) All interest derived from money loaned or invested in notes, mortgages, bonds or other evidence of debt of any kind whatsoever.

(d) All dividends derived from stocks provided, that the term "dividends" as used in this section shall be held to mean all dividends derived from stocks whether paid to its shareholders in cash or property of the corporation.

1. For the purpose of this section every distribution is presumed to be made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits.

2. All dividends received by any person paid in any property other than cash shall be valued at the fair market value of such property on the date of the distribution.

3. When property other than cash is distributed by a corporation in payment of a dividend other than a dividend or distribution in liquidation the profit or loss that arises in so disposing of such property, shall be that of the corporation and shall be measured by the difference between the fair market value of such property at the time of such disposition and the income tax cost thereof to said corporation.

(e) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under the provisions of this paragraph and section 71.03 (1) (g). No amounts received in liquidation shall be taxed as a gain until the distributee shall have received amounts in liquidation in excess of his cost or other income tax basis provided in section 71.03 (1) (g), and any such excess shall be taxed as gain in the year in which received. Losses upon liquidation shall be recognized only in the year in which the corporation shall have made its final distribution. For the purposes of this paragraph a corporation shall be considered to be liquidating when it begins to dispose of the assets with which it carried on the business for which it was organized and begins to distribute the proceeds from the disposition of such assets, or the assets themselves, whether or not such disposition and distribution is made pursuant to resolution for dissolution; provided, that any distribution of current earnings of a corporation shall not be considered to be a distribution in liquidation unless the corporation making such distribution has ceased or is about to cease carrying on the business for which it was organized.

(f) The sale of stock received as a dividend and exempt from tax at the time of its receipt under section 71.03 (2) (e), may result in a gain or loss for income tax purposes, and the gain or loss from the sale of such stock and from the sale of the stock with respect to which it was issued, shall be determined as provided in this paragraph and in section 71.03 (1) (g). For the purpose of determining the profit or loss on the sale or other disposition of stock received as a stock dividend or of the stock with respect to which such stock dividend was issued, the cost or other basis of the old and of the new shares shall be such proportion of the previous cost or other basis of the old stock as is properly allocable to each, under regulations prescribed by the department of taxation. If before or after the distribution of any stock dividend the corporation proceeds to cancel or redeem its stock at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock to the extent that it represents a distribution of earnings or profits accumulated after January 1, 1911, shall be treated as a taxable dividend as herein defined.

(g) All profits derived from the transaction of business or from the sale or other disposition of real estate or other capital assets; provided, that for the purpose of ascertaining the gain or loss resulting from the sale or other disposition of property, real or personal, acquired prior to January 1, 1911, the fair market value of such property as of January 1, 1911, shall be the basis for determining the amount of such gain or loss; and, provided, further, that the basis for computing the profit or loss on the sale of property acquired by gift after 1922 but prior to July 31, 1943, shall be the same as it would have been had the sale been made by the last preceding owner who did not acquire it by gift; and in case the taxing officers are unable to ascertain the cost of the property to such prior owner, if acquired after January 1, 1911, then the basis shall be the value thereof at or about the time it was acquired by him, and such value shall be determined from the best information obtainable. However, with respect to all gifts made after July 31, 1943, the basis for computing gain or loss resulting from the sale or other disposition of said property acquired by gift shall be the fair market value of said property at the time of the said gift or the valuation on which a gift tax has been paid or is payable. In computing profit or loss on the sale of property acquired by descent, devise, will or inheritance, or on the sale of property in a decedent's estate, since January 1, 1911, the appraised value of such property in the administration of the estate of the deceased owner as of the date of his death shall be the basis for determining the amount of such profit or loss. The cost, or other basis mentioned above, shall be diminished by the amount of the deduction for exhaustion, wear and tear and depletion which have, since the acquisition of the property, been allowed as deductions under all Wisconsin income tax laws; and such basis shall also be diminished by the amounts of all income deferred by the taxpayer and used to reduce property, and all anticipated losses on such property which have been deducted from taxable income. If property, exclusive of inventories (as raw materials, goods in process and finished goods), as a result of its destruction in whole or in part by fire or other casualty, theft or seizure, or an exercise of power of requisition or condemnation or the threat or imminence thereof, is involuntarily converted into money which is within one year in good faith, under regulations prescribed by the department of taxation, expended in the replacement of the property destroyed or in the acquisition of other property similar or related in service or use to the property so destroyed, or in the establishment of a replacement fund which, within 2 years from date of the fire or other casualty, is actually expended to replace the property destroyed or in the acquisition of other property similar or related in service or use to the property destroyed, no gain shall be recognized, and in the case of gain the property so replaced or acquired, for purposes of depreciation and all other purposes of taxation, shall be deemed to take the place of the property so destroyed. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended. A replacement of property by an insurance company shall be deemed to be an expenditure by the taxpayer of insurance moneys received by him from the insurance company for the purposes of this subsection. The provisions of this subsection relating to nonrecognition of gain on certain involuntary conversions shall be inapplicable when the property involuntarily converted was the taxpayer's residence and such involuntary conversion constituted a sale coming within the "nonrecognition" provisions of s. 71.03 (5). If shares of stock in a corporation acquired subsequent to January 1, 1934, are sold from lots acquired at different dates or at different prices, the basis for determining gain or loss shall be that of the specific shares sold. If the identity of the lots cannot be determined, the stock sold shall be charged against the earliest acquisitions of such stock. The basis for determining gain or loss on sales of stock acquired prior to January 1, 1934, shall be the average cost of all such shares of the same stock, determined in accordance with the regulations of the department of taxation in effect on January 1, 1934.

(i) All royalties derived from mines or the possession or use of franchises or legalized privileges of any kind.

(k) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the income year.

(l) And all other gains, profits or income of any kind derived from any source whatever except such as hereinafter exempted.

(2) EXCLUSIONS. There shall be exempt from taxation under this chapter the following:

(a) Pensions received from the United States.

(b) All inheritances, devises, bequests and gifts received during the year.

(c) All insurance received by any person or persons in payment of a death claim by

any insurance company, fraternal benefit society or other insurer, including insurance paid to a corporation or partnership upon the policies on the lives of its officers, partners or employes, but in computing net income, no deduction shall in any case be allowed in respect of premiums paid on any life insurance policy covering the life of any officer, partner, or employe, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

(d) Any earnings or profits accumulated, or increase in value of property accrued, before January 1, 1911, may be distributed exempt from tax, after the earnings and profits accumulated after January 1, 1911, have been distributed, but any such tax-free distribution shall be applied against and reduce the cost or other income tax basis provided in section 71.03 (1) (g). If such or any similar tax-free distributions exceed such cost or other income tax basis, any excess shall be included in the gross income of the year in which received.

(e) A dividend paid by a corporation in its own capital stock shall not be subject to income tax as a dividend at the time of its receipt by a stockholder.

(f) With respect to natural persons domiciled outside this state but who are deemed Wisconsin residents under the definition thereof contained in section 71.01, such income as follows their residence pursuant to section 71.07 (1) shall be excluded from Wisconsin gross income to the extent that it is subject to an income tax imposed by the state of their domicile; provided that the law of such state allows a similar exclusion of income received by natural persons domiciled in Wisconsin, or a credit against the tax imposed on the income of natural persons domiciled in this state, which credit is substantially similar in effect.

(3) REORGANIZATIONS. (a) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(b) No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(c) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in case of an exchange by 2 or more persons this paragraph shall apply only if the amount of the stock received by each is substantially in proportion to his interest in the property prior to the exchange.

(d) If there is distributed, in pursuance of a plan of reorganization, to a stockholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(e) The distribution, in pursuance of a plan of reorganization, by a corporation a party to the reorganization, of its stock or securities, or stock or securities in a corporation a party to the reorganization, shall not be considered a distribution of earnings or profits for the purpose of determining the taxability of subsequent distributions by the corporation.

(f) The term "reorganization" means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (b) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (c) a recapitalization, or change in the form of capitalization, or (d) a mere change in identity, form or place of organization, however effected.

(g) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(h) As used in this section the term "control" means the ownership of at least 80 per cent of the voting stock and at least 80 per cent of the total number of shares of all other classes of stock of the corporation.

(i) No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation in conformity with all the requirements of this paragraph. The corporation receiving such property must be, con-

tinuously from the date of the adoption of the plan of liquidation until the receipt of the property, the owner of stock in such other corporation, possessing at least 80 per cent of the total combined voting power of all classes of stock and the owner of at least 80 per cent of the total number of shares of all other classes of stock except nonvoting preferred stock. Such other corporation must have been organized prior to July 29, 1939 and must have made no distribution in liquidation to the receiving corporation prior to said date. The property may be distributed in one or a series of distributions, but the final distribution must occur within one year from the adoption of the plan of liquidation and within one year from the first distribution. The assumption of liabilities of such other corporation by its stockholders, including the receiving corporation, shall not prevent a distribution from being considered as final. The adoption of a resolution authorizing the distribution of all of the assets of a corporation in complete cancellation or redemption of all of its stock shall be considered an adoption of a plan of liquidation even though such resolution specifies no time for the completion of the transfer of the property.

(j) If property involved in transactions described in section 71.03 (3) (a) and (b) was acquired by a corporation in connection with a reorganization the basis for determining gain or loss, depletion or depreciation shall be the same as it would be in the hands of the transferor. This paragraph shall be applicable only when the transaction involved was treated for income tax purposes as provided in section 71.03 (3) (a) and (b).

(k) If property was acquired by a corporation by the issuance of its stock or securities in connection with a transaction described in section 71.03 (3) (c) the basis shall be the same as it would be in the hands of the transferor. This paragraph shall be applicable only when the transaction involved was treated for income tax purposes as provided in section 71.03 (3) (c).

(l) If the property consists of stock or securities distributed to a taxpayer in connection with a transaction described in section 71.03 (3) (d) the basis in the case of the stock in respect of which the distribution was made shall be apportioned as in the case of stock dividends. This paragraph shall be applicable only when the transaction involved was treated for income tax purposes as provided in section 71.03 (3) (d).

(m) The basis of property received by a corporation without the recognition of gain or loss under section 71.03 (3) (i) shall be the same as it would be in the hands of the transferor, and for the purpose of making the adjustments to such basis required by section 71.03 (1) (g) the corporation receiving the property shall be considered as having been the owner thereof while the property was in the hands of the transferor.

(4) ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS. (a) If property is distributed in complete liquidation of a corporation and if (a) the liquidation is made in pursuance of a plan of liquidation adopted after December 31, 1950 whether the taxable year of the corporation began on, before, or after January 1, 1950; and (b) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month in 1951; then in the case of each qualified electing shareholder as defined in paragraph (c) gain upon the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in the paragraph (d).

(b) The term "excluded corporation" as used in this section means a corporation which at any time between August 15, 1950, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 per cent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(c) The term "qualified electing shareholder" as used in this section means a shareholder, other than an excluded corporation, of any class of stock whether or not entitled to vote on the adoption of the plan of liquidation who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of this section is filed with the assessing authority not later than March 15, 1952, but (a) in the case of a shareholder other than a corporation, only if evidence is submitted to the department of taxation which is satisfactory to it that written elections have been filed as provided by section 112 (b) (7) of the United States Internal Revenue Code by shareholders other than corporations who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 per cent of the total combined voting power exclusive of voting power possessed by stock owned by corporations of all classes of stock entitled to vote on the adoption of such plan of liquidation; or (b) in the case of a shareholder which is a corporation, only if evidence is submitted to the department of taxation which is satisfactory to it that written elections have been filed as provided by section 112 (b) (7) of the United States Internal Revenue Code by corporate shareholders, other than an excluded corporation, which at the time of the adoption of such plan of liquidation are own-

ers of stock possessing at least 80 per cent of the total combined voting power exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(d) The gain of a corporate or noncorporate qualified electing shareholder upon the shares of the liquidating corporation owned by him at the time of adoption of the plan of liquidation shall be recognized and taxed as a profit on disposition of such shares, but only to the extent of the greater of the following: (a) the portion of the assets received by him which consists of money, or of stock or securities acquired by the liquidating corporation after August 15, 1950, or (b) his ratable share of the earnings and profits of the liquidating corporation accumulated after January 1, 1911, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred, but without diminution by reason of distributions made during such month, but including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and provided that no part of the gain herein recognized shall be considered a dividend under this chapter.

(e) The income tax basis to any qualified electing shareholder of the property received in liquidation of the shares upon which gain was recognized as provided in paragraph (d) shall be the same as the basis of such shares, decreased in the amount of any money received in liquidation and increased in the amount taxed as profit on the disposition of such shares.

(5) NONRECOGNITION OF GAIN FROM SALE OR EXCHANGE OF RESIDENCE. (a) If property in Wisconsin (hereinafter in this section called "old residence") used by the taxpayer as his principal residence is sold by him and, within a period beginning one year prior to the date of such sale and ending one year after such date, property in Wisconsin (hereinafter in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence.

(b) For the purposes of this section:

1. An exchange by the taxpayer of his residence for other property shall be considered as a sale of such residence, and the acquisition of a residence upon the exchange of property shall be considered as a purchase of such residence.

2. If the taxpayer's residence (as a result of its destruction in whole or in part, theft or seizure) is compulsorily or involuntarily converted into property or into money, such destruction, theft or seizure shall be considered as a sale of the residence; and if the residence is so converted into property which is used by the taxpayer as his residence, such conversion shall be considered as a purchase of such property by the taxpayer.

3. In the case of an exchange or conversion described in subds. 1 and 2, in determining the extent to which the selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence, the amount realized by the taxpayer upon such exchange or conversion shall be considered the selling price of the old residence.

4. A residence, any part of which was constructed or reconstructed by the taxpayer, shall be considered as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction, and improvements made which are properly chargeable to capital account, during the period specified in par. (a).

5. If a residence is purchased by the taxpayer prior to the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him prior to the date of the sale of the old residence.

6. If the taxpayer, during the period described in par. (a), purchases more than one residence which is used by him as his principal residence at some time within one year after the date of sale of the old residence, only the last of such residences used by him after the date of such sale shall constitute the new residence. If within the one year, referred to in the preceding sentence, property used by the taxpayer as his principal residence is destroyed, stolen, seized, requisitioned or condemned, or is sold or exchanged under threat or imminence thereof, then for purposes of the preceding sentence such one year shall be considered as ending with the date of such destruction, theft, seizure, requisition, condemnation, sale or exchange.

7. In the case of a new residence the construction of which was commenced by the taxpayer prior to the expiration of one year after the date of the sale of the old residence, the period specified in par. (a), and the one year referred to in subd. 6, shall be considered as including a period of 18 months beginning with the date of the sale of the old residence.

(c) The provisions of par. (a) shall not be applicable with respect to the sale of the taxpayer's residence if within one year prior to the date of such sale the taxpayer sold at a gain other property used by him as his principal residence and any part of such gain was not recognized by reason of the provisions of par. (a). For the purposes of this paragraph, the destruction, theft, seizure, requisition or condemnation of property or the sale or exchange of property under threat or imminence thereof shall not be considered as a sale of such property.

(d) Where the purchase of a new residence results, under par. (a), in the nonrecognition of gain upon the sale of an old residence, in determining the income tax basis of the new residence, as of any time following the sale of the old residence, the adjustments to basis shall include a reduction by an amount equal to the amount of the gain not so recognized upon the sale of the old residence. For this purpose, the amount of the gain not so recognized upon the sale of the old residence includes only so much of such gain as is not recognized by reason of the cost, up to such time, of purchasing the new residence.

(e) For the purposes of this section, references to property used by the taxpayer as his principal residence, and references to the residence of a taxpayer, shall include stock held by a tenant-stockholder in a co-operative apartment if:

1. In the case of stock sold, the apartment which the taxpayer was entitled to occupy as such stockholder was used by him as his principal residence, and

2. In the case of stock purchased, the stockholder used as his principal residence the apartment which he was entitled to occupy as such stockholder.

(f) For purposes of par. (e), a "tenant-stockholder" means an individual who is a stockholder in a co-operative apartment corporation, and whose stock is fully paid up in an amount not less than the amount shown to the satisfaction of the assessor of incomes, as bearing a reasonable relationship to the portion of the value of the corporation's equity in the building and the land on which it is situated which is attributable to the apartment which such individual is entitled to occupy. For purposes of par. (e), a "co-operative apartment" means a corporation—

1. Having one and only one class of stock outstanding;

2. All the stockholders of which are entitled, solely by reason of their ownership of stock in the corporation, to occupy for dwelling purposes apartments in a building owned or leased by such corporation, and who are not entitled, either conditionally or unconditionally, except upon a liquidation of the corporation, to receive any distribution not out of earnings and profits of the corporation; and

3. Eighty per cent or more of the gross income of which for the taxable year is derived from tenant-stockholders.

(g) If the taxpayer during a taxable year sells at a gain property used by him as his principal residence, then the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire prior to the expiration of 3 years from the date the department of taxation is notified by the taxpayer in writing of: (1) the taxpayer's cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain; or (2) the taxpayer's intention not to purchase a new residence within the period specified in par. (a); or (3) a failure to make such purchase within such period. Such deficiency may be assessed prior to the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(h) This provision shall be applicable in the determination of taxable income in any case in which the income year in which the old residence is sold ends on or after July 31, 1953.

History: 1951 c. 600; 1953 c. 61, 471, 528, 648.

A contribution by a corporation to a fund for enlarging 2 hospitals subscribed in response to a written solicitation asking employers to make "a gift to the community," with no provision that the employes of subscribers, or their families, would fare any differently from the general public in the enjoyment of the improvement which the subscription procured, was not deductible as an ordinary and necessary "business expense" under (2), but was deductible only as a charitable contribution under, and to the extent allowed by (7). For a contribution to be deductible as an ordinary and necessary business expense there must not only be a business motivation but there must also be a direct relationship between the expense and the anticipated return to the corporation; a charitable contribution, although motivated by reasons of good business, need not be made in contemplation of any immediate and particular return in direct proportion to the amount of the contribution; it is not the broad motivation for the contribution which determines its character as a busines expense, but rather the anticipated return to the donor resulting from the contribution. Dept. of Taxation v. Belle City M. I. Co. 258 W 101, 45 NW (2d) 68.

71.035 Exchanges and distributions in obedience to orders of securities and exchange commission. (1) NONRECOGNITION OF GAIN OR LOSS. In the case of any exchange or distribution described in paragraphs (a) to (e) herein, no gain or loss shall be recog-

nized to the extent specified in such paragraph with respect to such exchange or distribution.

(a) *Exchanges of stock or securities only.* No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the securities and exchange commission.

(b) *Exchanges and sales of property by corporations.* No gain shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the securities and exchange commission, transfers property in exchange for property, and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If any such property so received is nonexempt property gain shall be recognized unless such nonexempt property or an amount equal to the fair market value of such property at the time of the transfer is, within 24 months of the transfer, under rules prescribed by the department of taxation, and in accordance with an order of the securities and exchange commission, expended for property other than nonexempt property or is invested as a contribution to the capital, or as paid-in surplus, of another corporation, and such order recites that such expenditure or investment by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If the fair market value of such nonexempt property at the time of the transfer exceeds the amount expended and the amount invested, as required in the second sentence of this paragraph, the gain, if any, to the extent of such excess, shall be recognized. Any gain, to the extent that it cannot be applied in reduction of basis under section 71.035 (2) shall be recognized. For the purposes of this subsection, a distribution in cancellation or redemption (except a distribution having the effect of a dividend) of the whole or a part of the transferor's own stock (not acquired on the transfer) and a payment in complete or partial retirement or cancellation of securities representing indebtedness of the transferor or a complete or partial retirement or cancellation of such securities which is a part of the consideration for the transfer, shall be considered an expenditure for property other than nonexempt property, and if, on the transfer, a liability of the transferor is assumed, or property of the transferor is transferred subject to a liability, the amount of such liability shall be considered to be an expenditure by the transferor for property other than nonexempt property. This subsection shall not apply unless the transferor corporation consents, at such time and in such manner as the department of taxation may by rules prescribe, to the rules prescribed under section 71.035 (2) in effect at the time of filing its return for the taxable year in which the transfer occurs.

(c) *Distribution of stock or securities only.* If there is distributed, in obedience to an order of the securities and exchange commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(d) *Transfers within system group.* 1. No gain or loss shall be recognized to a corporation which is a member of a system group (a) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the securities and exchange commission, or (b) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the securities and exchange commission. If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of par. (a), (b) or (c), then the provisions of this paragraph only shall apply.

2. If the property received upon an exchange which is within any of the provisions of subdivision 1 of this paragraph consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the securities and exchange commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or

loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) *Exchanges not solely in kind.* 1. If an exchange (not within any of the provisions of section 71.035 (1) (d), would be within the provisions of section 71.035 (1) (a) if it were not for the fact that property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

2. If an exchange is within the provisions of section 71.035 (1) (e) 1 of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such subdivision 1 as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after January 1, 1911. The remainder, if any, of the gain recognized under such subdivision 1. shall be taxed as a gain from the exchange of property.

(f) *Application section.* The provisions of this section shall not apply to an exchange, expenditure, investment, distribution or sale unless (1) the order of the securities and exchange commission in obedience to which such exchange, expenditures, investment, distribution or sale was made recites that such exchange, expenditure, investment, distribution or sale is necessary or appropriate to effectuate the provisions of section 11 (b) of the public utility holding company act of 1935, 49 Stat. 820 (U. S. C., title 15, sec. 79k (b)), (2) such order specifies and itemizes the stock and securities and other property which are ordered to be acquired, transferred, received, or sold upon such exchange, acquisition, expenditure, distribution or sale, and, in the case of an investment, the investment to be made, and (3) such exchange, acquisition, expenditure, investment, distribution or sale was made in obedience to such order, and was completed within the time prescribed therefor.

(g) *Nonapplication of other provisions.* If an exchange or distribution made in obedience to an order of the securities and exchange commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 71.03 (3), then the provisions of this section only shall apply.

(2) BASIS FOR DETERMINING GAIN OR LOSS. (a) *Exchanges generally.* If the property was acquired upon an exchange subject to the provisions of section 71.035 (1) (a) or (e) the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 71.035 (1) (a) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it. The gain not recognized upon a transfer by reason of section 71.035 (1) (b) shall be applied to reduce the basis for determining gain or loss on sale or exchange of the following categories of property in the hands of the transferor immediately after the transfer, and property acquired within 24 months after such transfer by an expenditure or investment to which section 71.035 (1) (b) relates on account of the acquisition of which gain is not recognized under such subsection, in the following order:

1. Property of a character subject to the allowance for depreciation under section 71.04 (2);

2. Stock and securities of corporations not members of the system group of which the transferor is a member (other than stock or securities of a corporation of which the transferor is a subsidiary);

3. Securities (other than stock) of corporations which are members of the system group of which the transferor is a member (other than securities of the transferor or of a corporation of which the transferor is a subsidiary);

4. Stock of corporations which are members of the system group of which the transferor is a member (other than stock of the transferor or of a corporation of which the transferor is a subsidiary);

5. All other remaining property of the transferor (other than stock or securities of the transferor or of a corporation of which the transferor is a subsidiary).

6. The manner and amount of the reduction to be applied to particular property within any of the categories described in subdivisions 1 to 5, herein, shall be determined under rules prescribed by the department of taxation.

(b) *Transfer to corporations.* If, in connection with a transfer subject to the provisions of section 71.035 (1) (a), (b) or (e), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(c) *Distributions of stock or securities.* If the stock or securities were received in a distribution subject to the provisions of section 71.035 (1) (c), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules prescribed by the department of taxation, between such stock and the stock or securities distributed.

(d) *Transfers within system group.* If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 71.035 (1) (d) 1, then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (a) the same as in the case of the property transferred therefor, or (b) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (a) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (b) the fair market value of such stock or securities at the time of their receipt, whichever is the lower.

(3) DEFINITIONS. (a) The term "order of the securities and exchange commission" means an order issued after May 28, 1938, by the securities and exchange commission which requires, authorizes, permits or approves transactions described in such order to effectuate the provisions of section 11 (b) of the public utility holding company act of 1935, 49 Stat. 820 (U. S. C., title 15, sec. 79k (b)), which has become or becomes final in accordance with law.

(b) The terms "registered holding company," "holding-company system," and "associate company" shall have the meanings assigned to them by section 2 of the public utility holding company act of 1935, 49 Stat. 804 (U. S. C., Supp. III, title 15, sec. 79 (b), (c)).

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per cent of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only upon default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

1. At least 90 per cent of each class of the stock (other than stock which is preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

2. The common parent corporation owns directly at least 90 per cent of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

3. Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means:

1. Any consideration in the form of evidences of indebtedness owned by the trans-

feror or a cancellation or assumption of debts or other liabilities of the transferor (including a continuance of incumbrances subject to which the property was transferred);

2. Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

3. Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

4. Stock or securities which were acquired from a registered holding company or an associate company of a registered holding company which acquired such stock or securities after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in section 71.035 (3) (e) 1, 2 or 3) were acquired in obedience to an order of the securities and exchange commission or were acquired with the authorization or approval of the securities and exchange commission under any section of the public utility holding company act of 1935, 49 Stat. 820 (U. S. C., title 15, sec. 79k (b));

5. Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in section 71.035 (3) (e) 2 or 3.

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing).

History: 1951 c. 600; 1953 c. 61.

71.04 Deductions from gross income of corporations. Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions:

(1) Payments made within the year for wages, salaries, commissions and bonuses of employes and of officers if reasonable in amount, for services actually rendered in producing such income; provided, there be reported the name, address and amount paid each such employe or officer residing within this state to whom a compensation of $800 or more shall have been paid during the assessment year.

(2) Other ordinary and necessary expenses actually paid within the year out of the income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation by use, wear and tear of property from which the income is derived and in the case of mines and quarries an allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or the equivalent of cash; and including also interest and rent paid during the year in the operation of the business from which its income is derived; provided, the payor reports the amount so paid, together with the names and addresses of the parties to whom interest or rent was paid in the manner provided in section 71.10 (1).

(2a) In lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1949, the amortization deductions of any emergency facility provided in section 216 of revenue act of 1950 (section 124A of the United States internal revenue code) provided that:

(a) Written notice of election to take amortization of any emergency facility under this subsection is filed with the department of taxation on or before March 15, 1952, or on or before the filing date of the return for the first taxable year for which an election under this subsection is made with respect to such emergency facility. Such notice shall be given on such forms and in such manner as the department of taxation may by rule prescribe.

(b) The taxpayer files with the department of taxation at the time of his election under this subsection copies of certificates of necessity for such emergency facility issued by the appropriate federal certifying authority, and such other documents and data relating thereto as the department of taxation may by rule require.

(c) No deduction shall be allowed under this subsection on other than depreciable property.

(d) In no event shall amortization deductions be permitted for any period beyond that permitted by section 216 of the revenue act of 1950 (section 124A of the United States internal revenue code).

(e) Subsequent to the last amortization deduction of any emergency facility permissible under this subsection, the taxpayer shall deduct a reasonable allowance for depreciation at ordinary and usual rates on such of the depreciable emergency facilities as are continued in use in the business. The total amount of such depreciation subsequently allowable shall be limited to the unamortized balance of such facilities.

(2b) In lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1952, the owner may elect the accelerated amortization de-

duction for waste treatment plant and pollution abatement equipment purchased or constructed and installed pursuant to order or recommendation of the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (27) on any undepreciated portion of such treatment plant and equipment computed on an estimated life of 60 months.

(a) Written notice of election to take amortization of any treatment plant and pollution abatement equipment under this subsection must be filed with the department of taxation on or before the filing date of the return for the first taxable year for which such election under this subsection is made in respect to such plant and equipment. Such notice shall be given on such forms and in such manner as the department of taxation may by rule prescribe.

(b) The taxpayer shall file with the department of taxation at the time of his election under this subsection copies of recommendations, orders and approvals issued by the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (27) in respect to such treatment plant and pollution abatement equipment, and such other documents and data relating thereto as the department may by rule require.

(c) No deduction shall be allowed under this subsection on other than depreciable property, except that where wastes are disposed of through a lagoon process such lagooning costs and the cost of land containing such lagoons shall be subject to the accelerated amortization provided for under this subsection.

(d) In no event shall accelerated amortization, or depreciation and accelerated amortization deductions be permitted in excess of the cost of the asset subject to the provisions of this subsection.

(3) Taxes other than special improvement taxes paid during the year upon the business or property from which the income taxed is derived, including therein taxes imposed by the state of Wisconsin and the government of the United States as income, excess or war profits and capital stock taxes, including taxes on all real property which is owned and held for business purposes whether income producing or not, provided that such portion of the deduction for federal income and excess profits taxes as may be allowable shall be confined to cash payments made within the year covered by the income tax return, and provided further that deductions for income taxes paid to the United States government shall be limited to taxes paid on net income which is taxable under this chapter; and provided further that income taxes imposed by the state of Wisconsin shall accrue for the purpose of this subsection only in the year in which such taxes are assessed.

(3a) The deduction for all United States income, excess or war profits and defense taxes shall be limited to a total amount not in excess of 10 per cent of the taxpayer's net income of the calendar or fiscal year as computed without the benefit of the deduction for said United States income, excess or war profits and defense taxes, and before the deductions of amounts permitted by subsection (5) of this section. In no event shall any taxpayer be permitted hereunder a total deduction in excess of the actual amount of United States income, excess or war profits and defense taxes paid, and otherwise deductible.

(4) Dividends, except those provided in sections 71.03 (1) (e) and 71.03 (2) (d), received from any corporation conforming to all of the requirements of this subsection. Such corporation must have filed income tax returns as required by law and the income of such corporation must be subject to the income tax law of this state. The principal business of the corporation must be attributable to Wisconsin and for the purpose of this subsection any corporation shall be considered as having its principal business attributable to Wisconsin if 50 per cent or more of the entire net income or loss of such corporation after adjustment for tax purposes (for the year preceding the payment of such dividends) was used in computing the taxable income provided by chapter 71. If the net incomes of several affiliated corporations have been combined for the purpose of determining the amount of income subject to taxation under the statute, the location of the principal business of such group shall determine the taxable status of dividends paid, but intercompany dividends passing between affiliated corporations whose incomes are included in the taxable income of the group, shall not be assessed as group income.

(5) Contributions or gifts made within the year to the state or any political subdivision thereof for exclusively public purposes, or to any corporations, community chest fund, foundation or associations, operating within this state, organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 10 per centum of the taxpayer's net income of the calendar or fiscal year as computed without the benefit of this subsection.

(6) Amounts contributed for the given period to the unemployment reserve fund established in section 108.16 of the statutes, but not the amounts paid out of said fund.

(7) Losses actually sustained within the year and not compensated by insurance or otherwise, provided that no loss resulting from the operation of business conducted without the state, or the ownership of property located without the state, may be allowed as a deduction, and provided further that no loss may be allowed on the sale of property purchased and held for pleasure or recreation and which was not acquired or used for profit, but this proviso shall not be construed to exclude losses due to theft or to the destruction of property by fire, flood or other casualty. No deduction shall be allowed under this subsection for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within 30 days before or after the date of such sale or other disposition the taxpayer has acquired (otherwise than by bequest or inheritance) or has entered into a contract or option to acquire substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition. Reserves for contingent losses or liabilities shall not be deducted.

(8) All amounts which any assets of a bank, trust company or any corporation subject to state or federal regulations are reduced in valuation within the taxable year pursuant to direction or order of any state or federal authority having power to make such direction or order. No deduction allowed hereunder shall exceed the amount which would have been deductible had the asset been sold for an amount equal to the value to which it is written down. The amount of any deduction allowed hereunder shall reduce the cost or other basis of the asset and any amount recovered with respect to such asset which exceeds such adjusted cost or basis shall be taxed in the year in which received or accrued.

(9) The amount any asset has been charged down or off by any corporation upon the demand or order of any state or federal regulatory authority, body, agency or commission or of the examining committee of any state bank in accordance with the provisions of section 221.09 shall be allowed as a deduction from gross income if the taxpayer so elects; the taxpayer must specify whether it so elects or elects to defer the actual deduction allowable if a loss is incurred upon the liquidation of the asset or any portion thereof, but the method selected must be followed without change and notice of the election must be given the assessing authority.

(10) Amounts distributed to patrons in any year, in proportion to their patronage of the same year, by any corporation, joint stock company or association doing business on a co-operative basis (hereinafter called "company"), whether organized under chapter 185 or otherwise, shall be returned as income or receipts by said patrons but may be deducted by such company as cost, purchase price or refunds; provided that no such deduction shall be made for amounts distributed to the stockholders or owners of such company in proportion to their stock or ownership, nor for amounts retained by such company and subject to distribution in proportion to stock or ownership as distinguished from patronage.

(11) Amounts expended for the purchase of seeds and tree plants for planting, and for preparing land for planting and for planting and caring for, maintenance and fire protection of forest crops on "Forest Crop Lands" under the provisions of chapter 77, but the taxpayer may elect to defer the deduction of such amounts until the crop or the property, or any portion thereof, is sold or disposed of; except that the method so elected must be followed without change; and notice of the election of such method must be given to the assessing authority that such election is made.

(12) In computing net income no deduction shall be allowed under this section for wages, salaries, bonuses, interest or other expenses:

(a) If such items of deduction are not paid within the taxable year or within 6 months after the close thereof; and

(b) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless actually received, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(c) If, at the close of the taxable year of the taxpayer or at any time within 6 months thereafter, the person to whom the payment is to be made was an officer of such taxpayer corporation or was the owner, directly or indirectly, of more than 20 per cent of its outstanding voting stock.

History: 1951 c. 709, 720; 1953 c. 61, 183, 648.

The wisdom of a tax and the deductions that can be made in computing taxes are wholly within the province of the legislature. Household Finance Corp. v. Dept. of Taxation, 260 W 536, 51 NW (2d) 558.

A corporation paying privilege dividend taxes under 71.16, during the years 1944 to 1947, from its own funds, without withholding such taxes from the dividends declared and paid to its stockholders, could not

deduct the amount of such taxes as an "ordinary and necessary business expense" within 71.04 (3), in computing its Wisconsin income taxes; it being immaterial that the corporation might have incurred deductible expenses if it had computed and withheld the privilege dividend taxes from the dividends paid to its stockholders. (Wisconsin G. & E. Co. v. Dept. of Taxation, 243 W 216, applied.) Household Finance Corp. v. Dept. of Taxation, 260 W 536, 51 NW (2d) 558.

71.046 Depletion; mines producing ores of lead, zinc, copper or other metals except iron. (1) Beginning with the calendar year 1947 or corresponding fiscal year, in addition to other deductions allowed by ss. 71.04 and 71.05 there shall be allowed mines producing ores of lead, zinc, copper or other metals except iron, or mills finishing the products of such mines for the smelter, the following allowance for depletion:

(a) On the first $100,000 of gross income from sales of ore or ore products or any part thereof, 15 per cent;

(b) On the second $100,000 of gross income from sales of ore or ore products or any part thereof, 10 per cent;

(c) On the third $100,000 of gross income from sales of ore or ore products or any part thereof, 5 per cent;

(d) On all gross income from sales of ore or ore products in excess of $300,000, 3 per cent.

(2) In no case shall the depletion allowance provided in subsection (1) be in excess of 50 per cent of net income as computed under this chapter without the benefit of the depletion allowance provided by this section.

(3) In computing depletion allowance there shall be first deducted from gross income all sums paid for rents or royalties, or for the purchase of crude ore or concentrates.

(4) When depletion allowance is taken as a deduction pursuant to this section the savings in tax due to such depletion allowance shall be used by the taxpayer in prospecting for ore, and proof thereof duly verified shall be furnished the department of taxation.

History: 1953 c. 438.

71.05 Deductions from incomes of persons other than corporations. Persons other than corporations, in reporting incomes for purposes of taxation, shall be allowed the following deductions:

(1) Payments made within the year for wages or other compensation, if reasonable in amount, for services actually rendered in carrying on the profession, occupation or business from which the income is derived. But no deductions shall be made for any amount paid for services actually rendered in the carrying on of the profession, occupation or business from which the income is derived unless there be reported the name and address and amount paid each person to whom a sum of $700 or more shall have been paid for services during the assessment year. Except as provided in subsection (9) of this section, no deduction shall be allowed under this section for any amounts expended for personal, living or family expenses.

(2) The ordinary and necessary expenses actually paid within the year in carrying on the profession, trade or business from which the income is derived, including traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a profession, trade or business, and including also a reasonable allowance for depreciation by use, wear and tear of the property from which the income is derived, and in the case of mines and quarries an allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or the equivalent of cash. Provided, however, that no deduction shall be allowed for rent paid unless the payor reports the amount so paid together with the names and addresses of the parties to whom rent was paid. The term "profession, trade or business" shall include the performance of the functions of a public office. The term "ordinary and necessary expenses" shall include reasonable expenses for the entertainment of clients, patients or customers and the unreimbursed expenses for food, travel and lodging incurred by any employe of an employer when required to be away from home in the performance of his job.

(2a) In lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1949, the amortization deductions of any emergency facility provided in section 216 of revenue act of 1950 (section 124A of the United States internal revenue code) provided that:

(a) Written notice of election to take amortization of any emergency facility under this subsection is filed with the department of taxation before March 15, 1952, or before the filing date of the return for the first taxable year for which an election under this subsection is made with respect to such emergency facility. Such notice shall be given on such forms and in such manner as the department of taxation may by rule prescribe.

(b) The taxpayer files with the department of taxation at the time of his election under this subsection copies of certificates of necessity for such emergency facility issued

by the appropriate federal certifying authority, and such other documents and data relating thereto as the department of taxation may by rule require.

(c) No deduction shall be allowed under this subsection on other than depreciable property.

(d) In no event shall amortization deductions be permitted for any period beyond that permitted by section 216 of the revenue act of 1950 (section 124A of the United States internal revenue code).

(e) Subsequent to the last amortization deduction of any emergency facility permissible under this subsection, the taxpayer shall deduct a reasonable allowance for depreciation at ordinary and usual rates on such of the depreciable emergency facilities as are continued in use in the business. The total amount of such depreciation subsequently allowable shall be limited to the unamortized balance of such facilities.

(2b) In lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1952, the owner may elect the accelerated amortization deduction for treatment plant and pollution abatement equipment purchased or constructed and installed pursuant to order or recommendation of the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (27) on any undepreciated portion of such treatment plant and equipment computed on an estimated life of 60 months.

(a) Written notice of election to take amortization of any treatment plant and pollution abatement equipment under this subsection must be filed with the department of taxation on or before the filing date of the return for the first taxable year for which such election under this subsection is made in respect to such plant and equipment. Such notice shall be given on such forms and in such manner as the department of taxation may by rule prescribe.

(b) The taxpayer shall file with the department of taxation at the time of his election under this subsection copies of recommendations, orders and approvals issued by the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (27) in respect to such treatment plant and pollution abatement equipment, and such other documents and data relating thereto as the department may by rule require.

(c) No deduction shall be allowed under this subsection on other than depreciable property, except that where wastes are disposed of through a lagoon process such lagooning costs and the cost of land containing such lagoons shall be subject to the accelerated amortization provided for under this subsection.

(d) In no event shall accelerated amortization, or depreciation and accelerated amortization deductions be permitted in excess of the cost of the asset subject to the provisions of this subsection.

(3) Interest paid within the year on existing indebtedness; provided, the debtor reports the amount so paid, the form of the indebtedness, together with the name and address of the creditor. But no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, unless the income from such property or business would be taxable under this chapter.

(4) Taxes other than inheritance and special improvement taxes upon the property or business from which the income hereby taxed is derived paid by such persons during the year, including therein taxes imposed by the state of Wisconsin or the United States government as income taxes; provided, that such portion of the deduction for federal income taxes as may be allowable shall be confined to cash payments made within the year covered by the income tax return; and provided further, that deductions for income taxes paid to the United States government shall be limited to taxes paid on net income which is taxable under this chapter; and provided further that income taxes imposed by the state of Wisconsin shall accrue for the purposes of this subsection only in the year in which such taxes are assessed.

(4a) The deduction for all United States income, excess or war profits and defense taxes shall be limited to a total amount not in excess of 3 per cent of the taxpayer's net income of the calendar or fiscal year as computed without the benefit of the deduction of said United States income, excess or war profits and defense taxes, and before the deductions of amounts permitted by subsection (6) of this section. In no event shall any taxpayer be permitted hereunder a total deduction in excess of the actual amount of United States income, excess or war profits and defense taxes paid, and otherwise deductible.

(5) Dividends, except those provided in section 71.03 (1) (e) and (2) (d), received on or before December 31, 1951, from any corporation conforming to all of the requirements of this subsection. Such corporation must have filed income tax returns as required by law and the income of such corporation must be subject to the income tax law

of this state. The principal business of the corporation must be attributable to Wisconsin and for the purpose of this subsection any corporation shall be considered as having its principal business attributable to Wisconsin if 50 per cent or more of the entire net income or loss of such corporation after adjustment for tax purposes (for the year preceding the payment of such dividends) was used in computing the taxable income provided by chapter 71. If the net incomes of several affiliated corporations have been combined for the purpose of determining the amount of income subject to taxation under the statute, the location of the principal business of such group shall determine the taxable status of dividends paid, but intercompany dividends passing between affiliated corporations whose incomes are included in the taxable income of the group, shall not be assessed as group income.

(6) Contributions or gifts made within the year to any corporation or association organized and operated exclusively for religious purposes, to any national organization of veterans of the armed forces of the United States or subordinate unit thereof, or to the state or any political subdivision thereof for exclusively public purposes, or to any corporation, community chest fund, foundation or association operating within this state, organized and operated exclusively for charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of 10 per cent of the taxpayer's net income of the calendar or fiscal year as computed without the benefit of this subsection.

(7) Amounts contributed for the given period to the unemployment reserve fund established in section 108.16 of the statutes, but not the amounts paid out of said fund.

(8) Losses actually sustained within the year and not compensated by insurance or otherwise, provided that no loss resulting from the operation of business conducted without the state, or the ownership of property located without the state, may be allowed as a deduction, and provided further that no loss may be allowed on the sale of property purchased and held for pleasure or recreation and which was not acquired or used for profit, but this proviso shall not be construed to exclude losses due to theft or to the destruction of the property by fire, flood or other casualty. No deduction shall be allowed under this subsection for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within 30 days before or after the date of such sale or other disposition the taxpayer has acquired (otherwise than by bequest or inheritance) or has entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or other disposition. Reserves for contingent losses or liabilities shall not be deducted.

(9) With respect to determination of net taxable income for the calendar year 1953 and corresponding fiscal years, and thereafter, expenses paid during the income year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or of a dependent specified in s. 71.09 (6) (b) (regardless of the gross income of such dependent) in excess of $75 but not more than $1,500. Expenses paid for medical care under this subsection shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance).

(10) Any and all sums not to exceed $800 paid by any person by way of alimony to a former spouse under any order or decree of any court.

(11) Amounts expended for the purchase of seeds and tree plants for planting, and for preparing land for planting and for planting and caring for, maintenance and fire protection of forest crops on "Forest Crop Lands" under the provisions of ch. 77, but the taxpayer may elect to defer the deduction of such amounts until the crop or the property, or any portion thereof, is sold or disposed of; except that the method so elected must be followed without change; and notice of the election of such method must be given to the assessing authority that such election is made.

(12) For other provisions relating to deductions of estates or trusts see s. 71.08.

(13) (a) In lieu of the deductions allowed in this section for interest paid, other than interest paid on indebtedness incurred to carry on a profession or business from which taxable income is derived, Wisconsin income taxes, United States income taxes, contributions, medical expenses, dues to labor unions and professional societies and the deductions permitted in subs. (10) and (11), there shall be allowed to natural persons and guardians with adjusted gross incomes of $5,000 or more an optional standard deduction of $450 with respect to income of the calendar year 1953 or corresponding fiscal year and subsequent years. The meaning of the term "adjusted gross income" as used in this subsection shall be as defined in s. 71.09 (2m) (c).

(b) If the adjusted gross income shown on the return is $5,000 or more, but the correct adjusted gross income is less than $5,000, then an election by the taxpayer to take

the optional standard deduction shall be deemed an election by him to pay the optional tax imposed by s. 71.09 (2m).

(c) The optional standard deduction shall not be allowed to a married person whose spouse is required to file a return unless such spouse has elected to take the optional standard deduction or has elected to pay the optional tax imposed by s. 71.09 (2m) with respect to the same income year. The determination of whether an individual is married shall be made pursuant to s. 71.09 (6) (a).

(d) In the case of a taxable year of less than 12 months on account of a change in the accounting period, the optional standard deductions shall not be allowed.

(e) In the case of a taxpayer who moved into or out of the state within the income year, the optional standard deduction shall not be allowed.

Note: 71.05 (13), created by sec. 1, ch. 526, Laws 1949, is "applicable only to incomes received during the calendar year 1949 or corresponding fiscal year and to calendar years or corresponding fiscal years thereafter." See sec. 9 of said ch. 526.

(15) A member of congress representing Wisconsin shall be deemed to have his home in Wisconsin for purposes of sub. (2), but amounts expended by any such member in any income year for living expenses shall not be deductible in excess of $3,000.

History: 1951 c. 394, 593, 709, 720; 1953 c. 183, 523, 614, 648.

The general underlying purpose of 71.04 (4), Stats. 1943-1945, allowing any individual taxpayer to deduct from his gross income dividends received by him from any corporation conforming to certain requirements, was to avoid double taxation by exempting from taxation dividends of a corporation paid out of corporate earnings which were subject to Wisconsin income tax, regardless of whether the corporation was a Wisconsin corporation or a foreign corporation transacting business in the state. The requirement that "the income of such corporation must be subject to the income tax law of this state," meant that the corporation must have had income which was required to be included as gross income in its Wisconsin income-tax return which it was required to file with the department of taxation, regardless of whether or not there was net taxable income, or a net loss, for the tax year in question. If the income of a foreign, personal holding corporation was not subject to Wisconsin income tax, an individual Wisconsin taypayer receiving dividends from such foreign holding corporation would not be entitled to deduct the same from his gross income, even though the income of such foreign holding corporation consisted entirely of dividends representing a distribution of earnings of Wisconsin corporations on which such Wisconsin corporations had paid a Wisconsin income tax. Deductions and exemptions from gross income are matters of purely legislative grace, and provisions permitting them are to be strictly construed against persons claiming their applicability and in favor of the taxing authority. Cudahy v. Dept. of Taxation, 261 W 126, 52 NW (2d) 467.

71.06 Business loss carry forward. If a taxpayer in any year subsequent to the year 1932, sustains a net business loss, such loss, to the extent not offset by other items of income of the same year, may be offset against the net business income of the subsequent year and, if not completely offset by the net business income of such year, the remainder of such net business loss may be offset against the net business income of the following year. For the purposes of this section, net business income shall consist of all the income attributable to the operation of a trade or business regularly carried on by the taxpayer, less the deduction of business expenses allowed in sections 71.04 and 71.05.

71.07 Situs of income; allocation and apportionment. (1) For the purposes of taxation income from mercantile or manufacturing business, not requiring apportionment under section 71.07 (2) shall follow the situs of the business from which derived. Income derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived. All other income, including royalties from patents, income derived from personal services, professions and vocations and from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall follow the residence of the recipient, except as provided in section 71.08.

(2) Persons engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such person within the state is not an integral part of a unitary business, provided, however, that the department of taxation may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: There shall first be deducted from the total net income of the taxpayer such part thereof (less related expenses, if any) as follows the situs of the property or the residence of the recipient; provided, that in the case of income which follows the residence of the recipient, the amount of interest and dividends deductible under this provision shall be limited to the total interest and dividends received which are in excess of the total interest (or related expenses, if any) paid and allowable as a deduction under section 71.04 during the income year. The remaining

net income shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

1. The ratio of the tangible property, real, personal and mixed, owned and used by the taxpayer in Wisconsin in connection with his trade or business during the income year to the total of such property of the taxpayer owned and used by him in connection with his trade or business everywhere. Cash on hand or in the bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, good will, or property the income of which is not taxable or is separately allocated, shall not be considered tangible property nor included in the apportionment.

2. In the case of persons engaged in manufacturing or in any form of collecting, assembling or processing goods and materials within this state, the ratio of the total cost of manufacturing, collecting, assembling or processing within this state to the total cost of manufacturing, or assembling or processing everywhere. The term "cost of manufacturing, collecting, assembling, or processing within this state and everywhere", as used herein, shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the department of taxation the peculiar circumstances in any case justifies a different treatment, this term shall be generally interpreted to include as elements of cost within this state the following:

a. The total cost of all goods, materials and supplies used in manufacturing, assembling or processing within this state regardless of where purchased.

b. The total wages and salaries paid or incurred during the income year in this state in such manufacturing, assembling or processing activities.

c. The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling, or processing activities within this state.

3. In the case of trading, mercantile or manufacturing concerns the ratio of the total sales made through or by offices, agencies or branches located in Wisconsin during the income year to the total net sales made everywhere during said income year.

(3) Where, in the case of any person engaged in business within and without the state of Wisconsin and required to apportion his income as herein provided, it shall be shown to the satisfaction of the department of taxation, that the use of any one of the 3 ratios above provided for gives an unreasonable or inequitable final average ratio because of the fact that such person does not employ, to any appreciable extent in his trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this ratio may, with the approval of the department of taxation, be omitted in obtaining the final average ratio which is to be applied to the remaining net income.

(4) As used in this section the word "sales" shall extend to and include exchange, and the word "manufacturing" shall extend to and include mining and all processes of fabricating or of curing raw materials.

(5) If the income of any such person properly assignable to the state of Wisconsin cannot be ascertained with reasonable certainty by either of the foregoing methods, then the same shall be apportioned and allocated under such rules and regulations as the department of taxation may prescribe.

(6) Liability to taxation for income which follows the residence of the recipient, in the case of persons other than corporations, who move into or out of the state within the year, shall be determined for such year on the basis of the income received (or accrued, if on the accrual basis) during the portion of the year that any such person was a resident of Wisconsin. The deductions for personal exemptions provided for in section 71.09 (6) shall be prorated on the basis of the time of residence within and without the state. The net income of such person assignable to the state for such year shall be used in determining the income subject to assessment under this chapter.

History: 1951 c. 720.

Where the income of a foreign, personal holding corporation, all derived from intangible personal property, followed the residence of such recipient under provisions in 71.02 (3) (c), Stats. 1943-1945, and was therefore not subject to Wisconsin income tax, because 71.02 (3) (e), declaring any foreign corporation carrying on its principal business in Wisconsin to be a resident of Wisconsin for income-tax purposes, was unconstitutional and inapplicable to make such income subject to Wisconsin income tax, an individual Wisconsin taxpayer was not entitled under 71.04 (4), Stats. 1943-1945, to deduct from his gross income dividends received by him from such foreign holding corporation in the years 1942 to 1945. 71.02 (3) (e) repealed by ch. 557, Laws 1947, as "unconstitutional" apparently because the legislature had become apprised of adverse decisions of the supreme court thereon, was totally unconstitutional and void, and not merely unconstitutional as applied to the fact situations involved in such decisions. Cudahy v. Dept. of Taxation, 261 W 126, 52 NW (2d) 467.

Where, despite the fact that 71.02 (3) (e), Stats. 1945, had been held unconstitutional by a decision of the supreme court, the department of taxation accepted income-tax returns of a foreign, personal holding corporation as though it were a Wisconsin corporation subject to Wisconsin income tax, and an individual taxpayer, Wisconsin resident and sole stockholder, deducted from his gross income dividends received by him

from such foreign holding corporation in the years 1942 to 1945, which he might have been entitled to do if its income had been subject to Wisconsin income tax, the fact that, in reliance on the department's erroneous ruling, he may have refrained from reincorporating such foreign holding corporation as a Wisconsin corporation did not estop the department from subsequently levying an income tax against him on such dividends. (Libby, McNeill & Libby v. Dept. of Taxation, 260 W 551, distinguished.) Cudahy v. Dept. of Taxation, 261 W 126, 52 NW (2d) 467.

Where 71.02 (3) (e), Stats. 1927-1945, was repealed by ch. 557, Laws 1947, as "unconstitutional" apparently because the legislature was apprised of adverse decisions of the supreme court thereon, the court deems itself foreclosed from taking a position that 71.02 (3) (e) might be construed to be valid as to one fact situation and invalid as to another. Accordingly, income of a foreign investment company, all derived from intangible personal property, followed the residence of such recipient under provisions in 71.02 (3) (c) and was therefore not subject to Wisconsin income tax, regardless of whether the securities dealt in by such foreign corporation may have had a "business situs" in Wisconsin by reason of its carrying on its business therein. Hence, individual Wisconsin taxpayers were not entitled under 71.04 (4), Stats. 1943-1945, to deduct from their gross income dividends received by them from such foreign investment corporation in the years 1942 to 1945. Smith v. Dept. of Taxation, 261 W 143, 52 NW (2d) 475.

71.08 Fiduciaries; returns and assessments. (1) Every executor and administrator shall file an income tax return with the assessor of incomes of the county in which the decedent resided at the time of his death, or in the county in which the executor or administrator resides if the decedent was a nonresident, in all cases where the decedent, if living, would have been required to file such return, and shall so file such return, if notified by the assessor of incomes to make a report to him. Such executor or administrator shall include in such return:

(a) All income received by the decedent during that portion of the year covered by the return preceding the demise of the decedent.

(b) All receipts by him from the estate of the deceased during the year covered by the return, if such receipts would have been taxable as income to the decedent, had he survived.

(3) The first return of an executor or administrator shall be filed in the form and manner and within the time that a return should have been filed by the decedent had he survived. Subsequent returns of such executor or administrator shall be filed in the form and within the time that the returns of income are required from persons other than corporations. The first return of such executor or administrator shall include the income received by the decedent during the portion of the year preceding the demise of deceased and also items specified in s. 71.08 (1). In computing the net income of an estate, a deduction shall be allowed for amounts paid as premium on fidelity bonds of the executor or administrator.

(4) The same personal exemption shall be deducted from the tax of the executor or administrator as would have been deductible from the tax of the decedent under s. 71.09 (6) had he survived and made the return, except that,

(a) No personal exemption under ss. 71.09 (6) (a) and 71.09 (6) (c) for the decedent or his spouse shall be allowed for any year other than the year of death, except as provided in subs. (b) or (c).

(b) If, had decedent lived, he would have been entitled to an exemption for his spouse, pursuant to s. 71.09 (6) (a) or to an exemption for a dependent pursuant to s. 71.09 (6) (b), such exemption shall be allowed to the executor or administrator so long as over half of the support of the spouse or dependent is supplied by the decedent or the executor or administrator from decedent's estate and the gross income of the spouse or dependent for the calendar year in which the taxable year of the executor or administrator begins is less than $600.

(c) If the decedent was a married person at the date of his demise and if in any year subsequent to the year of decedent's death his widow is a head of a family within the meaning of s. 71.09 (6) (c), if such widow does not take a head of family exemption on her individual return, the head of family exemption may be taken on the return of the executor or administrator of decedent.

(d) If the decedent was a ward, the return of the administrator or executor for the year of death shall include all of the income includible in a return by a guardian during the portion of the year preceding the demise of deceased and also such other income as is includible in the return of an administrator or executor. If a personal exemption is allowable on a return by the guardian for the same income year, the same personal exemption shall be allowed on the return of the executor or administrator, and any tax paid by the guardian shall be allowed as a credit against the tax payable by the executor or administrator.

(6) The assessor of incomes shall certify the tax on the income of any decedent or on the income of his executor or administrator, as other taxes are certified, and the executor or administrator shall pay such tax when due.

(7) (a) *When guardians must report.* A guardian of the property of a ward, appointed pursuant to ch. 319, shall make an annual return of income of the ward (when required by s. 71.10 (2)) to the assessor of incomes of the county in which the ward resides, which return shall be made at the same time as returns of persons other than corporations are made.

(b) *Net income to be reported.* The net income of the ward to be reported by the guardian shall be ascertained in the same manner as the income of other persons is ascertained so as to submit to taxation both the earned income and unearned income of such ward.

(c) *Personal exemptions in guardianship cases.* The personal exemption allowable to the guardian shall be the same as would have been allowable to the ward had he made the return.

(8) Trustees of trust estates created by will or by contract or by declaration of trust or implication of law shall annually make a return of all income received by them as such to the assessor of incomes of the county in which the trust or estate is being administered, showing the total taxable income received by them during the year, the names and addresses of distributees and the amounts severally distributable to them whether distributed or not, and also the amounts to be accumulated by them for unknown or unborn or undisclosed beneficiaries or for other reasons. The net income received by such trustees shall be ascertained in the same manner as the net income of persons other than corporations, except that the personal exemptions under s. 71.09 (6) (a), (b) and (c) shall not be allowed to such trustee. Distributees who receive or who are entitled to receive any part of such net income shall return the same as income to the assessor of incomes in the district in which they respectively reside, together with all other income received by them and shall be assessed thereon as provided by this chapter. Such of said distributees as are nonresidents of this state shall be assessed on such income as they receive from the trust estate as the income of nonresidents is assessed. No personal exemption shall be allowed either resident or nonresident distributees unless they make a claim therefor in their income tax returns made in accordance with the terms of this act showing the total net income.

(9) All nondistributable or contingently distributable income not distributed shall be assessed to the trustee in the same manner as income of persons other than corporations is assessed, except that the personal exemptions under section 71.09 (6) shall not be allowed to such trustee. There shall be exempt from such taxation any part of the gross income, without limitation, which pursuant to the terms of the will, deed or other trust instrument creating the trust, is during the taxable year permanently set aside to be used exclusively by or for the state of Wisconsin or any city, village, town, county or school district therein or any agency of any of them or any corporation, community chest fund, foundation or association operating within this state, organized and operated exclusively for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual. Such exemption shall be operative retroactively except in those instances in which an assessment has become final and conclusive under the provisions of chapter 71.

(10) All income taxes levied against the income of beneficiaries shall be a lien on that portion of the trust estate or interest therein from which the income taxed is derived, and such taxes shall be paid by the fiduciary, if not paid by the distributee, before the same becomes delinquent. Every person who as a fiduciary under the provisions of this chapter pays an income tax, shall have all the rights and remedies of reimbursement for any taxes assessed against him or paid by him in such capacity, as is provided in section 70.19 (1) and (2).

(11) An executor, administrator, guardian or trustee applying to a court having jurisdiction for a discharge from his trust and a final settlement of his accounts, before his application shall be granted, shall file with the assessor of incomes of the county in which the trust or estate is being administered returns of income received in his representative capacity not previously filed and a return for the period between the close of the preceding income year and the date of his application for discharge, and also, in the case of an executor, administrator or guardian, returns of income received by the deceased, the ward or a prior guardian during each of the years open to audit under section 71.11 (21) if such returns have not heretofore been filed. Upon receipt of such returns, the assessor of incomes shall immediately determine the amount of taxes to become due and shall certify such amount to the court and the court shall thereupon enter an order directing the executor, administrator, trustee or guardian, as the case may be, to pay to the department of taxation the amount of tax, if any, found due by the assessor of incomes, and take his receipt therefor. The receipt of the department of taxation shall be evidence of the pay-

ment of the tax and shall be filed with the court before a final distribution of the estate is ordered, and the executor, administrator, trustee or guardian is discharged. Any taxes found to be due from the estate for any of the years open to audit under section 71.11 (21) shall be assessed against and paid by the executor or administrator; any taxes found to be due after the executor or administrator is discharged shall be assessed against and paid by the beneficiaries in the same ratio that their interest in the estate bears to the total estate.

(12) Returns of income required to be made by virtue of the next preceding subsection may be dispensed with by order of the court having jurisdiction in cases where it is clearly evident to the court that no income tax is due or to become due from the trust or estate. In computing the net income of a trust under will or a trust under agreement, a deduction shall be allowed for the fees and the commissions paid to the trustees, and for the ordinary and necessary expenses of administering the trust.

(13) A resident who receives income from a nonresident fiduciary shall be taxed the same as though such income had been received by such resident without the intervention of a fiduciary; and a resident fiduciary receiving income for a nonresident beneficiary shall report such income to the assessor of incomes of the district in which such fiduciary resides.

History: 1951 c. 720; 1953 c. 614.

Under a testamentary trust containing no direction for setting aside income, no part of the yearly income of the trust remaining undistributed in the hands of the trustees after the annual payment to the life beneficiary is exempt from taxation, as trust income "permanently set aside pursuant to the terms of the will" for the charitable legatees, since, until the contingencies on which some of the charitable bequests depend are resolved, it cannot be ascertained what amounts will ultimately reach the respective charitable legatees, even though the income and other property held by the trustees may be sufficient to pay all the other legacies. Coulter v. Dept. of Taxation, 259 W 115, 47 NW (2d) 303.

71.09 Rates of taxation, interest and personal exemptions. (1) The tax to be assessed, levied and collected upon the taxable incomes of all persons other than corporations, for calendar years prior to and including the calendar year 1952, and corresponding fiscal years, but not thereafter, shall be computed at the following rates, to wit:

(a) On the first $1,000 of taxable income or any part thereof, at the rate of one per cent.
(b) On the second $1,000 or any part thereof, 1¼ per cent.
(c) On the third $1,000 or any part thereof, 1½ per cent.
(d) On the fourth $1,000 or any part thereof, 2 per cent.
(e) On the fifth $1,000 or any part thereof, 2½ per cent.
(f) On the sixth $1,000 or any part thereof, 3 per cent.
(g) On the seventh $1,000 or any part thereof, 3½ per cent.
(h) On the eighth $1,000 or any part thereof, 4 per cent.
(i) On the ninth $1,000 or any part thereof, 4½ per cent.
(j) On the tenth $1,000 or any part thereof, 5 per cent.
(k) On the eleventh $1,000 or any part thereof, 5½ per cent.
(l) On the twelfth $1,000 or any part thereof, 6 per cent.
(m) On any sum of taxable income in excess of $12,000, 7 per cent.

(2) The taxes to be assessed, levied and collected upon the taxable incomes of corporations for calendar years prior to and including the calendar year 1952, and corresponding fiscal years, but not thereafter, shall be computed at the following rates, to wit:

(a) On the first $1,000 of taxable income or any part thereof, 2 per cent.
(b) On the second $1,000 or any part thereof, 2½ per cent.
(c) On the third $1,000 or any part thereof, 3 per cent.
(d) On the fourth $1,000 or any part thereof, 3½ per cent.
(e) On the fifth $1,000 or any part thereof, 4 per cent.
(f) On the sixth $1,000 or any part thereof, 5 per cent.
(g) On the seventh $1,000 or any part thereof, 6 per cent.
(h) On all taxable income in excess of $7,000, 6 per cent.

(1a) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the calendar year 1953 and corresponding fiscal years, and for calendar and fiscal years thereafter, shall be computed at the following rates, to wit:

(a) On the first $1,000 of taxable income or any part thereof, at the rate of one per cent.
(b) On the second $1,000 or any part thereof, 1¼ per cent.
(c) On the third $1,000 or any part thereof, 1½ per cent.
(d) On the fourth $1,000 or any part thereof, 2½ per cent.
(e) On the fifth $1,000 or any part thereof, 3 per cent.
(f) On the sixth $1,000 or any part thereof, 3½ per cent.

(g) On the seventh $1,000 or any part thereof, 4 per cent.
(h) On the eighth $1,000 or any part thereof, 5 per cent.
(i) On the ninth $1,000 or any part thereof, 5½ per cent.
(j) On the tenth $1,000 or any part thereof, 6 per cent.
(k) On the eleventh $1,000 or any part thereof, 6½ per cent.
(l) On the twelfth $1,000 or any part thereof, 7 per cent.
(m) On the thirteenth $1,000 or any part thereof, 7½ per cent.
(n) On the fourteenth $1,000 or any part thereof, 8 per cent.
(o) On all taxable income in excess of $14,000, 8½ per cent.

(2a) The taxes to be assessed, levied and collected upon taxable incomes of corporations for the calendar year 1953 and corresponding fiscal years and for calendar and fiscal years thereafter shall be computed at the following rates, to wit:

(a) On the first $1,000 of taxable income or any part thereof, 2 per cent.
(b) On the second $1,000 or any part thereof, 2½ per cent.
(c) On the third $1,000 or any part thereof, 3 per cent.
(d) On the fourth $1,000 or any part thereof, 4 per cent.
(e) On the fifth $1,000 or any part thereof, 5 per cent.
(f) On the sixth $1,000 or any part thereof, 6 per cent.
(g) On all taxable income in excess of $6,000, 7 per cent.

(2m) (a) In lieu of the taxes on net taxable incomes computed at the rates applicable to persons other than corporations, prescribed by ch. 71, an optional tax is imposed on adjusted gross income in an amount determined from the table prescribed in par. (d). Such optional tax basis may be elected only by natural persons and guardians with respect to income of the calendar year 1953 or corresponding fiscal year, and subsequent years and under the following conditions:

1. Such person's adjusted gross income for the income year must be less than $5,000.
2. The taxable year of such person may not, by reason of a change in the accounting period, cover less than 12 months.
3. If such person is married and such person's spouse is required to file a return, then the spouse must have elected either to pay the optional tax imposed by s. 71.09 (2m) or to have taken the optional standard deduction provided in s. 71.05 (13) (a), with respect to the same income year. The determination of whether an individual is married shall be made pursuant to s. 71.09 (6) (a).
4. Such person must not have moved into or out of the state within the income year.

(b) The election herein provided may be made annually by the filing of a return on the optional tax basis at the time and in the manner provided by this chapter. If the adjusted gross income shown on a return filed on the optional tax basis is less than $5,000, but the correct adjusted gross income is $5,000 or more, then the election by the taxpayer to pay the optional tax imposed by par. (a) shall be deemed an election by him to take the optional standard deduction. When both husband and wife have elected to file on one or the other of the bases provided in ss. 71.05 (13) and 71.09 (2m), or one files on one of such bases and the other on the other, neither may change such election in favor of an itemization of deductions unless the other also changes his election in favor of an itemization of deductions.

(c) The term adjusted gross income as used in this subsection means the sum of the items of income enumerated in ss. 71.03 (1) and 71.08 (8) and not exempted under ss. 71.01 (3), 71.03 (2) and 71.07 (1), minus the deductions allowed by ss. 71.046, 71.05 (1) to (11) and 71.06, except the following, which, with certain limitations, are deductible in determining net taxable income other than on the optional basis:

1. Income taxes imposed by the state of Wisconsin or the United States government.
2. Medical expenses.
3. Interest paid, other than that paid on indebtedness incurred to carry on a profession or business from which taxable income is derived.
4. Contributions.
5. Alimony.
6. Amounts expended for purposes covered by s. 71.05 (11).
7. Dues to unions or professional societies.

(d) The commissioner of taxation is authorized and directed to prepare a table from which the optional tax specified in par. (a) shall be determined. Such table shall be published in the department's official rules and be placed on the appropriate tax blanks. The form and the tax computations of said table shall be substantially as follows:

1. The title thereof shall be "Optional Tax Table."
2. The first 2 columns shall contain the minimum and the maximum amounts respectively of the adjusted gross income in brackets of not more than $100, and extending to include the maximum amount reportable under par. (a) 1.

3. The third column shall show the amount of the tax payable for each bracket by a person who claims no personal exemption or exemption for dependents. Said tax shall be computed at the rates provided in ch. 71 for all taxes and surtaxes on net income of persons other than corporations, which rate shall be applied to the amount of income at the middle of each bracket after deducting from such amount 9 per cent thereof. The amount of tax for each bracket shall be computed only to the nearest 10 cents.

4. Columns shall be provided showing the amount of tax payable for each bracket by persons claiming up to 8 exemptions. The amounts of such tax shall be computed by deducting from the amounts shown in column 3, $7 for each exemption. Specific directions, consistent with the provisions of this section, shall be provided in the form of footnotes to the tax table for the computation of taxes of persons claiming more than 8 exemptions. As used in this subsection or in the table provided pursuant to this subsection, the terms "exemptions," "each exemption," or "number of exemptions" mean the number of exemptions allowed under s. 71.09 (6) as deductions in computing the normal income tax.

(e) All the provisions of ch. 71 not in conflict with the provisions of this subsection shall be applicable to the optional tax imposed by this subsection.

(f) The proper division of the optional tax, assessed and collected in lieu of the normal income tax and any other tax or surtax on net income, shall be made as between such taxes by the department of taxation.

(3) The surtax imposed by section 71.01 (2) (a) shall be computed as follows: From the normal tax computed pursuant to subsection (1) of this section, deduct the exemption provided for in section 71.09 (6) or 71.08 and $37.50, and divide the remainder by 6.

(4) The surtax imposed by section 71.01 (2) (b) shall be computed as follows: From the normal tax computed pursuant to subsection (2) of this section, deduct $75 and divide the remainder by 6.

(5) (a) In assessing additional taxes interest shall be added to such taxes at the following rates per annum from the date on which such additional taxes if originally assessed would have become delinquent if unpaid, to the date on which such additional taxes when subsequently assessed will become delinquent if unpaid: 5 per cent on additional taxes assessed within the 4-year period provided by section 71.11 (21) (b); 5 per cent on additional taxes assessed within the period provided by section 71.11 (21) (g); and 5 per cent on additional taxes assessed pursuant to section 71.11 (21) (c).

(b) In crediting overpayments of income and surtaxes against underpayments or against taxes to be subsequently collected and in certifying refunds of such taxes interest shall be added at the following rates per annum from the date on which such taxes when assessed would have become delinquent if unpaid to the date on which such overpayment was certified on the refund roll: 5 per cent on credits and refunds made within the 4-year period provided by section 71.10 (10) (b).

(6) There may be deducted from the tax, after the same shall have been computed according to the rates in s. 71.09, personal exemptions for natural persons as follows:

(a) An exemption of $7 for the taxpayer; and an additional exemption of $7 for the spouse of the taxpayer, to the extent that such additional $7 exemption is not used as a deduction from the separate tax of the spouse, and provided that such spouse is not a dependent of another taxpayer. The determination of whether an individual is married shall be made as of the close of his taxable year, unless his spouse dies during his taxable year, in which case such determination shall be made as of the time of such death. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) An exemption of $7 for each dependent whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $600. As used in this subsection, the term "dependent" means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

1. A son or daughter of the taxpayer, or a descendant of either.
2. A stepson or stepdaughter of the taxpayer.
3. A brother, sister, stepbrother or stepsister of the taxpayer.
4. The father or mother of the taxpayer, or an ancestor of either.
5. A stepfather or stepmother of the taxpayer.
6. A son or daughter of a brother or sister of the taxpayer.
7. A brother or sister of the father or mother of the taxpayer.
8. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer. As used herein the terms "brother" and "sister" include a

brother or sister by the half-blood. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such person by blood. The term "dependent" does not include any individual who is domiciled in a state other than Wisconsin unless such person is a resident of Wisconsin within the meaning of s. 71.01. The relationship of affinity once existing will not be terminated by divorce or death of a spouse.

(c) An additional exemption of $7 for a head of a family. For purposes of this subsection, " a head of a family" shall mean a taxpayer deemed not married for purposes of par. (a) who maintained a household and supported therein himself and at least one other individual with respect to which individual the taxpayer was entitled to an exemption under par. (b).

(d) A married person reporting income for taxation on the optional basis provided by s. 71.09 (2m) must claim either all or none of each personal exemption provided by pars. (a), (b) or (c) and his tax will be determined accordingly from the optional tax table.

History: 1951 c. 720; 1953 c. 614.

Cross Reference: Ch. 9, Laws 1930, amending 71.05 (2) (e), applies to all taxes assessed in respect to income of 1938 and subsequent years; see sec. 2 of said act.

Note: The changes made in 71.09 by ch. the calendar year 1949 and subsequent 526, Laws 1949, "apply only to returns for years." See sec. 9 of said ch. 526.

71.10 Filing returns; payment of tax; tax refunds and credits. (1) Every corporation, whether taxable under this chapter or not, shall furnish to the department of taxation a true and accurate statement, on or before March 15 of each year (except that returns for fiscal years ending on some other date than December 31, shall be furnished on or before the fifteenth day of the third month following the close of such fiscal year) in such manner and form and setting forth such facts as said department shall deem necessary to enforce the provisions of this chapter. Such statement shall be subscribed by the president, or vice president or other principal officer and the treasurer, assistant treasurer or chief accounting officer of said corporation, and in the case of corporations in liquidation or in the hands of a receiver such return shall be subscribed by the person responsible for the conduct of the affairs of such corporation. All corporations doing business in this state shall also file with the department of taxation on or before March 15 of each year on forms prescribed by the department of taxation, a statement of such transfers of its capital stock as have been made by or to residents of this state during the preceding calendar year. Such schedule shall contain the name and address of the seller and the purchaser, date of transfer, and the number of shares of stock transferred; and such corporation shall also file with the department of taxation on or before March 15 of each year any information relative to payments made within the preceding calendar year to residents of this state of salaries, wages, fees, rents, royalties, interest, dividends and liquidating dividends in amounts and in the manner and forms prescribed by the department of taxation; provided such corporation may upon notifying the department of taxation report salaries, wages and fees on the accrual basis for the calendar year 1939 and thereafter.

(2) Every person other than a corporation, having for the calendar year a gross income of $600 or more and every married person receiving any net income during the year when the combined net incomes of such married person and his or her spouse is $1,400 or more shall report the same on or before March 15 following the close of such year (or when such person's fiscal year is other than the calendar year, then on or before the fifteenth day of the third month following the close of such fiscal year) to the assessor of incomes, in the manner and form prescribed by the department of taxation, whether notified to do so or not, and shall be subject to the same penalties for failure to report as those who receive notice. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. Nothing contained in this subsection shall preclude the assessor of incomes from requiring any person other than a corporation to file an income tax return when in the judgment of the assessor of incomes a return should be filed.

(3) (a) Every partnership shall furnish to the assessor of incomes a true and accurate statement, on or before March 15 of each year, except that returns for fiscal years ending on some other date than December 31, shall be furnished within 75 days after the last day of such fiscal year, in such manner and form and setting forth such facts as the department of taxation shall deem necessary to enforce the provisions of this chapter. Such statement shall be subscribed by one of the members of said partnership.

(b) The net income of the partnership shall be computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations.

(c) Partners shall file their returns on the basis of a fiscal or calendar year which coincides with that upon which the partnership return is filed, except when the department of taxation or assessor of incomes, for good cause shown, authorizes or directs filing on a different basis. Persons who are partners in more than one partnership shall file their returns on the basis of a fiscal or calendar year which coincides with that upon which the returns of one such partnership is filed, except that the department of taxation or assessor of incomes may direct filing on a different basis in such cases.

(3m) (a) Except as provided in section 71.10 (3) (c) a taxpayer may not change his basis of reporting from a calendar year to a fiscal year, from a fiscal year to a calendar year, or from one fiscal year to another without first obtaining the approval of the commissioner of taxation or the assessor of incomes.

(b) If a taxpayer, as required pursuant to section 71.10 (3) (c), or otherwise with the approval of the commissioner or the assessor of incomes, changes his basis of reporting from a calendar year to a fiscal year a separate return shall be made for the period between the close of the last calendar year and the date designated as the close of the fiscal year. If the change is from a fiscal year to a calendar year, a separate return shall be made for the period between the close of the last fiscal year and the following December 31. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. In no case shall a separate income tax return be made for a period of more than 12 months.

(c) When a separate income tax return is made for a fractional part of a year the income shall be computed and reported on the basis of the period for which the separate return is made, and such fractional part of a year shall constitute an income year.

(d) If a separate income tax return is made for a short period under sub. (b) on account of a change in the income year, the net income for such short period shall be placed on an annual basis by multiplying the amount thereof by 12 and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis (after deduction of any personal exemptions allowable under s. 71.09) as the number of months in such short period is of 12 months. If the individual's personal exemption status changed during the short period, such status shall be determined as of the end of such short period.

(4) In their return for purposes of assessment persons deriving incomes from within and without the state, or from more than one political subdivision of the state, shall make a separate accounting of the income derived from without the state and from each political subdivision of the state in such form and manner as the department of taxation may prescribe.

(5) In case of neglect occasioned by the sickness or absence of a person, or of an officer of any corporation required to file a return, or for other sufficient reason, the department of taxation in the case of corporations and the assessor of incomes in the case of persons other than corporations may on written request allow such further time for making and delivering such return as they may deem necessary not to exceed 30 days. Income taxes payable upon the filing of the tax return shall not become delinquent during such extension period, but shall be subject to interest at the rate of 5 per cent per annum during such period. The granting of any extension of time for filing and return shall not serve to extend the discount date provided by section 71.10 (9) (c).

(6) (a) An extension of time for filing a return of income for the calendar or corresponding fiscal year 1950, 1951 or 1952 shall be granted to any person in the armed forces of the United States who is located beyond the borders of the United States on the first day following the close of his income year or on the fifteenth day of the third month following the close of such year. The return of such person shall be filed 6 months after termination of such person's military service but in no event later than the fifteenth day of the sixth month following the close of such person's 1952 calendar or corresponding fiscal year. No interest or penalties shall be imposed during any extension period provided for in this paragraph.

(ab) An extension of time for filing a return of income for the calendar or corresponding fiscal year 1953 and 1954 shall be granted to any person in the armed forces of the United States who is located beyond the borders of the United States on the first day following the close of his income year or on the fifteenth day of the third month following the close of such year. The return of such person shall be filed 6 months after termination of such person's military service but in no event later than the fifteenth day of the sixth month following the close of such person's 1954 calendar or corresponding fiscal year. No interest or penalties shall be imposed during any extension period provided for in this paragraph.

(am) An extension of time for filing returns of income for the calendar year 1949 or corresponding fiscal year, shall be granted to all persons in the armed forces of the United States who are located beyond the borders of the United States, for a period up to and including the fifteenth day of the sixth month following the close of said year. The returns of income of any such person for the years 1942 to 1948, inclusive, shall be filed within 6 months after the termination of his military service but in no event shall such returns be filed later than June 15, 1950.

(b) An extension of time for filing returns of income for all taxable years begun after December 31, 1941, shall be granted to any person residing or traveling abroad on duty for the United States or any department thereof or for the American Red Cross, for a period up to and including the 15th day of the 6th month following the close of the taxable year.

(7) Each person, firm or corporation except farmers and wholesalers subject to section 78.66 required under this chapter to file a return of income in which inventories are a factor shall file for each taxing district on a form to be provided by the department of taxation the following information: (a) the inventory at the beginning and at the end of the fiscal year; (b) the total of merchandise purchased during the year; and (c) the total sales during the year. Failure of any person to file the information required by this subsection shall be deemed a failure to file a return and subject such person to the penalties provided in section 71.11 (40) and in addition such person shall be denied any right of abatement by the board of review on account of the assessment of such personal property unless such person, firm or corporation shall make such return to such board of review together with a statement of the reasons for the failure to make and file the return in the manner and form required by this section. Such information shall be forwarded by the department on or before May 1 to the assessor in the local taxation district concerned.

(9) All income taxes shall be paid to the department of taxation. Income taxes payable by corporations shall be paid to the department of taxation at its office at Madison and income taxes payable by persons other than corporations shall be paid to designated representatives of the department of taxation located at the office of the assessor of incomes for the district in which the taxpayer resides.

(a) With respect to the payment of taxes on income of the calendar year 1953 and corresponding fiscal years, and thereafter, the initial payment of taxes on incomes of persons who file on a calendar year basis shall be paid on or before March 15 following the close of the calendar year. Such initial payment shall be in the amount equal to at least one-third the total tax, and shall not be less than $20 if the total tax exceeds $20, nor less than the total amount of the tax if the same does not exceed $20. The balance of such tax shall be paid on or before August 1 following the close of the calendar year.

(b) If the return is made on the basis of a fiscal year such initial payment shall be paid on or before the fifteenth day of the third month following the close of such fiscal year. The balance shall be paid on or before the first day of the eighth month following the close of such fiscal year.

(c) Any person not paying his tax in full on or before the fifteenth day of the third month following the close of his income year is required to add to the amount not paid on or before such date, 2 per cent of such amount, which 2 per cent shall become due and payable at the time such unpaid balance becomes due and payable and shall be deemed a part of such unpaid balance.

(d) Back assessments of income taxes omitted from initial rolls and additional income taxes assessed under section 71.11 (16) and (20) shall become due and payable on entry upon the assessment roll.

(e) The department of taxation shall accept in advance income taxes and surtaxes from taxpayers desirous of making such payments before the same shall become due and payable. Advance payment of taxes under this provision shall not relieve the taxpayer from additional taxes which may result from subsequent legislation or from additional taxable income disclosed or discovered subsequent to such payment.

(f) Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child. All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of the preceding sentence shall be deemed to have been paid or incurred by the child. For the purposes of this subsection, the term "parent" includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child. Any tax assessed against the child, to the extent attributable to amounts includible in the gross income of the child and not of the parent solely by reason

of the first sentence of this subsection shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(10) (a) The provisions for refunds and credits provided in this subsection shall be the only method for the filing and review of claims for refund of income and surtaxes, and no person shall be allowed to bring any action or proceeding whatever for the recovery of such taxes other than is provided in this subsection.

(b In accordance with the provisions of and subject to the limitations of this subsection, refunds or credits may be made of income taxes and surtaxes assessed on incomes received in any one or more of the 4 calendar or fiscal years next preceding that in which the claim therefor is filed.

(d) No refund shall be made and no credit shall be allowed on any item of income or deduction, assessed as a result of an office audit, the assessment of which shall have become final and conclusive under the provisions of section 71.12 (1), 71.12 (3), 73.01 or 73.015; and no refund shall be made and no credit shall be allowed for any year, the income of which was assessed as a result of a field audit, and which assessment has become final and conclusive under the provisions of section 71.12 (1), 71.12 (3), 73.01 or 73.015.

(f) Every claim for refund or credit of income or surtaxes shall be filed with the department of taxation in case of assessments made by it, and with the assessor of incomes in case of assessments made by him, and such claim shall set forth specifically and explain in detail the reasons for and the basis of such claim. After such claim has been filed it shall be considered and acted upon in the same manner as are additional assessments made under sections 71.11 (16) and 71.11 (20).

(g) If the department of taxation or assessor of incomes shall fail or neglect to act on any claim for refund or credit within one year after the receipt thereof, such neglect shall have the effect of allowing such claim and the department of taxation or assessor of incomes shall certify such refund or credit.

(11) If the renegotiation of any war contract or subcontract by the government of the United States or any agency thereof or the voluntary adjustment of prices, costs or profits on any such contract or subcontract results in a reduction of income, the amount of any repayment or credit pursuant to such renegotiation or adjustment (including any federal income or excess profits taxes credited as a part thereof) shall be allowed as a deduction from the taxable income of the year in which said income was reported for taxation. Any federal income tax or excess profits tax previously paid upon any income so repaid or credited shall be disallowed as a deduction from income of the year in which such tax was originally deducted, to the extent that such tax constituted an allowable deduction for said year. Any taxpayer affected by such renegotiation or voluntary adjustment may within one year after the final determination thereof file a claim for refund and secure the same without interest, and the department of taxation shall make appropriate adjustments on account of said tax deductions without interest, notwithstanding the limitations of section 71.10 (10) or other applicable statutes. This subsection shall apply to the calendar or fiscal year 1940 and all subsequent years.

(12) When the reduction of income made as the result of the renegotiation or other adjustment of war contracts or subcontracts is subsequently determined to be excessive and such excessive reduction is rebated to the taxpayer by the federal government, the gross amount of the rebate is to be included as taxable income of the year to which the income reduction applies. Such rebate must be reported to the department of taxation by the taxpayer on or before the fifteenth day of the third month following the close of the income year in which the rebate was received. An assessment of additional income taxes based upon such rebate may be made by the department of taxation without interest within 2 years from the date on which the rebate was reported by the taxpayer, notwithstanding the limitations of section 71.11 (21) or other applicable statutes. Any federal income tax or excess profits tax paid upon the income resulting from the rebate shall be allowed as a deduction from income of the year following the year to which the renegotiation or other adjustment is applicable, subject however to the limitations provided by sections 71.04 (3a) and 71.05 (4a) as to the total amount of federal income tax or excess profits tax deductible, and a refund without interest may be made by reason of such deduction notwithstanding the limitations of section 71.10 (10) (b) and (d).

(13) For the purposes of subsections (1), (2), (3) (a), (5), (7) and (9) (a), (b) and (c), of this section, and of section 71.12 (1), the statements, reports, returns, and applications for abatement therein referred to shall be considered furnished, reported, filed or made on time, and the payments therein referred to shall be considered timely made, if mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the date prescribed for such furnishing, reporting, filing or making, or the making of such payment, provided such statement, report, return,

payment or application for abatement is actually received by the department of taxation within 5 days of such prescribed date.

History: 1951 c. 198, 212, 685, 720; 1953 c. 364, 614.

Cross Reference: See 185.23, exempting co-operative associations organized under ch. 185 from filing state income tax returns unless subject to a state income tax.

71.11 Administrative provisions; penalties. (1) GENERAL. The department of taxation and the assessor of incomes shall assess incomes as provided in this chapter and in performance of such duty the department of taxation and the assessors of income shall respectively possess all powers now or hereafter granted by law to the department of taxation or assessors in the assessment of personal property and also the power to estimate incomes.

(2) CORPORATIONS. The assessment of corporations shall be made by the department of taxation, and the assessment of persons other than corporations shall be made by the county assessors of income.

(3) REPORTS REQUESTED BY ASSESSORS. Whenever in the judgment of the assessor of incomes any person other than a corporation shall be subject to income tax in his district under the provisions of this chapter, he shall notify such person to make report to him on or before March 15 of each year in such manner and form as the department of taxation shall prescribe, specifying in detail the amounts of income received by him from all sources and such other information as the department shall deem necessary to enforce the provisions of this chapter.

(4) DEFAULT ASSESSMENT. Any person required to make an income tax return, who shall fail, neglest or refuse to do so in the manner and form and within the time prescribed by this chapter, or shall make a return that does not disclose his entire taxable income, shall be assessed by the department of taxation or the assessor of incomes as the case may be according to their best judgment.

(5) DEFAULT ASSESSMENT. In case of the failure on the part of any person to make a report of income within the time and in the manner prescribed by law, the department of taxation or assessor of incomes may enter an assessment against said person upon 10 days' notice in writing in a sum of not less than $500. Such notice may be served by mail. After the tax on such assessment has been entered on the assessment roll the person assessed shall be forever barred from questioning the correctness of the same in any action or proceeding.

(6) DOUBLE ASSESSMENT. Any person failing to make an income tax report or making an incorrect income tax report, with intent in either case to defeat or evade the income tax assessment required by law, shall be assessed at twice the normal income tax rate by the proper taxing authority. Such increased assessment shall be in addition to all other penalties of section 71.11.

(7) ASSESSMENT WHEN PRICES AFFECT TAXABLE INCOME. (a) When any corporation liable to taxation under this act conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business, by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income, the department may determine the amount of taxable income to such corporation for the calendar or fiscal year, having due regard to the reasonable profits which but for such arrangement or understanding might or could have been obtained from dealing in such products, goods or commodities.

(b) For the purpose of this chapter, whenever a corporation which is required to file an income tax return, is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or whose income is regulated through contract or other arrangement, the department of taxation may require such consolidated statements as in its opinion are necessary in order to determine the taxable income received by any one of the affiliated or related corporations.

(8) METHOD OF ACCOUNTING. The income and profits for the income year shall be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the department of taxation does clearly reflect the income.

(9) INVENTORIES, WHEN REQUIRED. Whenever in the opinion of the department the use of inventories is necessary in order to clearly determine the income of any person,

inventory shall be taken by such person upon such basis as the department may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

(10) RECORDS MAY BE REQUIRED OF TAXPAYER. Whenever in the judgment of the department of taxation or the assessor of incomes it is deemed necessary that a person subject to an income tax should keep records to show whether or not such person is liable to tax, the department of taxation or assessor of incomes may serve notice upon such person and require such records to be kept as will include the entire net income of such person and will enable the department of taxation or assessor of incomes to compute the taxable income. Thereafter, any taxes assessed upon information not contained in such records shall carry a penalty of 25 per cent of the amount of the tax. Such penalty shall be in addition to all other penalties provided in this chapter.

(11) TAX RECEIPTS. (a) The department of taxation shall accept payments of income taxes in accordance with the provisions of this chapter, and upon request shall give a printed or written receipt therefor.

(12) TAX RECEIPTS TRANSMITTED TO STATE TREASURER. Within 15 days after receipt of any income tax payments the department of taxation shall transmit the same to the state treasurer.

(13) RETURN PRESUMED CORRECT; ROLLS. The department of taxation or the assessor of incomes shall presume the incomes reported on the current return to be correct for the purpose of preparing initial assessment rolls, and shall enter the taxable income on initial assessment rolls by taxation districts. Such assessment rolls and all subsequent assessment rolls shall remain on file in the office of the department of taxation or the assessor of incomes as the case may be. Additional assessment rolls shall be prepared from time to time, which shall include corrections made by office audits of current returns, initial assessments on any return omitted from the first initial roll, initial assessments of fiscal year returns, and corrections made after field audit pursuant to section 71.11.

(15) NOTICE TO TAXPAYER BY DEPARTMENT. The department of taxation shall notify each taxpayer by mail of the amount of income taxes appearing against him on said rolls, of the amount paid thereon, of the balance due, of the date when such balance shall be paid and of the date when the taxes become delinquent.

(16) OFFICE AUDIT. The department of taxation or the assesor of incomes shall as soon as practicable audit each return filed in their respective offices and if it shall be found from such office audit that a person has been over or under assessed, or if it shall be found that no assessment has been made when one should have been made, the department of taxation or the assessor of incomes shall correct or assess the income of such person. Any assessment, correction or adjustment made as a result of such office audit shall be presumed to be the result of an audit of the return only, and such office audit shall not be deemed a verification of any item in said return unless the amount of such item and the propriety thereof shall have been determined after hearing and review as provided in section 71.12 (1); and such office audit shall not preclude the department of taxation or assessor of incomes from making field audits of the books and records of the taxpayer and from making further adjustment, correction and assessment of income.

(17) NOTICE TO TAXPAYER OF ADJUSTMENT. The department of taxation or the assessor of incomes shall notify the taxpayer, as provided in section 71.11 (22), of any adjustment, correction and assessment made pursuant to subsection (16) of this section.

(18) ADDITIONAL TAX ENTERED IN NEXT ROLL. In all cases where there has been no request for hearing, and after decision where a hearing has been requested, the additional tax or overpayment shall be entered on the next roll.

(19) COLLECTION OF ADDITIONAL TAX. (a) If the tax is increased the department of taxation shall proceed to collect the additional tax in the same manner as other income taxes are collected. If the income taxes are decreased upon direction of the department of taxation or assessor of incomes the state treasurer shall refund to the taxpayer such part of the overpayment as was actually paid in cash, and the certification of such overpayment by the department of taxation or the assessor of incomes shall be sufficient authorization to the treasurer for the refunding of such overpayment. No refund of income tax shall be made by the treasurer unless such refund is so certified. Such part of the overpayment paid to the county and the local taxation district shall be deducted by the state treasurer in his next settlement with the county and local treasurer.

(b) Whenever it shall be certified to the state treasurer by the department of taxation as to corporations or by the proper assessor of incomes as to persons other than corporations that excess payment has been made for teachers' retirement fund surtax within 6 years next preceding the date of such certificate, then the said state treasurer shall within

5 days after receipt of such certificate draw an order against the fund in the state treasury into which such excess was paid, reimbursing such payor for the amount of such excess payment so certified. Provided, however, that such excess payments of surtaxes may be certified only for the period during which corrections in assessments may be done under section 71.10 (10).

(c) No action or proceeding whatsoever shall be brought against the state or the treasurer thereof for the recovery, refund or credit of any income or surtaxes; except in case the state treasurer shall neglect or refuse for a period of 60 days to refund any overpayment of any income or surtaxes certified, the taxpayer may maintain an action to collect the overpayment against the treasurer so neglecting or refusing to refund such overpayment, without filing a claim for refund with such treasurer, provided that such action shall be commenced within one year after the certification of such overpayment.

(20) VERIFICATION OF RETURN; FIELD AUDIT. (a) Whenever in the judgment of the department of taxation or assessor of incomes it is deemed advisable to verify any return directly from the books and records of any person, or from any other sources of information, the department of taxation or assessor of incomes may direct any return to be so verified.

(b) For the purpose of ascertaining the correctness of any return or for the purpose of making a determination of the taxable income of any person, the department of taxation or assessor of incomes shall have power to examine or cause to be examined by any agent or representative designated by it, any books, papers, records or memoranda bearing on the income of such person, and may require the production of such books, papers, records or memoranda, and require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for their information. Upon such information as it may be able to discover, the department of taxation or the assessor of incomes shall determine the true amount of income received during the year or years under investigation.

(c) If it shall appear upon such investigation that a person has been over or under assessed, or that no assessment has been made when one should have been made, the department of taxation or assessor of incomes shall make a correct assessment in the manner provided in this section.

(21) ADDITIONAL ASSESSMENTS, WHEN PERMITTED. (a) Additional assessments and corrections of assessments by office audit or field investigation may be made of income of any taxpayer if notice pursuant to section 71.11 (22) is given within the time specified in this subsection.

(b) With respect to assessments of income received in the calendar year 1945, or corresponding fiscal year, and in subsequent years, such notice shall be given within 4 years after the close of the period covered by the income tax return, provided, however, that in any case in which a return is filed more than one year after the due date thereof, such notice may be given within 4 years after the income tax return was filed.

(c) Irrespective of paragraph (b) of this subsection, if any person has made an incorrect income tax return for any of the years since January 1, 1911, with intent to defeat or evade the income tax assessment provided by law, or has failed to file any income tax return for any of such years, income of any such year may be assessed when discovered by the proper assessing authority.

(d) The limitation periods provided in paragraph (b) of this subsection may be extended by written agreement between the taxpayer and the department of taxation or the assessor of incomes entered into prior to the expiration of said limitation periods or any extension thereof.

(e) Section 370.06 shall have no application to the provisions of this section.

(g) If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per cent of the amount of the gross income stated in the return the tax may be assessed at any time within 10 years after the return was filed, notwithstanding any other limitations expressed in this chapter.

(22) NOTICE OF ADDITIONAL ASSESSMENT. No additional assessment by office audit or field investigation shall be placed upon the assessment roll without notice in writing to the taxpayer. Such notice shall be served as a circuit court summons or by registered mail. Service of such notice by regular mail shall also be sufficient notice of such assessment if receipt thereof is admitted by the person assessed, or if there is other satisfactory evidence of the receipt thereof.

(23) ADDITIONAL REMEDY TO COLLECT TAX. The department of taxation may also proceed under section 71.13 (3) for the collection of any additional assessment of income taxes or surtaxes, after notice thereof has been given under section 71.11 (22) and before the same shall have become delinquent, when it has reasonable grounds to believe that the collection of such additional assessment will be jeopardized by delay. In such cases

notice of the intention to so proceed shall be given by registered mail to the taxpayer, and the warrant of the department of taxation shall not issue if the taxpayer within 10 days after such notice furnishes a bond in such amount, not exceeding double the amount of the tax, and with such sureties as the department of taxation shall approve, conditioned upon the payment of so much of the additional taxes as shall finally be determined to be due, together with interest thereon as provided by section 71.09 (5) (a). Nothing in this section shall affect the review of additional assessments provided by sections 71.12 (1), 71.12 (3), 73.01 and 73.015, and any amounts collected under this section shall be deposited with the state treasurer and disbursed after final determination of the taxes as are amounts deposited under section 71.12 (2).

(24) DEPARTMENTAL RULES; COLLECTIONS; EMPLOYES. (a) The department of taxation is hereby empowered to make such rules and regulations as it shall deem necessary in order to carry out the provisions of this chapter.

(b) The department of taxation is hereby authorized to employ such clerks and specialists as are necessary to carry into effective operation this chapter. Salaries and compensations of such clerks and specialists shall be charged to the proper appropriation for the department of taxation.

(c) Representatives of the department of taxation directed by it to accept payment of income taxes shall file bonds with the state treasurer in such amount and with such sureties as the state treasurer shall direct and approve. In collecting income taxes as provided in this chapter, the department of taxation shall be deemed to act as agents of the state, counties and towns, cities or villages entitled to receive the taxes collected.

(40) PENALTIES. If any person required under this chapter to file an income tax return fails to file such return within the time prescribed by law, or as extended under the provisions of section 71.10 (5) the department of taxation or the assessor of incomes shall add to the tax of such person $10 in the case of corporations and in the case of persons other than corporations $2 when the total normal income tax of such person is less than $10, $3 when such tax is $10 or more but less than $20, $5 when such tax is $20 or more. If no tax is assessed against any such person the amount of this fee shall be collected as income taxes are collected, and no person shall be allowed in any action or proceeding to contest the imposition of such fee.

(41) SAME; FAILURE TO FILE RETURN; FRAUD. If any person shall fail or refuse to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such person shall be liable to a penalty of not less than $100 and not to exceed $5,000 at the discretion of the court.

(42) SAME; FAILURE TO FILE RETURN; FRAUD. Any person, other than a corporation, who fails or refuses to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return shall upon conviction be fined not to exceed $500, or be imprisoned not to exceed one year, or both, at the discretion of the court, together with the cost of prosecution.

(43) SAME; OFFICER OF CORPORATION. Any officer of a corporation required by law to make, render, sign or verify any return, who makes any false or fraudulent return or statement, with intent to defeat or evade the assessment required by this act to be made, shall upon conviction be fined not to exceed $500 or be imprisoned not to exceed one year, or both, at the discretion of the court, with the cost of prosecution.

(44) SAME; DIVULGING INFORMATION. (a) No person shall divulge or circulate for revenue or offer to obtain, divulge or circulate for compensation any information derived from an income tax or gift tax return including information which may be furnished by the department of taxation as provided in this subsection; provided, that this shall not be construed to prohibit publication by any newspaper of information lawfully derived from income tax or gift tax returns for purposes of argument nor to prohibit any public speaker from referring to such information in any address.

(b) The department of taxation or assessor of incomes shall make available upon suitable forms prepared by said department information setting forth the net income tax or gift tax reported as paid or payable in the returns filed by any individual, partnership, or corporation for any individual year upon request. Before such request is granted, the person desiring to obtain said information shall prove his identity and shall be required to sign a statement setting forth his address and his reason for making such request and indicating that he understands the provisions of this subsection with respect to the divulgement, publication or dissemination of information obtained from returns as provided in par. (a). The use of a fictitious name is declared to be a violation of this subsection. Within 24 hours after any such information from any such income tax or gift tax return has been so obtained, the department of taxation or assessor of incomes shall mail to the person, partnership or corporation from whose return such information

has been obtained a notification thereof, which shall give the name and address of the person obtaining said information and the reason assigned by him for requesting said information. The department of taxation or assessor of incomes shall collect from the person requesting such information a fee of $1 for each return to defray the cost incident to the furnishing of such information and the notification of the person, partnership or corporation from whose return such information has been obtained.

(bm) No income tax return shall be open to inspection by any nonresident, or by any resident who is making the inspection for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation except to the extent that similar returns filed in the state of residence of such person or firm or the state of incorporation of such foreign corporation are open to inspection by residents of Wisconsin or Wisconsin corporations. As part of the statement required by par. (b), the department of taxation or the assessor of incomes shall require any person desiring to examine a return to declare whether he is a nonresident of the state, and whether the examination is desired for the use or benefit of a nonresident person or firm or a foreign corporation. No copy of any return shall be supplied to any person except as permitted by par. (c).

(c) Subject to regulations of the department, any income tax or gift tax returns, or any schedules, exhibits, writings, or audit reports pertaining to the same, on file with the department of taxation or assessor of incomes shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized; provided that the use of information so obtained is restricted to the discharge of duties imposed upon said persons by law or by the duties of their office, and any of said persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office or by order of a court as set forth in subd. 6 shall be deemed in violation of this subsection:

1. The commissioner of taxation, or any officer, agent or employe of the department of taxation or assessor of incomes;

2. Public officers of this state or its political subdivisions or the authorized agents of such officers when deemed by them necessary in the performance of the duties of their office;

3. Members of any legislative committee or its authorized agents where deemed by them necessary to accomplish the purpose for which the committee was organized;

4. Public officers of the federal government or other state governments or the authorized agents of such officers, where necessary in the administration of the laws of such governments, to the extent that such government accords similar rights of examination or information to officials of this state;

5. The person who filed or submitted such return, or to whom the same relates or by his authorized agent or attorney;

6. Any person examining such return pursuant to a court order duly obtained upon a showing to the court that the information contained in such return is relevant to a pending court action.

(d) Any person violating the provisions of this subsection shall upon conviction be fined not less than $100 nor more than $500, or imprisoned not less than one month nor more than 6 months, or both.

(45) FAILURE OF CORPORATION TO FILE RETURN. Any corporation failing to file any statement or form required by section 71.10 (1) shall be subject to a fine of not less than $50 nor more than $500.

(46) If any person required under this chapter to file an income tax return files such return more than 60 days after the time for filing prescribed by law, unless it is shown that such late filing was due to reasonable cause and not due to neglect, there shall be added to the tax 25 per centum of the amount otherwise payable on the income reported in such late return. The amount so added shall be assessed, levied and collected in the same manner as additional income taxes, and shall be in addition to any other penalties imposed by chapter 71.

(47) If any person required under this chapter to file an income tax return, fails to file a return or files an incomplete or incorrect return, unless it is shown that such failure or filing was due to good cause and not due to neglect, there shall be added to such person's tax for the income year 25 per centum of the amount otherwise payable on any taxable income subsequently discovered or reported. The amount so added shall be assessed, levied and collected in the same manner as additional normal income taxes, and shall be in addition to any other penalties imposed by chapter 71.

(49) PROSECUTIONS BY ATTORNEY-GENERAL. The attorney-general is authorized, upon

the request of the commissioner of taxation, to represent the state or to assist the district attorney in the prosecution of any case arising under subsections (41), (42) and (43).

History: 1951 c. 75, 76, 714, 720; 1953 c. 61, 184, 285, 303, 614.

Cross Reference: See secs. 2 to 5, ch. 293, Laws 1939, as to assessment of taxes on income derived from United States or any agency thereof prior to 1939.

When charged with making a false and fraudulent tax return of corporate income, a defendant who relied on the verification in due form of the return as a compliance with the law, when it was advantageous for him to do so, is estopped from claiming that the return was not a verified one on the ground that the verification was not in fact made as required by law. State ex rel. Marachowsky v. Kerl, 258 W 309, 45 NW (2d) 668.

The evidence warranted findings of the board of tax appeals that an attorney, who obtained an extension of time for filing a return of income for each of the years 1936 to 1943, but paid no more attention to the matter until compelled to do so by the department of taxation in 1947, had failed to file reports for such years with intent to defeat the tax assessments required by law, and hence warranted the board's affirmance of an assessment made against the taxpayer for each of such years at twice the normal rate. Under like evidence as to the years 1944 and 1945, the board should have made the same findings as to those years and affirmed the double assessment made against the taxpayer for each of such years. McKinnon v. Dept. of Taxation, 261 W 564, 53 NW (2d) 169.

In order to impose the penalty provided under 71.11 (6), of an assessment of income taxes at twice the normal rate for making an incorrect income-tax report with intent to defeat or evade the tax due, such intent must be proved before the board of tax appeals by clear and convincing evidence, so that, on review of a decision of the board finding such intent, the provision in 227.20 (1) (d) that the reviewing court may reverse or modify the decision of the board only if the same is unsupported by "substantial evidence in view of the entire record," means evidence which is clear and convincing. Evidence relating to the taxpayer's failure to report net taxable income of $90,161.99, out of a total of $113,533.84, during the years 1944, 1945 and 1946, established by clear and convincing proof that the taxpayer made incorrect income-tax returns for the 3 years in question with intent to defeat and evade the income taxes due on his income for such years. Platon v. Department of Taxation, 264 W 254, 58 NW (2d) 712.

71.12 Contested assessments and claims for refund. (1) Any person feeling aggrieved by a notice of additional assessment shall, within 30 days, after receipt thereof, make application to the department of taxation in case of corporations, or the assessor of incomes in the case of persons other than corporations, for abatement of the tax. The tax commissioner or the assessor of incomes shall grant or deny such application within 6 months after it is filed. Upon denial of said application for abatement, the taxpayer, if aggrieved thereby may appeal to the board of tax appeals by filing a petition with the clerk thereof as provided by law and the rules of practice promulgated by the board. If no application for abatement is made or if a petition is not filed with the board within the time provided in this chapter, the assessment shall be final and conclusive.

(2) If the taxpayer requests a hearing, the additional tax or overpayment shall not be placed on the assessment roll until after hearing and determination of the tax by the board of tax appeals or disposition of the appeal pursuant to stipulation and order as provided in sections 73.01 (5) (a) and 73.03 (25). In the application for such hearing, filed pursuant to section 71.12 (1), the taxpayer may offer to deposit the entire amount of the additional taxes, together with interest thereon, with the state treasurer. If such offer to deposit is made, the department of taxation or assessor of incomes, as the case may be, shall issue a certificate to the state treasurer authorizing him to accept payment of such taxes together with interest thereon to the first day of the succeeding month and to give his receipt therefor. A copy of such certificate shall be mailed to the taxpayer who shall thereupon pay such taxes and interest to said treasurer within 30 days. A copy of the receipt of the state treasurer shall be filed with the department of taxation or assessor of incomes. The department of taxation or the assessor of incomes shall, upon final determination of the appeal, certify to the state treasurer the amount of the taxes as finally determined and shall direct him to apportion and pay to the proper county and town, city or village treasurers the amounts of such taxes, together with the interest thereon, to which the counties and the towns, cities or villages are entitled under section 71.14 and shall also direct the state treasurer to refund to the appellant any portion of such payment which shall have been found to have been illegally assessed, including the interest thereon. Such certificate shall specify the counties and the local taxing districts to which the tax is attributable under section 71.14. The state treasurer shall make the payments directed by such certificate within 30 days after receipt thereof. Taxes paid to the state treasurer under the provisions of this subsection shall be subject to the interest provided by sections 71.09 (5) and 71.13 (2) only to the extent of the interest accrued on said taxes prior to the first day of the month succeeding the application for hearing. Payments made by the state treasurer to the county and town, city or village treasurers shall not include interest which may have been earned during the time that the funds were in the hands of the state treasurer. Any portion of the amount paid to the state treasurer which is refunded to the taxpayer shall bear interest at the rate of 5 per cent per annum during the time that the funds were in the hands of the state treasurer.

(3) No person against whom an assessment of income tax has been made shall be allowed in any action either as plaintiff or defendant or in any other proceeding to ques-

tion such assessment unless the requirements of section 71.12 (1) shall first have been complied with, and unless such person shall have made full disclosure under oath at the hearing before the board of tax appeals of any and all income received by him. The requirements of this subsection may be waived by the department of taxation.

(4) If any portion of a claim for refund is disallowed the person filing the same shall have the same right of hearing as is provided in section 71.12 (1). If after hearing before the board of tax appeals any portion of the claim is disallowed, the person filing the same shall have the right to review as provided in section 73.015.

(5) As soon as the appellant shall have filed a petition with the Wisconsin board of tax appeals, all collection proceedings except proceedings under section 71.11 (23) shall be stayed until final determination of the appeal and any review thereof, but such proceedings shall not operate to stay the delinquent penalty and interest on unpaid amounts as provided in section 71.13 (2).

(6) Any person who shall contest an assessment before the board of tax appeals or in court shall state in his petition or notice of appeal what portion if any of the tax is admitted to be legally assessable and correct. Within 5 days after notice by the department the appellant shall pay to the department of taxation the whole amount of the admitted tax and such tax shall be apportioned as provided in section 71.14 at the next settlement provided by section 71.14 (1). Any such payment shall be considered an admission of the legality of the tax thus paid, and such tax so paid cannot be recovered in the pending appeal or in any other action or proceeding.

(7) After final decision or other disposition, the record shall be returned to the department of taxation, and the department shall proceed to collect the taxes in the same manner as other delinquent income taxes are collected.

History: 1951 c. 720.

71.13 Collection of delinquent taxes. (1) Income taxes shall become delinquent if not paid when due as provided in section 71.10 (9), provided, however, that in case the initial payment is not made as required by section 71.10 (9) (a) or (b), the entire unpaid balance shall be considered as delinquent from the due date of the initial payment, and when delinquent shall be subject to a penalty of 2 per cent on the amount of the tax and interest at the rate of one per cent per month until paid, and the department of taxation shall immediately proceed to collect the same. For the purpose of such collection the department of taxation or its duly authorized agent shall have the same powers as conferred by law upon the county treasurer, county clerk, sheriff and district attorney.

(2) Any part of an income tax assessment which is contested before the board of tax appeals or the courts, which after hearing shall be ordered to be paid, shall be considered as a delinquent tax from the date on which it would have become delinquent under section 71.10 (9) if such contest had not been made, and any such tax so ordered to be paid shall be subject to a penalty of 2 per cent on the amount of the tax and interest at the rate of one per cent per month from the date of such delinquency until paid. Any tax so contested shall be subject to the provisions of section 71.11 (23), but shall not be subject to the provisions of section 71.13 (3) during the pendency of such appeal.

(3) (a) If any income tax be not paid within 30 days after the same becomes delinquent, the department of taxation shall issue a warrant to the sheriff of any county of the state commanding him to levy upon and sell sufficient of the taxpayer's real and personal property found within his county to pay such tax with the penalties, interest and costs, and to proceed upon the same in all respects and in the same manner as upon an execution against property issued out of a court of record, and to return such warrant to the department and pay to it the money collected, or such part thereof as may be necessary to pay such tax, penalties, interest and costs, within 60 days after the receipt of such warrant, and deliver the balance, if any, after deduction of lawful charges to the taxpayer.

(b) The sheriff shall within 5 days after the receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof, unless the taxpayer shall make satisfactory arrangements for the payment thereof with the department of taxation, in which case, the sheriff shall, at the direction of the department, return such warrant to it. The clerk shall docket the warrant as required by section 270.745, and thereupon the amount of such warrant, together with interest as provided by section 71.13 (1) shall become a lien upon the real property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The clerk of circuit court shall accept, file and docket such warrant without prepayment of any fee, but the clerk shall submit a statement of such proper fees semiannually to the department of taxation covering the period from January 1, to and including June 30 and July 1 to and including December 31, and such fees shall then be paid by the state in the manner provided by section 71.13 (3) (g), but the fees provided by section 59.42 (42) shall be added to the amount of such warrant and collected from the taxpayer when satisfaction or release is

presented for entry; provided, that in counties wherein the clerk is compensated otherwise than by salary such fees may be paid by the state in the manner provided by section 71.13 (3) (g) and added to the amount of the warrant and collected as herein provided. The sheriff shall be entitled to the same fees for executing upon said warrant as upon an execution against property issued out of a court of record, to be collected in the same manner. Upon the sale of any real estate the sheriff shall execute a deed of the same, and the taxpayer shall have the right to redeem the said real estate as from a sale under an execution against property upon a judgment of a court of record.

(c) A like warrant may be issued to any agent of the department authorized to collect income taxes, and in the execution thereof and collection of said taxes such agent shall have the powers of a sheriff, but shall not be entitled to collect from the taxpayer any fee or charge for the execution of such warrant in excess of actual expenses paid in the performance of his duty. When a warrant is issued to such agent he may proceed upon the same in any county of the state designated in the warrant, in the same manner as herein provided with respect to sheriffs of such counties.

(d) If a warrant be returned not satisfied in full, the department of taxation shall have the same remedies to enforce the claim for taxes, penalties, interest, and costs as upon a judgment against the taxpayer for the amount of same.

(e) The department, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may exact, may issue a release, of any warrant with respect to any real property upon which said warrant is a lien or cloud upon title, and such release shall be entered of record by the clerk upon presentation to him and payment of the fee for filing said release and the same shall be held conclusive that the lien or cloud upon the title of the property covered by the release is extinguished. Any person desiring that such release be issued shall present to the department a written application in affidavit form requesting that the release be issued. Such application shall give the reasons for the request and shall clearly describe the property with respect to which the release is desired. In support of the request, the applicant shall furnish the department with proof sufficient to establish satisfactorily the fair market value of the property, the amounts, character and dates, both of execution and of record, of all incumbrances of record prior to the warrant lien, as well as the amount and character of any unrecorded incumbrances believed to be prior to the warrant lien, including information as to how and when all such incumbrances arose. Appropriate references shall be made to the pages and volumes of the recording books in which any such incumbrances have been recorded. The department may require a certified copy of any record referred to in such application to be furnished by the applicant, at his expense, from the officer in whose office such record is kept.

(f) When the taxes set forth in a warrant together with penalties and interest to date of payment and all costs due the department of taxation have been paid to it, the department shall issue a satisfaction of the warrant and deliver or mail it to the taxpayer and the warrant shall be satisfied of record by the clerk upon presentation to him of such satisfaction and payment by the taxpayer of the fees due such clerk. When such warrant has not been paid or discharged, but the taxes for which such warrant was issued have been canceled or credited, the department shall issue a satisfaction of the warrant and file it with the clerk and said warrant shall be immediately satisfied of record by such clerk. When such warrant has not been paid or discharged but the enforcement of same would, in the opinion of the department, result in depriving the taxpayer of a substantial right, the department may issue a release of said warrant and file same with the clerk who shall immediately make an entry of same of record, and it shall be held conclusive of the extinguishment of the warrant and all liens and rights created thereby, but shall not constitute a release or satisfaction of the taxes for which such warrant was issued.

(g) All fees and compensation of officials or other persons performing any act or functions required in carrying out the provisions of this section, except such as are by the provisions of this section to be paid to such officials or persons by the taxpayer, shall, upon presentation to the department of taxation of an itemized and verified statement of the amount due, be paid by the state treasurer upon audit by the director of budget and accounts on the certificate of the commissioner of taxation and charged to the proper appropriation for the department of taxation. No public official shall be entitled to demand prepayment of any fee for the performance of any official act required in carrying out the provisions of this section.

(h) The state may be made a party defendant in any action to foreclose a mortgage, land contract, or other lien upon any real property affected by such warrant lien, and the summons may be served by delivering a copy to the attorney-general or leaving it at his office in the capitol with his assistant or clerk. But no judgment for the recovery of money or personal property or costs shall be rendered against the state in any such action.

(i) The provisions of this section shall be in addition to all other methods for the collection of income taxes, and the department of taxation may exercise the powers vested in it by virtue of section 73.03 (20), section 73.04, and section 70.64 (9) or any of the powers vested in it by virtue of any other section of the statutes for the purpose of enforcing collection of income taxes.

(4) (a) Any taxpayer who is unable to pay the full amount of his delinquent income taxes may apply to the department of taxation in the case of corporations and to the assessor of incomes in the case of other persons to pay such taxes with interest and penalties in instalments. Such application shall contain a sworn statement of the reasons such taxes cannot be paid in full and shall set forth the plan of instalment payments proposed by the taxpayer. Upon approval of such plan by the assessor of incomes or the department and the payment of instalments in accordance therewith collection proceedings with respect to such taxes shall be withheld; but on failure of the taxpayer to make any instalment payment, the department shall proceed to collect the unpaid portion of such taxes in the manner provided by law. Each instalment when made shall be applied first in discharging penalty and interest and other lawful charges accrued to the date of payment and the balance applied on the principal of the tax, and additional interest shall be computed only on the principal amount of the tax remaining due.

(b) Any taxpayer may petition the department of taxation in the case of corporations or the assessor of incomes in the case of other persons to compromise his delinquent income taxes including the penalties and interest thereon. Such petition shall set forth a sworn statement of the taxpayer and shall be in such form as the department shall prescribe and the department or assessor may examine the petitioner under oath concerning the matter. The assessor, in case the petition is to him, shall indorse on said petition his recommendations concerning such compromise and shall transmit the same to the department of taxation. If the department finds that the taxpayer is unable to pay the taxes, penalties and interest in full it shall determine the amount of taxes he is able to pay and shall enter an order reducing such taxes, penalties and interest in accordance therewith. Such order shall provide that such compromise shall be effective only if paid within 10 days. The department or its collection agents upon receipt of such order, a copy of which in case of persons other than corporations shall be forwarded to the assessor, shall accept payment in accordance therewith. The department or the assessor shall thereupon enter the unpaid portion of the principal amount of such taxes on the next credit roll and make appropriate record of the unpaid amount of penalties and interest accrued to the date of such order. If within 3 years of the date of such compromise order the department or assessor shall ascertain that the taxpayer has an income or property sufficient to enable him to pay the remainder of the tax including penalty and interest the department shall reopen said matter and order the payment in full of such taxes, penalties and interest. Before the entry of such order a notice shall be sent to the taxpayer by registered mail advising of the intention of the department of taxation to reopen such matter and fixing a time and place for the appearance of such taxpayer if he desires to be heard in regard thereto. Upon entry of such order the department of taxation shall, in the case of persons other than corporations, forward a copy to the assessor and the department or assessor shall make an entry of the principal amount of such taxes ordered to be paid on the delinquent roll and such taxes shall be immediately due and payable upon entry upon such roll and shall thereafter be subject to the interest provided by subsection (1), and the department shall immediately proceed to collect the same together with the unpaid portion of penalty and interest accrued to the date of the compromise order.

(c) Delinquent income taxes, and interest and penalty thereon, resulting from assessments pursuant to section 71.11 (4) or (5) or from assessments by virtue of disallowance of claimed deductions for failure to file information reports relating thereto, as required by this chapter, may be compromised by the department of taxation when such action is fair and equitable under the circumstances.

(d) The following clause contained in section 71.13 (5) is repealed in so far as it is in conflict with any of the provisions of this section: "except the provisions for the compromise or cancellation of illegal taxes and the refund of moneys paid thereon."

(e) If any delinquent income tax has been referred by the department to the attorney-general in order to effect collection of same and it shall appear to said attorney-general, after having fully investigated the matter, that it would be to best interest of the state to compromise said tax, the attorney-general may make a written recommendation to the department stating the terms upon which he believes the tax should be compromised and his reasons therefor. After receipt of such recommendation the department shall notify the attorney-general of its approval or disapproval of such recommendation, and if approved the attorney-general may thereupon enter into a stipulation with the taxpayer providing for the compromise of such tax on the terms set forth in said recommenda-

tion and upon compliance therewith by the taxpayer the tax shall be fully discharged. The attorney-general shall furnish the department with a copy of such stipulation, and the department or its agents charged with the collection of income taxes may accept payment of such tax in accordance with the terms of such stipulation and upon payment being made shall enter the unpaid portion of said tax on the next credit roll. The provisions of this subsection shall be in addition to all other powers of the attorney-general and the department of taxation with respect to compromise or settlement of income taxes.

(f) As used in this section, "principal amount" or "principal" of the tax means the tax and interest added thereto in accordance with section 71.09 (5) and section 71.10 (5).

(5) All laws not in conflict with the provisions of this act, relating to the assessment, collection and payment of taxes on personal property, the correction of errors in assessment and tax rolls, and for the collection of delinquent personal property taxes except the provisions for the compromise or cancellation of illegal taxes and the refunds of moneys paid thereon, shall be applicable to the income tax herein provided.

(6) (a) The transaction by any nonresident person of business in this state, except where such nonresident is a foreign corporation that has been licensed pursuant to chapter 180, shall be deemed an irrevocable appointment by such person, binding upon him, his executor, administrator or personal representative, of the secretary of state to be his true and lawful attorney upon whom may be served any notice, order, pleading or process (including without limitation by enumeration any notice of assessment, denial of application for abatement or denial of claim for refund) by any administrative agency or in any proceeding by or before any administrative agency, or in any proceeding or action in any court, to enforce or effect full compliance with or involving the provisions of this chapter. And the transaction of business in this state shall be a signification of his agreement that any such notice, order, pleading or process which is so served shall be of the same legal force and validity as if served on him personally, or upon his executor, administrator or personal representative.

(b) The transaction of business in this state or the derivation of income which has a situs in this state under the provisions of this chapter by any person while a resident of this state shall be deemed an irrevocable appointment by such person, binding upon him, his executor, administrator or personal representative, effective upon such person becoming a nonresident of this state, of the secretary of state to be his true and lawful attorney upon whom may be served any notice, order, pleading or process (including without limitation by enumeration any notice of assessment, denial of application for abatement or denial of claim for refund) by any administrative agency or in any proceeding by or before an administrative agency, or in any proceeding or action in any court, to enforce or effect full compliance with or involving the provisions of this chapter. And the transaction of such business or the derivation of such income shall be a signification of his agreement that any such notice, order, pleading or process which is so served shall be of the same legal force and validity as if served on him personally, or upon his executor, administrator or personal representative.

(c) Service pursuant to paragraphs (a) or (b) shall be made by serving a copy upon the secretary of state or by filing such copy in his office, and such service shall be sufficient service upon such person, or his executor, administrator or personal representative if notice of such service and a copy of the notice, order, pleading or process are within 10 days thereafter sent by mail by the state department, officer or agency making such service to such person, or his executor, administrator or personal representative, at his last known address, and that an affidavit of compliance herewith is filed with the secretary of state. The secretary of state shall keep a record of all such notices, orders, pleadings, processes and affidavits and shall note in such record the day and hour of service upon him.

History: 1951 c. 720.

Cross Reference: See 270.745 on delinquent income tax docket.

Lien of a delinquent income tax or gift tax warrant filed under 71.13 (3) (b), and docketed as provided in 270.745, is the same as the lien provided in 270.79, for a docketed judgment. 42 Atty. Gen. 115.

71.14 Distribution of revenue. (1) Upon the 15th day of August, 1949 the state treasurer shall pay to the county and local treasurers, upon certification by the department of taxation, the net amount of normal income taxes collected in the period from the date of the last distribution to June 30, 1949, inclusive, and apportionable to counties, towns, villages and cities in the manner provided by this section. For the year 1950 and annually thereafter the state treasurer shall, upon certification by the department of taxation, pay to county and local treasurers the net amounts of normal income taxes apportionable to counties, towns, villages and cities in accordance with this section as follows: upon the 15th day of May 80 per cent of the apportionable net amount collected during

the period beginning July 1 of the preceding year to and including March 31, of the current year; and upon the 15th day of August the apportionable net amount collected during the period from April 1 to June 30, inclusive, of the current year, plus the undistributed 20 per cent of the apportionable net amount collected during the period beginning July 1 of the preceding year to and including March 31 of the current year. Upon request of a municipality, the department of taxation may make an additional distribution on December 15, 1949 and annually on such date thereafter, to those municipalities where prior allotments by the department during the calendar year have not refunded 80 per cent of the amount due such municipality out of the current year's payments.

(2) Annually, beginning July 1 (to and including July 1, 1953, but not thereafter) out of the normal tax collection of the preceding fiscal year, exclusive of the amount of such taxes as have resulted from the repeal of s. 71.10 (9) (c) of the 1951 statutes, there shall be set aside 80 per cent of the estimated costs to be incurred from the appropriation made by s. 20.09 (1) including supplementary salary bonus appropriations made by the director of budget and accounts and supplementary appropriations made by the emergency board, for administering the income tax law as certified by the commissioner of taxation for the current fiscal year, and the amount of that portion of the appropriation made by s. 20.25 for the current fiscal year which is chargeable to the normal income tax. The estimated costs of administering the income tax law from s. 20.09 (1) shall be adjusted to actual costs on the cash basis per the records of the department of budget and accounts as of June 30 following, and such adjustment shall be reflected in the apportionment to be made August 15 pursuant to this section. The aggregate of the aforesaid amounts shall be borne by the state, the counties, and the towns, cities and villages in the proportion that the net normal income tax collections for the preceding fiscal year are allocated to the state and to each such political subdivision pursuant to the provisions of this section. The remainder of the net normal income tax collections shall be apportioned as follows, to wit: 40 per cent to the state, 10 per cent to the county, and the balance to the town, city or village from which the income was derived as provided in s. 71.14 (6), except that when in any calendar year the amount apportionable to any town, city or village exceeds 2 per cent of the equalized value of all taxable property in such town, city or village as established in November of the next preceding year under s. 70.61, such excess shall be apportioned and paid to the county to be distributed and paid to all of the several towns, cities and villages of the county, according to the school population therein. If subsequent to January 1, 1937, there shall be paid over to any town, city or village in any calendar year any amount in excess of 2 per cent of the equalized value of all taxable property therein for the preceding year, such excess payment shall be recoverable by the county.

(2a) Beginning July 1, 1954, and annually thereafter, out of the normal income tax collections of the preceding fiscal year, exclusive of the amount of such taxes as have resulted from the repeal of s. 71.10 (9) (c) of the 1951 statutes, there shall first be set aside for the state's general fund, 14 per cent of such taxes collected from corporations and 8 per cent of such taxes collected from persons other than corporations. From the balance of such taxes there shall be set aside 80 per cent of the estimated costs to be incurred from the appropriation made by s. 20.09 (1) including supplementary salary bonus appropriations made by the director of budget and accounts and supplementary appropriations made by the emergency board, for administering the income tax law as certified by the commissioner of taxation for the current fiscal year, and the amount of that portion of the appropriation made by s. 20.25 for the current fiscal year which is chargeable to the income tax. The estimated costs of administering the income tax law from s. 20.09 (1) shall be adjusted to actual costs on the cash basis per the records of the department of budget and accounts as of June 30 following, and such adjustment shall be reflected in the apportionment to be made August 15 pursuant to this section. The aggregate of the aforesaid amounts set aside to cover the cost of income tax administration and high school aid shall be borne by the state, the counties, and the towns, cities and villages in the proportion that the net normal income tax collections for the preceding year (after reduction by the 14 and 8 percentages) are allocated to the state and to each political subdivision pursuant to the provisions of this section. The remainder of the income tax collections shall be apportioned as follows, to wit: 40 per cent to the state, 10 per cent to the county, and the balance to the town, city or village from which the income was derived as provided in s. 71.14 (6), except that when in any calendar year the amount apportionable to any town, city or village exceeds 2 per cent of the equalized value of all taxable property in such town, city or village as established in November of the next preceding year under s. 70.61, such excess shall be apportioned and paid to the county to be distributed and paid to all of the several towns, cities and villages of the county, according to the school population therein. If subsequent to January 1, 1937, there shall

be paid over to any town, city or village in any calendar year any amount in excess of 2 per cent of the equalized value of all taxable property therein for the preceding year, such excess payment shall be recoverable by the county.

(3) Out of the first moneys received and retained from cash collected from such income taxes in any city of the first class, however organized, there shall be transferred and paid to the firemen's pension fund provided for by chapter 165 of the laws of 1903 and laws amendatory thereof, a sum each year sufficient to make the said firemen's pension fund on the first day of March in each year not less than $175,000, to be used for the purpose of paying pensions to disabled and superannuated members of the fire department and their beneficiaries mentioned in said laws.

(4) The department of taxation shall account for and pay all delinquent taxes collected by it, to the state treasurer, who shall apportion and pay the same to the several county, town, city and village treasurers entitled thereto at the time of the next division of revenues as provided for in section 71.14 (1).

(5) This section and the provisions of this chapter relating to the apportionment of taxable income to the several counties, towns, cities and villages and those relating to the collection of the income tax by the department of taxation, shall not apply to telegraph companies or transportation companies as defined in section 76.02 (4) and in section 76.39, respectively. All such telegraph companies and transportation companies shall pay their taxes under this chapter to the department of taxation, but such taxes shall not be apportioned or distributed to the taxing districts within which the properties lie, but shall be retained entirely by the state.

(6) The entire taxable income of every person deriving income from within and without the state or from within different political subdivision of the state, when such person resides within the state, shall be combined and aggregated for the purpose of determining the proper rate of taxation. The department of taxation or the assessor of incomes, as the case may be, shall compute the tax on the combined taxable income of such person. The income so computed, in the manner provided in section 71.11 (13) and (16), shall be apportioned, in the manner provided in section 71.07, to the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of the income derived from without the state when taxable as having been derived from the town, city or village in which said person resides. The tax on the combined taxable income shall be apportioned to the various towns, cities and villages in proportion to the respective amounts of taxable income so attributed to each.

(7) Whenever any county, city, town or village shall have received in final settlement a portion of an income tax that under the income tax law ought not to have been received by such county, city, town or village, but by the provisions of the income tax law should have been received by another county, town, city or village, such portion of the tax shall be paid by the county, town, city or village erroneously receiving the same to the county, town, city or village entitled thereto; provided, however, that no such payment shall be made except on the written approval of the assessor of incomes who made the assessment, or of the department of taxation in the case of assessments made by it, specifying the reasons for such payment, and provided further that a claim for such tax shall have been made within 3 years after the receipt of the tax. The return of any such overpayment, to any county, city, town or village to another county, city, town or village entitled thereto, in the event that such overpayment has not been settled or paid voluntarily by any such county, city, town or village, shall be effected by the department of taxation by withholding the amount of overpayment from the apportionment of income taxes next following the allowance of the adjustment, to the county, city, town or village which has received the overpayment. In the event that after the initial withholding there is still a balance due, then the department of taxation shall withhold all or a part of the balance due on each succeeding apportionment until the balance of the overpayment has been adjusted. The amounts thus withheld shall be credited in the apportionment to the county, city, town or village which did not receive its full amount of income taxes in the said previous distributions.

(8) The whole amount collected as surtax imposed by s. 71.01 (2) shall, through the same channel as other income taxes are paid, be paid into the state treasury, and this section shall not apply to such surtax. The amount of said surtax herein imposed is hereby levied and shall be collected as herein set forth and shall be paid into the general fund of the state treasury and set apart for the retirement deposit fund and contingent fund as provided in this act, except that such surtaxes collected on and after July 1, 1953 shall lose their identity as such and shall be included in the normal income taxes from which the 14 per cent and 8 per cent referred to in sub. (2a) shall be determined, and such 14 per cent and 8 per cent shall be set apart for the said retirement deposit fund and contingent fund. The state treasurer shall, in the same manner as other income taxes are

remitted and paid, annually remit and pay to the city treasurer of each city of the first class in which a teachers' annuity and retirement fund is maintained under the provisions of s. 38.24, the amount certified by the board of trustees of such annuity and retirement fund as necessary to maintain the assets of such fund, except that in any year in which the ratio of assets to the present value of future payments in the general fund of such annuity and retirement fund is less than 100 per cent, the amount remitted shall be not less than 40 per cent of the surtax imposed by s. 71.01 (2) levied and collected from the taxpayers in such city, and except that the amount remitted in any year shall not exceed 50 per cent of the surtax imposed by s. 71.01 (2) levied and collected from the taxpayers in such city, and it shall be the duty of the city treasurer of such city to pay the whole amount, so remitted and paid, into the general fund of such teachers' annuity and retirement fund of such city to constitute a part of said fund; provided that with respect to any distribution of taxes by the state treasurer on and after May 15, 1954, in lieu of any distribution of surtaxes imposed by s. 71.01 (2), the state treasurer shall remit and pay to the city treasurer of each city of the first class in which a teachers' annuity and retirement fund is maintained under the provisions of s. 38.24, the amount certified by the board of trustees of such annuity and retirement fund as necessary to maintain the assets of such fund, except that in any year in which the ratio of assets to the present value of future payments in the general fund of such annuity and retirement fund is less than 100 per cent, the amount remitted shall be not less than 5.6 per cent of the normal income taxes on corporations and 3.2 per cent of the normal income taxes on persons other than corporations collected from taxpayers in such city in the period covered by such distribution, and except that the amount remitted in any year shall not exceed 7 per cent of the normal income taxes on corporations and 4 per cent of the normal income taxes on persons other than corporations collected from taxpayers in such city in the period covered by such distribution.

(9) Whenever in any year the receipts from the surtax imposed by s. 71.01 (2) and/or the aggregate of the 14 per cent and the 8 per cent referred to in sub. (2a) of this section shall not be sufficient to provide the necessary moneys to carry out the provisions of this act, the deficit shall be paid out of the general fund of the state treasurer, and if in any year such surtax and/or such percentages provide more money than is needed, such excess shall be paid into the general fund of the state treasury.

(10) All normal income taxes collected by reason of the repeal of s. 71.10 (9) (c) of the 1951 statutes shall be retained entirely by the state.

History: 1951 c. 319 s. 206; 1953 c. 59, 61, 527, 614, 648.

Under provisions in 71.14 (2), that before distribution to counties and other governmental units of their respective shares of income taxes collected during the preceding fiscal year there should be set aside and deducted from such collections "the amount of the appropriation made by section 20.09 (4)" for the current fiscal year, which was an appropriation of a specific amount to the department of taxation for salaries and expenses of administering the income tax act, there could be set aside and deducted the specific amount of the appropriation made by 20.09 (4), but not, in addition thereto, the amount of supplemental appropriations made by other sections and not enumerated in 71.14 (2). Milwaukee v. Wegner, 258 W 285, 45 NW (2d) 699.

71.15 Miscellaneous provisions. (1) Whenever any bank is operating under a stabilization and readjustment agreement pursuant to section 220.07 (16) (Stats. 1933) the trust created pursuant to such stabilization and readjustment agreement shall not be considered as a separate taxable entity. The assets assigned to trustees pursuant to such agreement shall for income tax purposes be considered as owned by the bank and such trust shall be considered as being operated by and as an integral part of such bank. This section shall apply to all returns of income of such banks filed after such assignment to trustees, and any adjustment of such returns heretofore made shall be revised to conform to this section.

(2) The provisions of ss. 71.05 (10) and (12), 71.08 (3) and (8) and 71.10 (3m) (d) as amended by ch. 614, laws of 1953, ss. 71.08 (4) (b) and (c), 71.08 (7) (a), (b) and (c), 71.09 (6), 71.10 (2) and 71.11 (3) as repealed and recreated by said chapter and s. 71.10 (9) (f) created by said chapter, apply to income of the calendar year 1953, or corresponding fiscal year, and subsequent years. The repeal and recreation of s. 71.10 (9) (c) is to be effective in the determination of taxes payable on income of the calendar year 1953, or corresponding fiscal year, and thereafter.

(3) If any transfer of a reserve or other account or portion thereof is in effect a transfer to surplus, so much of such transfer as had been accumulated through deductions from the gross or taxable income of the years open to audit under ss. 71.11 (16) and 71.11 (20) shall be included in the gross or taxable income of such years, and so much of such transfer as has been accumulated through deductions from the gross or taxable income of the years following January 1, 1911, and not open to audit under ss. 71.11 (16)

and 71.11 (20) shall be included in the gross or taxable income of the year in which such transfer was effected.

(4) No occupational taxes imposed pursuant to ch. 70 shall be credited to or offset against teachers' retirement fund surtaxes levied pursuant to s. 71.01 (2) nor shall such occupational taxes be credited to or offset against that portion of the normal income taxes set apart for the "retirement deposit fund and contingent fund", and representing the 14 per cent and 8 per cent referred to in s. 71.14 (2a) and (8).

History: 1953 c. 614, 648.

71.16 Privilege dividend tax. (1) For the privilege of declaring and receiving dividends, out of income derived from property located and business transacted in this state, there is hereby imposed a tax equal to 3 per cent of the amount of such dividends declared and paid by all corporations (foreign and local), except those specified in section 71.01 (3) (a) and (c), after September 26, 1935 and prior to January 1, 1952. Such tax shall be deducted and withheld from such dividends payable to residents and nonresidents by the payor corporation.

(2) Every corporation required to deduct and withhold any tax under this section shall annually on or before the 15th day of the third month following the close of its fiscal year make return of its dividends paid during such fiscal year on the forms prescribed by the department of taxation and make remittance to the department of taxation of the privilege dividend taxes due thereon.

(4) (a) In the case of corporations doing business within and without the state of Wisconsin, such tax shall apply only to dividends paid out of income derived from business transacted and property located within the state of Wisconsin. Dividends shall be presumed to have been paid from the income of the fiscal year immediately preceding that in which they are paid. If the dividends paid exceed such prior year's income, the excess shall be presumed to have been paid from income of the most proximate prior fiscal year which has not been exhausted by subsequent dividends or losses. If the dividends paid exceed the aggregate of all prior years' incomes earned after January 1, 1911 and available for their payment, the excess shall be presumed to have been paid from the income of the year of payment. If the dividends paid exceed both the aggregate of prior years' incomes and the current year's income available for their payment, such excess shall be presumed to have been paid from income earned prior to January 1, 1911 or from capital and not subject to the tax herein imposed. The presumptions herein stated are to be deemed rebuttable only to such extent as is necessary to sustain the constitutionality of the tax. Should any corporation rebut the presumption as to the source of a dividend by establishing that such dividend was paid from a source other than that presumed, the portion of such dividend paid out of income derived from business transacted and property located in Wisconsin shall be determined by applying to such dividend the ratio of corporate surplus earned in Wisconsin to the total earned surplus, or by such other computation as may be warranted so as to reach a reasonable result.

(b) For the purposes of this section the amount of the total annual net income available for the payment of dividends shall be computed in accordance with the provisions of chapter 71, except that the provisions of section 71.06 shall not apply, increased by any nontaxable income and deductible dividends received, and decreased by any nondeductible taxes, contributions and expenses paid.

(c) The taxable portion of dividends paid by a corporation doing business both within and without Wisconsin shall be based on the ratio of its Wisconsin income to its total income for the year or years which are presumed to be the source of the dividend payments. For the purposes of this computation both total income and Wisconsin income shall be computed in accordance with the provisions of chapter 71, except that the provisions of section 71.06 shall not apply and the total income shall be increased by any nontaxable income and deductible dividends received, and such items shall likewise be added to Wisconsin income when under section 71.07 (1) they have a situs in this state. When the determination of the portion of dividends subject to taxation by use of this formula produces an inequitable result because the effective federal income tax rate imposed on a corporation's income attributable to Wisconsin is substantially different from the effective federal income tax rate on its total income, the department of taxation may authorize or direct the modification of the ratio provided in this subsection by deduction from the numerator of the nondeductible federal income taxes paid that would have been deductible from Wisconsin income but for the limitation of section 71.04 (3a), and by deduction from the denominator of the federal income taxes paid which were excluded in the computation of total income in accordance with the provisions of chapter 71.

(5) The provisions of this section shall not apply to dividends declared and paid by a corporation out of its income which it has reported for taxation under the provisions of

chapter 71, to the extent that the business of such corporation consists in the receipt of dividends upon which a privilege dividend tax has been paid. Dividends paid by a subsidiary corporation to a parent corporation, both of which corporations are organized under the laws of Wisconsin, shall not be subject to the tax herein imposed, provided the subsidiary and its parent report their income for taxation under the provisions of chapter 71.

(6) The term "dividends" as used in this section shall include all dividends paid in cash or property. The tax herein imposed shall not apply to stock dividends, liquidating dividends, dividends paid from capital and dividends paid from earnings accumulated prior to January 1, 1911. Only when all sources of income have been exhausted as provided in paragraph (a) of subsection (4) may a dividend be exempt from the tax as having been paid from capital or as having been paid from income earned prior to January 1, 1911.

(7) The tax hereby levied, if not paid within the time herein provided, shall become delinquent and when delinquent shall be subject to a penalty of 2 per cent on the amount of the tax and interest at the rate of one-half per cent per month until paid; provided that, except as they are inconsistent, the provisions of chapter 71, relating to the collection of taxes and the imposition of penalties and interest shall be applicable to the tax imposed by this section on dividends paid on or after July 1, 1949.

(8) The tax hereby imposed shall, when collected by the department of taxation, be paid by it into the state treasury and shall be used to provide rehabilitation for returning veterans of World War II, construction and improvements at state institutions and other state property, and post-war public works projects to relieve post-war unemployment.

(9) Except as they are inconsistent with this section, the provisions of section 71.09 (5) (b), sections 71.10 through 71.13, sections 73.01 and 73.015 shall apply to the tax imposed by this section, but the discount provisions of section 71.10 (9) (c) and the instalment payment provisions of section 71.10 (9) (a) and (b) shall not apply.

(10) Any amount of additional taxable income determined pursuant to the provisions of section 71.11 (7) (a) shall constitute a dividend declared and received during the year within the meaning of subsection (1). A transfer of income between affiliated corporations without a formal dividend declaration, which transfer in effect is a distribution of profits, shall constitute a dividend declared and received during the year within the meaning of subsection (1).

History: 1951 c. 247 s. 28; 1951 c. 394.

Where a corporation acting with the acquiescence of the state's taxing authorities, who acquiesced because of a decision of the supreme court, omitted to withhold any privileged dividend taxes from dividends paid to its stockholders during certain years, the state was estopped to compel the corporation later to pay out of its own funds the taxes which it would otherwise have deducted from and paid out of the dividends paid to its stockholders, although in the meantime the decision in question had been overruled by a later decision. Libby, McNeill & Libby v. Dept. of Taxation, 260 W 551, 51 NW (2d) 796.

71.17 Surtax for construction and educational aids. (1) To provide adequate revenue for construction and improvements at state welfare and educational institutions and other state property, and for increased state aids to the public schools there is levied and there shall be assessed, collected and paid, in addition to all other income and optional taxes imposed by chapter 71, a surtax upon the net incomes of all persons, other than corporations, and on the gross receipts of natural persons electing to report on the optional method permitted by section 71.09 (2m), received by such persons in the years ending December 31, 1949 and December 31, 1950 or in the corresponding fiscal years, which tax shall equal 25 per cent of the normal income tax or 25 per cent of that portion of the optional gross receipts tax assessed in lieu of the normal income tax, computed in accordance with the provisions of chapter 71.

(2) Such tax shall be paid to the department of taxation as provided by section 71.10 (9), and the whole amount collected from such tax shall, through the same channels as other income taxes are paid, be paid into the general fund and shall not be distributed as provided in section 71.14.

(3) In the event any person fails to pay such tax when due, it may be assessed and collected by the department of taxation in the same manner as the income taxes provided for in chapter 71, and the provisions of chapter 71, in so far as not inconsistent herewith, shall be generally applicable to the additional tax imposed by this section.

(4) In the case of a change by any person in income years, the tax on the income of any taxable period extending beyond the 24 months for which this tax is in effect shall be computed only on the proportionate part of such income to which the tax is applicable determined in accordance with regulations to be prescribed by the department of taxation.

(5) The commissioner of taxation is authorized and directed to modify the optional tax table provided for by section 71.09 (2m) so as to include the tax imposed by this section. That portion of the optional tax assessed and collected in lieu of the tax imposed by this section shall be separately accounted for and be paid into the state treasury by the department of taxation in accordance with subsection (2).