CHAPTER 71.

TAX ON INCOMES FOR STATE AND LOCAL REVENUES.

71.01 Imposition of tax; exempt income. (1) NORMAL TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, 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 this state, upon such income as is derived from property located or business transacted within the state, and also by every nonresident natural person upon such income as is derived from the performance of personal services within the state, except as hereinafter exempted. Every corporation organized under the laws of the state and every natural person domiciled in 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 assessments of income for former years under s. 71.11 (16) and (20).

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

(a) Income of insurance companies, railroad corporations and sleeping car companies, of car line companies from operation of car line equipment as defined in s. 76.39, and corporations organized under ch. 185 which are bona fide co-operatives operated without pecuniary profit to any shareholder or member, or operated on a co-operative plan pursuant to which they determine and distribute their proceeds in substantial compliance with s. 185.45, and of all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit. This paragraph does not apply to the income of mutual savings banks, mutual loan corporations, savings and loan associations or credit unions except credit unions the membership of which is limited to groups having a common bond of occupation, or

association, or to groups within a well-defined neighborhood, community or rural district. The amendment (1961) to this paragraph shall be applicable to taxation of income of the calendar year 1962, or corresponding fiscal years and thereafter.

(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 co-operative 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) The first $1,000 of compensation received from the United States for service as a reserve or active member of the armed forces.

(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 1957 and 1958.

(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: 1961 c. 129, 348, 620; 1963 c. 280, 335, 459.

Income tax on nonresident interstate truckers discussed and apportionment formula approved. Moore Motor Freight Lines v. Dept. of Taxation, 14 W (2d) 377, 111 NW (2d) 148.

Where the corpus was composed of intangible personal property and the trustees were all nonresidents of Wisconsin, the situs of the income from these intangibles would not be Wisconsin, and thus the income therefrom would not be taxable under (1). Department of Taxation v. Pabst, 15 W (2d) 195, 112 NW (2d) 161.

Providing for simplification of income tax law by reference to internal revenue code would result in invalid law. Incorporation of future federal statutes would be unconstitutional. 50 Atty. Gen. 107.

Taxation of foreign corporations discussed. 1962 WLR 378.

71.015 Menominee Indian tribe; distribution of assets. No distribution of assets from the United States to the members of the Menominee Indian tribe as defined in s. 49.085 or their lawful distributees, or to any corporation, or organization, created by the tribe or at its direction pursuant to section 8, P.L. 83-399, as amended, and no issuance of stocks, bonds, certificates of indebtedness, voting trust certificates or other securities by any such corporation or organization, or voting trust, to such members of the tribe or their lawful distributees shall be subject to income taxes under this chapter; provided, that so much of any cash distribution made under said P.L. 83-399 as consists of a share of any interest earned on funds deposited in the treasury of the United States pursuant to the supplemental appropriation act, 1952, (65 Stat. 736, 754) shall not by virtue of this section be exempt from the individual income tax of this state in the hands of the recipients for the year in which paid. For the purpose of ascertaining the gain or loss resulting from the sale or other disposition of such assets and stocks, bonds, certificates of indebtedness and other securities under this chapter, the fair market value of such

property, on termination date as defined in s. 70.057, shall be the basis for determining the amount of such gain or loss.

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.

71.03 Gross income; inclusions, exclusions. (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.

(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 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 the 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 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 for exhaustion, wear and tear, obsolescence, amortization, write offs and depletion to the extent of the amount 1. allowed as deductions in computing taxable income under all Wisconsin tax laws and 2. resulting (by reason of the deduction so allowed) in a reduction in any taxable year of the taxpayer's taxes under Wisconsin income tax law, but not less than the amount allowable under all Wisconsin income tax laws. Where no method has been adopted under s. 71.04 (13) or 71.05 (16) (relating to depreciation deduction) the amount allowable shall be determined under s. 71.04 (13) (b) 1 or 71.05 (16) (b) 1. 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 rules prescribed by the department of taxation, expended in the replacement of the property destroyed or in the acquisition of other property located in Wisconsin 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 located in Wisconsin 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 newly 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 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 sub. (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 rules 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.

(f) With respect to natural persons domiciled outside Wisconsin who derive income from the performance, on or after January 1, 1961, of personal services in Wisconsin, such income shall be excluded from Wisconsin gross income to the extent that it is subjected to an income tax imposed by the state of domicile; provided that the law of the state of domicile allows a similar exclusion of income from personal services earned in such state by natural persons domiciled in Wisconsin, or a credit against the tax imposed by such state on such income equal to the Wisconsin tax on such income. The employer of any employe domiciled in a state with which Wisconsin has reciprocity under this paragraph is not required to withhold under this chapter from the wages earned by such employe in this state.

(g) All payments received from the Milwaukee public school teachers' annuity and retirement fund, Wisconsin state teachers retirement system, employe's retirement system of the city of Milwaukee, Milwaukee county employes' retirement system, sheriff's annuity and benefit fund of Milwaukee county, policemen's annuity and benefit fund of Milwaukee, or firemen's annuity and benefit fund of Milwaukee, which are paid on the account of any person who was a member of the paying system or fund as of December 31, 1963, or was retired from any of the aforesaid systems or funds as of said date.

(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.

(6) PROPERTY HELD FOR PRODUCTIVE USE AND INVESTMENT. (a) No gain nor loss shall be recognized if property having a situs in Wisconsin and held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property having a situs in Wisconsin, of a like kind, to be held either for productive use in trade or business or for investment. This provision shall be effective if the exchange occurs in a taxable year ending on or after December 31, 1957. The basis of the property acquired on an exchange coming within this subsection shall be the same as in the case of the property exchanged.

(b) If an exchange would be within the provisions of par. (a) if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain, 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. The basis of the "property of a like kind" acquired on an exchange coming within this subsection shall be the same as in the case of the property exchanged, and the basis of such "other property" acquired (other than money) shall be its fair market value at the date of the exchange.

(c) If an exchange would be within the provisions of par. (a) if it were not for the fact that the 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 no loss from the exchange shall be recognized. In such case, the basis of the property other than money acquired shall be the same as in the case of the property exchanged, less any money acquired. The basis provided in this paragraph shall be allocated between the properties (other than money) received and for the purpose of the allocation there shall be assigned to such "other property" an amount equivalent to its fair market value at the date of the exchange.

(7) EXCHANGE OF STOCK FOR STOCK OF SAME CORPORATION. No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation. The basis of the property acquired on an exchange coming within this subsection shall be the same as in the case of the property exchanged.

History: 1961 c. 247, 348; 1963 c. 224, 267, 386.

An income tax which was imposed by Canada on dividends payable to a Wisconsin resident, on shares of stock owned by him in 3 Canadian corporations, created a personal liability, so that the payment of such income taxes to the Canadian government by these 3 corporations discharged the personal indebtedness of the shareholder-taxpayer and this resulted in a constructive receipt of the amount thereof by him, so as to render the same subject to income taxation by the state of Wisconsin, in addition to the net amount actually received by him. Marine Nat. Exchange Bank v. Dept. of Taxation, 12 W (2d) 154, 107 NW (2d) 157.

Sale of franchise and good will as to a minority stockholder in a sale to a successor corporation discussed. Copland v. Department of Taxation, 16 W (2d) 543, 114 NW (2d) 858.

71.032 Treatment of restricted stock options. (1) TRANSFER OF STOCK. If a share of stock is transferred to an individual pursuant to his exercise after 1962 of a restricted stock option, and no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him:

(a) No income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(b) No deduction under s. 71.04 (1) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which sub. (6) is applicable, with respect to the shares so transferred; and

(c) No amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(d) This subsection shall not apply unless:

1. The individual, at the time he exercises the restricted stock option, is an employe of either the corporation granting such option, a parent or subsidiary of such corporation, or a corporation or a parent or subsidiary of such corporation issuing or assuming a stock option in a transaction to which sub. (6) is applicable, or

2. The option is exercised by him within 3 months after the date he ceases to be an employe of such corporation. In applying sub. (3) (b) and (c) for purposes of subd. 1, there shall be substituted for the term "employer corporation" wherever it appears in such paragraphs the term "grantor corporation" or "corporation issuing or assuming a stock option in a transaction to which sub. (6) is applicable," as the case may be.

(2) ACQUISITION OF NEW STOCK. If stock is received by an individual in a distribution to which s. 71.305, 71.354, 71.355 or 71.356 applies or in a distribution wherein common stock in a corporation is exchanged for common stock in the same corporation or preferred stock in a corporation is exchanged for preferred stock in the same corporation, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(3) DEFINITIONS. For purposes of this section:

(a) *Restricted stock option.* The term "restricted stock option" means an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if:

1. At the time such option is granted:

a. The option price is at least 85 per cent of the fair market value at such time of the stock subject to the option, or

b. In the case of a variable price option, the option price (computed as if the option had been exercised when granted) is at least 85 per cent of the fair market value of the stock at the time such option is granted; and

2. Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

3. Such individual, at the time the option is granted, does not own stock possessing more than 10 per cent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. This subdivision shall not apply if at the time such option is granted the option price is at least 110 per cent of the fair market value of the stock subject to the option and such option either by its terms is not exercisable after the expiration of 5 years from the date such option is granted or is exercised within one year after August 17, 1963. For purposes of this subdivision:

a. Such individual shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants; and

b. Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust, shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries; and

4. Such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted, if such option has been granted on or after June 22, 1954.

(b) *Parent corporation.* The term "parent corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 per cent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(c) *Subsidiary corporation.* The term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each

of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 per cent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(d) *Disposition.* 1. General rule. Except as provided in subd. 2, the term "disposition" includes a sale, exchange, gift or a transfer of legal title, but does not include:

a. A transfer from a decedent to an estate or a transfer by bequest or inheritance;

b. An exchange to which s. 71.354, 71.355 or 71.356 applies or an exchange of common stock in a corporation for common stock in the same corporation or preferred stock in a corporation for preferred stock in the same corporation, or

c. A mere pledge or hypothecation.

2. Joint tenancy. The acquisition of a share of stock in the name of the employe and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employe acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(e) *Stockholder approval.* If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(f) *Exercise by estate.* 1. In general. If a restricted stock option is exercised subsequent to the death of the employe by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, this section shall apply to the same extent as if the option had been exercised by the decedent, except that:

a. The holding period and employment requirements of sub. (1) shall not apply.

2. Basis of shares acquired. In the case of a share of stock acquired by the exercise of an option to which subd. 1 applies:

a. The basis of such share shall include so much of the basis of the option as is attributable to such share.

(g) *Variable price option.* The term "variable price option" means an option under which the purchase price of the stock is fixed or determinable under a formula in which the only variable is the fair market value of the stock at any time during a period of 6 months which includes the time the option is exercised; except that in the case of options granted after September 30, 1958, such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

(4) MODIFICATION, EXTENSION OR RENEWAL OF OPTION. (a) *Rules of application.* For purposes of sub. (3), if the terms of any option to purchase stock are modified, extended or renewed, the following rules shall be applied with respect to transfers of stock made on the exercise of the option after the making of such modification, extension or renewal:

1. Such modification, extension or renewal shall be considered as the granting of a new option.

2. The fair market value of such stock at the time of the granting of such option shall be considered as:

a. The fair market value of such stock on the date of the original granting of the option,

b. The fair market value of such stock on the date of the making of such modification, extension or renewal, or

c. The fair market value of such stock at the time of the making of any intervening modification, extension or renewal, whichever is the highest.

3. Subdivision 2 shall not apply if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months before the date of the modification, extension or renewal, divided by 12, is an amount less than 80 per cent of the fair market value of such stock on the date of the original granting of the option or the date of the making of an intervening modification, extension or renewal, whichever is the highest.

(b) *Definition of modification.* The term "modification" means any change in the terms of the option which gives the employe additional benefits under the option, but such term shall not include a change in the terms of the option:

1. Attributable to the issuance or assumption of an option under sub. (6); or

2. To permit the option to qualify under sub. (3) (a) 2. If an option is exercisable after the expiration of 10 years from the date such option is granted, this subdivision

shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.

(5) EFFECT OF DISQUALIFYING DISPOSITION. If a share of stock, acquired by an individual pursuant to his exercise of a restricted stock option, is disposed of by him within 2 years from the date of the granting of the option or within 6 months after the transfer of such share to him, then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred.

(6) CORPORATE REORGANIZATIONS, LIQUIDATIONS, ETC. For purposes of this section, the term "issuing or assuming a stock option in a transaction to which sub. (6) is applicable" means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation, if:

(a) The excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares; and

(b) The new option or the assumption of the old option does not give the employe additional benefits which he did not have under the old option.

(7) For purposes of this section, the parent-subsidiary relationship shall be determined at the time of any such transaction under this section.

History: 1963 c. 242.

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 recognized 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 obe-

dience 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 ss. 71.301 to 71.373, 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 transferor 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).

71.04 Deductions from gross income of corporations. Except as provided in s. 71.047 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 is reported the name, address and amount paid each such employe or officer residing within this state to whom a compensation of $700 or more has 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 with respect to the calendar year 1963 and corresponding fiscal years and prior calendar and

fiscal years, but not thereafter a reasonable allowance for depreciation by use, wear and tear of property from which the income is derived; and in the cases 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 as provided in s. 71.10 (1).

(2a) In lieu of the allowance for depreciation for the calendar year 1964 or corresponding fiscal year or any later year the amortization deductions of any emergency facility provided in section 216 of the revenue act of 1950 (section 124A of the U. S. internal revenue code of 1939) and in Section 168 of the internal revenue code of 1954, 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 deduction 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 (53) or (85) 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 (53) or (85) 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.

(2c) In lieu of the allowance for depreciation for any taxable year or part thereof after December 31, 1952, the owner may elect the accelerated amortization deduction for milkhouses purchased, constructed and installed pursuant to rule Ag 30.03 (12) [Wis. Adm. Code] or wells required by law to conform to the Wisconsin well construction and pump installation code or by county or municipal ordinance to conform to the milk ordinance and code recommended by the U. S. public health service or bulk milk tanks or milk pipe lines, purchased, constructed or installed, including cost of installation,

on any undepreciated portion of such milkhouse, well, bulk milk tanks or milk pipe lines computed on an estimated life of 60 months.

(a) Written notice of election to take amortization of a milkhouse, well, bulk milk tank or milk pipe line under this subsection must be filed with the department of taxation with the taxpayer's return for the first taxable year for which such election under this subsection is made in respect to such milkhouse or well.

(b) No deduction shall be allowed on other than depreciable property, nor shall accelerated amortization or depreciation and accelerated amortization deductions be permitted in excess of the cost of the asset subject to 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 stock dividends not taxable pursuant to s. 71.305, 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 only 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 ch. 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 statutes, 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) (a) Charitable contributions, as defined in par. (d), payment of which is made within the year, to an amount not in excess of 5 per cent of the taxpayer's net income of the calendar or fiscal year as computed without the benefit of this section.

(b) In the case of a corporation reporting its taxable income on the accrual basis, if 1. the board of directors authorizes a charitable contribution during any taxable year, and 2. payment of such contribution is made after the close of such taxable year and on or before the fifteenth day of the third month following the close of such taxable year, then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the department of taxation may by rule or instruction prescribe.

(c) Any charitable contribution made by a corporation in a taxable year beginning after December 31, 1954, in excess of the amount deductible in such year under the 5 per cent limitation, shall be deductible in each of the 2 succeeding taxable years in order of time, but only to the extent of the lesser of the 2 following amounts: 1. the excess of the maximum amount deductible for such succeeding taxable year under the 5 per cent limitation over the contributions made in such year; and 2. in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second succeeding taxable year the portion of such excess contribution not deductible in the first succeeding taxable year.

(d) For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of:

1. The state or any political subdivision thereof, but only if the contribution or gift is made for exclusively public purposes.

2. A corporation, trust or community chest, fund or foundation operating within this state, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

3. A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization organized in the United States or any of its possessions, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

4. A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is operating within this state and is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

5. Carthage college of Carthage, Illinois, to facilitate the location and operation of such college in Kenosha, Wisconsin, provided such contribution or gift is made during the calendar year 1960.

6. The state of Wisconsin for its promotional activities for the New York World's Fair of 1964-1965.

7. Any policemen relief association organized under s. 213.11 or firemen relief association organized under s. 213.10. Under this subdivision contributions include contributions and donations, and other funds raised through the activities of such associations for the relief of widows and orphans.

(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.

(7a) (a) No deduction shall be allowed in respect to losses from sales or exchanges of property (other than losses in cases of distributions in corporate liquidations) directly or indirectly between persons specified in par. (b) 1, 2, 3 or 4.

(b) The persons referred to in par. (a) are:

1. An individual and a corporation more than 50 per cent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

2. Two corporations more than 50 per cent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the federal internal revenue code, a personal holding company or a foreign personal holding company;

3. A fiduciary of a trust and a corporation more than 50 per cent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is grantor of the trust;

4. A person and an organization whose income is exempt under s. 71.01 (3) (a) and which is controlled directly or indirectly by such person.

(8) 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 having power to make such demand or order, or by the examining committee of any state bank in accordance with s. 221.09, provided all the requirements of this subsection have been complied with: the corporation must elect to make deduction under this subsection by claiming a charge down or write-off of such asset, in an amount consistent with the terms of the demand or order, in its return covering the first income year in which the charge down or write-off is demanded or ordered. When a demand or order affects a

charge down or write-off of more than one asset, an election to claim the charge down or write-off of one such asset shall be deemed an election to claim the charge down or write-off of all assets affected by such demand or order. An election to claim or not claim a deduction under this subsection with respect to any such order shall be irrevocable. 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 any such asset, and any amount recovered with respect to such an asset which exceeds the adjusted cost or basis shall be reported as income in the year in which received or accrued, depending on the method of accounting employed by the taxpayer.

(9) (a) Savings and loan associations, mutual loan corporations, mutual savings banks, and credit unions may deduct amounts paid to, or credited to the accounts of depositors or holders of accounts as dividends or earnings on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(b) Savings and loan associations, mutual savings banks, and credit unions may make a deduction for a reasonable addition to reserve for bad debts of ⅔ of such sums as they are required to allocate to their loss reserves pursuant to statutory provisions or rules and regulations or orders of any state or federal governmental supervisory authorities.

(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 by the fifteenth day of the third month 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 2½ 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.

(d) No deduction shall be disallowed under this subsection if the item would not be includable in the Wisconsin taxable income of the creditor even if received in the taxable year or within 2½ months after the close thereof.

(e) If a deduction, which is otherwise properly accruable, is disallowed pursuant to the application of pars. (a) (b) and (c), such deduction shall be allowed for the same item in any subsequent year when actually paid.

(13) (a) With respect to the calendar year 1964 and corresponding fiscal years and thereafter, as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence):

1. Of property used in the trade or business, or

2. Of property held for the production of income.

(b) The term "reasonable allowance" as used in par. (a) includes (but is not limited to) an allowance computed in accordance with rules prescribed by the department of taxation, under any of the following methods:

1. The straight line method,

2. The declining balance method, using a rate not exceeding twice the rate which

would have been used had the annual allowance been computed under the method described in subd. 1,

3. The sum of the years-digits method, and

4. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method prescribed in subd. 2. Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under par. (a).

(c) Paragraph (b) 2, 3 and 4 shall apply only in the case of property (other than intangible property) described in par. (a) with a useful life of 3 years or more:

1. The construction, reconstruction or erection of which is completed after the end of the taxpayer's calendar or fiscal year 1963 and then only to that portion of the basis which is properly attributable to such construction, reconstruction or erection after the end of the taxpayer's calendar or fiscal year 1963, or

2. Acquired after the end of the taxpayer's calendar or fiscal year 1963, if the original use of such property commences with the taxpayer and commences after such date.

(d) Where, under rules prescribed by the department of taxation, the taxpayer and the department have, after August 15, 1963 entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the department in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change.

(e) In the absence of an agreement under par. (d) containing a provision to the contrary, a taxpayer may at any time elect in accordance with rules prescribed by the department to change from the method of depreciation described in par. (b) 2 to the method described in par. (b) 1.

(f) Under rules prescribed by the commissioner, a taxpayer may for purposes of computing the allowance under par. (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 per cent of the basis of such property (as determined under par. (g) as of the time as of which such salvage value is required to be determined). For purposes of this paragraph the term "personal property" means depreciable personal property (other than livestock) with a useful life of 3 years or more.

(g) The basis on which exhaustion, wear and tear and obsolescence shall be allowed in respect to any property shall be the Wisconsin income tax cost of such property, as determined by s. 71.03 (1) (g) and other provisions of this chapter, insofar as applicable.

(14) (a) In the case of property to which this subsection applies the term "reasonable allowance" as used in sub. (13) may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under sub. (13) to the taxpayer with respect to such property, of 20 per cent of the cost of such property.

(b) If in any taxable year the cost of property to which this provision applies with respect to which the taxpayer may elect an allowance under par. (a) for such taxable year exceeds $10,000, then par. (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of $10,000.

(c) 1. The election under this subsection for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the department by rule prescribes.

2. Any election made under this section may not be revoked except with the consent of the commissioner of taxation or his delegate.

(d) 1. For purposes of this subsection the term "property to which this subsection applies" means tangible personal property:

a. Of a character subject to the allowance for depreciation under sub. (13).

b. Acquired by purchase after December 31, 1963 or after the taxpayer's corresponding fiscal year for use in trade or business or for holding for production of income.

c. With a useful life (determined at the time of such acquisition) of 6 years or more.

2. For purposes of subd. 1 the term "purchase" means any acquisition of property, but only if

a. The property is not acquired by one member of an affiliated group from another member of the same affiliated group, and

b. The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the persons from whom acquired.

3. For purposes of this subsection the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

4. For purposes of par. (b),

a. All members of an affiliated group shall be treated as one taxpayer, and

b. The department of taxation shall apportion the dollar limitation contained in par. (b) among the members of such affiliated group in such manner as it by rule prescribes.

5. For purposes of this subsection, the term "affiliated group" means one or more chains of includible corporations, connected through stock ownership with a common parent corporation which is an includible corporation if stock possessing more than 50 per cent of the voting power of all classes of stock and more than 50 per cent of each class of nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations and the common parent corporation owns directly stock possessing more than 50 per cent of the voting power of all classes of stock and more than 50 per cent of each class of nonvoting stock of at least one of the other includible corporations. The term "stock" as used in this subsection does not include nonvoting stock which is limited and preferred as to dividends. As used in this subsection the term "includible corporation" means any corporation except corporations whose income is exempt from taxation under s. 71.01 (3).

6. In applying sub. (13) (g) the adjustment under s. 71.03 (1) (g) resulting by reason of an election made under this subsection with respect to any "property" to which this subsection applies shall be made before any other deduction allowed by sub. (13) (a) is computed.

History: 1961 c. 246, 467, 620; 1963 c. 6, 164, 223, 224, 433, 436, 459.

Payments which a business corporation made to a private club for dues for officers and employes of the corporation were not deductible by the corporation for income-tax purposes as "ordinary and necessary expenses" of the corporation. Forsberg Paper Box Co. v. Department of Taxation, 14 W (2d) 93, 109 NW (2d) 457.

Under (2), in determining the reasonableness of a contract between related parties, the test is whether the same contract would have been entered into between strangers. Capitol Lumber Co. v. Department of Taxation, 17 W (2d) 105, 115 NW (2d) 606.

Where the stock of a corporation was publicly held, and the entire issue of preferred stock was retired by the corporation, and the motivation for the transaction was to improve the status of the body corporate, not to favor any individual shareholders or a special group thereof, the corporation's payment of interest on the money borrowed for the purpose of retiring the issue must be considered ordinary and necessary expenses in the operation of the business from which its income was derived, so as to be deductible under (2). Basic Products Corp. v. Department of Taxation, 19 W (2d) 183, 120 NW (2d) 161.

71.046 Depletion; certain mines producing ores of lead, zinc, copper or other metals. (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, but including sulphur and iron resulting from the processing of lead, zinc, copper or other metals except iron, or mills finishing the products of such mines for the smelter, or smelters located in Wisconsin processing the products of such lead, zinc, copper or other metal mines, except iron mines, or mills 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 prospect-

ing for ore in Wisconsin, and proof thereof duly verified shall be furnished the department of taxation.

71.047 Deductions to financial institutions. The aggregate deductions from gross income which, but for this section, would be allowable under 71.04 to state banks, national banks, savings and loan associations, mutual savings banks and credit unions shall, with respect to the calendar year 1963 and corresponding fiscal years and thereafter, be reduced by so much thereof as would be reflected by multiplying such aggregate by four-fifths of such percentage as total untaxable interest from obligations of the United States and its instrumentalities was of total gross income, including such interest.

History: 1963 c. 224.

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 with respect to the calendar year 1963 and corresponding fiscal years and prior calendar and fiscal years but not thereafter 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. 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" includes the performance of the functions of a public office. The term "ordinary and necessary expenses" includes 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. No deduction from the total farm expenses of any sum representing the cost of raising farm products consumed by adults and minor children in the family of the taxpayer shall be required.

(2a) In lieu of the allowance for depreciation for the calendar year 1964 or corresponding fiscal year or any later year, 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) and in Section 168 of the internal revenue code of 1954, 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 (53) or (85) 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 (53) or (85) 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.

(2c) In lieu of the allowance for depreciation for any taxable year or part thereof after December 31, 1952, the owner may elect the accelerated amortization deduction for milkhouses purchased, constructed and installed pursuant to rule Ag 30.03 (12) [Wis. Adm. Code] or wells required by law to conform to the Wisconsin well construction and pump installation code or by county or municipal ordinance to conform to the milk ordinance and code recommended by the U. S. public health service or bulk milk tanks or milk pipe lines, purchased, constructed or installed, including cost of installation, on any undepreciated portion of such milkhouse, well, bulk milk tanks or milk pipe lines computed on an estimated life of 60 months.

(a) Written notice of election to take amortization of a milkhouse, well, bulk milk tank or milk pipe line under this subsection must be filed with the assessor of incomes in whose district the taxpayer's farm lies with the taxpayer's return for the first taxable year for which such election under this subsection is made in respect to such milkhouses or well.

(b) No deduction shall be allowed on other than depreciable property, nor shall accelerated amortization or depreciation and accelerated amortization deductions be permitted in excess of the cost of the asset subject to 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 U. S. 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 that deductions for income taxes paid to the U. S. government shall be limited to taxes paid on net income which is taxable under this chapter; and provided 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. For purposes of this subsection, amounts withheld by an employer from an employe's wages in compliance or purported compliance with this chapter shall be deemed Wisconsin income taxes assessed; and amounts both declared and paid pursuant to s. 71.21 shall be deemed Wisconsin income taxes assessed when paid, but no amount declared but not paid and no amount declared and paid for a future income year shall be deemed assessed. United States income, excess or war profits and defense taxes as limited by sub. (4a) shall be

deductible up to, but not including, the 1962 calendar and corresponding fiscal year returns.

(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) If in the calendar year 1962 or thereafter, a natural person domiciled in this state pays a net income tax to another state or the District of Columbia upon income derived from the performance by him of personal services outside Wisconsin in the calendar year 1961 or corresponding fiscal year or thereafter, such person may credit the tax paid to such other state or the District of Columbia on such income against the net income tax otherwise payable to Wisconsin on income of the year in which such personal services were performed. No such credit shall be allowed unless claimed within the time provided in s. 71.10 (10) (bn) but s. 71.10 (10) (d) shall not apply to such credits. For purposes of this section, amounts withheld from wages or declared and paid pursuant to the income tax law of another state shall be deemed a net income tax paid to such other state only in the year in which the income tax return for such state was required to be filed. The department of taxation shall compute the revenue loss to the state, county and various tax districts resulting from the tax credits granted under this subsection, and may from time to time correct its computations.

(6) (a) Charitable contributions, as defined in par. (b), payment of which is made within the year, 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 section.

(b) For purposes of this section, the term "charitable contributions" means a contribution or gift to or for the use of:

1. The state or any political subdivision thereof, but only if the contribution or gift is made for exclusively public purposes.

2. A corporation, trust or community chest, fund or foundation operating within this state, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

3. A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization organized in the United States or any of its possessions, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

4. A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is operating within this state and is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

5. A fraternal society, order or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals.

6. Any corporation or association organized and operated exclusively for religious purposes.

7. Any policemen relief association organized under s. 213.11 or firemen relief association organized under s. 213.10. Under this subdivision contributions include contributions and donations, and other funds raised through the activities of such associations for the relief of widows and orphans.

8. Carthage college of Carthage, Illinois, to facilitate the location and operation of such college in Kenosha, Wisconsin, provided such contribution or gift is made during the calendar year 1960.

9. The state of Wisconsin for its promotional activities for the New York World's Fair of 1964-1965.

(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.

(8a) (a) No deduction shall be allowed in respect to losses from sales or exchanges of property (other than losses in cases of distributions in corporate liquidations), directly or indirectly between persons specified in par. (b).

(b) The persons referred to in par. (a) are:

1. Members of a family which shall include in respect to an individual only his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants;

2. An individual and a corporation more than 50 per cent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

3. A grantor and a fiduciary of any trust;

4. A fiduciary of a trust and a fiduciary of another trust, if the same person is grantor of both trusts;

5. A fiduciary of a trust and a beneficiary of such trust;

6. A fiduciary of a trust and a beneficiary of another trust, if the same person is the grantor of both trusts;

7. A fiduciary of a trust and a corporation more than 50 per cent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust, or by or for a person who is grantor of the trust; or

8. A person and an organization whose income is exempt under s. 71.01 (3) (a) and which is controlled directly or indirectly by such person or by members of the family of such person.

(8b) No deduction shall be allowed in respect to losses from sales or exchanges of property (other than an interest in the partnership) directly or indirectly between:

(a) A partnership and a partner owning, directly or indirectly, more than 50 per cent of the capital interest, or the profits interest in such partnership, or

(b) Two partnerships in which the same persons own, directly or indirectly, more than 50 per cent of the capital interests or profits interests.

(9) With respect to determination of net taxable income for the calendar year 1963 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 $85 but not more than $2,500. 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 up to and including 1961 calendar and corresponding fiscal 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.

(13a) (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, 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 an optional standard deduction with respect to income of the calendar year 1962 or corresponding fiscal years and subsequent years in an amount equal to 10 per cent of the adjusted gross income or $1,000, whichever is the lesser, except in the case of married persons the sum of the optional standard deductions allowable to the husband and wife shall not exceed $1,000. For the income year 1963 and thereafter, the following persons may elect to take a minimum optional standard deduction of $300: "A head of a family" as defined in s. 71.09 (6) (c), a single person who has reached the age of 65 prior to the close of the calendar or fiscal year or a married person.

(b) The optional standard deduction provided in par. (a) shall not be allowed to a married person whose spouse is required to file a return unless such spouse has also elected to take the optional standard deduction with respect to the same income year. An election by one spouse to take the minimum optional standard deduction of $300 under par. (a) shall with respect to the same income year preclude the other spouse from taking such deduction, the optional standard deduction or the deductions enumerated in par. (c) 1 to 8. For purposes of this subsection the determination of whether an individual is married shall be made pursuant to s. 71.09 (6) (a).

(c) The term "adjusted gross income" as used in this subsection means the sum of the items 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), (2), (2a), (2b), (2c), (3), (4), (7) and (8) and 71.06, except the following:

1. Income taxes imposed by the state of Wisconsin.
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.
8. Casualty losses to nonbusiness property.

(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.

(16) (a) With respect to the calendar year 1964 and corresponding fiscal years and thereafter, as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence):

1. Of property used in the trade or business, or
2. Of property held for the production of income.

(b) The term "reasonable allowance" as used in par. (a) includes (but is not limited to) an allowance computed in accordance with rules prescribed by the department under any of the following methods:

1. The straight line method.
2. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in subd. 1.
3. The sum of the years-digits method, and
4. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such

allowances been computed under the method prescribed in subd. 2. Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under par. (a).

(c) Paragraph (b) 2, 3 and 4 shall apply only in the case of property (other than intangible property) described in par. (a) with a useful life of 3 years or more:

1. The construction, reconstruction or erection of which is completed after the end of the taxpayer's calendar or fiscal year 1963 and then only to that portion of the basis which is properly attributable to such construction, reconstruction or erection after the end of the taxpayer's calendar or fiscal year 1963, or

2. Acquired after the end of the taxpayer's calendar or fiscal year 1963, if the original use of such property commences with the taxpayer and commences after such date.

(d) Where, under rules prescribed by the department, the taxpayer and the department have, after August 15, 1963, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the department in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change.

(e) In the absence of an agreement under par. (d) containing a provision to the contrary, a taxpayer may at any time elect in accordance with rules prescribed by the department to change from the method of depreciation described in par. (b) 2 to the method described in par. (b) 1.

(f) Under rules prescribed by the commissioner, a taxpayer may for purposes of computing the allowance under par. (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 per cent of the basis of such property (as determined under par. (g) as of the time as of which such salvage value is required to be determined). For purposes of this paragraph the term "personal property" means depreciable personal property (other than livestock) with a useful life of 3 years or more.

(g) The basis on which exhaustion, wear and tear and obsolescence shall be allowed in respect to any property shall be the Wisconsin income tax cost of such property, as determined by s. 71.03 (1) (g) and other provisions of this chapter, insofar as applicable.

(h) In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees and devisees on the basis of the income of the estate allocable to each.

(i) Under rules prescribed by the commissioner, a taxpayer may for purposes of computing the allowance under par. (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 per cent of the basis of such property as determined under par. (g) as of the time such salvage value is required to be determined. In this paragraph "personal property" means depreciable personal property other than livestock with a useful life of 3 years or more.

(17) (a) In the case of property to which this provision applies the term "reasonable allowance" as used in sub. (16) may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under sub. (16) to the taxpayer with respect to such property, of 20 per cent of the cost of such property.

(b) If in any taxable year the cost of property to which this subsection applies with respect to which the taxpayer may elect an allowance under par. (a) for such taxable year, exceeds $10,000, then par. (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of $10,000.

(c) 1. The election under this subsection for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the department by rule prescribes.

2. Any election made under this section may not be revoked except with the consent of the commissioner or his delegate.

(d) 1. For purposes of this subsection the term "property to which this subsection applies" means tangible personal property:

a. Of a character subject to the allowance for depreciation under sub. (16).

b. Acquired by purchase after December 31, 1963 or after the taxpayer's corresponding fiscal year for use in trade or business or for holding for production of income.

c. With a useful life (determined at the time of such acquisition) of 6 years or more.

2. For purposes of subd. 1. the term "purchase" means any acquisition of property, but only if:

a. The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under sub. (8a) or (8b) or s. 71.04 (7a) (but in applying sub. (8a) for purposes of this subsection, sub. (8a) (b) shall be treated as providing that the family of an individual includes only his spouse, ancestors, and lineal descendants), and

b. The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired.

3. For purposes of this subsection the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

4. This subsection shall not apply to trusts.

5. In the case of an estate, any amount apportioned to an heir, legatee or devisee under sub. (16) (g) shall not be taken into account in applying par. (b) of this subsection to "property to which this subsection applies" of such heir, legatee or devisee not held by such estate.

6. In applying sub. (16) (f) the adjustment under s. 71.03 (1) (g) resulting by reason of an election made under this subsection with respect to any "property to which this subsection applies" shall be made before any other deduction allowed by sub. (16) (a) is computed.

History: 1961 c. 348, 620; 1963 c. 6, 102, 164, 223, 224, 328, 433, 436, 455, 459.

See note to 72.79, citing Fulton Foundation v. Department of Taxation, 13 W (2d) 1, 108 NW (2d) 312.

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 ss. 71.04 and 71.05. The addition to and deductions from income of urban transit companies under s. 71.18 (1) shall also be used in determining the net business loss of such companies to be offset against the net business income as determined under s. 71.18 of subsequent years as provided in this section. Any net business loss for any year prior to the calendar year 1955 or corresponding fiscal year shall not, however, be recomputed under s. 71.18.

71.07 Situs of income; allocation and apportionment. (1) For the purposes of taxation income from business, not requiring apportionment under sub. (2), (3) or (5), 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. Corporation income from personal services performed by employes of corporations shall be deemed business income and shall follow the situs of the business. Income from personal services of resident individuals, including income from professions, shall follow residence. Income from personal services of nonresident individuals, including income from professions, shall follow the situs of the services. All other income, including royalties from patents, income derived 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 s. 71.08. For the purposes of taxation, interest received on state and federal tax refunds when the tax refunded was on business income or property shall be deemed income from business and shall follow the situs of the business from which derived.

(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:

(a) 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. In determining apportionable net income with respect to the calendar year 1964 and corresponding fiscal years and thereafter, in any case in which the property factor is distorted by the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, the department may determine the property factor by depreciating all property by the same method, or using original cost or any other means as will achieve an equitable result.

(b) In the case of persons engaged in manufacturing or in any form of collecting, assembling or processing goods and materials, 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", 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 justify a different treatment, this term shall be generally interpreted to include as elements of cost the following:

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

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

3. The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling or processing activities.

(c) 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 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: 1961 c. 348, 652; 1963 c. 224.

Action of the board of tax appeals, in holding that in the absence of definite proof the property factor should be based on sales was arbitrary and capricious for ignoring the weight of the property factor in the statutory formula, and improperly reducing the three-factor formula to a two-factor formula in this case. Department of Taxation v. Blatz Brewing Co. 12 W (2d) 615, 108 NW (2d) 319.

The tax-apportionment formula contained in (2) did not intend to allocate business income among the sum of the states in which business was done, since, once a taxpayer is engaged in business within and without this state, entitling the taxpayer to use the apportionment formula, Wisconsin is restricted to taxing "only on such income as is derived from business transacted and property located within the state." Department of Taxation v. Blatz Brewing Co. 12 W (2d) 615, 108 NW (2d) 319.

Where a Wisconsin taxpayer corporation, not making a separate accounting, was engaged in the brewing of beer in Milwaukee, and in the sale thereof in Wisconsin to distributors located both within and without the state, in returnable containers which were returned when empty to Milwaukee, and the taxpayer corporation also owned neon advertising signs and certain other property located throughout the United States, the nature of such property outside the state did not constitute "engaged in business" by the taxpayer corporation outside the state, within the meaning of (2), prescribing a formula for the taxation of apportionable income in cases of taxpayers engaged in business within and without the state. Department of Taxation v. Blatz Brewing Co. 12 W (2d) 615, 108 NW (2d) 319.

See note to 71.01, citing Moore Motor Freight Lines v. Dept. of Taxation, 14 W (2d) 377, 111 NW (2d) 148.

The income of a Wisconsin resident and professional engineer from a firm in which he was a partner, which had its principal office in New York, which did no actual construction work and did not employ contractors, was derived from a profession and not from a business, and the taxation of this income therefore followed his residence under 71.07 (1), Stats. 1953, 1955, so as to be taxable thereunder for the years in question. Whitney v. Department of Taxation, 16 W (2d) 274, 114 NW (2d) 445.

The application of a formula adopted under (5) to a unitary multistate trucking business, consisting of the 3 factors of revenue miles, payroll and originating revenue, is not arbitrary or unreasonable. In determining validity of a formula the court must not only look at the challenged factor but also its relation to the other factors and the composite result. A taxpayer who attacks a formula apportionment of income has the burden of showing by clear and cogent evidence that it results in extraterritorial values being taxed. W. R. Arthur & Co. v. Department of Taxation, 18 W (2d) 225, 118 NW (2d) 168.

Even though some manufacturing was done and sales were made from warehouses outside of Wisconsin, 100 per cent of sales could be used in the tax ratio since the Wisconsin office played a major part in all sales. Globe-Union, Inc. v. Department of Taxation, 20 W (2d) 213, 121 NW (2d) 894.

Taxation of foreign corporations discussed. 1962 WLR 378.

71.08 Fiduciaries; returns and assessments. (1) Every executor and administrator shall file an income tax return on a calendar or fiscal year basis 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, except that no deduction shall be allowed in such subsequent returns for any Wisconsin income taxes paid which have been allowed as a deduction in arriving at the net taxable estate for inheritance tax purposes under s. 72.015 (4). 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 sub. (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 depend-

ent 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 on a calendar or fiscal year basis 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 destributees 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 de-

rived, 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 payment 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: 1961 c. 33, 404.

Revisor's Note, 1961: The amendment of 71.08 (3) by chapter 221, Laws 1959, was clearly intended to be complementary to the new inheritance tax provision created as 72.015 (4) by the same act. Reference in 71.08 (3) should, therefore, be to 72.015 (4) and not to the whole section. Approved by Department of Taxation. (Bill 50-S)

Where a sizeable trust provided for an annuity of $5,000 to be paid from income to an individual for life and on termination the estate to go to a designated city, and there was only a remote possibility that the annuity would exhaust the annual income, (8) exempted from income tax all income in excess of the $5,000. Wisconsin Dept. of Taxation v. La Crosse, 11 W (2d) 345, 105 NW (2d) 800.

Trusts having nonresident trustees who made policy decisions, with only the mechanics of the purchase or sale of securities carried out by a local agent who had no power and never exercised any power to either alter or modify decisions of a nonresident company engaged to advise trustees, were not "administered" in this state, for purposes of income taxation, within the meaning of (8). Department of Taxation v. Pabst, 15 W (2d) 195, 112 NW (2d) 161.

Where, under the terms of a will, the residue of the testatrix's estate would be distributed to a trustee for exclusive charitable purposes, but there was a will contest lasting from 1953 through 1955, and the will was not admitted to probate and letters of trust were not issued until near the end of 1955, and the corporate special administrator and personal representative of the decedent, as such, received income consisting of capital gains, as well as ordinary income, during such interim period, the same was taxable to it within 71.08 (1) to (6) and 71.08 (9), and such income was not relieved from taxation by virtue of a charitable-trust exemption provision contained in 71.08 (9). Estate of Greenwald, 17 W (2d) 533, 117 NW (2d) 609.

As used in (8), the word "administered," as applied to an inter vivos trust of intangibles, means simply conducting the business of the trust, and a proper application of the statute requires the conclusion that the trust is being administered in Wisconsin within the meaning of the statute if the major portion of the trust business is conducted in Wisconsin. Pabst v. Department of Taxation, 19 W (2d) 313, 120 NW (2d) 77.

Tax accounting problems of personal representatives. 47 MLR 57.

Tax accounting problems of trustees. Hinners, 47 MLR 147.

71.09 Rates of taxation, interest and personal exemptions. (1) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the calendar year 1963 and corresponding fiscal years, and for calendar and fiscal years thereafter, shall be computed at the following rates:

(a) On the first $1,000 of taxable income or any part thereof, at the rate of 2.30 per cent.
(b) On the second $1,000 or any part thereof 2.55 per cent.
(c) On the third $1,000 or any part thereof, 2.80 per cent.
(d) On the fourth $1,000 or any part thereof, 3.80 per cent.
(e) On the fifth $1,000 or any part thereof, 4.30 per cent.
(f) On the sixth $1,000 or any part thereof, 4.80 per cent.
(g) On the seventh $1,000 or any part thereof, 5.30 per cent.
(h) On the eighth $1,000 or any part thereof, 6.30 per cent.
(i) On the ninth $1,000 or any part thereof, 6.80 per cent.
(j) On the tenth $1,000 or any part thereof, 7.30 per cent.
(k) On the eleventh $1,000 or any part thereof, 7.80 per cent.
(l) On the twelfth $1,000 or any part thereof, 8.30 per cent.
(m) On the thirteenth $1,000 or any part thereof, 8.80 per cent.
(n) On the fourteenth $1,000 or any part thereof, 9.30 per cent.
(o) On the fifteenth $1,000 or any part thereof, 9.80 per cent.
(p) On all taxable income in excess of $15,000, 10 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 through the 1961 calendar and fiscal years, shall be computed at the following rates:

(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.

(1am) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the calendar year 1962 and corresponding fiscal years shall be computed at the following rates:

(a) On the first $1,000 of taxable income or any part thereof, at the rate of 2 per cent.
(b) On the second $1,000 or any part thereof, 2¼ per cent.
(c) On the third $1,000 or any part thereof, 2½ 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, 4½ per cent.
(g) On the seventh $1,000 or any part thereof, 5 per cent.
(h) On the eighth $1,000 or any part thereof, 6 per cent.
(i) On the ninth $1,000 or any part thereof, 6½ per cent.
(j) On the tenth $1,000 or any part thereof, 7 per cent.
(k) On the eleventh $1,000 or any part thereof, 7½ per cent.
(l) On the twelfth $1,000 or any part thereof, 8 per cent.
(m) On the thirteenth $1,000 or any part thereof, 8½ per cent.
(n) On the fourteenth $1,000 or any part thereof, 9 per cent.
(o) On the fifteenth $1,000 or any part thereof, 9½ per cent.
(p) On all taxable income in excess of $15,000, 10 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.

(2b) The commissioner of taxation shall prepare a table from which the tax specified in sub. (1a) on taxable income up to $7,000 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:

(a) The title thereof shall be "Tax Table."

(b) The first 2 columns shall contain the minimum and the maximum amounts, respectively, of taxable income in brackets of not more than $100, and extending to include the maximum amount reportable under sub. (1a) (g). Computation of tax on taxable income in excess of $7,000 may be set forth at the foot of such table.

(c) The third column shall show the amount of the tax payable for each bracket before the allowance of any deduction for personal exemptions or exemptions for dependents. Said tax shall be computed at the rates under sub. (1a), which rates shall be applied to the amount of income at the middle of each bracket. The amount of tax for each bracket shall be computed only to the nearest 10 cents.

(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).

(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 before the allowance of any deduction for personal exemptions or exemptions for dependents. Said tax shall be computed at the rates provided in ch. 71 for normal income taxes 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.

(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.

(g) The commissioner shall prepare a combined single form for reporting income with separate columns for each individual taxpayer when both husband and wife have elected to file on the optional tax basis and to determine their separate income taxes from the table under par. (d) Such form shall be appropriately titled using the word "combined" but not the word "joint". Nothing herein nor any signature on such form shall affect the separate liability of an individual for payment of his income tax nor shall in any way make a wife liable for her husband's debts. This provision shall not preclude the commissioner from preparing a form for the reporting of income by husbands and wives on a single form in instances where the optional tax method is not elected, nor shall it preclude him from incorporating combined husband and wife reporting on a single form which can be used by individuals regardless of the method of reporting which they may elect.

(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 s. 71.11 (21) (bm); 5 per cent on additional taxes assessed within the period provided by s. 71.11 (21) (g); and 5 per cent on additional taxes assessed pursuant to s. 71.11 (21) (c).

(b) Except as otherwise specifically provided, 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 rate of 5 per cent 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 rolls except that if any overpayment of tax is certified on a refund roll within 90 days after the last date prescribed for filing the return of such tax or 90 days after the date of actual filing of the return of such tax, whichever occurs later, no interest shall be allowed on such overpayment. For purposes of this section the return of such tax shall not be deemed actually filed by an employe unless and until he has included the written statement required to be filed by him under s. 71.10 (8). However when any part of a tax paid on an estimate of income, whether paid in connection with a tentative return or not, is refunded or credited to a taxpayer, such refund or credit shall not draw interest. This provision shall apply to all such payments made in the calendar year 1960 and thereafter.

(6) There may be deducted from the tax, after the same shall have been computed according to the rates in this section, or determined through use of the optional tax table provided in sub. (2m), 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 or of the taxpayer's spouse.
7. A brother or sister of the father or mother of the taxpayer or of the taxpayer's spouse.

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, except that a nonresident child of the taxpayer domiciled in another state is included in the term "dependent" if he otherwise qualifies as such. The relationship of affinity once existing will not be terminated by divorce or death of a spouse.

9. A child placed in the home of a taxpayer for adoption pursuant to ch. 48 while the child remains in the home of such taxpayer, for adoption.

(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) Beginning with the calendar year 1962 and corresponding fiscal years and thereafter the personal exemption provided in this subsection shall in all cases be $10 except that for each taxpayer and also for the spouse of a married taxpayer who has reached the age of 65 prior to the close of the calendar or fiscal year, it shall be $15.

(e) The deductions for personal exemptions provided for in this subsection shall be prorated as follows:

1. With respect to persons who move into or out of the state within the year on the basis of the time of residence within and without the state, and in any event a minimum total deduction for personal exemptions of $5 shall be allowed.

2. With respect to nonresidents in the proportion of the income attributable to Wisconsin to the total income, and in any event a minimum total deduction for personal exemptions of $5 shall be allowed.

History: 1961 c. 466, 478, 620, 622, 652; 1963 c. 224.

71.10 Filing returns; payment of tax; tax refunds and credits; nonresident contractor's surety bond; withholding statements and wage reports. (1) Every corporation, except corporations all of whose income is exempt from taxation, 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 of 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 deems 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, 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 of rents, royalties, interest, dividends and liquidating dividends to persons taxable thereon under this chapter in amounts and in the manner and form prescribed by the department of taxation. Nothing contained in this subsection shall preclude the department of taxation from requiring any corporation to file an income tax return when in the judgment of the department of taxation a return should be filed.

(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 April 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 fourth 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 April 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 fourth month following the close 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 par. (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 more than one political subdivision of the state shall compute the amount of income properly assignable to each political subdivision of the state in such form and manner as the department of taxation prescribes.

(5) In case of inability 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.

(ab) An extension of time for filing a return of income for the calendar or corresponding fiscal year 1957 and 1958 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 fourth 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 1958 calendar or corresponding fiscal year. No interest or penalties shall be imposed during any extension period provided for in this paragraph.

(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 s. 78.66 required under this chapter to file a return of income in which inventories are a factor shall on or before the due date of his income tax return 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 s. 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 to the assessor in the local taxation district concerned within 45 days after the statutory filing date for corporate returns and 30 days after the statutory filing date for noncorporate returns.

(8) (a) Every person or partnership required to deduct and withhold from an employe under the general withholding provisions of this chapter during the calendar year 1962 or in any calendar year thereafter shall furnish to each such employe in respect of the remuneration paid by such person or partnership to such employe during the calendar year, on or before January 31 of the succeeding year, or if his employment is terminated before the close of any such calendar year on the day on which the last payment of remuneration is made, 2 legible copies of a written statement showing the following:

1. The name of such person or partnership, and his or its Wisconsin income tax identification number, if any.
2. The name of such employe, and his social security number, if any.
3. The total amount of wages as defined in s. 71.19 (1).
4. The total amount deducted and withheld as required by the general withholding provisions of this chapter.

(b) The employe shall furnish the department of taxation one copy of such written statement along with his return for the year.

(8m) Every person required to deduct and withhold from an employe under this chapter shall furnish to the department of taxation at its offices in Madison, in respect to remuneration paid by such person to such employe during the calendar year, on or before January 31 of the succeeding year, one legible copy of the written statement referred to in sub. (8).

(8n) Every resident of this state and every nonresident carrying on activities within this state, whether taxable or not under this chapter, who or which shall pay in any calendar year for services performed within this state by an individual remuneration which is excluded from the definition of wages in s. 71.19 (1), in the amount of $600 or more, shall, on or before January 31 of the succeeding year furnish the department of taxation at its offices in Madison, a written statement in such form as required by the department, disclosing the name of the payor, the name and address of the recipient and the total amount paid in such year to such recipient. In any case in which an individual receives wages, as defined in s. 71.19 (1) and also remuneration for services which remuneration is excluded from such definition, both from the same payor, the wages and the excluded remuneration shall both be reported in the report required by sub. (8m) in a manner satisfactory to the department, regardless of the amount of the excluded remuneration.

(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) Corporation income taxes not paid on or before the fifteenth day of the third month following the close of the income year, shall be deemed delinquent.

(am) With respect to the payment of taxes on income of the calendar year 1954 and corresponding fiscal years to and including 1961 calendar and corresponding fiscal years, the initial payment of taxes on incomes of persons other than corporations who file on a

calendar year basis shall be paid on or before April 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.

(an) With respect to the payment of taxes on income of the calendar year 1962 and corresponding fiscal years, and thereafter, the final payment of taxes on incomes of persons other than corporations who file on a calendar year basis shall be made on or before April 15 following the close of the calendar year. If the return of a person other than a corporation is made on the basis of a fiscal year, such final payment shall be made on or before the fifteenth day of the fourth month following the close of such fiscal year.

(bm) If the return of a person other than a corporation is made on the basis of a fiscal year such initial payment shall be paid on or before the fifteenth day of the fourth 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. This subsection shall be in force up to and including the 1961 fiscal year.

(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 with respect to income taxes and surtaxes assessed on incomes received in the calendar year 1953 or corresponding fiscal year, and in prior years, if the claim therefor is filed within 4 years after the close of the period covered by the income tax return.

(bm) With respect to income taxes and surtaxes assessed on incomes received in the calendar year 1954 or corresponding fiscal year and up to and including the 1961 calendar and corresponding fiscal years, refunds may be made if the claim therefor is filed within 4 years of the date the income tax return was filed, provided that for purposes of this paragraph, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(bn) With respect to income taxes and surtaxes assessed on incomes received in the calendar year 1962 or corresponding fiscal year, and subsequent years, refunds may be made if the claim therefor is filed within 4 years of the date the income tax return was filed, provided that for purposes of this paragraph a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day and that no refund may be made of any income taxes withheld and paid or declared and paid with respect to which an income tax return was not filed when due unless claim therefor is filed within 4 years of the date such return was due.

(c) No refund shall be made on the over-withholding or over-declaration of estimated income taxes with respect to any person for any income year in an amount less than $2 unless such refund is specifically applied for on the return of such person reporting his income for such year.

(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) The department of taxation and assessors of incomes are directed to act on any claim for refund or credit within one year after the receipt thereof and their failure to act 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 or price redetermination of any defense 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, price redetermination, or adjustment (including any federal income 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 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, price redetermination, 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 sub. (10) or other applicable statutes. This subsection shall apply to the calendar or fiscal year 1940 and all subsequent years.

(13) Documents and payments required or permitted by this chapter shall be considered furnished, reported, filed or made on time, 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, provided such document or payment is actually received by the department within 5 days of such prescribed date.

(14) (a) All nonresident persons, whether incorporated or not, engaging in construction contracting in this state as contractor or subcontractor and not otherwise regularly engaged in business in this state, shall file a surety bond with the department, payable to the Wisconsin department of taxation, to guarantee the payment of income taxes, required unemployment compensation contributions, sales and use taxes and income taxes withheld from wages of employes, together with any penalties and interest thereon. The department shall approve the form and contents of such bond. The amount of the bond shall be 3 per cent of the contract or subcontract price on all contracts of $50,000 or more or 3 per cent of contractor's or subcontractor's estimated cost-and-profit under a cost-plus contract of $50,000 or more. When the aggregate of 2 or more contracts in one calendar year is $50,000 or more the amount of the bond or bonds shall be 3 per cent of the aggregate amount of such contracts. Such surety bond must be filed within 60 days after construction is begun in this state by any such contractor or subcontractor on any contract the price of which is $50,000 or more (or the estimated cost-and-profit of which is $50,000 or more), or within 60 days after construction is begun in this state on any contract for less than $50,000, when the amount of such contract, when aggregated with any other contracts, construction on which was begun in this state in the same calendar year, equals or exceeds $50,000. If the department concludes that no bond is necessary to protect the tax revenues of the state, including contributions under ch. 108, the requirements under this subsection may be waived by the commissioner of taxation or his designated departmental representative. The bond shall remain in force until the liability thereunder is released by the commissioner or his designated departmental representative.

(b) A construction contractor required to file a surety bond under par. (a) may, in lieu of such requirement, but subject to approval by the department, deposit with the state treasurer an amount of cash equal to the face of the bond that would otherwise be required. If an offer to deposit is made the department shall issue a certificate to the state treasurer authorizing him to accept payment of such moneys and to give his receipt therefor. A copy of such certificate shall be mailed to the contractor who shall, within the time fixed by the department, pay such amount to said treasurer. A copy of the receipt

of the state treasurer shall be filed with the department. Upon final determination by the department of such contractor's liability for state income taxes, required unemployment compensation contributions, sales and use taxes and income taxes withheld from wages of employes, interest and penalties, by reason of such contract or contracts, the department shall certify to the state treasurer the amount of taxes, penalties and interest as finally determined, shall instruct him as to the proper distribution of such amount, and shall state the amount, if any, to be refunded to such contractor. The state treasurer shall make the payments directed by such certificate within 30 days after receipt thereof. Amounts refunded to the contractor shall be without interest.

(c) All persons subject to the provisions of this subsection shall notify the department of taxation of the completion of a construction project in this state within 30 days after such completion.

(d) Any person who fails or refuses to comply with the provisions of this subsection shall be fined not less than $300 nor more than $5,000.

History: 1961 c. 129, 130, 132, 408, 620; 1963 c. 23, 223, 224, 278, 394.

Cross Reference: See 185.50, 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 April 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, neglect 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; GENERAL RULE; FARMERS. (a) 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. A farmer may elect to compute his income on either a cash or inventory method if the method of accounting used reflects the consistent application of generally accepted accounting principles and if all items of gross income and expenses are treated consistently from year to year.

(b) In computing the taxpayer's taxable income for any taxable year, commencing after December 31, 1953, if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply, and except that this rule shall not modify or change the rule as to federal income and excess profits taxes set forth in s. 71.02 (3).

(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 assessor 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.

(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.

(bm) With respect to assessments of income received in the calendar year 1954 or corresponding fiscal year, and in subsequent years, such notice shall be given within 4 years of the date the income tax return was filed.

(c) Irrespective of par. (bm), 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.

(cm) Irrespective of par. (c), if additional assessments are made for any period more than 6 years before the year in which the assessment is made, the burden of proof shall rest with the state to prove their case by a preponderance of the evidence.

(d) The limitation periods provided in par. (bm) 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 990.06 shall have no application to the provisions of this section.

(g) Notwithstanding any other limitations expressed in this chapter, an assessment may be made if notice thereof is given within 6 years after a return was filed, if the taxpayer reported for taxation on his return less than 75 per cent of the net taxable income properly assessable, except that no assessment of additional income may be made under this paragraph for any year beyond the period specified in par. (bm) unless the aggregate of the taxes on the additional income of such year is in excess of $100.

(h) For purposes of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(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, REPORT OR DECLARATION; FRAUD. If any person fails or refuses to make a return at the time or times hereinbefore specified in each year, or fails or refuses to furnish a statement as required by s. 71.10 (8) or to file a statement as required by s. 71.10 (8m) or (8n) or to make deposits as required by s. 71.20 (4) or to file a withholding report as required by s. 71.20 (4), or to file a declaration of estimated income tax as required by s. 71.21 or 71.22, or renders a false or fraululent return, statement, deposit report, withholding report or declaration of estimated income tax, such person shall be liable to a penalty 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, statement, deposit report or withholding report who makes any false or fraudulent return, statement, deposit report or withholding report with intent to defeat or evade any assessment or collection required by this chapter 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, together 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) The information described in par. (b) shall not be made available to any nonresident, or to any resident who is making the request for such information for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation except to the extent that similar information in the state of residence of such person or firm or the state of incorporation of such foreign corporation is made available to 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 obtain such information to declare whether he is a nonresident of the state, and whether the information 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: 1961 c. 129, 131, 474, 620; 1963 c. 182, 224.

Distinction between office audits and field audits discussed. The department may use information other than the return in making an office audit. Department of Taxation v. O. H. Kindt Mfg. Co. 13 W (2d) 258, 108 NW (2d) 535.

(41) creates a civil forfeiture and (42) a criminal penalty. Both can coexist without violating constitutional safeguards. Either or both can be applied. State v. Roggensack, 15 W (2d) 625, 113 NW (2d) 389, 114 NW (2d) 459.

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 ss. 73.01 (5) (a) and 73.03 (25). In the application for such hearing, filed pursuant to sub. (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 or assessor of incomes. The department 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 appropriate the amounts of such taxes, together with the interest thereon, in accordance with s. 71.14 and shall also direct the state treasurer to refund to the appellant any portion of such payment which has been found to have been illegally assessed, including the interest thereon. The state treasurer shall make the refunds directed by such certificate within 30 days after receipt thereof. Taxes paid to the state treasurer under this subsection shall be subject to the interest provided by ss. 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. Any portion of the amount deposited with 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 on deposit.

(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 question 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 s. 71.11 (23) shall be stayed until final determination of the appeal and any review thereof.

(6) Any person who contests 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 the whole amount of the admitted tax and such tax shall be appropriated in accordance with s. 71.14. 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 income taxes are collected.

History: 1961 c. 620.

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 additional income tax assessment contested before the board of tax appeals or in the courts, which is finally determined to be correct, shall become delinquent if not paid on or before the thirtieth day following the date on which the order or judgment representing such final determination becomes final and conclusive. Any additional income tax assessment so contested shall be subject to the provisions of s. 71.11 (23).

(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 s. 270.745, and thereupon the amount of such warrant, together with interest as provided by s. 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 he shall submit a statement of the proper fee semiannually to the department of taxation covering the periods from January 1 to and including June 30 and July 1 to and including December 31. The fees shall then be paid by the state as provided by par. (g), but the fees provided by s. 59.42 (8) for filing and docketing such warrants shall be added to the amount of the warrant

and collected from the taxpayer when satisfaction or release is presented for entry. In counties wherein the clerk is compensated otherwise than by salary the fees may be paid by the state as provided by par. (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 department of administration 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, interest and penalties, resulting from assessments pursuant to s. 71.11 (4) or (5); or s. 71.20 (5) or (6) 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 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).

(g) Delinquent income tax accounts which are more than 20 years old may be written off the records of the department of taxation following a determination by the commissioner of taxation that they are not collectible; except that delinquent income tax accounts in the amount of $10 or less may be written off the records of the department at any time after 3 years delinquency following a determination by the commissioner that they are not collectible.

(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 of business or the performance of personal services in this state or the derivation of income from property the income from which has a taxable situs in this state by any nonresident person, except where the nonresident is a foreign corporation that has been licensed pursuant to ch. 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 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. The transaction of business, the performance of personal services or derivation of income from such property 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: 1961 c.128, 620; 1963 c. 322.

Cross References: See 270.745 on delinquent income tax docket.

As to the reference in 71.13 (1) to 71.10 (9), see 71.15 (12).

71.135 Withholding by employer of delinquent income tax of employe. (1) Any assessor of incomes of the department or his authorized representative may give notice

to any employer deriving income having a taxable situs in Wisconsin (regardless of whether any such income is exempt from taxation) to the effect that an employe of such employer is delinquent in a certain amount with respect to state income taxes, including penalties, interest and costs. Such notice may be served by registered mail, or by delivery by an employe of the department of taxation. Upon receipt of such notice of delinquency, such employer shall withhold from compensation due or to become due to such employe, the total amount shown by the notice. The assessor of incomes or his authorized representative, in his discretion, may arrange between the employer and such employe for a withholding of an amount not less than 10 per cent of the total amount due the employe each pay period, until the total amount as shown by the notice, plus interest thereon, has been withheld. In no event shall the employer withhold more than 25 per cent of the compensation due any employe for any one pay period, except that, if the employe leaves the employ of the employer or gives notice of his intention to do so, or is dicharged for any reason, the employer shall withhold the entire amount otherwise payable to such employe, or so much thereof as may be necessary to equal the unwithheld balance of the amount shown in the notice of delinquency, plus delinquent interest thereon. In crediting amounts withheld against delinquent income taxes of an employe, the department shall apply amounts withheld in the following order: costs; delinquent interest; delinquent income tax. The "compensation due" any employe for purposes of determining the 25 per cent maximum withholding for any one pay period shall include all wages, salaries and fees constituting gross income under s. 71.03 (1) (a) when paid to an employe, less only amounts payable therefrom pursuant to a garnishment action with respect to which the employer was served prior to his being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages, of which amounts and the facts relating thereto the employer shall give notice to the department within 10 days after service of the notice of delinquency.

(2) In any case in which the employe ceases to be employed by the employer before the full amount set forth in a notice of delinquency, plus delinquent interest thereon, has been withheld by the employer, the employer shall immediately notify the assessor of incomes in writing of the termination date of the employe and the total amount withheld.

(3) The employer shall, on or before the last day of the month next succeeding every calendar quarter, remit to the office of the assessor of incomes the amount withheld during the calendar quarter. Any amount withheld from an employe by an employer shall immediately be a trust fund for the state of Wisconsin. Should any employer, after notice, wilfully fail to withhold in accordance with the notice and this section, or wilfully fail to remit any amount withheld, as required by this section, such employer shall be liable for the total amount set forth in the notice together with delinquent interest thereon as though the amount shown by the notice was due by such employer as a direct obligation to the state of delinquent income taxes, and may be collected by any means provided by law including the means provided for the collection of delinquent income taxes. However, no amount required to be paid by an employer by reason of his failure to remit pursuant to this section may be deducted from the gross income of such employer, pursuant to either s. 71.04 or 71.05. Any amount collected from the employer for failure to withhold or for failure to remit pursuant to this section shall, for purposes of distribution, be treated as a tax paid by the employe.

(4) The provisions of subs. (1) to (3) shall be applicable in any case in which the employer is the United States or any instrumentality thereof or the state of Wisconsin or any municipality or other subordinate unit thereof except those provisions imposing a liability on the employer for failure to withhold or remit. But an amount equal to any amount withheld by any municipality or other subordinate unit of the state of Wisconsin pursuant to this section and not remitted to the assessor of incomes as required by this section shall be retained by the state treasurer from funds otherwise payable to any such municipality or subordinate unit, and transmitted instead to the assessor of incomes, upon certification by the commissioner of taxation.

(5) The department of taxation shall refund to the employe excess amounts withheld from the employe under this section.

(6) Employers required to withhold delinquent taxes, interest and costs pursuant to this section shall in no case be required to withhold amounts other than the total amounts certified to such employers by the department and in no case shall such employers be required to compute interest, costs or other charges to be withheld.

(7) No amounts shall be withheld from employes under this section after June 30, 1966.

History: 1963 c. 224.

71.14 Distribution of revenue. (1) All collections of normal income taxes of persons other than corporations, including remittances of taxes withheld or declared, commencing with October 1, 1962, shall become a part of the state general fund for use of the state, except that 33 per cent of such collections for the period Octboer 1, 1962, to June 30, 1963, 25 per cent of such collections for the period July 1, 1963, to October 31, 1963, 28 per cent of such collections for the period November 1, 1963, to October 31, 1964, and 28.75 per cent of such collections for each annual period ending October 31 thereafter, shall be apportioned as follows:

(a) On May 15, 1963, such apportionable collections for the period October 1, 1962, to March 31, 1963 shall be apportioned to each county, town, village and city on the basis of the percentage of its allocable share in the November 15, 1962, distribution of apportionable collections from persons other than corporations. On May 31, 1964, and on every May 31 thereafter, such apportionable collections for the period November 1 of the preceding year to March 31 of the current year shall be apportioned to each county, town, village and city on the basis of the percentage of its allocable share in total allocable shares as of November 30 of the preceding year as determined under par. (c) 2.

(b) On August 15, 1963 such apportionable collections for the period April 1, 1963, to June 30, 1963 shall be apportioned to each county, town, village and city on the basis of the percentage of its allocable share in the November 15, 1962, distribution of apportionable collections from persons other than corporations. On September 30, 1964, and on every September 30 thereafter, such apportionable collections for the period April 1 to July 31 of the current year shall be apportioned to each county, town, village and city on the basis of the percentage of its allocable share in total allocable shares as of November 30 of the preceding year as determined under par. (c) 2.

(c) On November 30, 1963, and on every November 30 thereafter, there shall be apportioned to each county, town, village and city the amount allocable to each under subd. 2, reduced by the amounts paid to each in apportionments of the curent year under pars. (a) and (b).

1. On or before November 30, 1963 and every November 30, thereafter, the department shall determine the total income taxes (before credit for taxes withheld, credit for taxes paid pursuant to declaration, and tax credits for income taxes paid to other states) shown on income tax returns of persons other than corporations for the preceding income year and filed on or before June 30 of the current year. The portion of such taxes attributable to each town, village and city shall be determined on the basis of situs of the income producing such taxes, as set forth in s. 71.07. The amount thus determined for each town, village and city shall be reduced by one-sixth and such one-sixth amount shall be attributed to the county of the situs of such income, as set forth in s. 71.07.

2. The apportionable collections for the period October 1, 1962, to June 30, 1963, for the period July 1, 1963, to October 31, 1963, for the period November 1, 1963, to October 31, 1964, and for the annual periods November 1 to October 31 thereafter, shall be allocated on or before the following November 30 to each county, town, village and city, in proportion to the amounts attributed to each under subd. 1 to the total of such amounts for all counties, towns, villages and cities and shall constitute its annual allocable share.

(2) (a) All collections of income taxes of corporations, commencing with July 1, 1961, and ending June 30, 1963, shall become a part of the state general fund for use of the state, except that 49 per cent of such collections shall be apportioned as follows:

1. Five-sixths to the town, village or city from which the income was derived, as determined under s. 71.07.

2. One-sixth to the county from which the income was derived, as determined under s. 71.07.

(b) The department of administration shall, upon certification by the department of taxation on the basis of the apportionment provided for in par. (a), make the following distributions of such apportionable collections:

1. On May 15, 1962, such apportionable collections for the period July 1, 1961, to March 31, 1962.

2. On May 15, 1963, and on every May 15 thereafter, such apportionable collections for the period October 1 of the preceding year to March 31 of the current year.

3. On August 15, 1962, and on every August 15 thereafter, such apportionable collections for the period April 1 to June 30 of the current year.

4. On November 15, 1962, and on every November 15 thereafter, such apportionable collections for the period July 1 to September 30 of the current year.

(2a) All collections of income taxes of corporations, including remittances of taxes declared, commencing with July 1, 1963, shall become a part of the state general fund for use of the state, except that 36.5 per cent of such collections for the period July 1, 1963, to Ocotober 31, 1963, 32.25 per cent of such collections for the period November 1, 1963 to October 31, 1964, and 47.5 per cent of such collections thereafter shall be apportioned as follows:

(a) On May 31, 1964, and on every May 31 thereafter, such apportionable collections for the period November 1 of the preceding year to March 31 of the current year shall be apportioned to each county, town, village and city on the basis of the percentage of its allocable share in total allocable shares as of November 30 of the preceding year, as determined under par. (c).

(b) On September 30, 1964, and on every September 30 thereafter, such apportionable collections for the period April 1 to July 31 of the current year shall be apportioned to each county, town, village and city on the basis of the percentage of its allocable share in total allocable shares as of November 30 of the preceding year, as determined under par. (c).

(c) On November 30, 1963, there shall be apportioned to each county, town, village and city the amount of apportionable corporation income tax collections for the period July 1, 1963, to October 31, 1963, and allocable to each under subd. 2. On November 30, 1964, and on every November 30 thereafter, there shall be apportioned to each county, town, village and city the amount allocable to each under subd. 2, reduced by the amounts paid to each in the May 31 and September 30 apportionments of the current year.

1. On or before November 30, 1963, and every November 30 thereafter, the department shall determine the total income taxes (before credit for taxes paid pursuant to declaration) shown on income tax returns of corporations for the preceding income year and filed on or before June 30 of the current year. The portion of such tax attributable to each town, village and city shall be determined on the basis of situs of the income producing such taxes, as set forth in s. 71.07. The amount thus determined for each town, village and city shall be reduced by one-sixth and such one-sixth amount shall be attributed to the county of the situs of such income, as set forth in s. 71.07.

2. The apportionable collections for the period July 1, 1963, to October 31, 1963, the apportionable collections for the period November 1, 1963, to October 31, 1964, and the apportionable collections for each annual November 1 to October 31 period thereafter, shall be allocated on or before the following November 30 to each county, town, village and city in proportion to the amounts attributed to each under subd. 1 to the total of such amounts for all counties, towns, villages and cities, and shall constitute its annual allocable share.

(3) Whenever income has been attributed to an erroneous situs under sub. (1) (c) 1, (2) (a) or (2a) (c) 1, such portion of the tax collections allocated erroneously under sub. (1) (c), (2) (a) or (2a) (c) shall be paid by the county, town, village or city erroneously receiving the same, to the county, town, village or city entitled thereto; but no such payment shall be made except on the written approval of the department of taxation. Such claim must be made within 3 years of the claimed November 30 erroneous allocation. If the amount of the claim is approved by the department and not paid by the county, town, village or city erroneously receiving it, such amount shall be deducted from its next apportionment, or next apportionments and paid to the county, town, village or city entitled thereto.

(4a) Whenever a municipality files a claim under sub. (3) within the period of time expressed therein, it is not necessary for any such county to file a similar claim. If the amount of the municipality's claim is approved by the department, the department shall thereafter make a similar adjustment as between respective counties. If after notice by the department the claim is not paid by the county which erroneously received it, such amount shall be deducted from its next apportionment and paid to the county entitled thereto.

(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.

(8) (c) Beginning in 1958, the board of trustees of said teachers annuity and retire-

ment fund shall annually, prior to August 15, estimate the amount of the payment to be made by the state to such fund during the fiscal year beginning on the next September 1, to maintain the assets of the fund as provided in s. 38.24 (20). The board shall certify such estimate to the department of administration which shall prepare a warrant each month for one-twelfth of said estimated amount and upon such warrants the state treasurer shall transfer the sums specified therein to the teachers annuity and retirement fund from funds appropriated for that purpose. When the board has determined the exact amounts payable by the state to the fund for such fiscal year in accordance with s. 38.24 (20), a final certification thereof shall be made by said board to the department of administration and a final transfer shall be made to or from the fund, as determined from said final certification.

(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: 1961 c. 336, 348, 620, 621; 1963 c. 6, 84, 223, 224, 459.

71.15 Miscellaneous provisions. (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) and (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. The amendment of s. 71.09 (6) by ch. 22, laws of 1955, shall be applicable to the calendar year 1955 and corresponding fiscal years, 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.

(5) The provisions of ss. 71.10 (2), (3) (a), (7), (9) (a), (b) and (c), and 71.11 (3), as amended by ch. 3, laws of 1955, the provisions of s. 71.10 (9) (am) and (bm) as created by said chapter, and s. 71.10 (12) [see Stats. 1959] as amended by ch. 131, laws of 1955, apply to income of the calendar year 1954, or corresponding fiscal year, and subsequent years.

(7) Section 71.07 (1), as amended by chapter 488, laws of 1959, shall be operative retroactively except in those instances in which assessment has become final under ch. 71.

(10) In the case of any overpayment, the department of taxation or the assessors of incomes, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability, in respect to any tax collected by the department, on the part of the person who made the overpayment, and shall refund any balance to such person.

(11) In the case of married persons filing a joint return all or part of the amount of tax credits of one spouse in excess of the amount of tax computed on the return as payable by such spouse may be credited to the tax liability on such return of the other spouse. This subsection applies only to couples who are married at the close of their taxable year and at the time of filing their returns and have no action for divorce or for legal separation pending between them at the time of filing their returns.

(12) The repeal and recreation of s. 71.10 (9) (a) and the repeal of s. 71.10 (9) (b), (c) and (cm) shall apply with respect to calendar or fiscal income years beginning after July 31, 1963. The repeal of 71.04 (13) (a) and (b) and (14) (a) and (b), the amendment to 71.04 (9) (b) and the creation of 71.047 shall first apply to income of the calendar year 1963 or corresponding fiscal years.

History: 1961 c. 129, 620, 652; 1963 c. 224, 385.

71.17 Surtax for buildings, health, welfare and education. (1) To provide additional revenue to the state to maintain its building, health, welfare and education programs there is levied and there shall be assessed, collected and paid, in addition to all other income and optional taxes imposed by this chapter, a surtax upon the net income, adjusted gross income or gross income of persons other than corporations which tax shall be equal to:

(a) 20 per cent of the normal tax on net income or 20 per cent of the optional tax on adjusted gross income of the 1955, 1956, 1957, 1958, 1960 and 1961 calendar or corresponding fiscal years.

(b) 25 per cent of the normal tax on net income or 25 per cent of the optional tax on adjusted gross income of the 1959 calendar or fiscal years.

(2) Such tax shall be paid to the department of taxation as provided by s. 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 subject to the distribution provided for in s. 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 this chapter, which chapter 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 surtax imposed by this section on the income of any taxable period extending beyond the period for which this surtax is in effect shall be computed only on the proportionate part of such income to which the surtax is applicable determined in accordance with regulations to be prescribed by the department of taxation.

History: 1961 c. 620; 1963 c. 6.

71.18 Urban transit companies; special tax. (1) COMPUTATION. In lieu of the tax rates prescribed in s. 71.09, there shall be assessed, levied and collected upon the taxable income of every corporation whose principal source (herein defined as being 50 per cent or more) of gross income is the urban mass transportation of passengers a special income tax of 50 per cent determined in accordance with this chapter, except that:

(a) United States income, excess or war profits and defense taxes shall be allowed as a deduction from gross income to the extent of the total payment actually made during the tax year.

(b) A deduction shall be allowed from such taxable income as hereinabove defined, and before the imposition of the special tax levied by this section, in an amount equivalent to 8 per cent of the amount by which the cost of the property of such corporation used and useful in providing its urban mass transportation service exceeds the cumulated amount of the depreciation accrued against such property as of the end of the fiscal year for which the income tax return is filed.

(c) An amount shall be added to such taxable income as hereinabove defined, and before imposition of the special tax levied by this section, which amount shall be equivalent to the interest paid during the year in the operation of the business from which its income is derived.

(2) DEFINITIONS. (a) "Urban mass transportation of passengers" means the transportation of passengers by means of vehicles having a passenger-carrying capacity of 10 or more persons including the operator, such capacity to be determined by dividing by 20 the total seating space measured in inches, when such transportation takes place entirely within contiguous incorporated cities or villages and in municipalities contiguous to that in which the carrier has its principal place of business, or within or between municipalities located within a radius of 10 miles of the municipality in which the carrier has its principal place of business, or entirely within one municipality or municipalities contiguous thereto, or within a county having a population of 500,000 or more or within such county and the counties contiguous thereto, or suburban operations classified as such by the public service commission.

(b) The cost of property used and useful in providing urban mass transportation service and the depreciation accrued on such property shall be determined on the basis of the reports and orders on file with the public service commission.

(3) PAYMENT OF TAX. The special income tax assessed under this section shall be reported in an income tax return filed in accordance with this chapter, except as modified by this section. The tax so reported and assessed shall be payable to the department of taxation, and when collected, shall be apportioned to the state, counties, towns, cities and villages in the same manner as taxes are apportioned pursuant to s. 76.28.

71.18, levying on urban-transit companies a special income tax, in lieu of other taxes, of 50 per cent on all taxable income in excess of 8 per cent of the depreciated cost of property used and useful in providing urban mass-transportation service, indicates that 8 per cent is to be considered a maximum, but there is no mandatory requirement that the public service commission allow an 8 per cent return. Milwaukee & S. T. Corp. v. Public Service Comm. 13 W (2d) 384, 108 NW (2d) 729.

71.19 Withholding income tax; definitions. As used in this section and s. 71.20, unless the context clearly indicates otherwise:

(1) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employe for his employer, including cash value of all remuneration paid in any medium other than cash; except that the term shall not include remuneration paid:

(a) For active service as a member of the armed forces of the United States for any month during any part of which such member served in a combat zone during an induction period or was hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone during an induction period, but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone and remuneration, for purposes of this paragraph, shall not include pensions and retirement pay.

(b) For agricultural labor, and for purposes of this paragraph the term "agricultural labor" includes all service performed:

1. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and furbearing animals and wildlife;

2. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

3. In connection with the production or harvesting of crude gum, gum spirits of turpentine or gum rosin, in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farm purposes;

4. In the employ of the operator of a farm in handling, planting, drying, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service was performed, or in the employ of a group of operators of farms (other than a co-operative organization) in the performance of such services, but only if such operators produced all of the commodity with respect to which such service is performed, but the provisions of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution or consumption;

5. On a farm operated for profit if such service is not in the course of the employer's trade or business;

6. As used in this paragraph the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(c) For domestic service in a private home, local college club or local chapter of a college fraternity or sorority.

(d) For service not in the course of the employer's trade or business performed in any calendar quarter by an employe, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. An individual shall be deemed to be regularly employed by an employer during a calendar quarter only if on each of some 24 days during such quarter such individual performs, for such employer, for some portion of the day, service not in the course of the employer's trade or business, or such individual was regularly employed (as herein defined) by such employer in the performance of such service during the preceding calendar quarter.

(e) For services by a citizen or resident of the United States for a foreign government or an international organization.

(f) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.

(g) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(h) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back.

(i) For services not in the course of the employer's trade or business to the extent paid in any medium other than cash.

(j) To, or on behalf of, an employe or his beneficiary from a trust created or organized in the United States and forming part of a stock bonus, pension or profit sharing plan of an employer for the exclusive benefit of his employes or their beneficiaries and which trust is exempt from taxation pursuant to s. 71.01 (3) (e), unless such payment is made to an employe of the trust as remuneration for services rendered as such employe and not as a beneficiary of the trust.

(k) For personal services performed in Wisconsin in the form of retirement, pension and profit-sharing benefits, received by nonresidents after retirement from the employ of the employer for whom such personal services were performed.

(l) To, or on behalf of, an employe or his beneficiary from a plan described in s. 272.18 (31) (a) under which the benefits are fully funded by life insurance or annuities.

(m) If the remuneration paid by an employer to an employe for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employe for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employe for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employe for such period shall be deemed to be wages.

(2) "Pay roll period" means a period for which a payment of wages is ordinarily made to the employe by his employer, and the term "miscellaneous pay roll period" means a pay roll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual pay roll period.

(3) "Employe" means a resident individual who performs or performed services for an employer anywhere or a nonresident individual who performs or performed such services within this state, and includes an officer, employe or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term also includes an officer of a corporation.

(4) "Employer" means a person or partnership, whether subject to or exempt from income taxation or not, for whom an individual performs or performed any service, of whatever nature, as an employe of such person or partnership, except that:

(a) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of sub. (1)) means the person having control of the payment of such wages.

(5) "Department" means the state department of taxation.

History: 1961 c. 620; 1963 c. 81, 82, 120, 248, 273, 429, 459.

71.20 Employers required to withhold. (1) On and after February 1, 1962, every employer at the time of payment of wages to an employe shall deduct and withhold from such wages, without regard for federal insurance contributions act deductions therefrom an amount determined in accordance with tables to be prepared by the department, as hereinafter provided. The commissioner may grant permission to employers who do not desire to use the withholding tax tables provided by the department to determine the amount of tax to be withheld by use of a method of withholding other than the withholding tax tables, provided such method will withhold from each employe substantially the same amount as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the commissioner before the beginning of a pay roll period for which the employer desires to withhold the tax by such other method. Applications for use of such other method must be accompanied by evidence establishing the need for the use of such method.

(1m) An employer may, at his discretion, deduct and withhold from any one payment of wages in a month, in the case of an employe paid more often than once during any month, the total amount which the employer reasonably estimates he will be required to withhold under this section from such employe during that month. Permission from the commissioner under sub. (1) is not needed by any employer acting under this subsection.

(2) Prior to February 1, 1962, the department shall prepare, promulgate, and publish in the official state paper, without regard to the requirements of ch. 227, rules establishing withholding tables prepared on a weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay period basis. Such tables shall be based upon the normal tax rates and upon any surtax applicable to the income of the calendar year 1962. Thereafter, the

department shall from time to time similarly correct such tables to reflect any changes in normal income tax rates or changes in surtax. Such rules shall also provide instructions for withholding with respect to quarterly, semiannual and annual pay periods. Such tables shall be extended to cover from zero to 10 withholding exemptions, shall assume that the payment of wages in each pay period will, when multiplied by the number of such pay periods in a year reasonably reflect the annual wage of the employe from such employer and shall be based on the further assumption that such annual wage should be reduced for allowable deductions from gross income. It is within the discretion of the department to determine the length of such tables and a reasonable span of each bracket. In preparing such tables the department shall adjust all withholding amounts not an exact multiple of 10 cents to the next highest figure that is a multiple of 10 cents.

(3) On and after February 1, 1962, at the time of payment of wages to a nonresident employe which wages were derived from the performance of services both within and without the state, the employer shall deduct and withhold from the wages derived from the performance of services within the state the amount as reflected by the proper withholding table.

(4) Every employer who deducts and withholds any amount under this section in any month up to and including the month of June, 1963 shall deposit such amount within 20 days of the close of the month in which withheld, and every employer who deducts and withholds any amount under this section on or after July 1, 1963, shall deposit such amount on a quarterly basis, the withholdings of each calendar quarter to be deposited within 20 days of the close of such calendar quarter, with such bank in Wisconsin as the state of Wisconsin investment board designates a public depository therefor under s. 25.17 (61) to the credit of the general fund. With each deposit the employer shall include a deposit report on a form to be provided by the department. The department may, in its discretion, when satisfied that the revenues will be adequately safeguarded, permit an employer whose withheld taxes do not exceed $50 per month to deposit withheld taxes and reports for other than quarterly periods. The department may revoke such permission at any time. The department, if it deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require reports or payments of the amount of withheld taxes for other than quarterly periods. The depository bank shall record on such deposit report the amount deposited and shall then forward such report to the department in such manner and at such time as the department by rule prescribes. On or before January 31 of each year every employer shall file with the department at its offices in Madison (or at such other place as the department by rule prescribes) a withholding report on a form to be provided by the department showing the amount withheld from the wages paid each employe in the previous calendar year, the amount deposited in respect to each employe on wages paid in the previous calendar year and a reconciliation of the aggregate of the amounts deposited in respect to each employe on wages paid in the previous calendar year with the aggregate of the amounts shown on the quarterly deposit reports filed in respect to such withholding. No employe shall have any right of action against his employer in regard to money deducted from his wages and deposited with the depository bank in compliance or intended compliance with this section.

(5) The penalties provided by this section shall be paid upon notice and demand of the commissioner of taxation or the assessors of incomes or their respective delegates and shall be assessed and collected in the same manner as income taxes. Any person required to withhold, account for or pay over any tax imposed by this chapter, whether exempt under s. 71.01 (3) or not, who intentionally fails to withhold such tax, or account for or pay over such tax, shall be liable to a penalty equal to the total amount of the tax not withheld, collected, accounted for or paid over.

(6) Any person, whether exempt under s. 71.01 (3) or not, required under s. 71.10 (8) to furnish a written statement to an employe, who furnishes a false or fraudulent statement, or who intentionally fails to furnish a statement in the manner, at the time and showing the information required under s. 71.10 (8), or rules prescribed with respect thereto, shall, for each such failure, be subject to a penalty of $20.

(7) Whenever any person is required to withhold any Wisconsin income tax from an employe, until such amount is deposited with the depository bank prescribed by sub. (4), the amount so withheld shall be held to be a special fund in trust for the state. The amount of such fund may be assessed and collected from such person by the department as income taxes are assessed and collected, and such collection shall not abate any penalty imposed under sub. (6).

(8) (a) On or before February 1, 1962 (or on or before the date on which an employe commences employment with an employer after such date), each employe shall furnish

his employer with a signed withholding exemption certificate relating to the number of withholding exemptions he claims, which shall in no event exceed the number to which he is entitled. If the employe fails to furnish such certificate, such employe, for withholding purposes, shall be considered as claiming no withholding exemptions.

(b) If, on any day during the calendar year, the number of withholding exemptions to which the employe is entitled is less than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employe shall within 10 days after the change occurs furnish the employer with a new withholding exemption certificate, which shall in no event exceed the number to which he is entitled on such day.

(c) If, on any day during the calendar year, the number of withholding exemptions to which the employe is entitled is more than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employe may furnish the employer with a new withholding exemption certificate on which the employe must in no event claim more than the number of withholding exemptions to which he is entitled on such day.

(d) A withholding exemption certificate furnished the employer shall take effect as of the beginning of the first pay roll period ending after the date on which such certificate is furnished.

(e) Any employe who wilfully supplies his employer with false or fraudulent information regarding his withholding exemption or who wilfully fails to supply information which would increase the amount to be withheld may be fined not more than $200.

(9) An employe receiving wages shall on any day be entitled to the following withholding exemptions:

(a) An exemption for himself;

(b) If the employe is married, an exemption to which his spouse is entitled, or would be entitled if such spouse were an employe receiving wages, but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption.

(c) An exemption for each individual with respect to whom, on the basis of the facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under s. 71.09 (6) (a), (b) and (c) for the taxable year in which such day falls.

(d) An exemption as head of a family when on the basis of the facts existing at the beginning of such day such an exemption may reasonably be expected to be allowable under s. 71.09 (6) (c) for the taxable year in which such day falls.

(10) The commissioner of taxation is authorized to enter into an agreement with the secretary of the treasury of the United States pursuant to the provisions of P.L. 587 (66 U.S. Statutes at large 765) enacted July 17, 1952.

(11) In addition to the amount required to be deducted and withheld, an employer and employe may agree in writing that an additional amount shall be withheld from the employe's wages. The amount deducted and withheld pursuant to such an agreement shall be considered as an amount required to be deducted and withheld for all purposes of this chapter.

(12) The commissioner of taxation, acting within his discretion, may authorize special withholding arrangements in hardship cases resulting from situations in which persons, domiciled in Wisconsin, are subjected to withholding in some other state by reason of the performance of substantial personal services in such other state, pursuant to s. 71.05 (5).

(13) This section shall not apply to any county fair association in regard to any employe receiving less than $100 annually in wages or salary from the association.

History: 1961 c. 620, 652; 1963 c. 224, 252, 472.

71.21 Declaration of estimated tax by individuals. (1) Every individual deriving income (other than or in addition to wages as defined in s. 71.19 (1)) subject to taxation under this chapter during the calendar year 1962, or any calendar or fiscal year beginning after January 1, 1962, shall make, at the time hereinafter prescribed, a declaration of estimated income tax if the total tax on income of any such year can reasonably be expected to exceed withholding on wages paid in such year (if any) by $20 or more. Such declaration shall contain such information as the department may by rule or forms prescribe. This section shall not apply to an estate or trust, or to any person on active duty with the United States armed forces while stationed outside the continental United States.

(2) Declarations of estimated income tax required by sub. (1) from individuals other than farmers shall be filed on or before the fifteenth day of the fourth month of the

income year with the department at its offices in Madison, except that if the requirements of sub. (1) are first met:

(a) After the fifteenth day of the fourth month of the income year and on or before the fifteenth day of the sixth month of the income year, the declaration shall be filed on or before the fifteenth day of the sixth month, or

(b) After the fifteenth day of the sixth month of the income year and on or before the fifteenth day of the ninth month of the income year, the declaration shall be filed on or before the fifteenth day of the ninth month, or

(c) After the fifteenth day of the ninth month of the income year the declaration shall be filed on or before the fifteenth day of the month following the end of the income year.

(3) Declarations of estimated income tax required by sub. (1) from farmers may be filed at any time on or before the fifteenth day of the first month of the succeeding income year. For purposes of this section, farmers are individuals whose estimated gross income from farming for the income year is at least two-thirds of the total estimated gross income from all sources for the income year.

(4) The amount of the estimated income tax shall be the total estimated tax, including surtaxes, if any, reduced by the amount, if any, the individual determines will be withheld from wages pursuant to s. 71.20.

(5) The amount of the estimated income tax with respect to which a declaration is required shall be paid as follows:

(a) If the declaration is filed on or before the fifteenth day of the fourth month of the income year, the amount thereof shall be paid in 4 equal instalments. The first instalment shall be paid with the filing of the declaration, the second on or before the fifteenth day of the sixth month of the income year, the third on or before the fifteenth day of the ninth month of the income year, and the final instalment on or before the fifteenth day of the first month following the end of the income year.

(b) If the declaration is filed after the fifteenth day of the fourth month of the income year as provided in sub.(2) (a) but on or before the fifteenth day of the sixth month, the estimated tax shall be paid in 3 equal instalments. The first instalment shall be paid with the filing of the declaration, the second on or before the fifteenth day of the ninth month of the income year and the final instalment on or before the fifteenth day of the first month following the end of the income year.

(c) If the declaration is filed after the fifteenth day of the sixth month of the income year as provided in sub. (2) (b) but on or before the fifteenth day of the ninth, the estimated tax shall be paid in 2 equal instalments. The first instalment shall be paid with the filing of the declaration and the second on or before the fifteenth day of the first month following the end of the income year.

(d) If the declaration is filed after the fifteenth day of the ninth month of the income year, the entire amount shall be paid with the filing of the declaration. All payments of estimated tax shall be made to the department at its offices in Madison unless the department, by rule, prescribes another place of payment.

(e) If the taxpayer claims a refund on any tax return due on or after April 15, 1964, and concurrent with or subsequent to the filing of the return upon which such refund is claimed is required to file a declaration of estimated tax, and at the time of filing such declaration such refund has not been paid, he may deduct the amount of such refund from the total estimated tax and submit the balance in such equal instalments as required by sub. (5). If he later receives such refund he shall file an amended declaration with the instalment next due on his original declaration and, if such refund is paid after the due date of the last instalment on the original declaration, the receipt of such refund must be reflected on the income tax return covering the year of the declaration. If the refund claim is determined to be excessive in whole or in part at any time prior the due date of the last instalment of the original declaration, an amended declaration reflecting the disallowance of some or all of such refund must be filed on the due date for the next instalment under the original declaration, and if the refund is disallowed in whole or in part after the due date of the last instalment of the original declaration, such disallowance must be reflected on the income tax return covering the year of the declaration.

(6) At the election of the individual, any instalment of the estimated tax may be paid prior to the date prescribed for its payment.

(7) An individual may amend a declaration during the income year under rules prescribed by the department. If an amendment of a declaration is filed, the payments required under the original declaration shall be increased or decreased, as the case may be, to reflect the increase or decrease of the estimated tax by reason of such amendment.

(8) If on or before the fifteenth day of the second month of the succeeding taxable

year a farmer files his return for the taxable year (for which a declaration was required on or before the fifteenth day of the first month of the succeeding taxable year under sub. (3)) and pays in full the amount computed on the return as payable, then such return shall be considered as such declaration, and, as such, shall be deemed timely filed.

(9) Application of this section to taxable years of less than 12 full months shall be made pursuant to rules of the department.

(10) When the amount of an instalment payment of estimated tax exceeds the amount determined to be the correct amount of such instalment payment, the overpayment shall be credited against the unpaid instalment, if any.

(11) In the case of any underpayment of estimated tax by an individual, except as hereinafter provided, there shall be added to the aggregate tax for the taxable year an amount determined at the rate of 6 per cent per annum on the amount of the underpayment for the period of the underpayment.

(12) For purposes of sub. (11), the amount of the underpayment shall be the excess of the amount of the instalment which would be required to be paid if the total estimated tax were equal to 70 per cent of the tax shown on the return for the taxable year (or, if no return was filed, 70 per cent of the tax for such year) reduced by the aggregate of wages withheld under s. 71.20, over the amount, if any, of the instalment paid on or before the last date prescribed for payment.

(13) The period of the underpayment shall run from the date the instalment was required to be paid to whichever of the following dates is the earlier:

(a) The fifteenth day of the fourth month following the close of the taxable year.

(b) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on the due date of any payment shall be considered a payment of a previous underpayment only to the extent such payment exceeds the instalment due on such due date.

(14) Notwithstanding subs. (1) to (13), the addition to the tax with respect to any underpayment of any instalment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for such instalment equals or exceeds the amount which would have been required to be paid on or before such date if the total estimated tax were whichever of the following is the least:

(a) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months.

(b) An amount equal to the tax computed at the rates applicable to the taxable year and on the basis of the taxpayer's status with respect to personal exemptions for the taxable year but otherwise on the basis of the facts shown on the return of the individual for, and the law applicable to the preceding taxable year.

(c) An amount equal to 70 per cent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

1. For the first 3 months of the taxable year in the case of the instalment required to be paid in the fourth month, and

2. For the first 5 months of the taxable year in the case of the instalment required to be paid in the sixth month, and

3. For the first 8 months of the taxable year in the case of the instalment required to be paid in the ninth month.

(15) For purposes of sub. (14), the taxable incomes shall be placed on an annualized basis by:

(a) Multiplying by 12 the taxable income referred to in par. (c), and

(b) Dividing the resulting amount by the number of months of the taxable year completed as of the due date of the instalment payment.

(16) Notwithstanding subs. (1) to (15), the addition to the tax with respect to any underpayment of any instalment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such instalment equals or exceeds an amount equal to 90 per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the instalment is required to be paid.

(18) If a taxpayer files his return for a calendar year on or before January 31 of the succeeding calendar year (or if a taxpayer on a fiscal year basis files his return on or before the last day of the first month immediately succeeding the close of such fiscal year) and pays in full at the time of such filing the amount computed on the return as payable, then, if a declaration is not required to be filed on or before the fifteenth day of the ninth

month of the income year but is required to be filed on or before January 15 of the succeeding income year (or the date corresponding thereto in the case of a fiscal year), such return shall be considered as such declaration, or, if a declaration was filed during the income year, such return shall be considered as an amendment of the declaration permitted to be filed under sub. (7).

(19) (a) Any individual deriving income from wages, as defined in s. 71.19 (1), which is subject to taxation under this chapter during the calendar year 1963 or any calendar or fiscal year after January 1, 1963, shall, if he files a declaration of estimated tax and pays 100 per cent of the estimated tax for the following calendar or income year on or before the last day of the current calendar or income year, be entitled to complete exemption from payroll withholding under ss. 71.19 and 71.20 for such following calendar or income year.

(b) No employer shall recognize exemption from payroll withholding for any employe unless he first furnishes a certificate prepared by the Wisconsin department of taxation satisfactorily showing that the employe has filed a declaration of estimated tax and prepaid the estimated tax within the time and manner prescribed in this subsection with respect to the calendar or income year for which such exemption is sought.

(c) So far as applicable the penalties prescribed in this section shall apply to declarations of estimated income tax filed under this subsection and persons making and filing the same.

(d) No employer shall force or attempt to coerce an employe into estimating and prepaying his income taxes. Any employer found guilty of violating this subsection may be fined not less than $25 nor more than $200 for each violation.

History: 1961 c. 620; 1963 c. 51, 69, 224, 459.

71.22 Declarations of estimated tax by corporations. (1) Every corporation subject to income taxation under this chapter during any calendar or fiscal year beginning after July 31, 1963, shall file, at the time hereinafter prescribed, a declaration of estimated income tax, if the total tax on income of any such year can reasonably be expected to exceed $2,000. Such declaration shall contain such information as the department may by rule or form prescribe.

(2) Declarations of estimated income tax required by sub. (1) shall be filed on or before the fifteenth day of the third month of the income year (starting with the first income year beginning after July 31, 1963) with the department at its offices in Madison, except that if the requirements of sub. (1) are first met:

(a) After the fifteenth day of the third month of the income year and on or before the fifteenth day of the sixth month of the income year, the declaration shall be filed on or before the fifteenth day of the sixth month, or

(b) After the fifteenth day of the sixth month of the income year and on or before the fifteenth day of the ninth month of the income year, the declaration shall be filed on or before the fifteenth day of the ninth month, or

(c) After the fifteenth day of the ninth month of the income year, the declaration shall be filed on or before the fifteenth day following the end of the income year.

(3) The amount of the estimated income tax with respect to which a declaration is required shall be paid as follows:

(a) If the declaration is filed on or before the fifteenth day of the third month of the income year, the amount thereof shall be paid in 4 equal instalments. The first instalment shall be paid with the filing of the declaration, the second on or before the fifteenth day of the sixth month of the income year, the third on or before the fifteenth day of the ninth month of the income year, and the final instalment on or before the fifteenth day of the first month following the end of the income year.

(b) If the declaration is filed after the fifteenth day of the third month of the income year as provided in sub. (2) (a) but on or before the fifteenth day of the sixth month, the estimated tax shall be paid in 3 equal instalments. The first instalment shall be paid with the filing of the declaration, the second on or before the fifteenth day of the ninth month of the income year and the final instalment on or before the fifteenth day of the first month following the end of the income year.

(c) If the declaration is filed after the fifteenth day of the sixth month of the income year as provided in sub. (2) (b) but on or before the fifteenth day of the ninth month, the estimated tax shall be paid in 2 equal instalments. The first instalment shall be paid with the filing of the declaration and the second on or before the fifteenth day of the first month following the end of the income year.

(d) If the declaration is filed after the fifteenth day of the ninth month of the income year, the entire amount shall be paid with the filing of the declaration. All payments of estimated tax shall be made to the department at its offices in Madison.

(4) At the election of any corporation, any instalment of an estimated tax may be paid prior to the date prescribed for its payment.

(5) A corporation may amend a declaration during the income year under rules prescribed by the department.

(6) Application of this section to income years of less than 12 full months shall be made pursuant to rules of the department.

(7) When the amount of an instalment payment of estimated tax exceeds the amount determined to be the correct amount of such instalment payment, the overpayment shall be credited against the unpaid instalments, if any.

(8) In the case of any underpayment of estimated tax by a corporation, except as hereinafter provided, there shall be added to the aggregate tax for the taxable year an amount determined at the rate of 6 per cent per annum on the amount of the underpayment for the period of the underpayment.

(9) For purposes of sub. (8) the underpayment shall be the excess of the amount of the instalment which would be required to be paid if the total estimated tax were equal to 70 per cent of the tax shown on the return for the taxable year (or, if no return was filed, 70 per cent of the tax for such year) over the amount, if any, of the instalment paid on or before the last date prescribed for payment. The period of the underpayment shall run from the date the instalment was required to be paid to whichever of the following dates is the earlier:

(a) The fifteenth day of the third month following the close of the income year.

(b) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on the due date of any payment shall be considered a payment of a previous underpayment only to the extent such payment exceeds the instalment due on such due date. Any underpayment of an instalment not paid by the fifteenth day of the third month following the close of the income year, together with interest as provided in sub. (8), shall be deemed delinquent.

(10) Notwithstanding subs. (8) and (9) the addition to the tax with respect to any underpayment of any instalment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for such instalment equals or exceeds the amount which would have been required to be paid on or before such date if the total estimated tax were whichever of the following is the least:

(a) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(b) An amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the corporation for and the law applicable to the preceding taxable year.

(c) An amount equal to 70 per cent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

1. For the first 2 months of the taxable year in the case of an instalment required to be paid in the third month, and

2. For the first 5 months of the taxable year in the case of the instalment required to be paid in the sixth month, and

3. For the first 8 months of the taxable year in the case of the instalment required to be paid in the ninth month.

(d) For purposes of par. (c) the taxable income shall be placed upon an annualized basis by multiplying by 12 the taxable income for the appropriate number of months and dividing the resulting amount by the number of months of the taxable year completed as of the due date of the instalment payment.

(11) Notwithstanding subs. (8), (9) and (10) the addition to the tax with respect to any underpayment of any instalment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such instalment equals or exceeds an amount equal to 90 per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months of the taxable year ended before the month in which the instalment is required to be paid.

History: 1963 c. 224.

71.23 Penalties not deductible. No penalty imposed by this chapter, including penalties imposed under ss. 71.20 and 71.21 may be deducted from gross income in arriving at net income taxable under this chapter.

History: 1961 c. 620.

71.26 Time extension. For good cause shown upon application by an employer, the department or assessors of incomes may grant an extension of time not exceeding 30 days in which to furnish employes the written statements required by s. 71.10 (8) or to file the copies of such written statements as required by s. 71.10 (8m) or (8n), or in which to file a withholding report as required by s. 71.20 (4), but no such extension shall extend the time for deposit with the depository bank of amounts required to be deducted and withheld pursuant to s. 71.20, and any such amount not deposited with the depository bank when required to be deposited shall be subject to interest at one per cent per month until deposited.

History: 1961 c. 620.

71.30 Partial forgiveness of 1961 taxes. (1) In determining the Wisconsin income tax payable by natural persons and guardians on income of the calendar year 1961, or corresponding fiscal year, there may be deducted 65 per cent of the normal taxes and surtaxes, after personal exemptions, on all income, except the portion of such taxes attributable to gain from the sale or exchange of capital assets. The tax on the gain from the sale or exchange of capital assets shall be computed at the rates which would apply thereto if no income were excluded from taxation under this subsection, and as if the rates, deductions and personal exemption credits applied first to income other than gain from the sale or exchange of capital assets and then to the gain from the sale or exchange of capital assets.

(2) For the purposes of this section "capital assets" means property held by the taxpayer (whether or not connected with his trade or business) but shall not include stock in trade or inventory assets.

(3) For the purposes of this section "gain from the sale or exchange of capital assets" means the excess of gains over losses from the sale or exchange of capital assets.

History: 1961 c. 620.

71.301 Distributions of property. (1) IN GENERAL. Except as otherwise provided in this chapter, a distribution of property (as defined in s. 71.317 (1)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in sub. (3).

(2) AMOUNT DISTRIBUTED. (a) *General rule.* For purposes of this section, the amount of any distribution shall be:

1. Noncorporate distributees. If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

2. Corporate distributees. If the shareholder is a corporation, the amount of money received, plus whichever of the following is the lesser: a. the fair market value of the other property received; or b. the basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under s. 71.311 (2) or (3).

(b) *Reduction for liabilities.* The amount of any distribution determined under par. (a) shall be reduced (but not below zero) by:

1. The amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

2. The amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(c) *Determination of fair market value.* For purposes of this section, fair market value shall be determined as of the date of the distribution.

(3) AMOUNT TAXABLE. In the case of a distribution to which sub. (1) applies:

(a) *Amount constituting dividend.* That portion of the distribution which is a dividend (as defined in s. 71.316) shall be included in gross income, except for a distribution of divested stock as defined in section 1111 of the internal revenue code of 1954 (P.L. 87-403, 2nd session).

(b) *Amount applied against basis.* That portion of the distribution which is not a dividend, or is a distribution of divested stock to which par. (a) applies, shall be applied against and reduce the basis of the stock.

(c) *Amount in excess of basis.* 1. In general. Except as provided in subd. 2, that portion of the distribution which is not a dividend, or is a distribution of divested stock to which this subsection applies, to the extent that it exceeds the basis of the stock, shall be treated as gain from the sale or exchange of property.

2. Distributions out of increase in value accrued before January 1, 1911. That portion of the distribution which is not a dividend, to the extent that it exceeds the basis of the stock and to the extent that it is out of increase in value accrued before January 1, 1911, shall be exempt from tax.

(4) BASIS. The basis of property received in a distribution to which sub. (1) applies shall be:

(a) *Noncorporate distributees.* If the shareholder is not a corporation, the fair market value of such property.

(b) *Corporate distributees.* If the shareholder is a corporation, whichever of the following is the lesser:

1. The fair market value of such property; or

2. The basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under s. 71.311 (2).

(c) *Divested stock.* With respect to any property received in a distribution of divested stock as defined in section 1111 of the internal revenue code of 1954 (P.L. 87–403, 2nd session), the fair market value of such property as of the date of such distribution.

History: 1963 c. 17.

NOTE: Ch. 17, Laws 1963, which amended (3) and created (4) (c), provides that it applies to any distribution occurring on or after January 1, 1962.

Note: Sec. 5, ch. 571, Laws 1955, creating 71.301 to 71.373 provides that: "This act shall be effective as to all transactions occurring on or after January 1, 1955. With respect to ss. 71.331 to 71.346 relating to corporate liquidations, this act shall apply to distributions in liquidation and to sales or exchanges in connection with liquidations whether or not the plan of liquidation pursuant to which such distribution, sale, or exchange is made occurs prior to January 1, 1955, provided that the first distribution in pursuance of such plan of liquidation occurs on or after January 1, 1955."

71.302 Distributions in redemption of stock. (1) GENERAL RULE. If a corporation redeems its stock (within the meaning of s. 71.317 (2)), and if such redemption is not essentially equivalent to a dividend, it shall be treated as a distribution in part or full payment in exchange for the stock. A redemption is not essentially equivalent to a dividend if the distribution is substantially disproportionate with respect to the shareholder.

(2) REDEMPTIONS TREATED AS DISTRIBUTIONS OF PROPERTY. Except as otherwise provided in ch. 71, if a corporation redeems its stock (within the meaning of s. 71.317 (2)), and if sub. (1) does not apply, such redemption shall be treated as a distribution of property to which s. 71.301 applies.

71.303 Distributions in redemption of stock to pay death taxes. A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which is included in the inventory of a decedent's estate shall be treated as a distribution in full payment in exchange for the stock so redeemed, provided such distribution shall be made prior to the time that taxes payable under ch. 72 by reason of the death of such decedent have become finally and conclusively fixed and determined, to the extent that the amount of such distribution does not exceed the sum of:

(1) The estate, inheritance, legacy and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) The amount of funeral and administration expenses allowable by the probate court having jurisdiction of the decedent's estate.

71.305 Distributions of stock and stock rights. (1) GENERAL RULE. Except as provided in sub. (2), gross income does not include the amount of any distribution made by a corporation to its shareholders, with respect to the stock of such corporation, in its stock or in rights to acquire its stock.

(2) DISTRIBUTIONS IN LIEU OF MONEY. Subsection (1) shall not apply to a distribution by a corporation of its stock (or rights to acquire its stock), and the distribution shall be treated as a distribution of property to which s. 71.301 applies:

(a) To the extent that the distribution is made in discharge of preference dividends for the taxable year of the corporation in which the distribution is made or for the preceding taxable year; or

(b) If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either 1. in its stock (or in rights to acquire its stock), or 2. in property.

71.307 Basis of stock and stock rights acquired in distributions. (1) GENERAL RULE. If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as "new stock") in a distribution to which s. 71.305 (1) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the basis of the old stock. Such allocation shall be made under rules prescribed by the department of taxation.

(2) EXCEPTIONS FOR CERTAIN STOCK RIGHTS. (a) *In general.* If a corporation distributes rights to acquire its stock to a shareholder in a distribution to which s. 71.305 (1) applies, and the fair market value of such rights at the time of the distribution is less than 15 per cent of the fair market value of the old stock at such time, then sub. (1) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in sub. (1).

(b) *Election.* The election referred to in par. (a) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the department of taxation may by rule prescribe, and shall be irrevocable when made.

71.311 Taxability of corporation on distribution. (1) GENERAL RULE. Except as provided in subs. (2) and (3), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock of:

(a) Its stock (or rights to acquire its stock), or

(b) Property.

(2) LIFO INVENTORY. (a) *Recognition of gain.* If a corporation inventorying goods under the last-in, first-out (LIFO) inventory method distributes inventory assets (as defined in par. (b) 1) then the amount (if any) by which the inventory amount (as defined in par. (b) 2) of such assets under the first-in, first-out (FIFO) inventory method, exceeds the inventory amount of such assets under the LIFO method, shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(b) *Definitions.* For purposes of par. (a):

1. Inventory assets. The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

2. Inventory amount. The term "inventory amount" means, in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(c) *Method of determining inventory amount.* For purposes of this subsection, the inventory amount of assets under the FIFO method shall be determined:

1. If the corporation uses the retail method of valuing LIFO inventories, by using such method, or

2. If subd. 1 does not apply, by using cost or market, whichever is lower.

(3) LIABILITY IN EXCESS OF BASIS. If a corporation distributes property to a shareholder with respect to its stock, such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and the amount of such liability exceeds the basis (in the hands of the distributing corporation) of such property, then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its basis.

71.312 Effect on earnings and profits. (1) GENERAL RULE. Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of the amount of money, the principal amount of the obligations of such corporation and the basis of the other property, so distributed.

(2) CERTAIN INVENTORY ASSETS. (a) *In general.* On the distribution by a corporation, with respect to its stock, of inventory assets (as defined in par. (b) 1) the fair market value of which exceeds the basis thereof, the earnings and profits of the corporation:

1. Shall be increased by the amount of such excess; and

2. Shall be decreased by whichever of the following is the lesser: a. the fair market value of the inventory assets distributed, or b. the earnings and profits (as increased under subd. 1).

(b) *Definitions.* 1. Inventory assets. For the purposes of par. (a), the term "inventory assets" means: stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year; property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subdivision.

2. Unrealized receivables or fees. For purposes of subd. 1, the term "unrealized receivables or fees" means, to the extent not previously includible in income under the

method of accounting used by the corporation, any rights (contractual or otherwise) to payment for goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property, or services rendered or to be rendered.

(3) ADJUSTMENTS FOR LIABILITIES, ETC. In making the adjustments to the earnings and profits of a corporation under sub. (1) or (2), proper adjustments shall be made for:

(a) The amount of any liability to which the property distributed is subject,

(b) The amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(c) Any gain to the corporation recognized under s. 71.311 (2).

(4) CERTAIN DISTRIBUTIONS OF STOCK AND SECURITIES. (a) *In general.* The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which ch. 71 applies, shall not be considered a distribution of the earnings and profits of any corporation.

1. If no gain to such distributee from the receipt of such stock or securities, or property, was recognized under ch. 71, or

2. If the distribution was not subject to tax in the hands of such distributee by reason of s. 71.305 (1).

(b) *Prior distributions.* In the case of a distribution of stock or securities, or property, before January 1, 1955, the effect on earnings and profits of such distribution shall be determined under the corresponding provisions of prior law.

(c) *Stock or securities.* For purposes of this subsection, the term "stock or securities" includes rights to acquire stock or securities.

(5) SPECIAL RULE FOR PARTIAL LIQUIDATIONS AND CERTAIN REDEMPTIONS. In the case of amounts distributed in partial liquidation or in a redemption to which s. 71.302 (1) or 71.303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.

(6) EFFECT ON EARNINGS AND PROFITS OF GAIN OR LOSS AND OF RECEIPT OF TAX-FREE DISTRIBUTIONS. (a) *Effect on earnings and profits of gain or loss.* The gain or loss realized from the sale or other disposition (after January 1, 1911) of property by a corporation for the purpose of the computation of the earnings and profits of the corporation shall (except as herein provided) be determined by using as the basis the basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of January 1, 1911; but for purposes of the computation of the earnings and profits of the corporation for any period beginning after January 1, 1911, shall be determined by using as the basis the basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain. Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided.

(b) *Effect on earnings and profits of receipt of tax-free distributions.* Where a corporation receives (after January 1, 1911) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

1. No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

2. No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for s. 71.307 (1), be so allocated).

(7) EARNINGS AND PROFITS—INCREASE IN VALUE ACCRUED BEFORE JANUARY 1, 1911. (a) If any increase or decrease in the earnings and profits for any period beginning after January 1, 1911, with respect to any matter would be different had the basis of the property involved been determined without regard to its January 1, 1911, value, then, except as provided in par. (b), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before January 1, 1911.

(b) If the application of sub. (6) to a sale or other disposition after January 1, 1911, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after January 1, 1911, then, notwithstanding sub. (6) and in lieu of the rule provided in par. (a), the amount of such loss so to be applied shall be reduced by the amount, if any, by which the basis of the property used in determining the loss exceeds the basis computed without regard to the value of the property on January 1, 1911, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before January 1, 1911.

(8) ALLOCATION IN CERTAIN CORPORATE SEPARATIONS. In the case of a distribution or exchange to which s. 71.355 (or so much of s. 71.356 as relates to s. 71.355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under rules prescribed by the department of taxation.

(9) DISTRIBUTION OF PROCEEDS OF LOAN INSURED BY THE UNITED STATES. If a corporation distributes property with respect to its stock, and if, at the time of the distribution there is outstanding a loan to such corporation which was made, guaranteed or insured by the United States (or by any agency or instrumentality thereof), and the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan, then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of this subsection, the basis of the property at the time of distribution shall be determined without regard to any adjustment for depreciation and depletion. For purposes of this subsection, a commitment to make, guarantee or insure a loan shall be treated as the making, guaranteeing or insuring of a loan.

71.316 Dividend defined. (1) GENERAL RULE. For purposes of this chapter, the term "dividend" means any distribution of property made by a corporation to its shareholders out of its earnings and profits accumulated after January 1, 1911, or out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. Except as otherwise provided in this chapter, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this chapter, treated as a distribution of property to which s. 71.301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

71.317 Other definitions. (1) PROPERTY. For purposes of ss. 71.301 to 71.317, the term "property" means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(2) REDEMPTION OF STOCK. For purposes of ss. 71.301 to 71.317, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is canceled, retired or held as treasury stock.

71.331 Gain or loss to shareholders in corporate liquidations. (1) GENERAL RULE. (a) *Complete liquidations.* Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) *Partial liquidations.* Amounts distributed in partial liquidation of a corporation (as defined in s. 71.346) shall be treated as in part or full payment in exchange for the stock.

(2) NONAPPLICATION OF SECTION 71.301. Section 71.301 shall not apply to any distribution of property in partial or complete liquidation.

71.332 Complete liquidations of subsidiaries. (1) GENERAL RULE. No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(2) LIQUIDATIONS TO WHICH SECTION APPLIES. For purposes of sub. (1), a distribution shall be considered to be in complete liquidation only if:

(a) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possession at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per cent of the total number of shares of all other classes of stock (except nonvoting

stock which is limited and preferred as to dividends); and either

(b) The distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(c) Such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under par. (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (a) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in s. 71.361, and (b) the complete cancellation or redemption under the plan, as a result of exchanges described in s. 71.354, of the shares not owned by the taxpayer.

(3) SPECIAL RULE FOR INDEBTEDNESS OF SUBSIDIARY TO PARENT. If a corporation is liquidated and sub. (1) applies to such liquidation, and on the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80 per cent stock ownership requirements specified in sub. (2), then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness.

71.333 Election as to recognition of gain in certain corporate liquidations. (1) 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, 1954, 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; then in the case of each qualified electing shareholder as defined in sub. (3) 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 sub. (4).

(2) The term "excluded corporation" as used in this section means a corporation which at any time between January 1, 1955, 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.

(3) 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 within 30 days after the adoption of the plan of liquidation, 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 333 of the U. S. internal revenue code of 1954 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 333 of the U. S. internal revenue code of 1954 by corporate shareholders, other than an excluded corporation, which at the time of the adoption of such 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 an excluded corporation and by share-

holders who are not corporations of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(4) 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 January 1, 1955, 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.

71.334 Basis of property received in liquidations. (1) GENERAL RULE. If property is received in a distribution in partial or complete liquidation (other than a distribution to which s. 71.333 applies), and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(2) LIQUIDATION OF SUBSIDIARY. (a) *In general.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of s. 71.332 (2)), then, except as provided in par. (b), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which s. 71.332 (3) applies, and if par. (b) does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(b) *Exception.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of s. 71.332 (2)), and if the distribution is pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described in this sentence (or, in the case of a series of transactions, the date of the last such transaction); and stock of the distributing corporation possessing at least 80 per cent of the total combined voting power of all classes of stock entitled to vote, and at least 80 per cent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (c)) during a period of not more than 12 months, then the basis of the property in the hands of the distributee shall be the basis of the stock with respect to which the distribution was made. For purposes of the preceding sentence, under rules prescribed by the department of taxation, proper adjustment in the basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items.

(c) *Purchase defined.* For purposes of par. (b), the term "purchase" means any acquisition of stock, but only if the basis of the stock in the hands of the distributee is not determined in whole or in part by reference to the basis of such stock in the hands of the person from whom acquired, or under such provisions of s. 71.03 (1) (g) as relate to the basis of property acquired by descent, devise, will or inheritance, and the stock is not acquired in an exchange to which s. 71.351 applies.

(d) *Distributee defined.* For purposes of this subsection, the term "distributee" means only the corporation which meets the 80 per cent stock ownership requirements specified in s. 71.332 (2).

(3) PROPERTY RECEIVED IN LIQUIDATION UNDER SECTION 71.333. If property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and with respect to such acquisition gain was realized, but as a result of an election made by the shareholder under s. 71.333, the extent to which gain was recognized was determined under s. 71.333, then the basis shall be the same as the basis of such stock canceled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him.

71.336 Gain or loss to corporation on liquidation; general rule. No gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation.

71.337 Gain or loss on sales or exchanges in connection with certain liquidations. (1) GENERAL RULE. If a corporation adopts a plan of complete liquidation, and within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet

claims, then gain or loss shall not be recognized to such corporation from the sale or exchange by it of property within such 12-month period to the extent that such gain or loss is participated in by Wisconsin resident shareholders.

(2) PROPERTY DEFINED. (a) *In general.* For purposes of sub. (1), the term "property" does not include:

1. Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

2. Instalment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in sub. (1) of stock in trade or other property described in subd. 1, and

3. Instalment obligations acquired in respect of property (other than property described in subd. 1) sold or exchanged before the date of the adoption of such plan of liquidation.

(b) *Nonrecognition with respect to inventory in certain cases.* Notwithstanding par. (a), if substantially all of the property described in par. (a) 1 which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of sub. (1) the term "property" includes such property so sold or exchanged, and instalment obligations acquired in respect of such sale or exchange.

(3) LIMITATIONS. (a) *Liquidations to which section 71.333 applies.* This section shall not apply to any sale or exchange following the adoption of a plan of complete liquidation, if s. 71.333 applies with respect to such liquidation.

(b) *Liquidations to which section 71.332 applies.* In the case of a sale or exchange following the adoption of a plan of complete liquidation, if s. 71.332 applies with respect to such liquidation, then:

1. If the basis of the property of the liquidating corporation in the hands of the distributee is determined under s. 71.334 (2) (a), this section shall not apply; or

2. If the basis of the property of the liquidating corporation in the hands of the distributee is determined under s. 71.334 (2) (b), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of a. that portion of the basis (adjusted for any adjustment required under the second sentence of s. 71.334 (2) (b)) of the stock of the liquidating corporation which is allocable, under rules prescribed by the department of taxation to the property sold or exchanged, over b. the basis, in the hands of the liquidating corporation, of the property sold or exchanged.

History: 1961 c. 190.

71.346 Partial liquidation defined. (1) IN GENERAL. For purposes of ch. 71, a distribution shall be treated as in partial liquidation of a corporation if:

(a) The distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(b) The distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the requirements of sub. (2).

(2) TERMINATION OF A BUSINESS. A distribution shall be treated as a distribution described in sub. (1) (b) if the requirements of this subsection are met.

(a) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the 5-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(b) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the 5-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2a) Whether or not a distribution meets the requirements of sub. (2) shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

(3) TREATMENT OF CERTAIN REDEMPTIONS. The fact that, with respect to a shareholder, a distribution qualifies under s. 71.302 (1) (relating to redemptions treated as distributions in part or full payment in exchange for stock) by reason of such distribution being substantially disproportionate shall not be taken into account in determining

whether the distribution, with respect to such shareholder, is also a distribution in partial liquidation of the corporation.

71.351 Transfer to corporation controlled by transferor. (1) GENERAL RULE. No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control (as defined in s. 71.368 (3)) of the corporation. For purposes of this section, stock or securities issued for services shall not be considered as issued in return for property.

(2) RECEIPT OF PROPERTY. If sub. (1) would apply to an exchange but for the fact that there is received, in addition to the stock or securities permitted to be received under sub. (1), other property or money, then gain (if any) to such recipient shall be recognized, but not in excess of the amount of money received, plus the fair market value of such other property received; and no loss to such recipient shall be recognized.

(3) SPECIAL RULE. In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

71.354 Exchanges of stock and securities in certain reorganizations. (1) GENERAL RULE. (a) *In general.* 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) *Limitation.* Paragraph (a) shall not apply if the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or any such securities are received and no such securities are surrendered.

(2) EXCEPTION. (a) *In general.* Subsection (1) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of s. 71.368 (1) (a) 4, unless: the corporation to which the assets are transferred acquired substantially all of the assets of the transferor of such assets; and the stock, securities and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(3) CERTAIN RAILROAD REORGANIZATIONS. Notwithstanding any other provision of ch. 71, sub. (1) (a) and s. 71.356 shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of s. 71.368 (1)) for a railroad approved by the interstate commerce commission under section 77 of the bankruptcy act, or under section 20b of the interstate commerce act, as being in the public interest.

Transfer of business through tax-free reorganization. Willis, 43 MLR 399.

71.355 Distribution of stock and securities of a controlled corporation. (1) EFFECT ON DISTRIBUTEES. (a) *General rule.* If:

1. A corporation (referred to in this section as the "distributing corporation") distributes to a shareholder, with respect to its stock, or distributes to a security holder, in exchange for its securities, solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

2. The transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

3. The requirements of sub. (2) (relating to active businesses) are satisfied, and

4. As part of the distribution, the distributing corporation distributes all of the stock and securities in the controlled corporation held by it immediately before the distribution, or an amount of stock in the controlled corporation constituting control within the meaning of s. 71.368 (3), and it is established to the satisfaction of the department of taxation that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of income tax, then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(b) *Non pro rata distributions, etc.* Paragraph (a) shall be applied without regard to the following:

1. Whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

2. Whether or not the shareholder surrenders stock in the distributing corporation, and

3. Whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of s. 71.368 (1) (a) 4).

(c) *Limitation.* Paragraph (a) shall not apply if the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or securities in the controlled corporation are received and no securities are surrendered in connection with such distribution. For purposes of this section (other than par. (a) 4) and so much of s. 71.356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction which occurs within 5 years of the distribution of such stock and in which gain or loss was recognized in whole or in part, shall not be treated as stock of such controlled corporation, but as other property.

(2) REQUIREMENTS AS TO ACTIVE BUSINESS. (a) *In general.* Subsection (1) shall apply if either:

1. The distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

2. Immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(b) *Definition.* For the purposes of par. (a), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if:

1. It is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,

2. Such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

3. Such trade or business was not acquired within the period described in subd. 2 in a transaction in which gain or loss was recognized in whole or in part, and

4. Control of a corporation which (at the time of acquisition of control) was conducting such trade or business was not acquired directly (or through one or more corporations) by another corporation within the period described in subd. 2, or was so acquired by another corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

71.356 Receipt of additional consideration. (1) GAIN ON EXCHANGES. (a) *Recognition of gain.* If s. 71.354 or 71.355 would apply to an exchange but for the fact that the property received in the exchange consists not only of property permitted by s. 71.354 or 71.355 to be received without the recognition of gain 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.

(b) *Treatment as dividend.* If an exchange is described in par. (a) but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each distributee such an amount of the gain recognized under par. (a) 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 par. (a) shall be treated as gain from the exchange of property.

(2) ADDITIONAL CONSIDERATION RECEIVED IN CERTAIN DISTRIBUTIONS. If s. 71.355 would apply to a distribution but for the fact that the property received in the distribution consists not only of property permitted by s. 71.355 to be received without the recognition of gain, but also of other property or money, then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which s. 71.301 applies.

(3) LOSS. If s. 71.354 would apply to an exchange, or s. 71.355 would apply to an exchange or distribution, but for the fact that the property received in the exchange or distribution consists not only of property permitted by s. 71.354 or 71.355 to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange or distribution shall be recognized.

(4) SECURITIES AS OTHER PROPERTY. For purposes of this section:

(a) *In general.* Except as provided in par. (b), the term "other property" includes securities.

(b) *Exceptions.*

1. Securities with respect to which nonrecognition of gain would be permitted. The term "other property" does not include securities to the extent that, under s. 71.354 or

71.355, such securities would be permitted to be received without the recognition of gain.

2. Greater principal amount in s. 71.354 exchange. If in an exchange described in s. 71.354 (other than sub. (3) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and the principal amount of such securities received exceeds the principal amount of such securities surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this subdivision and subd. 3, if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

3. Greater principal amount in s. 71.355 transaction. If, in an exchange or distribution described in s. 71.355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

71.357 Assumption of liability. (1) GENERAL RULE. Except as provided in subs. (2) and (3), if the taxpayer receives property which would be permitted to be received under s. 71.351, 71.361 or 71.371, without recognition of gain if it were the sole consideration, and as part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability, then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of s. 71.351, 71.361 or 71.371, as the case may be.

(2) TAX AVOIDANCE PURPOSE. (a) *In general.* If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in sub. (1) was a purpose to avoid income tax on the exchange, or if not such purpose, was not a bona fide business purpose, then such assumption or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall, for purposes of s. 71.351, 71.361 or 71.371 (as the case may be) be considered as money received by the taxpayer on the exchange.

(b) *Burden of proof.* In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(3) LIABILITIES IN EXCESS OF BASIS. (a) In the case of an exchange to which s. 71.351 applies, or to which s. 71.361 applies by reason of a plan of reorganization within the meaning of s. 71.368 (1) (a) 4, if the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds the total of the basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of property.

(b) *Exception.* Paragraph (a) shall not apply to any exchange to which s. 71.357 (2) (a) applies or to which s. 71.371 applies.

71.358 Basis to distributees. (1) GENERAL RULE. In the case of an exchange to which s. 71.351, 71.354, 71.355, 71.356, 71.361 or 71.371 (2) applies:

(a) *Nonrecognition property.* The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged decreased by the fair market value of any other property (except money) received by the taxpayer, and the amount of any money received by the taxpayer, and increased by the amount which was treated as a dividend, and the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(b) *Other property.* The basis of any property (except money) received by the taxpayer shall be its fair market value.

(2) ALLOCATION OF BASIS. (a) *In general.* Under rules prescribed by the department of taxation, the basis determined under sub. (1) (a) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(b) *Special rule for section 71.355.* In the case of an exchange to which s. 71.355 (or so much of s. 71.356 as relates to s. 71.355) applies, then in making the allocation under par. (a), there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(3) TRANSACTIONS WHICH ARE NOT EXCHANGES. For purposes of this section, a distribution to which s. 71.355 (or so much of s. 71.356 as relates to s. 71.355) applies shall

be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(4) ASSUMPTION OF LIABILITY. Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability), shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(5) EXCEPTION. This section shall not apply to property acquired by a corporation by the issuance of its stock or securities as consideration in whole or in part for the transfer of the property to it.

71.361 Nonrecognition of gain or loss to corporations. (1) GENERAL RULE. 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.

(2) EXCHANGES NOT SOLELY IN KIND. (a) *Gain.* If sub. (1) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by sub. (1) to be received without the recognition of gain, but also of other property or money, then:

1. If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

2. If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation 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 so received, which is not so distributed.

(b) *Loss.* If sub. (1) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by sub. (1) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

71.362 Basis to corporations. (1) PROPERTY ACQUIRED BY ISSUANCE OF STOCK OR AS PAID-IN SURPLUS. If property was acquired on or after January 1, 1955, by a corporation in connection with a transaction to which s. 71.351 (relating to transfer of property to corporation controlled by transferor) applies, or as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(2) TRANSFERS TO CORPORATIONS. If property was acquired by a corporation in connection with a reorganization to which ss. 71.351 to 71.368 apply, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS TO CAPITAL. (a) *Property other than money.* Notwithstanding sub. (1), if property other than money is acquired by a corporation, on or after January 1, 1955, as a contribution to capital, and is not contributed by a shareholder as such, then the basis of such property shall be zero.

(b) *Money.* Notwithstanding sub. (1), if money is received by a corporation, on or after January 1, 1955, as a contribution to capital, and is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under rules prescribed by the department of taxation.

71.368 Definitions relating to corporate reorganizations. (1) REORGANIZATION. (a) *In general.* For purposes of ss. 71.301 to 71.368, the term "reorganization" means:

1. A statutory merger or consolidation;

2. The acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock or another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

3. The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

4. A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under s. 71.354, 71.355, or 71.356;

5. A recapitalization; or

6. A mere change in identity, form, or place of organization, however effected.

(b) *Special rules.* 1. Reorganization described in par. (a) 3 and 4. If a transaction is described in par. (a) 3 and 4, then, for purposes of ch. 71, such transaction shall be treated as described only in par. (a) 4.

2. Additional consideration in certain cases. If *a.* one corporation acquires substantially all of the properties of another corporation, *b.* the acquisition would qualify under par. (a) 3 but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and *c.* the acquiring corporation acquires, solely for voting stock described in par. (a) 3, property of the other corporation having a fair market value which is at least 80 per cent of the fair market value of all of the property of the other corporation, then such acquisition shall (subject to subd. 1) be treated as qualifying under par. (a) 3. Solely for the purpose of determining whether clause *c.* of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

3. Transfers of assets to subsidiaries in certain cases. A transaction otherwise qualifying under par. (a) 1 or 3 shall not be disqualified by reason of the fact that part or all of the assets which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets.

(2) PARTY TO A REORGANIZATION. For purposes of ss. 71.351 to 71.368, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under sub. (1) (a) 3, if the stock exchanged for the properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under sub. (1) (a) 1 or 3 by reason of sub. (1) (b) 3, the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets are transferred.

(3) CONTROL. For purposes of ss. 71.301 to 71.368, the term "control" means the ownership of stock possessing at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock of the corporation.

History: 1961 c. 33.

Revisor's Note, 1961: Corrects a cross reference. Approved by the Department of Taxation. (Bill 50-S)

71.371 Reorganization in certain receivership and bankruptcy proceedings. (1) EXCHANGES BY CORPORATIONS. (a) *In general.* No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77 (m) of the bankruptcy act (49 Stat. 922; 11 USC 205)) is transferred in pursuance of an order of the court having jurisdiction of such corporation in a receivership, foreclosure, or similar proceeding, or, in a proceeding under chapter X of the bankruptcy act (52 Stat. 883–905; 11 USC, ch. 10) or the corresponding provisions of prior law, to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(b) *Gain from exchanges not solely in kind.* If an exchange would be within the provisions of par. (a) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by par. (a) to be received without the recognition of gain, but also of other property or money, then if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but if the corporation receiving

such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation 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 so received, which is not so distributed.

(2) EXCHANGES BY SECURITY HOLDERS. (a) *In general.* No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described in sub. (1), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan or reorganization.

(b) *Gain from exchanges not solely in kind.* If an exchange would be within the provisions of par. (a) if it were not for the fact that the property received in exchange consists not only of property permitted by par. (a) to be received without the recognition of gain, 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.

(3) LOSS FROM EXCHANGES NOT SOLELY IN KIND. If an exchange would be within the provisions of sub. (1) (a) or (2) (a) if it were not for the fact that the property received in exchange consists not only of property permitted by sub. (1) (a) or (2) (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(4) ASSUMPTION OF LIABILITIES. In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in s. 71.357 shall apply.

71.372 Basis in connection with certain receivership and bankruptcy proceedings. If property was acquired by a corporation in a transfer to which s. 71.371 (1) applies, so much of s. 71.371 (3) as relates to s. 71.371 (1) (a) applies or the corresponding provisions of prior law apply, then notwithstanding the provisions of section 270 of the bankruptcy act (54 Stat. 709; 11 USC 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted by reason of a discharge of indebtedness in pursuance of the plan or reorganization under which such transfer was made.

71.373 Loss not recognized in certain railroad reorganizations. (1) NONRECOGNITION OF LOSS. No loss shall be recognized if property of a railroad corporation, as defined in section 77 (m) of the bankruptcy act (49 Stat. 922; 11 USC 205), is transferred in pursuance of an order of the court having jurisdiction of such corporation in a receivership proceeding, or in a proceeding under section 77 of the bankruptcy act, to a railroad corporation (as defined in section 77 (m) of the bankruptcy act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding.

(2) BASIS. (a) *Railroad corporations.* If the property of a railroad corporation (as defined in section 77 (m) of the bankruptcy act) was acquired after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation in a receivership proceeding, or in a proceeding under section 77 of the bankruptcy act, and the acquiring corporation is a railroad corporation (as defined in section 77 (m) of the bankruptcy act) organized or made use of to effectuate a plan of reorganization approved by the courts in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired.

(b) *Property acquired by street, suburban or interurban electric railway corporation.* If the property of any street, suburban or interurban electric railway corporation engaged as a common carrier in the transportation of persons or property in interstate commerce was acquired after December 31, 1934, in pursuance of an order of the court having jurisdiction of such corporation in a proceeding under section 77B of the bankruptcy act (48 Stat. 912), and the acquiring corporation is a street, suburban or interurban electric railway engaged as a common carrier in the transportation of persons or property in interstate commerce, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, then, notwithstanding the provisions of section 270 of the bankruptcy act (52 Stat. 904; 11 USC 670), the basis shall be the same as it would be in the hands of the corporation whose property was so acquired.