CHAPTER 71

INCOME AND FRANCHISE TAXES FOR STATE AND LOCAL REVENUES

71.01 Imposition of tax; exempt income. (1) PERSONAL INCOME 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 natural person residing within the state or by his personal representative in case of death, and trusts administered within the state; by every nonresident natural person and trust 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; and by every corporation not subject to the franchise tax under sub. (2), which owns property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both; except as hereinafter exempted. 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).

(2) FRANCHISE TAX ON CORPORATIONS. For the privilege of exercising its franchise or doing business in this state in a corporate capacity every domestic or foreign corporation, except corporations specified in sub. (3), shall annually pay a franchise tax according to or measured by its entire net income of the preceding income year at the rates set forth in s. 71.09 (2am), (2k) and (2m). Every corporation organized under the laws of this state shall be deemed to be residing within this state for the purposes of this franchise tax. All provisions of chs. 71 and 73 relating to net income taxation of corporations shall apply to franchise taxes imposed under this subsection, unless the context requires otherwise. The tax imposed by this subsection on national banking associations shall be in lieu of all taxes imposed by this state on national banking associations to the extent it is not permissible to tax such associations under

federal law. The tax imposed by this subsection on insurance companies subject to taxation under this chapter, except societies, organizations or corporations under ch. 613 operating by virtue of s. 148.03, 447.13, 449.15, 450.13 or 613.80, shall be based on net income computed under sub. (4), and no other provision of this chapter relating to computation of taxable income for other corporations shall apply to such insurance companies. All other provisions of this chapter shall apply to insurance companies subject to taxation under this chapter unless the context clearly requires otherwise. The tax imposed upon societies, organizations or corporations under ch. 613 operating by virtue of s. 148.03, 447.13, 449.15, 450.13 or 613.80, shall be upon such net income as is determined by application to such companies of those provisions of the internal revenue code applicable to mutual insurance companies, other than life insurance companies or mutual marine insurance companies, having total receipts over $500,000 subject to any applicable addition or subtraction as provided in sub. (4) (a).

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

(a) Income of mutual insurance companies exempt from federal income taxation pursuant to section 501 (c) (15) of the internal revenue code, town mutual insurance companies organized under or subject to ch. 612, foreign insurance companies, and domestic life insurance companies engaged exclusively in life insurance business, domestic insurance companies insuring against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate, 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 cooperatives operated without pecuniary profit to any shareholder or member, or operated on a cooperative 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. Beginning with calendar year 1972 and thereafter, this paragraph does not apply to the income of societies, organizations or corporations under ch. 613 operating by virtue of s. 148.03, 447.13, 449.15, 450.13 or 613.80. Tax on the income of such societies, organizations or corporations shall first be payable on or before March 15, 1973, and thereafter under s. 71.10 (1).

(b) Income received by the United States, the state and all counties, cities, villages, school districts, vocational, technical and adult education 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) Whenever any bank has been placed in the hands of the commissioner of banking for liquidation under s. 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 banking certifies to the department of revenue 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 banking, which taxes have not been paid.

(e) The first $1,680 of any annuity received annually from a retirement system established for its civil service employes by the United States. This exemption is limited to persons 62 years of age or older. For those persons having earned income in excess of $600 per taxable year, the exemption under this section shall be reduced by the amount of earned income in excess of $600. For purposes of this exemption, "earned income" means "earned income" as defined in section 911 (b) of the internal revenue code as of January 1, 1972.

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

(g) Awards received under ch. 949.

(4) INSURANCE CORPORATIONS. (a) Insurance companies subject to taxation under this chapter, except societies, organizations or corporations under ch. 613 operating by virtue of s. 148.03, 447.13, 449.15, 450.13 or 613.80, beginning with calendar year 1972 and thereafter, shall be taxed on the basis of net income. Such tax shall first be payable on or before March 15, 1973, and thereafter under s. 71.10 (1). "Net income" of an insurance company subject to taxation under this chapter means federal taxable income as determined in accordance with the provisions of the internal revenue code applicable to such company with respect to determination of federal income tax payable by such company, adjusted as follows:

1. By adding to federal taxable income the amount of any loss carry-forward, including any capital loss carry-forward, deducted in the calculation of federal taxable income;

2. By adding to federal taxable income that portion of any gain on sales of assets in a corporate liquidation subject to s. 71.337 represented by the ratio which the percentage of the outstanding stock of such corporation owned by nonresidents of this state bears to the total outstanding stock of such corporation;

3. By adding to federal taxable income, if not already included therein, the amount of any federal tax refund or portion thereof previously applied to reduce the amount of tax payable under this chapter;

4. By adding to federal taxable income an amount equal to interest income received or accrued during the taxable year to the extent such interest income was used as a deduction in determining the company's federal taxable income;

5. By adding to federal taxable income an amount equal to dividend income received during the taxable year to the extent such dividend income was used as a deduction in determining federal taxable income;

6. By adding to federal taxable income the amount of Wisconsin corporation franchise tax, if any, deducted in the calculation of federal taxable income;

7. By subtracting from federal taxable income dividends received from Wisconsin corporations which are deductible under s. 71.04 (4), to the extent such dividends have been included in federal taxable income;

8. By subtracting from federal taxable income the amount of Wisconsin corporation franchise tax, if any, assessed during the taxable year;

9. By subtracting from federal taxable income any net capital losses not offset against capital gains to the extent provided by s. 71.04 (7) and (7a);

10. By subtracting any net business loss carry-forward permissible under s. 71.06, but no loss incurred by any insurance company in 1971 or any prior year may be carried forward, and any such loss, not incurred in 1971 or any prior year, sustained by a nonprofit service plan of sickness care under ch. 148, dental care under s. 447.13, prepaid optometric service plans under s. 449.15 or prepaid prescription plans under s. 450.13 shall be treated as a net business loss of the successor service insurance corporation under ch. 613 operating by virtue of s. 148.03, 447.13, 449.15 or 450.13.

(b) 1. With respect to any domestic insurance company engaged in the sale of life insurance and also other insurance, the net income figure derived by application of par. (a) shall be multiplied by a fraction, the numerator of which shall be the net gain from operations on insurance, other than life insurance, and the denominator of which shall be the total net gain from operations. If the numerator is zero or negative, the multiplier shall be zero.

2. For purposes of the numerator, "net gain from operations on insurance, other than life insurance" includes net income, after dividends to policyholders, but before federal and foreign income taxes, from fire and casualty insurance; net gain from operations, after dividends to policyholders and before federal income taxes, from accident and health insurance; and net realized capital gains or losses on investments from accident and health insurance operations, said net realized capital gains or losses to be apportioned among life and accident and health insurance lines in the same manner as net investment income is required to be apportioned by the commissioner of insurance. "Net gain from operations", "net income", "net realized capital gains or losses", and "net investment income" shall be calculated and reported as required under rules adopted by the commissioner of insurance.

3. For purposes of the denominator, "total net gain from operations" includes net income, after dividends to policyholders, but before federal and foreign income taxes, from fire and casualty insurance; net gain from operations after dividends to policyholders and before federal income taxes, from accident and health and life insurance; and net realized capital gains or losses on investments from accident and health and life insurance operations. "Net income", "net gain from operations", and "net realized capital gains or losses" shall be calculated and reported as

required under rules adopted by the commissioner of insurance.

4. The resultant figure shall constitute Wisconsin net income for purposes of the Wisconsin franchise tax measured by net income except with respect to such of said insurance corporations as had, in the taxable year, premiums written on insurance other than life insurance where the subject of such insurance was resident, located or to be performed outside this state.

(c) With respect to domestic insurance companies not engaged in sale of life insurance or not operating under ch. 613 by virtue of s. 148.03, 447.13, 450.13, 449.15 or 613.80 but which, in the taxable year, have collected premiums written on subjects of insurance resident, located or to be performed outside this state, there shall be subtracted from the net income figure derived by application of par. (a) to arrive at Wisconsin income constituting the measure of the franchise tax an amount calculated by multiplying such adjusted federal taxable income by the arithmetic average of the following 2 percentages:

1. The percentage of total premiums written on all property and risks other than life insurance, wherever located during the taxable year, as reflects premiums written on insurance, other than life insurance, where the subject of insurance was resident, located or to be performed outside this state.

2. The percentage of total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year as reflects such compensation paid outside this state. Compensation is paid outside this state if the individual's service is performed entirely outside this state; or the individual's service is performed both within and without this state, but the service performed within is incidental to the individual's service without this state; or some service is performed without this state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is without this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is outside this state.

(d) The arithmetic average of the 2 percentages referred to in par. (c) shall be applied to the net income figure arrived at by the successive application of pars. (a) and (b) with respect to Wisconsin insurance corporations to which both pars. (a) and (b) apply and which have collected premiums written upon insurance, other than life insurance, where the subject of such insurance was resident, located or to be performed outside this state, to arrive at Wisconsin income constituting the measure of the franchise tax.

(e) Section 71.22 shall apply to insurance companies subject to taxation under this chapter on and after January 1, 1972.

(f) Elections authorized by and made in accordance with the internal revenue code, except an election to file consolidated returns, shall be deemed elections for the purpose of applying this chapter.

(g) For purposes of this subsection, "internal revenue code" means the federal internal revenue code as effective November 5, 1971, except that for taxable year 1976 and subsequent years "internal revenue code" means the federal internal revenue code as amended to December 31, 1975, or such code as subsequently amended or changed by the U.S. congress and effective for the taxable year for federal income tax purposes, at the option of the insurance company; and "life insurance" includes annuities.

History: 1971 c. 125, 154, 211, 215, 320; 1973 c. 243; 1975 c. 41, 223, 224, 344, 372, 422.

Legislative Council Note to (3) (a), 1975: In this revision, the position has been taken that present tax law should not be disturbed. The repeal of s. 201.04 requires the amendment of s. 71.01 (3) (a) as above. [Bill 632-S]

See note to 70.11, citing Pitts v. Dept. of Revenue, 333 F. Supp. 662.

The theory of property taxation and land use restrictions. Heller, 1974 WLR 751.

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 [Stats. 1967], shall be the basis for determining the amount of such gain or loss.

71.02 Definitions. (1) DEFINITIONS APPLICABLE TO CORPORATIONS. As used in this chapter:

(a) "Net income" means, for corporations, "gross income" less allowable deductions, except that for taxable years 1972, 1973, 1974 and 1975 for a corporation or common law trust which qualifies as a regulated investment company or real estate investment trust under the internal revenue code as amended to December 31, 1972, "net income" means the federal regulated investment company taxable income or the federal real estate investment trust taxable income of such corporation or trust as determined under the internal revenue code as amended to December 31, 1972, and except that for taxable year 1976 and subsequent years, for a corporation or common law trust which qualifies as a regulated investment company or real estate investment trust under the internal revenue code as amended to December 31, 1975, "net income" means the federal regulated investment company taxable income or the federal real estate investment trust taxable income of such corporation or trust as determined under the internal revenue code as amended to December 31, 1975.

(b) "Person" includes corporations, unless the context requires otherwise, and "corporation" includes corporations, joint stock companies, associations or common law trusts organized or conducted for profit, unless the context requires otherwise.

(c) "Paid" or "actually paid" 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; but 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.

(d) All fiscal years ending between the June 30 preceding and the July 1 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.

(2) DEFINITIONS APPLICABLE TO NATURAL PERSONS AND FIDUCIARIES. As used in this chapter:

(a) "Federal taxable income" and "federal adjusted gross income" of natural persons and fiduciaries, mean taxable income or adjusted gross income as determined under the internal revenue code or, if redetermined by the department, as determined by the department under the internal revenue code or as may be determined on final appeal therefrom.

(b) 1. For the taxable year 1975, "internal revenue code" means the federal internal revenue code in effect on December 31, 1974. Amendments to the internal revenue code enacted after December 31, 1974, shall not apply to this subsection with respect to the taxable year 1975.

2. For the taxable year 1976 and thereafter, "internal revenue code" means the federal internal revenue code in effect on December 31, 1975. Amendments to the internal revenue code enacted after December 31, 1975, shall not apply to this subsection with respect to the taxable year 1976 and thereafter.

(c) "Wisconsin taxable income" of estates and trusts means federal taxable income with the modifications prescribed in s. 71.05 (1) and (4).

(d) "Wisconsin taxable income" of natural persons means Wisconsin adjusted gross income less itemized deductions or less the Wisconsin standard deduction.

(e) "Wisconsin adjusted gross income" means federal adjusted gross income, with the modifications prescribed in s. 71.05 (1) and (4).

(f) "Itemized deductions" means deductions from federal adjusted gross income allowable under the internal revenue code in determining federal taxable income, other than the federal standard deduction, low-income allowance and deductions for personal exemptions; but with respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state in the calendar year 1972 or corresponding fiscal year or thereafter, "itemized deductions" are limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except that for married persons "itemized deductions" are limited to such fraction of the amount so determined as combined Wisconsin adjusted gross income is of combined or joint federal adjusted gross income.

(g) For purposes of determining "Wisconsin taxable income" of the calendar year 1970 and corresponding fiscal years and prior calendar and fiscal years, "Wisconsin standard deduction" means 10% of a natural person's Wisconsin adjusted gross income but not less than $300 and not more than $1,000, except that the combined Wisconsin standard deduction of married persons shall not exceed $1,000.

(gh) For purposes of determining "Wisconsin taxable income" of the calendar year 1971 and corresponding fiscal years, "Wisconsin standard deduction" means 11% of a natural person's Wisconsin adjusted gross income but not less than $475 nor more than $1,250, except that the combined Wisconsin standard deduction of married persons shall not exceed $1,250.

(gn) For purposes of determining "Wisconsin taxable income" of the calendar year 1972 and

corresponding fiscal years, "Wisconsin standard deduction" means 14% of a natural person's Wisconsin adjusted gross income but not less than $1,000 nor more than $2,000, except that the combined Wisconsin standard deduction of married persons shall not exceed $2,000. With respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state in such year, the "Wisconsin standard deduction" shall be limited to such fraction of the amount so determined, regardless of whether the $1,000 minimum is used, as Wisconsin adjusted gross income is of federal adjusted gross income.

(gp) 1. With respect to taxable years beginning after December 31, 1972, except as otherwise provided, the Wisconsin standard deduction is the larger of the percentage standard deduction or the low-income allowance as provided in this paragraph.

2. The percentage standard deduction is an amount equal to 15% of adjusted gross income, but not to exceed $2,000 for an unmarried individual or $2,000 in the aggregate for a husband and wife.

3. The low-income allowance is $1,300 for an unmarried individual or $1,300 in the aggregate for a husband and wife.

4. For a fiscal year taxpayer, any increase in the standard deduction, including the low-income allowance, over the standard deduction permissible in the previous calendar year must be prorated by taking into account the number of days of the taxpayer's fiscal year falling into each calendar year.

5. In the case of a taxpayer with respect to whom a deduction under s. 71.09 (6) (b), (6m) and (6p) is allowable to another taxpayer for the taxable year, the percentage standard deduction shall be computed only with reference to so much of his adjusted gross income as is attributable to his earned income, as defined in section 911 (b) of the internal revenue code as of January 1, 1973, and the low-income allowance shall not exceed his earned income for the taxable year.

6. With respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state, in 1973 and thereafter, the low-income allowance authorized under this paragraph is limited by such fraction of that amount as Wisconsin adjusted gross income is of federal adjusted gross income, for unmarried persons, and as combined Wisconsin adjusted gross income is of combined or joint federal adjusted gross income for married persons.

(h) "Taxable income" and "adjusted gross income," when not preceded by the word "federal" means Wisconsin taxable income and Wisconsin adjusted gross income, respectively, unless otherwise defined or the context plainly requires otherwise.

(i) "Person," "fiduciary," "income" and all other terms not otherwise defined, have the same meaning as in the internal revenue code unless otherwise defined or the context requires otherwise.

(j) "Person" includes natural persons and fiduciaries, unless the context requires otherwise.

(k) "Taxable year" means the taxable year upon the basis of which the taxable income of the taxpayer is computed under the internal revenue code. References to a particular taxable year include the taxable year coinciding with the calendar year named and all other taxable years ending on or after July 1 in such calendar year or on or before June 30 following such calendar year.

(l) "Federal net operating loss" of persons other than corporations means net operating loss as determined by the taxpayer under the internal revenue code, or if redetermined by the department, as determined by the department under such code or as may be determined on final appeal therefrom.

(m) "Wisconsin net operating loss" of persons other than corporations for years prior to 1965 means Wisconsin net business loss as computed pursuant to s. 71.06, 1963 Stats., and for 1965 and thereafter means "federal net operating loss" adjusted by the modifications prescribed in s. 71.05 (1) and (4).

History: 1971 c. 121, 125, 215, 307; 1973 c. 13, 90, 243; 1975 c. 39, 224.

Note: Section 84m of chapter 163, laws of 1965, provides that if 71.02 (2) is declared unconstitutional, several other sections created by the act are also invalid

The deductibility of attorneys' fees for estate planning. Joseph, 1973 WBB No. 4

71.03 Gross income and exclusions. (1) INCLUSIONS. "Gross income", as used in determining taxable income of corporations under this chapter, shall include:

(a) All 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 but:

1. 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.

2. The cost or other basis under subd. 1, shall be diminished for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion to the extent of the amount allowed as deductions but not less than the amount allowable in computing taxable income under all Wisconsin tax laws. Where no method has been adopted under s. 71.04 (13) (relating to depreciation deduction) the amount allowable shall be determined under s. 71.04 (13) (b) 1.

3. 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 2 years from date of the conversion, or within extensions of such period as granted by the department of revenue, actually expended, in good faith under rules prescribed by the department of revenue, to replace the property converted by the acquisition of other property located in Wisconsin similar or related in service or use to the property converted, 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 converted. 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 from the insurance company for the purposes of this subsection.

4. 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 revenue in effect on January 1, 1934.

Note: Chapter 214, laws of 1975, sec. 4, provides that the amendment of (1) (g) by chap. 214 is effective for the reporting of corporate income and franchise taxes for the tax year of 1975 and succeeding years.

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

(k) 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) The value of property acquired by gift, bequest, devise or inheritance, but such exemption shall not exclude from gross income the income from any such property, or, where the gift, bequest, devise or inheritance is of income from property or constitutes payment for a service, the amount of such income or payment. Where, under the terms of the gift, bequest, devise or inheritance, the payment, crediting or distribution thereof is to be made at intervals, then to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for the purpose of this paragraph as a gift, bequest, devise or inheritance of income from property. Any amount included in the gross income of a beneficiary, estate, trust or any other person under subchapter J of the internal revenue code shall be treated for purposes of this paragraph as a gift, bequest, devise or inheritance of income from property.

Note: Chapter 239, laws of 1967, which repealed and recreated par. (a) also provided that this change applies in the determination of Wisconsin taxable income of taxable years beginning on or after January 1, 1968, but no benefit under an employe benefit plan shall be taxable as income to a beneficiary to the extent such benefit was included in the estate of a decedent for inheritance tax purposes by reason of the death of the decedent having occurred prior to January 1, 1968.

(b) All insurance received by any corporation in payment of a death claim by any insurance company, fraternal benefit society or other insurer, including insurance paid to a corporation upon the policies on the lives of its officers 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 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.

(c) 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.

(d) 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.

(e) All amounts received in accordance with s. 13.123 (1) (a) which are spent for the purposes specified in s. 13.123 (1) (a). In this chapter, the place of residence of a member of the state legislature within the legislative district which the member represents shall be considered the member's home.

(f) Dividends received by a Wisconsin holding company from a regulated corporation having 80% or more of its total combined voting power of all classes of stock owned by the Wisconsin holding company receiving the dividends. For the purposes of this paragraph, "regulated corporation" means a corporation whose business is regulated by a federal or state regulatory agency specifically created to regulate such business, and which business is subject to limitations, restrictions or approvals by such agency as to the kind of entity under which business shall be conducted, the manner in which distributions or transfers of assets may be made by such entity, and the prices or rates to be charged for, or the manner in which, services or products are furnished to the public. For purposes of this paragraph, "Wisconsin holding company" means a corporation which has a Wisconsin apportionment fraction of 95% or more under s. 71.07.

(3) MINNESOTA INCOME TAX RECIPROCITY. (a) For purposes of income tax reciprocity reached with the state of Minnesota under sub. (2) (c), whenever the income taxes on residents of one state which would have been paid to the 2nd state without reciprocity exceeds the income taxes on residents of the 2nd state which would have been paid to the first state without reciprocity, the state with the net revenue loss shall receive from the other state the amount of such loss. This subsection shall apply to taxable years beginning after December 31, 1972.

(b) The data used for computing the loss to either state shall be determined by the respective departments of revenue of both states on or before November 1 of the year following the close of the previous calendar year. If an agreement cannot be reached as to the amount of the loss, the secretary of revenue of this state and the commissioner of taxation of the state of Minnesota shall each appoint a member of a board of arbitration and these members shall appoint a 3rd member of the board. The board shall select one of its members as chairman. The board may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers and documents and hold hearings at such places as it deems necessary. The board shall then make a determination as to the amount to be paid the other state which shall be conclusive. This state shall pay no more than one-half of the cost of such arbitration.

(5) CORPORATE PROPERTY HELD FOR PRODUCTIVE USE AND INVESTMENT. (a) No gain nor loss shall be recognized to corporations 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 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. 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.

(6) EXCHANGE OF STOCK FOR STOCK OF SAME CORPORATION. No gain or loss shall be recognized to a corporation 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: 1973 c. 90; 1975 c. 214, 224, 421

In computing capital gain on the sale of income property under sub. (1) (g), the 1963 amendment which changed "deductions allowed for depreciation" to "the amount allowable" was not retroactive. Dept. of Revenue v. Dziubek, 45 W (2d) 499, 173 NW (2d) 642.

Income of a partnership, not distributed before a partner's death, is properly taxed as income even though it was also taxed as part of his estate for inheritance tax purposes. American Bank & Trust Co. v. Dept. of Revenue, 60 W (2d) 660, 211 NW (2d) 627

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 pars. (a) to (e), no gain or loss shall be recognized to a corporation 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 revenue, 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 revenue 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 s. 71.035 (1) (d), would be within the provisions of s. 71.035 (1) (a) if it were not for the fact that property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

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

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

(g) *Nonapplication of other provisions.* If an exchange or distribution made in obedience to an order of the securities and exchange commission is within any of the provisions of this section and may also be considered to be within any of the provisions of ss. 71.301 to 71.372, 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 revenue.

(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 revenue, 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).

History: 1973 c 12 s 37.

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

(1) Payments made within the year for wages, salaries, commissions and bonuses of employes and of officers if reasonable in amount, for services actually rendered in producing such income; provided, there is reported the name, address and amount paid each such employe or officer residing within this state to whom a compensation of $500 or more has been paid during the assessment year. The department may waive the reporting requirement herein with respect to a corporation claiming deduction from gross income of wages, salaries, commissions or bonuses in the taxable year 1969 or thereafter, if the department is satisfied that failure to report has resulted in no revenue loss to the state.

(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, except interest paid on money borrowed or interest on notes or securities issued by a corporation to purchase its own capital stock; if, 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). Such ordinary and necessary expenses do not include money or the value or cost of property given to or spent on behalf of a public official. In this subsection, "public official" includes any elected or appointed official, any candidate for public office and any employe of the United States or of any state or a political subdivision thereof.

(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 revenue 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 revenue may by rule prescribe.

(b) The taxpayer files with the department of revenue 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 revenue 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) The remaining cost of any waste treatment plant or pollution abatement equipment installed prior to the calendar year 1969 or corresponding fiscal year pursuant to order, recommendation or approval of the committee on water pollution, department of health and social services, city council, village board or county board pursuant to s. 59.07 (53) or (85), 1971 stats., which plant or equipment was not fully depreciated or amortized for Wisconsin franchise or income tax purposes at the end of the 1968 calendar year or corresponding fiscal year, may be deducted in the calendar year 1969 or corresponding fiscal year at the election of the taxpayer. Failure to exercise such election on the 1969 return shall require continuation of the previous method of deducting cost of such property. The cost of all waste treatment or pollution abatement plant and equipment purchased or constructed in the calendar year 1969 or corresponding fiscal year or thereafter pursuant to order, recommendation or approval of the committee on water pollution, department of resource development, department of natural resources, department of health and social services, city council, village board, or county board pursuant to s. 59.07 (53) or (85), 1971 stats., may be deducted in the year paid (as defined in s. 71.02 (1) (c)), may be depreciated, or may be amortized over a period of 5 years. The deduction election, once made, cannot be changed.

(a) The taxpayer shall file with the department of revenue at the time of his election under this subsection copies of recommendations, orders and approvals issued by the department of resource development, department of natural resources, department of health and social services, city council, village board or county board pursuant to s. 59.07 (53) or (85), 1971 stats., in respect to such waste treatment plant and pollution abatement equipment.

(b) 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 may be deducted, depreciated or amortized as provided herein and the cost of land containing the lagoons may be deducted, depreciated or amortized as provided herein.

(c) In no event shall the sum of past and current year deductions be permitted in excess of the cost of the asset subject to 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 revenue 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.

(2d) (a) The organizational expenditures of a corporation may, at the election of the corporation, be treated as deferred expenses, and such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as is selected by the taxpayer corporation, beginning with the month in which the corporation begins business.

(b) The term "organizational expenditures" means any expenditure which:

1. Is incident to the creation of the corporation;

2. Is chargeable to capital account; and

3. Is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

(c) The election provided by par. (a) may be made for any taxable year beginning after December 31, 1969, but only if made not later than the time prescribed by law for filing the return for the taxable year, including extensions thereof, in which the taxpayer begins business. The period so elected shall be adhered to in computing the taxable income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred on or after February 19, 1970.

(2e) (a) Any trademark or trade name expenditure paid or incurred during a taxable year beginning after December 31, 1969, may, at the election of the taxpayer, be treated as a deferred expense. In computing taxable income, all expenditures paid or incurred during the taxable year which are so treated shall be allowed as a deduction ratably over such period of not less than 60 months, beginning with the 1st month in the taxable year, as is selected by the taxpayer in making the election. The expenditures so treated are expenditures properly chargeable to capital account for purposes of s. 71.03 (1) (g).

(b) For purposes of par. (a), "trademark or trade name expenditure" means any expenditure which:

1. Is directly connected with the acquisition, protection, expansion, registration (federal, state or foreign), or defense of a trademark or trade name;

2. Is chargeable to capital account; and

3. Is not part of the consideration paid for a trademark, trade name, or business.

(c) The election provided by par. (a) shall be made within the time prescribed by law, including extensions thereof, for filing the return for the taxable year during which the expenditure is paid or incurred. The period selected by the taxpayer under par. (a) with respect to the expenditures paid or incurred during the taxable year which are treated as deferred expenses shall be adhered to in computing his taxable income for the taxable year for which the election is made and all subsequent years.

(2f) (a) Research or experimental expenditures paid or incurred during a taxable year beginning after December 31, 1969, in connection with the taxpayer's trade or business, may at the election of the taxpayer, be treated as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction. The election of this method shall be made within the time prescribed by law, including extensions thereof, for filing the return for the taxable year in which the expenditures are paid or incurred and shall apply to all such expenditures. The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the department of revenue, a change to a different method is authorized with respect to part or all of such expenditures.

(b) At the election of the taxpayer, research or experimental expenditures paid or incurred during a taxable year beginning after December 31, 1969, in connection with the taxpayer's trade or business, chargeable to capital account, but not chargeable to property of a character which is subject to amortization, depreciation or depletion, and not treated as expenses under par. (a), may be treated as deferred expenses and such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as is selected by the taxpayer, beginning with the month in which the taxpayer first realizes benefits from the expenditures. These deferred expenditures are properly chargeable to capital account under s. 71.03 (1) (g). The election may be made for any taxable year beginning after December 31, 1969, but only if made not later than the time prescribed by law for filing the return for the taxable year including extensions thereof. The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent years unless, with the approval of the department of revenue, a change to a different method or to a different period is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditures paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) This subsection shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, including oil and gas; or any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to allowance for depreciation or depletion, but such depreciation or depletion allowances shall be considered as expenditures for purposes of this subsection.

(2g) (a) The cost of the following described property may be deducted in the year paid as defined in s. 71.02 (1) (c), may be depreciated, or may be amortized over a period of 5 years: All property purchased or constructed as a waste treatment facility utilized for the treatment of industrial wastes as defined in s. 144.01 (9), or air contaminants as defined in s. 144.30 (1) but not for other wastes as defined in s. 144.01 (10) and approved by the department of revenue under s. 70.11 (21) (a) for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state. The deduction election, once made, cannot be changed, and it may be claimed beginning with the month following the month in which the facility is completed or acquired, or with the succeeding taxable year.

(b) 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 may be deducted, depreciated or amortized as provided in this subsection and the cost of land containing the lagoons may be deducted, depreciated or amortized as provided in this subsection.

(c) Subsection (2b) applies to all property purchased prior to July 31, 1975, or purchased and constructed in fulfillment of a written construction contract or formal written bid, which contract was entered into or which bid was made prior to July 31, 1975.

(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 as income taxes, and taxes on all real property which is owned and held for business purposes whether income producing or not. 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.

(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, the income of such corporation must have been subject to the income tax law of this state, and the dividend must not have been deductible for tax purposes from the gross income of such corporation. 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% 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.

Note: Chapter 214, laws of 1975, sec. 4, provides that the amendment of (4) by chap. 214 is effective for the reporting of corporate income and franchise taxes for the tax year of 1975 and succeeding years.

(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 revenue 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.

7. Any police officers' relief association organized under s. 213.11 or firefighters' 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 surviving spouses and orphans.

(e) If the contribution is other than money, the basis for the calculation of the amount thereof shall be the fair market value of the property at the time of the contribution, except that if the basis of the property was deducted pursuant to sub. (7) or charged down or off and deducted pursuant to sub. (8) or the property was depreciable, amortizable or depletable, such fair market value shall be reduced by the lesser of 1) the amount which would have been treated (but was not actually treated) as gain if the property contributed had been sold at its fair market value determined at the time of such contribution, or 2) the amount of depreciation, amortization, write-off or depletion to the extent allowed as deductions in computing taxable income under all Wisconsin franchise and income tax laws and which resulted in a tax benefit, but not less than the amount allowable under all Wisconsin franchise and income tax laws.

(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, production credit associations and credit unions may make a deduction for a reasonable addition to reserve for bad debts of 2/3 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 ch. 185 or otherwise, shall be returned as income or receipts by said corporate patrons but may be deducted by such company as cost, purchase price or refunds; but 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, includable 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 2 1/2 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 2 1/2 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 revenue, 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 revenue, 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 secretary, 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 secretary of revenue 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 revenue 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 includable corporations, connected through stock ownership with a common parent corporation which is an includable 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 includable corporations (except the common parent corporation) is owned directly by one or more of the other includable 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 includable 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 "includable 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.

(15) (a) With the exception of sub. (2b), all provisions of this section relating to amortization or depreciation of depreciable property by corporations shall terminate as of the close of each corporation's 1971 taxable year for all purposes of the Wisconsin tax on or measured by net income, including but not limited to subs. (2a), (2c), (13) and (14). No loss or deduction shall be allowed to any corporation pursuant to sub. (7) or (8), respectively, with respect to depreciable property in determining net income of the 1972 taxable year or taxable years thereafter unless such loss or deduction is allowed as a deduction under the internal revenue code for federal income tax purposes. With the exception of pollution abatement plants and equipment deducted, amortized or depreciated pursuant to sub. (2b), for all purposes of the Wisconsin corporation tax on or measured by net income of the 1972 taxable year and taxable years thereafter, the amount of depreciation or amortization on depreciable property allowable as a deduction from gross income shall be limited to the amount allowable as a deduction from gross income under the internal revenue code for federal income tax purposes, but no deduction for depreciation or amortization for depreciable property may exceed the Wisconsin "income tax cost" (basis) of depreciable property.

(b) In this subsection, "internal revenue code" means such code as applicable to the determination of net income of the calendar year 1972 for federal income tax purposes. In determining the Wisconsin tax on or measured by net income of any year subsequent to 1972, "internal revenue code" means such code as applicable to the determination of net income for such subsequent year for federal income tax purposes or as applicable to determination of net income of 1972 for federal income tax purposes, at the option of the corporation.

(c) Effective as of the first day of each corporation's 1972 taxable year, the Wisconsin adjusted basis for all depreciable property subject to depreciation or amortization under the internal revenue code, except pollution abatement plants or equipment deducted, amortized or depreciated pursuant to sub. (2b), shall be identical to the adjusted basis of such property on such date for federal income tax purposes under such code. As of the end of each corporation's 1971 taxable year, the net difference between the Wisconsin and federal adjusted basis of all depreciable property subject to depreciation or amortization for federal income tax purposes, except pollution abatement plants and equipment covered by sub. (2b), shall be aggregated. If the Wisconsin adjusted basis of the aggregate of such property exceeds the federal adjusted basis of such aggregate, one-fifth of such difference may be deducted from gross income to arrive at net income (before apportionment, if any) for Wisconsin income and franchise tax purposes in respect of the income year 1972 and the next succeeding 4 income years. If the federal adjusted basis of the aggregate of such property exceeds the Wisconsin adjusted basis of such aggregate, the other allowable deductions from gross income to arrive at net income (before apportionment, if any)

shall be reduced by one-fifth of such difference with respect to the income year 1972 and each of the next succeeding 4 income years, and such reduction shall be made regardless of any disposition made of the underlying depreciable property. If a corporation is dissolved, or merged into or consolidated with another corporation before the termination of the 5-year period, any remaining balance of the net difference between the Wisconsin and federal adjusted basis of such depreciable property as of the end of such corporation's 1971 taxable year shall be deducted from gross income or used to reduce otherwise allowable deductions from gross income, as the case may be, in the year of dissolution, merger or consolidation.

(d) Adjustments for capital expenditures and changes in the amount of depreciation or amortization of depreciable property, other than pollution abatement plants or equipment deducted, amortized or depreciated pursuant to sub. (2b), determined for federal income tax purposes by federal audit or otherwise affecting the net difference between the Wisconsin and federal adjusted basis of depreciable property at the end of the 1971 income year shall be reflected for Wisconsin income and franchise tax purposes by appropriate adjustments in the 5 amortization years and such adjustments and changes affecting a corporation's net income of the 1972 taxable year or taxable years thereafter shall be reflected for Wisconsin income and franchise tax purposes in the year or years to which they relate. Additional assessments or refunds may be made consistent with such adjustments or changes and consistent with this subsection regardless of any limitations otherwise applicable to such year or years.

(e) With respect to depreciable property disposed of in a corporation's taxable year 1973 or thereafter, any difference in adjusted basis for purposes of the federal income tax and the Wisconsin tax on or measured by net income, apart from any difference amortized pursuant to par. (c), shall be taken into account in determining net income in the year of disposition.

(f) With respect to any corporation which has, in any year prior to deriving income with a Wisconsin situs for Wisconsin income or franchise tax purposes, taken depreciation or amortization of depreciable property for federal income tax purposes, the federal adjusted basis of its depreciable property as of the beginning of the income year in which such corporation begins operations in this state shall be the Wisconsin adjusted basis of such property.

(g) With respect to the Wisconsin corporation tax on or measured by net income of the 1972 taxable year and taxable years thereafter the special rule of exclusion provided in section 108 (a) of the internal revenue code shall apply if it applies for federal income tax purposes, and in such case a reduction of the basis of property shall be effected for purposes of such Wisconsin tax in the same manner and to the same extent as for federal income tax purposes as provided in section 1017 of the internal revenue code and the applicable federal regulations.

History: 1971 c. 215; 1973 c. 90, 243; 1975 c. 39, 94, 214, 224, 422.

Interest paid on money used to purchase its own stock is not deductible since the fact that the stockholder might sell to an outsider is not sufficient to show that the stock was purchased to realign the corporate structure or was related to income production. Hoffman Co. v. Department of Revenue, 51 W (2d) 220, 186 NW (2d) 228.

71.043 Reduction of tax. (1) The tax imposed upon or measured by corporation net income of the taxable year 1972 pursuant to s. 71.01 (1) or (2) may be reduced by an amount equal to so much of the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state as was paid on fuel and electricity costs in excess of 2% of the cost of manufacturing within this state as determined pursuant to s. 71.07 (2) (b), 1969 stats. Such deduction may not exceed 50% of the tax computed without such reduction.

(2) The tax imposed upon or measured by corporation net income of the taxable year 1973 and subsequent taxable years pursuant to s. 71.01 (1) or (2) may be reduced by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state.

(3) If any corporation in any year is entitled to a credit under this section, such credit, to the extent not offset by the tax liability of the same year may be offset against the tax liability of the subsequent year, and if not completely offset by the tax liability of such year, the remainder of such credit may be offset against the tax liability of the following year. A credit under sub. (2) may be carried forward and offset against tax liability in the next succeeding 5 years.

(4) In this section:

(a) "Sales and use tax under ch. 77 paid by the corporation" includes use taxes paid directly by the corporation and sales and use taxes paid by the corporation's supplier and passed on to the corporation whether separately stated on the invoice or included in the total price.

(b) "Manufacturing" has the meaning designated in s. 77.51 (27).

History: 1971 c. 125, 211; 1973 c. 90.

71.045 Allowability of certain deductions. No deduction shall be allowable at any time to the employer corporation, or to a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 425 (a) of the internal revenue code applies, if the stock option was exercised on or after June 30, 1965, by an individual in a transfer in respect of which the requirements of section 422 (a), 423 (a) or 424 (a) of the internal revenue code were met; and 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. If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422 (a), 423 (a) or 424 (a) of the internal revenue code except that there is a failure to meet any of the holding period requirements of section 422 (a) (1), 423 (a) (1) or 424 (a) (1), then any deduction from the income of the employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as a deduction from income of the taxable year of such employer corporation in which such disposition occurred.

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 s. 71.04 there shall be allowed mines owned by corporations 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 prospecting for ore in Wisconsin, and proof thereof duly verified shall be furnished the department of revenue.

71.047 Depletion; mines producing low-grade iron ore. (1) Corporations engaged in the mining of low-grade iron ore in this state shall be allowed, in lieu of depletion based upon cost of such ore, percentage depletion in the amount of 15% of the gross income from mining of such low-grade iron ore after first deducting from such gross income all sums paid for rents or royalties, but such allowance shall not exceed 50% of the taxpayer's taxable income from such mining computed under this chapter without the allowance for depletion provided by this section. In no event shall such allowance for depletion be less than the amount allowable under s. 71.04.

(2) As used in this section:

(a) "Low-grade iron ore" means such ore as defined in s. 70.93 (1).

(b) "Mining" includes not merely the extraction of low-grade iron ore from the ground (including extraction from the waste or residue of prior mining), but also the following treatment processes (and physical or chemical treatment processes necessary or incidental thereto): crushing, grinding, sorting, concentrating, agglomerating (by sintering, pelletizing, or other means), and substantially equivalent processes to bring to shipping grade and form, and loading for shipment.

71.05 Modifications, transitional adjustments and election of deductions for natural persons and fiduciaries. (1) MODIFICATIONS. Some of the modifications referred to in s. 71.02 (2) (c), (e) and (m) are:

(a) Add:

1. The amount of any interest, less related expenses, excluded solely by reason of section 103 of the internal revenue code (relating to interest received on state and municipal obligations).

2. Any amounts deducted under section 1202 of the internal revenue code (relating to the deduction for capital gains).

3. Losses not allocable or apportionable to this state under s. 71.07.

4. Any amount deducted as a capital loss carry-over from any taxable year prior to the 1965 taxable year.

5. Gain on the sale or exchange of a principal residence, excluded under section 1034 (a) of the internal revenue code, if the "new residence" referred to therein is located outside this state.

6. Gain on the involuntary conversion of Wisconsin property by nonresident individuals, estates or trusts excluded under section 1033 of the internal revenue code if the replacement property is located outside this state.

7. Moving expenses incurred to move from this state.

8. The ordinary income portion of any lump sum distribution taxable under section 402 (e) (1) of the internal revenue code (relating to distributions from employe benefit plans).

9. Any amount deducted as a capital loss carry-over from any taxable year prior to the 1975 taxable year if the capital asset which generated the loss had a situs outside of Wisconsin.

(b) Subtract, to the extent included in federal taxable or adjusted gross income:

1. The amount of any interest or dividend income, less related expenses, which is by federal law exempt from taxation by this state.

2. Any amount included under sections 668 and 1373 of the internal revenue code.

3. Net income not allocated or apportioned to this state under s. 71.07.

4. Any other amount not subject to taxation under this chapter, less any amount allocable thereto which has been deducted in the computation of federal taxable or adjusted gross income.

5. Any interest received or accrued by prisoners of war during their imprisonment or during the year of their release on income which is exempt from taxation under section 112 of the internal revenue code.

6. Any amount deducted under section 404 of the internal revenue code, as amended to December 31, 1975, if the contribution to the individual retirement plan is made for the 1975 taxable year not later than the time prescribed by law for filing the returns for the 1975 taxable year, including extensions thereof.

(c) Add or subtract, as appropriate, any transitional adjustments computed under sub. (2).

(d) The carry back of losses to reduce income of prior years shall not be permitted. There shall be added any amount deducted as a federal net operating loss carry-over and there may be subtracted any Wisconsin net operating loss carry-forward in an amount not in excess of the Wisconsin taxable income computed before the deduction of such Wisconsin net operating loss carry-forward. A Wisconsin net operating loss, to the extent not offset against other income of the year of loss may be carried forward against Wisconsin taxable income of consecutive succeeding years subsequent to the loss year for a period not to exceed 5 years.

(e) In determining Wisconsin adjusted gross income or Wisconsin taxable income of a partner, any applicable modification described in this section which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share of any such item is not required to be taken into account separately for federal income tax purposes or the modification relates to no ascertainable item of the partnership income of the current year, each partner's share of such modification shall be proportional to his distributive share for federal income tax purposes of partnership taxable income or loss generally.

(f) Add to or subtract from federal adjusted gross income, as appropriate, any amounts excluded or included therein solely by reason of subchapter S (small business corporations electing to be taxed as partnerships) or subchapter R (proprietorships or partnerships electing to be taxed as corporations) under the internal revenue code.

(g) Add or subtract from federal adjusted gross income, as appropriate, on sale, exchange, abandonment or other disposition in a transaction in which gain or loss is recognized to the owner of property acquired from a decedent, as described in sec. 1014 of the internal revenue code, by inheritance, exclusive of property constituting income under sec. 102 (b) of the internal revenue code, the difference between the federal basis and the Wisconsin basis. The Wisconsin basis of property acquired from a decedent by inheritance shall be determined under the internal revenue code, but the value of property properly includible for Wisconsin inheritance tax purposes shall be used in lieu of the value of property includible for federal estate tax purposes. In this paragraph, the exemption under s. 72.12 (6) (b) shall not be deemed property properly includible for inheritance tax purposes.

Note: Chapter 222, laws of 1975, which amended par. (g), provided that chap. 222 applies to all transfers because of death or gift and to transfers covered by par. (g), as amended, which occur on or after July 1, 1976.

(h) The federal adjusted basis at the end of the calendar year 1968 or corresponding fiscal year of waste treatment plant or pollution abatement equipment acquired 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), 1971 stats., may be treated as a subtraction modification on the return of the calendar year 1969 or corresponding fiscal year but not in later years. In case of such subtraction an add modification shall be made in 1969 and later taxable years to reverse federal depreciation or amortization of such basis or to correct gain or loss on disposition. The cost of such plant or equipment acquired in 1969 or thereafter pursuant to order, recommendation or approval of the committee on water pollution, department of resource development, department of natural resources, state board of health, city council, village board, or county board pursuant to s. 59.07 (53) or (85), 1971 stats., (less any federal depreciation or amortization taken) may be deducted as a subtraction modification or as subtraction modifications in the year or years in which paid or accrued, dependent on the method of accounting employed. In case of such election, appropriate add modifications shall be made in subsequent years to reverse federal depreciation or amortization or to correct gain or loss on disposition. This paragraph is intended to apply only to depreciable property except that where wastes are disposed of through a lagoon process, lagooning costs and the cost of land containing such lagoons may be treated as depreciable property for purposes of this paragraph. In no event may any amount in excess of cost be deducted. The taxpayer shall file with the department copies of all recommendations, orders or approvals relating to installation of such property and such other documents or data relating thereto as the department requests.

(i) The cost of the following described property, less any federal depreciation or amortization taken, may be deducted as a subtraction modification or as subtraction modifications in the year or years in which paid or accrued, dependent on the method of accounting employed: All property purchased or constructed as a waste treatment facility utilized for the treatment of industrial wastes as defined in s. 144.01 (9), or air contaminants as defined in s. 144.30 (1) but not for other wastes as defined in s. 144.01 (10) and approved by the department of revenue under s. 70.11 (21) (a) for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state. In case of such election, appropriate add modifications shall be made in subsequent years to reverse federal depreciation or amortization or to correct gain or loss on disposition. This paragraph is intended to apply only to depreciable property except that where wastes are disposed of through a lagoon process, lagooning costs and the cost of land containing such lagoons may be treated as depreciable property for purposes of this paragraph. In no event may any amount in excess of cost be deducted. Paragraph (h) applies to all property purchased prior to July 31, 1975, or purchased and constructed in fulfillment of a written construction contract or formal written bid, which contract was entered into or which bid was made prior to July 31, 1975.

(j) With respect to taxable years beginning after December 31, 1969, there may be deducted from federal adjusted gross income the amount of any long-term capital loss or long-term capital loss carry-forward permissible as a deduction under the internal revenue code immediately prior to, but not after, adoption of the federal tax reform act of 1969.

(2) TRANSITIONAL ADJUSTMENTS. It is the purpose of this subsection to prevent the double inclusion or omission of any item of income, deduction or basis by reason of change to reporting on the basis of federal taxable income or federal adjusted gross income.

(a) *Definitions.* As used in this subsection:

1. "Transitional date" means the first day of the taxpayer's 1965 taxable year, as defined at s. 71.02 (2) (k).

2. "Federal adjusted basis" means the adjusted basis of the asset or account for the purpose of determining gain on the sale or other disposition thereof computed as of the transitional date for federal income tax purposes.

3. "Wisconsin adjusted basis" means the adjusted basis of the asset or account which would have been applicable in determining gain on the sale or other disposition thereof on the day preceding the transitional date.

4. The "adjusted basis" of a liability or reserve account created by accruals or other charges deducted from income for federal or Wisconsin income tax purposes is the current balance of such account on the transitional date.

5. "Constant basis assets" means assets, other than inventories, the federal adjusted basis of which does not affect and is not affected by the computation of the taxpayer's federal taxable income except when such asset is sold, exchanged, abandoned or otherwise disposed of.

6. "Changing basis assets" means inventories and assets or accounts, including liability and reserve accounts created by accruals or other charges deducted from income, other than annuity contracts or constant basis assets. Changing basis assets include property subject to depreciation, depletion or amortization of cost, premium or discount; capitalized intangible expenses such as trademark expense, research and development expense and loan expense if the same are being amortized for federal income tax purposes; and accruals, reserves and deferrals of either income or expense.

7. "Owner" means successively the owner of changing basis assets or constant basis assets as of the transitional date and any subsequent owner whose basis for such assets is found by reference to the basis therefor of another person.

(b) With respect to a constant basis asset any excess of federal adjusted basis over Wisconsin adjusted basis shall be added to income, and any excess of Wisconsin adjusted basis over federal adjusted basis shall be subtracted from income in the year in which such asset is sold, exchanged, abandoned or otherwise disposed of by the owner in a transaction in which gain or loss is recognized to the owner.

(c) With respect to changing basis assets compute the net difference between the federal adjusted basis and the Wisconsin adjusted basis of all such assets as of the transitional date. If such net difference is a net excess of federal adjusted basis it shall be ratably amortized and subtracted from the amounts otherwise allowable to the owner as deductions (under this chapter and the internal revenue code) over such period of not more than 60 months commencing with the first day of the first taxable year ended after the transitional date as may be selected by the owner as of the transitional date. If such net difference is a net excess of Wisconsin adjusted basis it shall be ratably amortized and subtracted from the income of the owner over such period of not less than 60 months commencing with the first day of the first taxable year ended after the first transitional date as may be selected by the owner as of the transitional date. In either event:

1. Any remaining balance of such difference shall be taken into account on the final Wisconsin income tax return of the owner or in any year in which the owner disposes of all or substantially all of its assets in a transaction in which gain or loss is recognized; and

2. If the net difference as of the transitional date is not more than $5,000 the owner at its election may take the entire amount thereof into account in the first taxable year ended after the transitional date.

(d) If the taxpayer's last Wisconsin taxable year, subject to this chapter but not to s. 71.02 (2), would otherwise include any period also included in the taxpayer's first taxable year subject to s. 71.02 (2), such last taxable year shall terminate with the day prior to the first day of such first taxable year. Returns and payments of tax with respect to such last taxable year shall be due on the same date or dates as if such year did not terminate until the day on which it would have terminated but for this paragraph.

(3) ELECTION OF DEDUCTIONS; AND HUSBAND AND WIFE DEDUCTIONS. (a) Natural persons electing the federal standard deduction, or using federal tax tables based on federal adjusted gross income, in filing their federal income tax return, may elect to take itemized deductions in reporting Wisconsin taxable income of the same year.

(b) Natural persons who have not elected the federal standard deduction, or tax tables based on adjusted gross income, in filing their federal income tax return, may elect the Wisconsin standard deduction in reporting Wisconsin's taxable income of the same year.

(c) The standard deduction 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 standard deduction in reporting income of the same year. If with respect to the calendar year 1972 or corresponding fiscal year or prior calendar year or fiscal years one spouse claims the minimum standard deduction, the other spouse cannot claim any deduction.

(d) The standard deduction shall not be allowed in computing the taxable income of:

1. A nonresident alien individual.

2. A U.S. citizen entitled to the benefits of section 931 of the internal revenue code for federal income tax purposes, applicable with respect to taxation of individuals on 1973 income, and income of subsequent years.

3. An individual making a return for a period of less than 12 months because of a change in his annual accounting period.

4. An estate or trust, common trust fund or partnership.

(e) A change of election with respect to the standard deduction for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless 1) the spouse makes a change of election with respect to the standard deduction for the taxable year covered in such separate return, consistent with the change of election sought by the taxpayer, and 2) the taxpayer and his spouse consent in writing to the assessment, within such period as is agreed on with the secretary of revenue or his delegate, of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

(f) Married persons electing itemized deductions in determining Wisconsin taxable income, may divide the total amount of their itemized deductions between them, as they choose.

(4) MODIFICATION OF FEDERAL ADJUSTED GROSS INCOME. Whenever a person other than a corporation acquires, after the transitional date,

as defined in sub. (2) (a), a constant basis asset, the federal basis of which is different from the Wisconsin basis, an appropriate modification of federal adjusted gross income shall be made in the year of sale, exchange, abandonment or other disposition of such asset properly to reflect the income consequences of such difference. Whenever such a person acquires, after said transitional date, a changing basis asset the federal basis of which is different from the Wisconsin basis, appropriate modifications of federal adjusted gross income shall be made each year properly to reflect the income consequences of such difference; in any such case the secretary of revenue or his delegate may agree with the taxpayer for an amortization of such difference in basis over a period of 5 years or less.

History: 1971 c. 121, 125, 215; 1973 c. 90, 141; 1975 c. 39, 222, 224.

71.06 Corporation business loss carry forward. (1) For calendar or fiscal years ending on or after July 31, 1976, a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 5 preceding income years to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the income year for which an offset is claimed. For purposes of this section Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions under s. 71.04. The Wisconsin net business income or loss of corporations engaged in business within and without the state shall be determined under s. 71.07 (2), (3) or (5). Nonapportionable losses having a Wisconsin situs under s. 71.07 (1m) shall be included in Wisconsin net business loss; and nonapportionable income having a Wisconsin situs under s. 71.07 (1m), whether taxable or exempt, shall be included in other items of Wisconsin income and Wisconsin net business income for purposes of this section.

(2) The addition to and deductions from income of urban transit companies under s. 71.18 (1) shall also be used in determining the Wisconsin net business loss of such companies to be offset against the Wisconsin net business income as determined under s. 71.18 for purposes of this section.

(3) For insurance companies subject to taxation under this chapter, Wisconsin net business loss shall be determined under s. 71.01 (4), except that s. 71.01 (4) (a) 7, 9, 10 and 11 may not apply.

History: 1971 c. 125; 1975 c. 224.

71.07 Situs of income; allocation and apportionment. (1) All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust. Income or loss of nonresident individuals and nonresident estates and trusts from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived. Income or loss of nonresident individuals and nonresident estates and trusts 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. Income from personal services of nonresident individuals, including income from professions, shall follow the situs of the services. All other income or loss of nonresident individuals and nonresident estates and trusts, including income or loss derived from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall follow the residence of such persons, except as provided in sub. (7).

(1m) CORPORATIONS. Income or loss from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived. Income or loss 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, except that gains or losses realized on disposals of real property or tangible personal property used in the production of business income shall follow the situs of the business. Income from personal services performed by employes of corporations, and from patents, copyrights, trademarks, tradenames, plans, specifications, blueprints, processes, techniques, formulae, designs, layouts, patterns, drawings, manuals and technical know-how shall be deemed business income and shall follow the situs of the business. Gain or loss by a corporation on redemption of its own bonds shall be deemed business income or loss and shall follow the situs of the business, and a corporation's bond premium or discount shall be deemed business loss or income and shall follow the situs of the business. All other income or loss, including income or loss derived from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall be deemed business income or loss and shall follow the situs of the business, except that such income or loss of a personal holding company shall follow its

residence. For purposes of this subsection, "personal holding company" means "personal holding company" as defined in section 542 of the internal revenue code in effect on December 31, 1974. 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.

Note: Chapter 189, laws of 1975, which amended (1m), provides that the amendment applies "to the reporting of income for the calendar year 1975 and corresponding fiscal year and thereafter".

(2) Corporations, nonresident individuals and nonresident estates and trusts 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 corporation, nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue 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: for all business except financial organizations and public utilities 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; except 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 s. 71.04 during the income year. The remaining net income shall be apportioned to Wisconsin by multiplying such net income by a fraction, the numerator of which is the sum of the property factor, the payroll factor and the sales factor, and the denominator of which is the number 3. Beginning with calendar year 1974, or corresponding fiscal year, and thereafter, in lieu of the equally weighted 3-factor apportionment fraction based on property, payroll and sales, there shall be used an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction.

(a) 1. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. Cash on hand or in the bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, goodwill, or property the income of which is not taxable or is separately allocated, shall not be considered tangible property nor included in the apportionment.

2. Property used in the production of nonapportionable income or losses shall be excluded from the numerator and denominator of the property factor. Property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the property factor so as to exclude, as near as possible, the portion of such property producing the nonapportionable income or loss.

3. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub-rentals.

4. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the secretary of revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(b) 1. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

2. Compensation related to the operation, maintenance, protection or supervision of real or tangible personal property used in the production of nonapportionable income or losses shall be excluded from the numerator and denominator of the payroll factor.

3. Compensation related to the operation, maintenance, protection or supervision of real or tangible and intangible personal property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the payroll factor so as to exclude, as near as possible, the portion of such pay related to the operation, maintenance, protection and supervision of real or tangible and

intangible personal property used in the production of nonapportionable income.

4. Compensation is paid in this state if: the individual's service is performed entirely within the state; or the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) 1. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

2. Sales of tangible personal property are in this state if: the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government or the taxpayer is not within the jurisdiction, for income tax purposes of the destination state.

3. Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state. If the income-producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by par. (b) 4.

(d) 1. "Financial organization", as used in this section, means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

2. "Public utility", as used in this section, means any business entity a) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and b) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(e) The net business income of financial organizations; and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state.

(3) Where, in the case of any corporation, nonresident individual or nonresident estate or trust engaged in business within and without the state of Wisconsin and required to apportion its income as herein provided, it shall be shown to the satisfaction of the department of revenue, 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 corporation, nonresident individual or nonresident estate or trust does not employ, to any appreciable extent in its 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 revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income.

(5) If the income of any such corporation, nonresident individual or nonresident estate or trust 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 as the department of revenue 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.

(7) For purposes of determining the situs of income under this section:

(a) The estate of a decedent shall be considered resident at the domicile of the decedent at the time of his death.

(b) A trust estate created by will, contract, declaration of trust or implication of law shall be considered resident at the place where the trust estate is being administered except as provided in par. (d).

(c) The situs of income derived by any taxpayer as the beneficiary of the estate of a

decedent or of a trust estate, shall be determined as if such income had been received without the intervention of a fiduciary.

(d) With respect to taxable years beginning after December 31, 1972, the situs of income received by a trustee, which income, under the internal revenue code, is taxable to the grantor of the trust or to any person other than the trust, shall be determined as if such income had been actually received directly by such grantor or such other person, without the intervention of the trust.

History: 1971 c. 125; 1973 c. 90, 110; 1975 c. 39, 189, 224.

Note: Chap. 125, laws of 1971, which amended sub. (1), repealed and recreated sub. (2) and repealed sub. (4), also provided, in section 532 (6), that these changes apply to reporting, for franchise and income tax purposes, of taxable income for the calendar year 1973 or corresponding fiscal years and thereafter.

For income years prior to 1973 see the 1969 Statutes.

In (2) the phrase "total interest and dividends" means all interest and dividends received whether or not apportionable. Transamerica Financial Corp. v. Dept. of Revenue 56 W (2d) 57, 201 NW (2d) 552.

Globe-Union test applied to 71.07 (2), Stats. 1969. American Motors Corp. v. Dept. of Revenue, 64 W (2d) 337, 219 NW (2d) 300.

A loss incurred by a Wisconsin resident as a result of interest as a limited partner in a New York limited partnership is allowable for the purpose of determining personal income taxes under (1), Stats. 1969. Sweitzer v. Dept. of Revenue, 65 W (2d) 235, 222 NW (2d) 662.

71.08 Fiduciaries. (1) The tax imposed by this chapter on individuals shall apply to the Wisconsin taxable income of estates or trusts and shall be paid by the fiduciary.

(2) The income of a trust distributable or distributed to a nonresident beneficiary shall be assessed as the income of other nonresidents is assessed. No personal exemptions shall be allowed in assessing the income of such nonresident beneficiary unless he makes a complete return under this chapter.

(3) The Wisconsin modifications applicable to the Wisconsin taxable income or Wisconsin adjusted gross income of estates, trusts and beneficiaries thereof with respect to income derived from such estates or trusts shall be computed and allocated as follows:

(a) A modification or portion thereof which relates to an item of income, gain, loss or deduction which affects the computation of the federal distributable net income of the estate or trust for the current year shall be apportioned among and taken into account by the fiduciary and the beneficiary or beneficiaries in the same proportion that the item to which it relates is considered as distributed among them for federal income tax purposes.

(b) Any remaining modifications or portions thereof shall be taken into account by the fiduciary.

(c) If an additional assessment is made against the fiduciary or any beneficiary as a result of correction of an erroneous allocation of the modifications applicable to the the income of an estate or trust, any overpayment resulting from consistent application of such correction to all other taxpayers interested in such estate or trust shall be refunded notwithstanding any rule of law which would otherwise bar such refund.

(4) A personal exemption for the decedent under s. 71.09 (6), (6k), (6m) and (6p) shall not be allowed the executor or administrator, except against the tax on income of the decedent in the year of death. If the decedent would have been entitled to an exemption for the decedent's spouse or a dependent under s. 71.09 (6), (6k), (6m) and (6p), had the decedent lived, 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 by the executor or administrator from the decedent's estate and the gross income of the spouse or dependent for the calendar year in which the taxable year of the executor or administrator begins is less than $500. If the decedent was a married person at the date of death and if in any year subsequent to the year of death the decedent's surviving spouse is a head of family within the meaning of s. 71.09 (6), (6k), (6m) and (6p), and such surviving spouse does not take a head of family exemption on the individual return, the head of family exemption may be taken on the return of the executor or administrator of the decedent's estate.

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

(6) (a) An executor, administrator, personal representative or trustee applying to a court having jurisdiction for a discharge of his trust and a final settlement of his accounts, before his application is granted, shall file with the department:

1. Returns of income received by the deceased, any previous guardian, executor, administrator, personal representative or trustee, during each of the years open to assessment under s. 71.11 (21), if such returns had not theretofore been filed, including a return of income for the year of death to the date of death; and

2. Returns of income received during the period of his administration or trust except for

the final income tax year of the estate or trust; and

3. Gift tax returns or reports, sales and use tax returns, and withholding returns or reports which were required to be filed, if not theretofore filed.

(b) Upon receipt of such returns, the department shall immediately determine the amount of taxes including interest, penalties and costs to be payable, as well as any delinquent income, withholding, sales, use and gift taxes, penalties, interest and costs due, and shall certify such amounts to the court. The court shall thereupon enter an order directing the executor, administrator, personal representative or trustee to pay the amounts found to be due by the department and take its receipt therefor. The receipt shall be evidence of the payment and shall be filed with the court before a final distribution of the estate or trust is ordered and the executor, administrator, personal representative or trustee is discharged. The filing of such receipt shall in no manner affect the obligation of the executor, administrator, personal representative or trustee to file income, sales and withholding returns covering transactions reportable during the final income year of the estate or trust and to pay income, sales, use and withholding taxes, penalties, interest and costs due as the result of such transactions.

(7) Any income, withholding, sales, use or gift taxes, penalties, interest and costs found to be due from a decedent, an estate or a trust for any of the years open to assessment under s. 71.11 (21) and any delinquent income, withholding, sales, use or gift taxes, penalties, interest and costs found to be due shall be assessed against and paid by the executor, administrator, personal representative or trustee; any of such items found to be due after the executor, administrator, personal representative or trustee is discharged shall be assessed against and paid by the beneficiaries in the same ratio that their interest in the estate or trust bears to the total estate or trust.

(8) Returns of income required to be made by sub. (6) 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.

(9) Trusts exempt from federal income tax pursuant to subtitle A, chapter I, subchapter F of the internal revenue code shall to the same extent be exempt from taxation under this chapter.

History: 1973 c. 12, 243; 1975 c. 94 s. 91 (5); 1975 c. 199.

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 years 1966 to 1970 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 2.7%.

(b) On the second $1,000 or any part thereof, 2.95%.

(c) On the third $1,000 or any part thereof, 3.2%.

(d) On the fourth $1,000 or any part thereof, 4.2%.

(e) On the fifth $1,000 or any part thereof, 4.7%.

(f) On the sixth $1,000 or any part thereof, 5.2%.

(g) On the seventh $1,000 or any part thereof, 5.7%.

(h) On the eighth $1,000 or any part thereof, 6.7%.

(i) On the ninth $1,000 or any part thereof, 7.2%.

(j) On the tenth $1,000 or any part thereof, 7.7%.

(k) On the eleventh $1,000 or any part thereof, 8.2%.

(l) On the twelfth $1,000 or any part thereof, 8.7%.

(m) On the thirteenth $1,000 or any part thereof, 9.2%.

(n) On the fourteenth $1,000 or any part thereof, 9.7%.

(o) On all taxable income in excess of $14,000, 10%.

(1b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the calendar year 1971 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 2.8%.

(b) On the second $1,000 or any part thereof, 3.1%.

(c) On the third $1,000 or any part thereof, 3.3%.

(d) On the fourth $1,000 or any part thereof, 4.3%.

(e) On the fifth $1,000 or any part thereof, 4.9%.

(f) On the sixth $1,000 or any part thereof, 5.4%.

(g) On the seventh $1,000 or any part thereof, 5.9%.

(h) On the eighth $1,000 or any part thereof, 6.9%.

(i) On the ninth $1,000 or any part thereof, 7.5%.

(j) On the tenth $1,000 or any part thereof, 8.0%.

(k) On the eleventh $1,000 or any part thereof, 8.5%.

(l) On the twelfth $1,000 or any part thereof, 9.0%.

(m) On the thirteenth $1,000 or any part thereof, 9.5%.

(n) On the fourteenth $1,000 or any part thereof, 10%.

(o) On all taxable income in excess of $14,000, 10.4%.

(1d) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the calendar year 1972 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 3.1%.

(b) On the second $1,000 or any part thereof, 3.4%.

(c) On the third $1,000 or any part thereof, 3.6%.

(d) On the fourth $1,000 or any part thereof, 4.8%.

(e) On the fifth $1,000 or any part thereof, 5.4%.

(f) On the sixth $1,000 or any part thereof, 5.9%.

(g) On the seventh $1,000 or any part thereof, 6.5%.

(h) On the eighth $1,000 or any part thereof, 7.6%.

(i) On the ninth $1,000 or any part thereof, 8.2%.

(j) On the tenth $1,000 or any part thereof, 8.8%.

(k) On the eleventh $1,000 or any part thereof, 9.3%.

(l) On the twelfth $1,000 or any part thereof, 9.9%.

(m) On the thirteenth $1,000 or any part thereof, 10.5%.

(n) On the fourteenth $1,000 or any part thereof, 11.1%.

(o) On all taxable income in excess of $14,000, 11.4%.

(2a) The taxes to be assessed, levied and collected upon taxable incomes of corporations for the calendar years 1953 to 1970 and corresponding fiscal years shall be computed at the following rates:

(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, 2 1/2 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.

(2am) The corporation franchise tax imposed under s. 71.01 (2) and measured by net income of calendar and fiscal years to 1970 shall be computed at the following rates:

(a) For the first $1,000 of income or any part thereof, 2%.

(b) For the second $1,000 or any part thereof, 2 1/2%.

(c) For the third $1,000 or any part thereof, 3%.

(d) For the fourth $1,000 or any part thereof, 4%.

(e) For the fifth $1,000 or any part thereof, 5%.

(f) For the sixth $1,000 or any part thereof, 6%.

(g) For all income in excess of $6,000, 7%.

(2c) The taxes to be assessed, levied and collected upon taxable incomes of corporations for the calendar year 1971 and corresponding fiscal years shall be computed at the following rates:

(a) On the first $1,000 of taxable income or any part thereof, 2.1%.

(b) On the second $1,000 or any part thereof, 2.7%.

(c) On the third $1,000 or any part thereof, 3.2%.

(d) On the fourth $1,000 or any part thereof, 4.3%.

(e) On the fifth $1,000 or any part thereof, 5.3%.

(f) On the sixth $1,000 or any part thereof, 6.4%.

(g) On all taxable income in excess of $6,000, 7.4%.

(2g) The taxes to be assessed, levied and collected upon taxable incomes of corporations for the calendar year 1972 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, 2.3%.

(b) On the second $1,000 or any part thereof, 2.8%.

(c) On the third $1,000 or any part thereof, 3.4%.

(d) On the fourth $1,000 or any part thereof, 4.5%.

(e) On the fifth $1,000 or any part thereof, 5.6%.

(f) On the sixth $1,000 or any part thereof, 6.8%.

(g) On all taxable income in excess of $6,000, 7.9%.

(2k) The corporation franchise tax imposed under s. 71.01 (2) and measured by net income of the calendar year 1971 and corresponding fiscal years shall be computed at the following rates:

(a) For the first $1,000 of net income or any part thereof, 2.1%.

(b) For the second $1,000 or any part thereof, 2.7%.

(c) For the third $1,000 or any part thereof, 3.2%.

(d) For the fourth $1,000 or any part thereof, 4.3%.

(e) For the fifth $1,000 or any part thereof, 5.3%.

(f) For the sixth $1,000 or any part thereof, 6.4%.

(g) For all net income in excess of $6,000, 7.4%.

(2m) The corporation franchise tax imposed under s. 71.01 (2) and measured by net income of the calendar year 1972 and corresponding fiscal years and calendar and fiscal years thereafter shall be computed at the following rates:

(a) For the first $1,000 of net income or any part thereof, 2.3%.

(b) For the second $1,000 or any part thereof, 2.8%.

(c) For the third $1,000 or any part thereof, 3.4%.

(d) For the fourth $1,000 or any part thereof, 4.5%.

(e) For the fifth $1,000 or any part thereof, 5.6%.

(f) For the sixth $1,000 or any part thereof, 6.8%.

(g) For all net income in excess of $6,000, 7.9%.

(3) The secretary of revenue shall prepare a table from which the tax in effect on taxable personal income up to $10,000 shall be determined. Such table shall be published in the department's appropriate instructional booklets. The form and the tax computations of the 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. Computation of tax on taxable income of $10,000 and over may be set forth at the foot of such table.

(c) The 3rd 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. The tax shall be computed at the rates in effect, 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.

(4) (a) Commencing with the calendar year 1965 and with fiscal years ending after December 31, 1965, natural persons whose total income is not in excess of $10,000 and consists entirely of wages subject to withholding for Wisconsin tax purposes and not more than $200 total of dividends, interest and other wages not subject to Wisconsin withholding, and who have elected the Wisconsin standard deduction and have not claimed either the credit for homestead property tax relief or deductions for expenses incurred in earning such income, shall, at their election, not be required to record on their income tax returns the amount of the tax imposed on their Wisconsin taxable income. Married persons shall be permitted this election only if the combined income of the husband and wife does not exceed $10,000, if both report their incomes on the same combined income tax return form, and if both make this election.

(b) The tax on income reported by persons making the election under par. (a) shall be computed by the department of revenue. After applying all known applicable credits, the department shall notify the taxpayer by mail of the amount of taxes due or the amount of taxes to be refunded.

(5) (a) In assessing taxes interest shall be added to such taxes at 9% per annum from the date on which such taxes if originally assessed would have become delinquent if unpaid, to the date on which such taxes when subsequently assessed will become delinquent if unpaid.

(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 9% 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 the employe has included the written statement required to be filed 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.

(6) On income of calendar years to 1970 and corresponding fiscal years, there may be deducted from the tax, after the same has been computed according to the rates of this section, personal exemptions for natural persons as follows:

(a) An exemption of $10 for the taxpayer; and an additional exemption of $10 for the spouse of the taxpayer, to the extent that such 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; but 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, the exemption shall be $15. 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 $10 for each person for whom the taxpayer is entitled to an exemption for the taxable year under section 151 (e) of the federal internal revenue code.

(c) An additional exemption of $10 for a head of a family. In this subsection, "a head of a family" means 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).

(6k) On income of the calendar year 1971 and corresponding fiscal years there may be deducted from the tax after the same has been computed according to the rates of this section, personal exemptions for natural persons as follows:

(a) An exemption of $12 for the taxpayer; and an additional exemption of $12 for the spouse of the taxpayer, to the extent that such exemption is not used as a deduction from the separate tax of the spouse, and provided such spouse is not a dependent of another taxpayer; but 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, the exemption shall be $17. 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 $12 for each person for whom the taxpayer is entitled to an exemption for the taxable year under section 151 (e) of the federal internal revenue code.

(c) An additional exemption of $12 for a head of a family. In this paragraph, a "head of a family" means 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).

(6m) On income of the calendar years 1972 and 1973 and corresponding fiscal years, there may be deducted from the tax after the same has been computed according to the rates of this section, personal exemptions for natural persons as follows:

(a) An exemption of $15 for the taxpayer; and an additional exemption of $15 for the spouse of the taxpayer, to the extent that such exemption is not used as a deduction from the separate tax of the spouse, and provided such spouse is not a dependent of another taxpayer; but 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, the exemption shall be $20. 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 $15 for each person for whom the taxpayer is entitled to an exemption for the taxable year under section 151 (e) of the federal internal revenue code.

(c) An additional exemption of $15 for a head of a family. In this paragraph, a "head of a family" means 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).

(6p) On income of the calendar year 1974 and corresponding fiscal years and thereafter, there may be deducted from the tax after it has been computed according to the rates of this section, personal exemptions for natural persons as follows:

(a) An exemption of $20 for the taxpayer and an additional exemption of $20 for the spouse of the taxpayer, to the extent such exemption is not used as a deduction on the separate tax of the spouse, and provided the spouse is not the dependent of another taxpayer; but 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, the exemption shall be $25. The determination of whether an individual is married shall be made as of the close of the taxable year, unless the spouse dies during the taxable year, in which case such determination shall be made as of the time of death. An individual separated from his spouse under a decree of divorce or separate maintenance shall not be considered married.

(b) An exemption of $20 for each person for whom the taxpayer is entitled to an exemption for the taxable year under section 151 (e) of the federal internal revenue code.

(c) An additional exemption of $20 for a head of family. In this paragraph, a "head of family" means 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 whom the taxpayer was entitled to an exemption under par. (b).

(d) Beginning with the calendar year 1975 and corresponding fiscal years and thereafter, the deduction for personal exemptions provided for in this subsection shall be limited as follows:

1. With respect to persons who change their domicile into or from this state during the taxable year, personal exemptions shall be limited to such fraction of the amount so determined that the time of domicile within this state is of the total time during the taxable year, but the total deduction for all personal exemptions shall not be less than $5.

2. With respect to nonresident persons, personal exemptions shall be limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except that for married persons personal exemptions shall be limited to such fraction of the amount so determined as combined Wisconsin adjusted gross income is of combined federal adjusted gross income, but the total deduction for all personal exemptions shall not be less than $5.

(7) HOMESTEAD CREDIT. The purpose of this subsection is to provide credit to certain persons who own or rent their homestead, through a system of income tax credits and refunds, and appropriations from the general fund.

(a) *Definitions.* As used in this subsection, unless the context clearly indicates otherwise:

1. "Income" means the sum of adjusted gross income as defined in s. 71.02 (2) (e), alimony, support money, cash public assistance and relief (not including credit granted under this subsection), the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act and veterans disability pensions), nontaxable interest received from the federal government or any of its instrumentalities, worker's compensation, unemployment compensation, the gross amount of "loss of time" insurance and compensation and other cash benefits received from the United States for past or present service in the armed forces, and scholarship and fellowship gifts or income, all regardless of the fact that they may be excluded from adjusted gross income as defined in s. 71.02 (2) (e). It does not include gifts from natural persons, or surplus food or other relief in kind supplied by a governmental agency.

2. "Household" means a claimant and an individual related to the claimant as husband or wife.

3. "Household income" means all income received by all persons of a household in a calendar year while members of such household.

4. "Homestead" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. ("Owned" includes a vendee in possession under a land contract and of one or more joint tenants or tenants in common.) It does not include personal property such as furniture, furnishings or appliances, but a mobile home may be a homestead.

5. "Claimant" means a person who has filed a claim under this subsection and who was domiciled in this state during the entire calendar year preceding the year in which the person files claim for credit under this subsection. When 2 individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue and the secretary's decision shall be final.

6. "Rent constituting property taxes accrued" means 25% of the gross rent actually paid in cash or its equivalent in 1964 or any subsequent calendar year by a claimant and his household solely for the right of occupancy of their Wisconsin homestead in such calendar year, and which rent constitutes the basis, in the succeeding calendar year of a claim for relief under this section by such claimant.

7. "Gross rent" means rental paid at arms-length, solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether expressly set out in the rental agreement or not. In any case

in which the landlord and tenant have not dealt with each other at arms-length and the department is satisfied that the gross rent charged was excessive, the department may adjust such gross rent to a reasonable amount for purposes of this subsection. "Gross rent" includes the space rental paid to a landlord for parking of a mobile home, exclusive of any charges for utilities, services, furniture and furnishings or personal appliances furnished by the landlord as a part of the space rental. Twenty-five per cent of such annual gross rental plus the monthly parking permit fees paid during the year shall be the annual "property taxes accrued".

8. "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on a claimant's homestead in 1964 or any calendar year thereafter pursuant to ch. 70, less the tax credit, if any, afforded in respect of such property by s. 79.10 (3). When a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common and one or more such persons or entities is not a member of claimant's household, "property taxes accrued" is that part of property taxes levied on such homestead (reduced by the tax credit hereinbefore referred to) as reflects the ownership percentage of the claimant and the claimant's household. For purposes of this paragraph property taxes are "levied" when the tax roll is delivered to the local treasurer with the warrant for collection. When a homestead is sold during the calendar year of the levy the "property taxes accrued" for the seller and buyer shall be the amount of the tax levy prorated to each in the closing agreement pertaining to the sale of the homestead or, if not so provided for in the closing agreement, the tax levy shall be prorated between seller and buyer in proportion to months of their respective ownership, provided that the seller and buyer occupy the homestead during the periods of their respective ownership. When a household owns and occupies 2 or more homesteads in the same calendar year "property taxes accrued" shall be the sum of the prorated taxes attributable to the household for each of such homesteads. If the household owns and occupies the homestead for part of the calendar year and rents a household for part of the calendar year, it may include both the proration of taxes on the homestead owned and "rent constituting property taxes accrued" with respect to the months the homestead is rented, in computing the amount of the claim under pars. (g), (gm) and (gn). Whenever a homestead is an integral part of a larger unit such as a farm, or a multipurpose or multidwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value, except that the claimant may use the total property taxes accrued for the larger unit, but not exceeding 120 acres of land, except as the limitations of par. (h) apply. For claims for 1967 and subsequent years, monthly parking permit fees collected under s. 66.058 (3) (c) shall be considered property taxes.

(b) The right to file claim under this subsection shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. When a claimant dies after having filed a timely claim the amount thereof shall be disbursed to another member of the household as determined by the secretary of revenue. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within 2 years of the filing of the claim, the amount of the claim shall escheat to the state.

(c) Subject to the limitations provided in this subsection, a claimant may claim as a credit against Wisconsin income taxes otherwise due, Wisconsin property taxes accrued, or rent constituting property taxes accrued, or both. If the allowable amount of claim exceeds the income taxes otherwise due on claimant's income or if there are no Wisconsin income taxes due on claimant's income, the amount of the claim not used as an offset against income taxes shall be certified to the department of administration for payment to the claimant by check drawn on the general fund. No such check and no offset against income taxes otherwise payable, or refund of income taxes paid in respect of any such claim shall be charged against any town, city, village or county in the distribution of income taxes under this chapter. No interest shall be allowed on any payment made to a claimant pursuant to this subsection.

(dm) No claim with respect to property taxes accrued or rent constituting property taxes accrued shall be allowed or paid unless such claim is filed with the department of revenue on or before December 31 of the year following the year for which the claim is filed.

(e) The amount of any claim otherwise payable under this subsection may be applied by the department of revenue against any liability outstanding on the books of the department against claimant, or against any other individual who was a member of his household in the year to which the claim relates.

(f) Only one claimant per household per year shall be entitled to credit under this subsection.

(g) The amount of any claim filed in the calendar year 1971 or a prior calendar year

pursuant to this subsection and based upon property taxes accrued or rent constituting property taxes accrued in 1970 or in a prior calendar year shall be limited as follows:

1. The secretary of revenue shall prepare a table under which claims under this subsection shall be determined. The table shall be published in the department's instructional booklets.

2. The claimant shall, at the claimant's election, not be required to record on the claim the amount claimed. The claim allowable to persons making this election shall be computed by the department which shall notify the claimant by mail of the amount of the allowable claim.

(gm) The amount of any claim filed in 1972, 1973, 1974 or 1975 and based upon property taxes accrued or rent constituting property taxes accrued in 1971, 1972, 1973 or 1974, respectively, shall be limited as follows:

1. If the household income of the claimant's household was $3,500 or less in the year to which the claim relates, the claim shall be limited to 80% of the property taxes accrued, or rent constituting property taxes accrued, or both, in such year on the claimant's homestead.

2. If the household income of the claimant's household was more than $3,500 in the year to which the claim relates, the claim shall be limited to 80% of the amount by which the property taxes accrued, or rent constituting property taxes accrued, or both, in such year on the claimant's homestead is in excess of 14.3% of household income exceeding $3,500.

3. The secretary of revenue shall prepare a table under which claims under this subsection shall be determined. The table shall be published in the department's instructional booklets.

4. The claimant shall, at his election, not be required to record on his claim the amount claimed by him. The claim allowable to persons making this election shall be computed by the department which shall notify the claimant by mail of the amount of his allowable claim.

(gn) The amount of any claim filed in 1976 and based upon property taxes accrued or rent constituting property taxes accrued in 1975, or claims filed in later calendar years based upon property taxes accrued or rent constituting property taxes accrued in the preceding calendar year shall be limited as follows:

1. If the household income of the claimant's household was $3,750 or less in the year to which the claim relates, the claim shall be limited to 80% of the property taxes accrued, or rent constituting property taxes accrued, or both, in such year on the claimant's homestead.

2. If the household income of the claimant's household was more than $3,750 in the year to which the claim relates, the claim shall be limited to 80% of the amount by which the property taxes accrued, or rent constituting property taxes accrued, or both, in such year on the claimant's homestead is in excess of 14.3% of household income exceeding $3,750.

3. No credit shall be allowed if household income of a claimant exceeds $7,500.

(gz) 1. The secretary of revenue shall prepare a table under which claims under this subsection shall be determined. The table shall be published in the department's instructional booklets.

2. The claimant shall, at the claimant's election, not be required to record on the claim the amount claimed. The claim allowable to persons making this election shall be computed by the department which shall notify the claimant by mail of the amount of the allowable claim.

(h) 1. In any case in which property taxes accrued, or rent constituting property taxes accrued, or both, in calendar year 1975 or any subsequent calendar year in respect of any one household exceeds $535, the amount thereof shall, for purposes of this subsection, be deemed to have been $535.

2. In any case in which property taxes accrued, or rent constituting property taxes accrued, or both, in 1971, 1972, 1973 or 1974 calendar year in respect of any one household exceeds $500, the amount thereof shall, for purposes of this subsection, be deemed to have been $500.

(hm) If the amount of a qualified claimant's claim is more than zero but less than $10 the amount of credit paid or credited shall be $10.

(i) In administering this subsection, the department of revenue shall make available suitable forms with instructions for claimants, including a form which may be included with or a part of the individual income tax blank.

(im) At the end of each fiscal year, the department of revenue shall review the homestead tax credit program and may propose legislation to adjust the amounts of claims allowable under the program, taking into account findings that social security benefits and the cost of living, as reflected in the index computed by the U.S. bureau of labor statistics, have increased or decreased.

(j) Every claimant under this subsection shall supply to the department, in support of his claim, reasonable proof of age, rent paid, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead and a statement that the property taxes accrued used for purposes of this section have been or will be paid by him and that there are no delinquent property taxes on the homestead.

(k) Whenever an audit of any claim filed under this subsection indicates that an incorrect

claim was filed, the department shall make a determination of the correct amount and notify the claimant of such determination and the reasons therefor. Notice of such determination shall be given to the claimant within 4 years of the last day prescribed by law for filing the claim. Any person feeling aggrieved by such determination shall, within 30 days after receipt thereof, petition the department for redetermination thereof. The department shall make a redetermination on such petition within 6 months after it is filed and notify the claimant thereof. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(km) A claimant who has filed a timely claim under this subsection may file an amended claim with the department of revenue within 4 years of the last day prescribed by law for filing the original claim.

(l) In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the date of payment or credit of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared 10% of the corrected claim shall be disallowed and if the claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at 1.5% per month from the date of payment until refunded or paid.

(m) In any case in which a homestead is rented by a person from another person under circumstances deemed by the department of revenue to be not at arms-length, it may, with the aid of its property tax division, determine rent constituting property taxes accrued as at arms-length, and, for purposes of this section, such determination shall be final.

(n) Any person aggrieved by the department of revenue's redetermination under this subsection (except when the denial is based upon late filing of claim for credit or is based upon a redetermination of rent constituting property taxes accrued as at arms-length) may appeal such redetermination to the tax appeals commission by filing a petition with the commission within 30 days after such redetermination, as provided under s. 73.01 (5) with respect to income tax cases, and review of the commission's decision may be had under s. 73.015. For appeals brought under this paragraph, the filing fee required under s. 73.01 (5) (a) shall not apply.

(p) No claim for credit under this section may be allowed to any claimant who at the time of filing such claim is a recipient of assistance under s. 49.19 or is receiving general relief from any municipality or county.

(q) A claim shall be disallowed if the department finds that the claimant received title to his homestead primarily for the purpose of receiving benefits under this subsection.

(r) No claim for credit under this subsection may be allowed to any claimant who was under 18 years of age at the close of the year the property taxes were levied or rents were paid.

(s) No claim for credit under this subsection may be allowed to any claimant who was claimed as a dependent for federal income tax purposes by another person during the year the taxes in question were levied or rents were paid but this limitation shall not apply if the claimant was 62 years of age or older at the close of the year the claimed property taxes or rent constituting property taxes accrued.

(8) (a) 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 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 revenue 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.

(b) If in the calendar year 1976 or thereafter a resident individual, estate or trust pays a net income tax to another state or the District of Columbia upon income from business conducted

in such state or the District of Columbia or upon income 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 or tangible personal property located in such state or the District of Columbia, in the calendar year 1975 or corresponding fiscal year or thereafter, such resident individual, estate or trust may credit the net 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 same year. The credit shall not be allowed if such income was not considered income for Wisconsin tax purposes. The credit shall not be allowed unless claimed within the time provided in s. 71.10 (10) (bn) but s. 71.10 (10) (d) does not apply to such credits. For purposes of this section amounts 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.

(9) 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.

(10) In the case of any overpayment, the department of revenue 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.

History: 1971 c. 40; 1971 c. 125 ss. 375 to 384, 521; 1971 c. 164 s. 92; 1971 c. 181, 215; 1973 c. 90 ss. 353 to 356, 560 (2); 1973 c. 139; 1975 c. 39, 104; 1975 c. 147 s. 54; 1975 c. 199.

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 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 15th day of the 3rd month following the close of such fiscal year) in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. Such statement shall be subscribed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary such fiduciary shall subscribe the return. The fact that an individual's name is subscribed on the return shall be prima facie evidence that such individual is authorized to subscribe the return on behalf of the corporation.

(a) All corporations doing business in this state shall also file with the department on or before March 15 of each year on forms prescribed by the department, 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 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.

(b) Whenever a corporation has been completely inactive for an entire taxable year, in lieu of filing the statements and information otherwise required by this subsection, it may file a declaration, on a form to be provided by the department, subscribed by its president, if a resident of this state, and, if not a resident, then by another officer residing in this state, attesting to such inactivity. Such declaration must be filed prior to the otherwise due date for its Wisconsin return for such taxable year. Thereafter the corporation need not file such statements or information for any subsequent year unless specifically requested to do so by the department or unless in a subsequent year the corporation has been activated or reactivated. If a corporation files a false declaration of complete inactivity, or, after filing a declaration, becomes activated or reactivated and fails to file timely statements and information hereunder covering such year or years of activity or reactivity its officers at the time of such filing or failure shall be jointly and severally liable for a civil penalty of $25 for such filing or each such failure, which penalty may be assessed and collected as income taxes are assessed and collected.

(c) Nothing contained in this subsection shall preclude the department from requiring any corporation to file a return when in the judgment of the department a return should be filed.

(2) The following shall report in accordance with this subsection:

(a) 1. This subdivision applies with respect to income of the calendar year 1971 and corresponding fiscal years and prior calendar and fiscal years. 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, except that beginning with the 1964 calendar year or corresponding fiscal year and in subsequent years, every such person having a gross income of $500 or more if under 65 years of age, or if 65 years of age or over, $1,000 or more and every married person receiving any gross income during the year when the combined gross incomes of such married person and his or her spouse is: a) $1,200 or more if both are under 65 years of age; b) $1,400 or more if one spouse is under 65 years of age and the other spouse is 65 years or over; or c) $1,600 or more, if both are 65 years of age or over.

2. This subdivision applies with respect to income of the calendar year 1972 or corresponding fiscal years. Every person having a gross income of $1,500 or more if under 65 years of age, or if 65 years of age or over $1,650 or more, and every married person receiving any gross income during the year when the combined gross incomes of such married person and his or her spouse is: a) $2,000 or more if both are under 65 years of age; b) $2,150 or more if one spouse is under 65 years of age and the other spouse is 65 years or over; or c) $2,300 or more, if both are 65 years of age or over.

3. This subdivision applies with respect to income of the calendar year 1973 or corresponding fiscal years. Every person having a gross income of $1,800 or more if under 65 years of age, or if 65 years of age or over $1,950 or more, and every married person receiving any gross income during the year when the combined gross income of such married person and his or her spouse is: a) $2,300 or more if both are under 65 years of age; b) $2,450 or more if one spouse is under 65 years of age and the other spouse is 65 years or over; or c) $2,600 or more, if both are 65 years of age or over.

4. Annually, commencing with the 1974 calendar year or corresponding fiscal year, every person having a gross income of $1,950 or more if under 65 years of age, or if 65 years of age or over $2,150 or more, and every married person receiving any gross income during the year when the combined gross income of such married persons is: a) $2,600 or more if both are under 65 years of age; b) $2,750 or more if one spouse is under 65 years of age and the other spouse is 65 years of age or over; or c) $2,900 or more, if both are 65 years of age or over.

(b) Such reports shall be made on or before April 15 following the close of a year referred to in par. (a) (or when such person's fiscal year is other than the calendar year, then on or before the 15th day of the 4th month following the close of such fiscal year) to the department of revenue, in the manner and form prescribed by the department of revenue, whether notified to do so or not. Such persons 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.

(c) Nothing in this subsection precludes the department of revenue 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 revenue 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) If a receiver, trustee in bankruptcy or assignee, by order of a court, by operation of law or otherwise, has possession of all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(d) If an individual is deceased, the return of such individual required under sub. (2) shall be made by his executor, administrator or other person charged with the property of such decedent. If an individual is unable to make a return required under sub. (2) the return of such individual shall be made by the guardian, custodian or other person charged with the care of the person or property of such individual.

(e) Annual returns of income of an estate or a trust shall be made to the department by the fiduciary thereof at or before the time such income is required to be reported to the internal revenue service under the internal revenue code. Under such rules as the department prescribes, a

return made by one of 2 or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(f) Except as otherwise provided by this subsection, any return, statement or other document required to be made under this chapter shall be signed in accordance with rules promulgated by the department.

(g) The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(3m) (a) Corporations may not change their 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 department of revenue.

(b) If a corporation changes its 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 corporation 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 as the number of months in such short period is of 12 months.

(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 revenue prescribes.

(5) (a) In the case of a corporation required to file a return, when sufficient reason is shown, the department of revenue may on written request allow such further time for making and delivering such return as is considered necessary not to exceed 30 days. Any extension of time granted by law or by the internal revenue service for the filing of corresponding federal returns shall extend the time for filing under this chapter if a copy of any extension requested of the internal revenue service is filed with the return in the case of an automatic 3-month extension, and if a copy of any additional extension granted by the internal revenue service is submitted to the department within 10 days of its receipt by the taxpayer. Termination of an automatic extension by the internal revenue service, or its refusal to grant such automatic extension, shall similarly require that any returns due under this chapter are due on or before the date for termination fixed by the internal revenue service. Except as provided in s. 71.22 (9) (b) 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 9% per annum during such period.

(b) In the case of returns of natural persons and fiduciaries which require a statement of amounts or information contained or entered on a corresponding return under the internal revenue code, such returns shall be filed within the time fixed under said code for the filing of the corresponding federal return. Any extension of time granted by law or by the internal revenue service for the filing of such corresponding federal return shall extend the time for filing under this chapter provided a copy of any extension granted by the internal revenue service is filed with the return under this chapter or at such earlier date as the department by rule prescribes. Extensions for periods of 30 days may also be granted by the department in any case for cause satisfactory to it. Taxes payable upon the filing of the return shall not become delinquent during the period of an extension but shall be subject to interest at the rate of 9% per annum during such period.

(6) To the extent necessary for the administration of the tax imposed by this chapter, when required under rules prescribed or orders issued by the department or upon the written request of the department, natural persons and fiduciaries subject to this chapter shall file with the department a true and complete copy of their federal income tax return and any other return or statement filed with, or made to, or any

document received from, the internal revenue service.

(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 revenue 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 revenue 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 revenue 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 $500 or more, shall, on or before January 31 of the succeeding year furnish the department of revenue 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 and franchise taxes shall be paid to the department of revenue, at its office at Madison or at such other place the department designates.

(a) Corporation franchise and income taxes not paid on or before the 15th day of the 3rd month following the close of the income year, shall be deemed delinquent.

(b) 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, except for persons electing to have the department compute their tax under s. 71.09 (4). 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 15th day of the 4th month following the close of such fiscal year, except for persons electing to have the department compute their tax under s. 71.09 (4).

(c) If the taxpayer elects under s. 71.09 (4) (a) to have the department compute the tax on his income and the taxpayer files his return on or before the date on which such return is required to be filed, the amount of taxes due thereon, as stated in the notice from the department under s. 71.09 (4) (b), shall become delinquent if not paid on or before the due date stated in the notice to the taxpayer. Such amounts of taxes due shall

not be subject to any interest, other than extension interest, prior to the date of delinquency. Taxes due on returns filed after the date on which returns are required to be filed shall be deemed delinquent as of the due date of the return.

(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 revenue 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.

(10) (a) Except as provided in ss. 71.04 (15) and 71.11 (21) (g) 2, 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 may bring any action or proceeding for the recovery of such taxes other than as provided in this subsection.

(bn) With respect to income taxes, franchise taxes and surtaxes assessed or based on incomes received in the calendar year 1962 or corresponding fiscal year, and subsequent years, except as otherwise provided in par. (e) and s. 71.11 (21) (g) 2, refunds may be made if the claim therefor is filed within 4 years of the date the tax return was filed, but for purposes of this paragraph a return filed before the last day prescribed by law for the filing of the return shall be considered as filed on such last day and no refund may be made of any income taxes withheld and paid or declared and paid with respect to which a 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 or franchise 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 for any year, the income of which was assessed as a result of a field audit, and which assessment has become final under s. 71.12 (1), (3), 73.01 or 73.015 and, except as provided in par. (e), 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 under s. 71.12 (1) and (3), 73.01 or 73.015.

(e) A claim for refund may be made within 2 years of the assessment of a tax, assessed by office audit on or after January 1, 1970, provided such tax was not protested by the filing of a petition for redetermination and the taxable year had not been closed by field audit under par. (d) prior to the filing of such claim. No claim may be allowed under this paragraph for any tax paid with respect to any item of income or deduction self-assessed by the taxpayer or assessed as the result of any assessment made by the department with respect to which all the conditions specified in this paragraph are not met.

(f) Every claim for refund or credit of income or surtaxes shall be filed with the department of revenue 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 ss. 71.11 (16) and 71.11 (20).

(g) The department of revenue 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 revenue or assessor of incomes shall certify such refund or credit.

(11) If the renegotiation or price redetermination of any corporation 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 corporate 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 corporate 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 revenue shall make appropriate adjustments on account of said tax deductions without interest, notwithstanding the

limitations of sub. (10) or other applicable statutes.

(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 department of revenue, 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% of the contract or subcontract price on all contracts of $50,000 or more or 3% 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% 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 secretary of revenue or his designated departmental representative. The bond shall remain in force until the liability thereunder is released by the secretary 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 this subsection shall notify the department of revenue 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.

(15) Persons deducting rent, interest, dividends or royalties in determining taxable income, shall inform the department of the amounts and of the name and address of all residents of this state to whom interest, dividends or royalties of $100 or more were paid during the income year; and of the amounts and of the name and address of residents and nonresidents to whom rent of $100 or more is paid during the income year for property having a situs in this state. Such information shall be submitted on forms prescribed by the department and shall be filed at the time of filing the income tax return on which such payments are deducted, or at such other time as the department prescribes.

(16) (a) Where a natural person or fiduciary files a federal income tax return for a fractional part of the year or where a Wisconsin income tax return for a fractional part of the year is necessary in making transition to reporting on the basis of income reported for federal tax purposes, the person shall file a Wisconsin income tax return for such fractional year, and such fractional year shall constitute an income year.

(b) The Wisconsin taxable income, in case of reporting income for a fractional part of a year under par. (a), 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 return is made. The tax payable shall be such proportion of the tax computed on such annual basis, after deduction of personal exemptions, as the number of months in such short period is to 12. If the person's personal exemption status changed during the short period, such status shall be determined as of the end of such short period.

(17) (a) *Use of whole dollar amounts.* With respect to any amount required to be shown on a form prescribed for any return, statement or other document required by this chapter, if the amount of such item is other than a whole dollar amount the fractional part of a dollar shall be disregarded unless it amounts to 50 cents or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased to the next whole dollar.

(b) *Election not to use whole dollar amounts.* Any person making a return, statement or other document required by this chapter shall be allowed to make such return, statement or other document without regard to par. (a).

(c) *Inapplicability to computation of amount.* Paragraph (a) does not apply to items which must be taken into account in making the computations necessary to determine the total amount required to be shown on a form, statement or other document but applies only to such final amount.

History: 1971 c. 40, 125, 215; 1973 c. 90; 1975 c. 39, 104, 214, 224, 422.

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.

Existence of a partnership between husband and wife in operating a farm discussed. Skaar v. Dept. of Revenue, 61 W (2d) 93, 211 NW (2d) 642.

Where a taxpayer for income tax purposes, but without the filing of partnership returns, claimed the existence of a partnership between himself and his wife in an interior decorating business by reporting one-half of the income therefrom to each, the department correctly determined no partnership existed. Stern v. Dept. of Revenue, 63 W (2d) 506, 217 NW (2d) 326.

71.11 Administrative provisions; penalties. (1) GENERAL. The department of revenue and the assessor of incomes shall assess incomes as provided in this chapter and in performance of such duty the department of revenue and the assessors of income shall respectively possess all powers now or hereafter granted by law to the department of revenue 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 revenue, 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 revenue 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 or franchise tax return, who fails, neglects or refuses to do so in the manner and form and within the time prescribed by this chapter, or makes a return that does not disclose his entire net income, shall be assessed by the department of revenue 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 revenue 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) ATTEMPT TO DEFEAT OR EVADE TAX; INCREASED ASSESSMENT. (a) Any person failing to make an income or franchise tax report reporting income of the calendar year 1968 or corresponding fiscal year or any prior calendar or fiscal year or making an incorrect income or franchise tax report with respect to any such taxable year, with intent in either case to defeat or evade the income or franchise tax assessment required by law, shall be assessed at twice the normal income or franchise tax rate by the department. Such increased assessment shall be in addition to all other penalties in this section.

(b) With respect to the calendar year 1969 or corresponding fiscal year and subsequent calendar or fiscal years, any person failing to make an income or franchise tax report or making an incorrect report with intent, in either case, to defeat or evade the income or franchise tax assessment required by law, shall have added to the tax an amount equal to 50% of the tax on the entire underpayment. No amount paid under this paragraph may be deducted from gross income and assessments hereunder may be made with respect to decedents. Amounts added to the tax under this paragraph shall be treated as additional taxes for all purposes of assessment and collection.

(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 revenue 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.

(7m) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the secretary or his delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if he determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

(8) METHOD OF ACCOUNTING; GENERAL RULE; CORPORATIONS. (a) The income and profits of corporations 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 revenue does clearly reflect the income.

(b) In computing a corporation'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 (1) (c).

(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 revenue 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 revenue 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 revenue 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% 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 revenue shall accept payments of income taxes in accordance with 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 revenue shall transmit the same to the state treasurer.

(13) RETURN PRESUMED CORRECT; ROLLS. The department of revenue 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 revenue 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 s. 71.11.

(15) NOTICE TO TAXPAYER BY DEPARTMENT. The department of revenue 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 revenue shall as soon as practicable office audit such returns as it deems advisable and if it is found from such office audit that a person has been over or under assessed, or found that no assessment has been made when one should have been made, the department of revenue 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 s. 71.12 (1). Such office audit shall not preclude the department of revenue 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 revenue or the assessor of incomes shall notify the taxpayer, as provided in s. 71.11 (22), of any adjustment, correction and assessment made pursuant to sub. (16).

(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 revenue 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 revenue 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 revenue 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 revenue 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 revenue 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 revenue 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 revenue 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 revenue 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 or franchise tax return was filed.

(c) Irrespective of par. (bm), if any person has made an incorrect income tax or franchise tax return for any of the years since January 1, 1911, with intent to defeat or evade the income tax or franchise tax assessment provided by law, or has failed to file any income tax or franchise 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 this subsection may be extended by written agreement between the taxpayer and the department of revenue entered into prior to the expiration of such limitation periods or any extension of such limitation periods. Paragraph (cm) shall not apply to any assessment made in any such extended period.

(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 or refund may be made:

1. If notice of assessment is given within 6 years after a return was filed, if the taxpayer reported for taxation on his or her return less than 75% of the net 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.

2. If notice of assessment or refund is given to the taxpayer within 90 days of the date on which the department receives a report from the taxpayer under sub. (21m) or within such other period specified in a written agreement entered into prior to the expiration of such 90 days by the taxpayer and the department. If the taxpayer does not report to the department as required under sub. (21m), the department may make an assessment against the taxpayer after discovery by the department of the requirement of such reports within 10 years after the date on which the tax return is filed. This 10-year time limitation shall not apply to assessments made under par. (c).

(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.

(21m) INTERNAL REVENUE SERVICE ADJUSTMENTS AND AMENDED RETURNS. If the amount of taxable income for any year of any taxpayer as reported to the internal revenue service is changed or corrected by the internal revenue service or other officer of the United States, such taxpayer shall report such changes or corrected income to the department within 90 days after its final determination and shall concede the accuracy of such determination or state how the determination is erroneous. Such changes or corrections need not be reported unless they affect the amount of income reportable or tax payable under this chapter. Any taxpayer filing an amended return with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state, shall also file, within 90 days of such filing date, an amended return with the department if any information contained on the amended return affects the amount of income reportable or tax payable under this chapter.

(21n) ADDITIONAL ASSESSMENTS AGAINST DISSOLVED CORPORATION. If all or substantially all of the business or property of a corporation is transferred to one or more persons and the corporation is liquidated, dissolved, merged, consolidated or otherwise terminated, any tax imposed by this chapter on such corporation may be assessed and collected as prescribed in this section against the transferee or transferees of such business or property. Notice shall be given to such transferee or transferees under sub. (22) within the time specified in sub. (21) irrespective of any other limitations imposed by law. If such corporation has dissolved, such notice may be served on any one of the last officers or members of the board of directors of such corporation.

(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 revenue may also proceed under s. 71.13 (3) for the collection of any additional assessment of income taxes or surtaxes, after notice thereof has been given under s. 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

revenue 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 revenue 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 s. 71.09 (5) (a). Nothing in this section shall affect the review of additional assessments provided by ss. 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 s. 71.12 (2).

(24) DEPARTMENTAL RULES; COLLECTIONS; EMPLOYES. (a) The department of revenue may make such rules and regulations as it shall deem necessary in order to carry out this chapter.

(b) The department of revenue may 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 revenue.

(c) Representatives of the department of revenue 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 revenue shall be deemed to act as agents of the state, counties and towns, cities or villages entitled to receive the taxes collected.

(d) In preparing income tax returns for taxable year 1974 and thereafter, the department of revenue shall provide a space for identification of the school district in which the taxpayer resides.

(25) FAILURE OF NATURAL PERSONS AND FIDUCIARIES TO FILE INFORMATION RETURNS. The department may assess as an addition to taxable income the amount of deductions taken in arriving at federal adjusted gross income or federal taxable income by natural persons and fiduciaries for wages, rent, interest or royalties, upon failure to file information returns concerning such payments where required under s. 71.10 (8), (8m), (8n) and (15). Such assessments shall be made and reviewed in the same manner as other income tax assessments.

(40) PENALTIES. If any person required under this chapter to file an income or franchise tax return fails to file such return within the time prescribed by law, or as extended under s. 71.10 (5), the department of revenue 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 OR REPORT; FALSE RETURNS; FRAUD; MISDEMEANOR. If any person, including an officer of a corporation required by law to make, render, sign or verify any return, wilfully fails or refuses to make a return at the time required in s. 71.10 (1), (2) and (3), or wilfully fails or refuses to make deposits or payments as required by s. 71.20 (4) or wilfully renders a false or fraudulent statement required by s. 71.10 (8), (8m) or (8n) or deposit report or withholding report required by s. 71.20 (4), such person shall be guilty of a misdemeanor and may be fined not more than $500 or imprisoned not to exceed 6 months or both, together with the cost of prosecution.

(42) SAME; FALSE INCOME TAX RETURN; FRAUD; FELONY. Any person, other than a corporation, who renders a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter shall be guilty of a felony and may be fined not to exceed $10,000 or be imprisoned not to exceed 5 years or both, together with the cost of prosecution.

(43) SAME; OFFICER OF A CORPORATION; FALSE FRANCHISE OR INCOME TAX RETURN; FELONY. Any officer of a corporation required by law to make, render, sign or verify any franchise or income tax return, who makes any false or fraudulent franchise or income tax return, with intent to defeat or evade any assessment required by this chapter shall be guilty of a felony and may be fined not to exceed $10,000 or be imprisoned not to exceed 5 years or both, 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 revenue 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 revenue 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 revenue 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 revenue 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 revenue 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 revenue 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 secretary of revenue, or any officer, agent or employe of the department of revenue 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.

(cm) At the time of or within 30 days after a distribution of income tax collections pursuant to s. 71.14 (1) the department of revenue may file, in an income tax assessment district office, a statement setting forth only the names, addresses, identification numbers and reported income taxes of persons other than corporations whose reported taxes were included in the total income taxes attributed to a county, town, village or city as used in the calculation of the income tax collections allocated and as so distributed thereto. Upon the filing with such district office of a certified copy of a resolution, adopted by a county, town or village board or the governing body of a city requesting such statement, a copy of such statement relating to that political subdivision shall be supplied to the clerk thereof. No statement by the department of revenue which embraces the above authorized information, including any issued heretofore, shall at any time be open to examination except by the public officers of the local subdivision to which it relates and the information contained therein shall be used by such officials only to effect the correction of errors in distribution of income tax collections as provided in s. 71.14. No public

official shall disclose or use any such statement or information derived therefrom other than in connection with the correction of errors in the distribution of income taxes. Nothing in this paragraph shall preclude authorized agents of municipalities from continuing to examine all tax returns for proper distribution of shared income taxes as provided in s. 71.11 (44).

(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.

(46) FAILURE TO FILE, ASSESSMENT. In case of failure to file any return required under s. 71.10 (1), (2), (3) (c), (d) or (e) on the due date prescribed therefor, including any extension of time for filing, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on the return 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment and by the amount of any credit against the tax which may be claimed upon the return.

(47) INCOMPLETE OR INCORRECT RETURN, ASSESSMENT. If any person required under this chapter to file an income or franchise tax return, files an incomplete or incorrect return, unless it is shown that such 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% of the amount otherwise payable on any income subsequently discovered or reported. The amount so added shall be assessed, levied and collected in the same manner as additional normal income or franchise taxes, and shall be in addition to any other penalties imposed by this chapter.

(48) AVOIDANCE OF TAX BY ESTABLISHMENT OR MAINTENANCE OF OUT-OF-STATE TRUST; GRANTOR LIABLE FOR TAX. The establishment or maintenance of a trust outside Wisconsin by a Wisconsin resident as grantor, the income from which trust is taxable to the grantor or to any person other than the trust under the internal revenue code, is hereby declared to be a tax avoidance device designed to avoid the legal application of the Wisconsin income tax to income properly taxable to the grantor or such other person. Any Wisconsin resident who is the grantor of such a trust shall be liable for the Wisconsin income tax on the income of such trust which is federally taxable to such grantor or other person under the internal revenue code.

(49) PROSECUTIONS BY ATTORNEY GENERAL. The attorney general is authorized, upon the request of the secretary of revenue, to represent the state or to assist the district attorney in the prosecution of any case arising under subs. (41), (42) and (43).

History: 1973 c. 110, 333; 1975 c. 224.

The court adopts the rule that an application for refund of income taxes can be offset by an additional assessment even though the latter was barred by statute of limitations, so long as the same year or tax period is involved, and conversely, a taxpayer can counter with a refund claim. American Motors Corp. v. Dept. of Revenue, 64 W (2d) 337, 219 NW (2d) 300.

71.12 Contested assessments and claims for refund. (1) Any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund shall, within 30 days after receipt thereof, petition the department of revenue for redetermination. The department shall make a redetermination on such petition within 6 months after it is filed. The person, if aggrieved by the department's redetermination, may appeal to the tax appeals commission by filing a petition with the clerk thereof as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s. 73.01, or, except as provided in s. 71.10 (10) (e), if no petition for redetermination is made within the time provided the assessment, refund, or denial of refund 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 tax appeals commission or disposition of the appeal pursuant to stipulation and order under ss. 73.01 (4) (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 revenue shall issue a certificate to the state treasurer authorizing the treasurer to accept payment of such taxes together with interest thereon to the first day of the succeeding month and to give a receipt therefor. A copy of such certificate shall be mailed to the taxpayer who shall thereupon pay such taxes and interest to the treasurer within 30 days. A copy of the receipt of the state treasurer shall be filed with the department. The department shall, upon final determination of the appeal, certify to the state treasurer the amount of the taxes as finally determined and direct the state treasurer to appropriate the amounts of such taxes, together with the interest thereon, in accordance with s. 71.14 and 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 9% 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 sub. (1) shall first have been complied with, and unless such person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income received by him. The requirements of this subsection may be waived by the department of revenue.

(5) As soon as the appellant shall have filed a petition with the tax appeals commission, 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 tax appeals commission 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 revenue, and the department shall proceed to collect the taxes in the same manner as other income taxes are collected.

History: 1975 c. 39, 199.

71.13 Collection of delinquent taxes. (1) (a) Income and franchise taxes shall become delinquent if not paid when due under s. 71.10 (9), and when delinquent shall be subject to interest at the rate of 1.5% per month until paid, and if delinquent prior to January 1, 1970, shall also be subject to a penalty of 2% of the amount of the tax and the department shall immediately proceed to collect the same. For the purpose of such collection the department or its duly authorized agent shall have the same powers as conferred by law upon the county treasurer, county clerk, sheriff and district attorney.

(b) The department shall provide by rule for reduction of interest under par. (a) to 9% per annum in stated instances wherein the secretary of revenue determines reduction fair and equitable.

(2) Any additional income or franchise tax assessment contested before the tax appeals commission or in the courts, which is finally determined to be correct, shall become delinquent if not paid on or before the 30th day following the date on which the order or judgment representing such final determination becomes final and conclusive. Any additional income or franchise tax assessment so contested shall be subject to s. 71.11 (23).

(3) (a) If any income or franchise tax be not paid within 30 days after the same becomes delinquent, the department of revenue 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 or her county a copy of such warrant, unless the taxpayer makes satisfactory arrangements for payment with the department, 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. 806.11, and upon docketing the amount of such warrant, together with interest required by sub. (1) shall be considered in all respects as a final judgment creating a perfected lien upon the taxpayer's right, title and interest in all of the real and personal property of the taxpayer against whom it is issued in the county where the warrant or duplicate copy of the warrant is docketed. Such perfected lien shall not give the state priority over preexisting lienholders. The clerk of circuit court shall accept, file and docket such warrant without prepayment of any fee, but the clerk shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to

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, and a filing fee of $1 for filing satisfactions of 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 where 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 provided in this paragraph. The sheriff shall be entitled to the same fees for executing upon such 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 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 revenue 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 have been paid to it or 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. The department shall send a copy of such satisfaction to the taxpayer. 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 this section, except such as are by this section to be paid to such officials or persons by the taxpayer, shall, upon presentation to the department of revenue 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 secretary of revenue and charged to the proper appropriation for the department of revenue. No public official shall be entitled to demand prepayment of any fee for the performance of any official act required in carrying out 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 revenue may exercise the powers vested in it by virtue of ss. 73.03 (20) and 73.04 or any of the powers vested in it by virtue of any other statute for the purpose of enforcing collection of income taxes.

(4) (a) Any taxpayer who is unable to pay the full amount of his or her delinquent income taxes, costs, penalties and interest may apply to the department of revenue to pay such taxes, costs, penalties and interest in instalments. Such application shall contain a statement of the reasons such taxes, costs, penalties and interest 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 department and the payment of instalments in accordance therewith collection proceedings with respect to such taxes, costs, penalties and interest 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, costs, penalties and interest in the manner provided by law.

(b) Any taxpayer may petition the department of revenue to compromise his or her delinquent income taxes including the costs, penalties and interest. 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 may examine the petitioner under oath concerning the matter. If the department finds that the taxpayer is unable to pay the taxes, costs, penalties and interest in full it shall determine the amount the taxpayer is able to pay and shall enter an order reducing such taxes, costs, penalties and interest in accordance with such determination. 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 shall accept payment in accordance with the order. Upon payment the department shall 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, costs, and interest accrued to the date of such order. If within 3 years of the date of such compromise order the department shall ascertain that the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax including costs, penalty and interest the department shall reopen said matter and order the payment in full of such taxes, costs, penalties and interest. Before the entry of such order a notice shall be sent to the taxpayer by certified mail advising of the intention of the department of revenue to reopen such matter and fixing a time and place for the appearance of the taxpayer if he or she desires a hearing. Upon entry of such order the department of revenue shall make an entry of the principal amount of such taxes, penalties, costs and interest ordered to be paid on the delinquent roll and such taxes shall be immediately due and payable upon entry upon the roll and shall thereafter be subject to the interest provided by sub. (1), and the department shall immediately proceed to collect the same together with the unpaid portion of penalty, costs, and interest accrued to the date of the compromise order.

(c) Delinquent income taxes, interest and penalties, ulting 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 sub. (5) is reporled insofar 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 for collection and after having fully investigated the matter the attorney general determines that it would be in the best interest of the state to compromise the tax, a written recommendation shall be made to the department stating the terms upon which the tax should be compromised and the reasons therefor. The department shall approve or disapprove the recommendation and notify the department of justice. If approved the department of justice may enter into a stipulation with the taxpayer providing for the compromise of the tax on the terms set forth in the recommendation and upon compliance by the taxpayer the tax shall be fully discharged. The department of justice 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 the tax on the next credit roll. This subsection shall be in addition to all other powers of the department of justice and the department of revenue 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) All payments made on delinquencies shall be applied first in discharging costs, penalties and interest and the balance applied on the principal of the tax.

(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.

Note: See also sub. (4) (d) as to sub. (5).

(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: Sup. Ct. Order, 67 W (2d) 774; 1975 c. 39, 218, 224, 422.

Cross References: See 806.11 on delinquent income tax docket.

See 73.03 (27) for provision as to writing off uncollectible income taxes.

Tax warrants may be docketed by the clerk of court prior to issuance of sheriff for levy purposes 61 Atty. Gen. 148

71.135 Withholding by employer of delinquent tax of employe. (1) The department may give notice to any employer deriving income having a taxable situs in this state (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 taxes, including penalties, interest and costs. Such notice may be served by certified mail, or by delivery by an employe of the department of revenue. Upon receipt of such notice of delinquency, the employer shall withhold from compensation due or to become due to the employe, the total amount shown by the notice. The department may arrange between the employer and the employe for a withholding of an amount not less than 10% of the total amount due the employe each pay period, until the total amount as shown by the notice, plus interest, has been withheld. The employer shall not withhold more than 25% 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 or her intention to do so, or is discharged 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. In crediting amounts withheld against delinquent taxes of an employe, the department shall apply amounts withheld in the following order: costs, penalties, delinquent interest, delinquent tax. The "compensation due" any employe for purposes of determining the 25% 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 amounts payable pursuant to a garnishment action with respect to which the employer was served prior to 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 to such assignment 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, has been withheld by the employer, the employer shall immediately notify the department 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 next month after every calendar quarter, remit to the department the amount withheld during the calendar quarter. Any amount withheld from an employe by an employer shall immediately be a trust fund for this state. 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 as though the amount shown by the notice was due by such employer as a direct obligation to the state for delinquent 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 or her failure to remit under this section may be deducted from the gross income of such employer, under either s. 71.04 or 71.05. Any amount collected from the employer for failure to withhold or for failure to remit under this section shall be credited as tax, costs, penalties and interest paid by the employe.

(4) Subsections (1) to (3) shall apply in any case in which the employer is the United States or any instrumentality thereof or this state 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 this state under this section and not remitted to the department 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 department, upon certification by the secretary of revenue.

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

(6) Employers required to withhold delinquent taxes, penalties, interest and costs under this section shall not be required to withhold amounts other than the total amounts certified to such employers by the department and shall not be required to compute interest, costs or other charges to be withheld.

History: 1975 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 ending October 31, 1971, shall become a part of the general fund for use of the state, except that 26.38% of such collections to October 31, 1971, shall be apportioned as follows:

(a) On May 31 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 the total allocable shares as of September 30 of the preceding year as determined under par. (b) 1.

(b) 1. On September 30 such apportionable collections for the period November 1 of the preceding year to July 31 of the current year shall be allocated to each county, town, village and city in proportion to the amounts attributed to each under subd. 2 to the total of such amounts for all counties, towns, villages and cities; and the amounts thus allocated to each county, town, village and city, less the amount apportioned to it on the preceding May 31, shall be apportioned to it as its September 30 apportionment.

2. On or before September 30 the department shall determine the total income taxes (before credit for taxes withheld, credit for taxes paid pursuant to declaration, homestead tax relief credit, 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.

(c) On November 30 such apportionable collections for the period August 1 to October 31 of the current year shall be apportioned to each county, town, village and city in proportion to the amounts attributed to each under par. (b) 2 to the total of such amounts for all counties, towns, villages and cities.

(2) All collections of income and franchise taxes of corporations, including remittances of taxes declared, ending October 31, 1971, shall become a part of the general fund for use of the state, except that 46.2% of such collections to October 31, 1971, shall be apportioned as follows:

(a) On May 31 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 the total allocable shares as of September 30 of the preceding year as determined under par. (b) 1.

(b) 1. On September 30 such apportionable collections for the period November 1 of the preceding year to July 31 of the current year shall be allocated to each county, town, village and city in proportion to the amounts attributed to each under subd. 2 to the total of such amounts for all counties, towns, villages and cities; and the amounts thus allocated to each county, town, village and city, less the amount apportioned to it on the preceding May 31, shall be apportioned to it as its September 30 apportionment.

2. On or before September 30 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 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.

(c) On November 30 such apportionable collections for the period August 1 to October 31 of the current year shall be apportioned to each county, town, village and city in proportion to the amounts attributed to each under par. (b) 2 to the total of such amounts for all counties, towns, villages and cities.

(3) Whenever income has been attributed to an erroneous situs under sub. (1) (b) or (2) (b) such portion of the tax collections allocated erroneously shall be reallocated to the county, town, village or city entitled thereto; but no such reallocation shall be made except on the written approval of the department of revenue. Such claim must be made within 4 years after the end of the calendar year in which such collection was erroneously allocated. If the amount of the claim is approved by the department such amount shall be deducted from the county, town, village or city's next apportionment, or next apportionments, and paid to the county, town, village or city entitled thereto.

(4) 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.

(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 revenue, shall not apply to telegraph companies or transportation companies as defined in ss. 76.02 (4) and 76.39, respectively. All such telegraph companies and transportation companies shall pay their taxes under this chapter to the department of revenue, but such taxes shall not be apportioned or distributed to the taxing districts within which the properties lie, but shall be retained entirely by the state.

(6) (a) Whenever an erroneous September or November allocation has been made under sub. (1) (b), (c), (2) (b) or (c) as a result of omission of an income tax liability from the numerator of the allocation ratio of a particular county, town, village or city and also from the denominator of the allocation ratios of all counties, towns, villages and cities, the amount so omitted shall be added to the numerator of the allocation ratio of the particular county, town, village or city and to the denominator of the allocation ratios of all counties, towns, villages and cities in making the September or November allocation next succeeding the discovery of such omission.

(b) Whenever an erroneous September or November allocation has been made under sub. (1) (b), (c), (2) (b) or (c) as a result of overstating an income tax liability in the numerator of the allocation ratio of a particular county, town, village or city and also in the

denominator of the allocation ratios of all counties, towns, villages and cities, the amount so overstated shall be subtracted from the numerator of the allocation ratio of the particular county, town, village or city and from the denominator of the allocation ratios of all counties, towns, villages and cities in making the September or November allocation next succeeding the discovery of such overstatement. If the numerator of the next succeeding allocation ratio of the particular county, town, village or city, prior to deducting the overstatement, is less than the amount so overstated, the excess overstatement shall be corrected in the same manner in subsequent September or November allocations, except that, if the overstatement to a particular county, town, village or city is in an amount which in the opinion of the secretary of revenue cannot be corrected in the 3 September or November allocations next succeeding the discovery of the overstatement, the secretary of revenue may make written demand upon such county, town, village or city for the return of income taxes erroneously distributed to it as a result of such overstatement, and the amounts so recovered shall be added to the amount of income taxes apportioned to counties, towns, villages and cities in the next succeeding September apportionment.

(c) Whenever the department of revenue discovers an erroneous September or November allocation resulting from omissions or overstatements referred to in par. (a) or (b), prior to making the apportionments of the following year under sub. (1) (a), (b), (2) (a) or (b), the apportionment amounts determined thereunder may be adjusted by the department so as near as possible to obtain apportionments which will correct for the said omissions or overstatements.

(d) The department shall correct for omissions or overstatements under par. (a) or (b) only if notified thereof within 4 years after the end of the calendar year in which such omission or overstatement was made.

(e) No correction for errors in previous allocations shall be made under this subsection in making any distribution subsequent to that of November 30, 1971.

(7) The department shall correct for errors and omissions under sub. (6) (a), (b) and (c) in making distributions after November 30, 1971, only if the department is notified of such error on or before December 31, 1971, and within the limitation period provided in sub. (6) (d). In such cases, the appropriate correction shall be made in the next succeeding distribution under subch. I of ch. 79, and such adjustment shall be carried over, if necessary, to future distributions under subch. I of ch. 79, until the correction has been completed.

(8) All taxes imposed and collected under this chapter on and after November 1, 1971, other than those imposed on urban transit companies under s. 71.18, shall become a part of the general fund for use of the state, except that 25.17% for the period November 1, 1971, to July 31, 1972, 24.66% for the period August 1, 1972 to July 31, 1973 and 24.845% for the period August 1, 1973 to July 31, 1974, and 25.25% for the period August 1, 1974 to June 30, 1975, and 25.14% for the period July 1, 1975 to June 30, 1976 and 25.16% thereafter, of collections of income of persons other than corporations and 43.98% for the period August 1, 1974 to June 30, 1975, 38.79% for the period July 1, 1975, to June 30, 1976, and 37.81% thereafter, of collections of income and franchise taxes of corporations shall be entered in the municipal and county shared tax account and distributed under subch. I of ch. 79.

History: 1971 c. 40, 125; 1973 c. 90; 1975 c. 39.

71.15 Miscellaneous provisions. (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.

History: 1971 c. 40.

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 revenue. Taxes collected prior to November 1, 1971, shall be apportioned to the state, counties, towns, cities and villages in the same manner as taxes are apportioned pursuant to s. 76.28, 1969 stats. Taxes collected on or after November 1, 1971, shall be deposited in the general fund, and 83% thereof shall be entered in the municipal and county shared tax account and distributed under subch. I of ch. 79.

History: 1971 c. 125

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 fur-bearing 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, 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 beneficiary from a plan described in s. 815.18 (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.

(n) In the form of tips paid to employes if:

1. The tips are paid in a medium other than cash.

2. The cash tips received by an employe in any calendar month in the course of employment by an employer are less than $20. However, if such cash tips received in a calendar month amount to $20 or more none of such cash tips are excepted from wages under this section.

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

History: Sup. Ct Order, 67 W (2d) 774; 1975 c. 104, 199, 218.

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 secretary 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 secretary before the beginning of a payroll 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 secretary 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 shall deposit such amount on a quarterly basis, except that effective July 1, 1967, if the amount deducted and withheld in any quarter ended before or after this date exceeded $300, the department may require by written notice to the employer, that amounts deducted and withheld on and after the date indicated on such notice shall be deposited on a monthly basis. Employers who are required to file reports and deposit withheld taxes on a monthly, quarterly, or annual basis, as the case may be, shall file such reports and deposit such taxes on or before the last day of the month next succeeding the withholding period. If the amount deducted and withheld in any quarter exceeded $5,000, the department may require by written notice to the employer, that for amounts deducted and withheld from the first day of the month through the 15th day of the month, the employer shall file reports and deposit such taxes on or before the last day of such month; that for amounts deducted and withheld from the 16th day of the month through the last day of the month the employer shall file reports and deposit such taxes on or before the 15th day of the next succeeding month. Employers shall file reports and deposit taxes with such public depository in Wisconsin as the investment board designates a public depository therefor under s. 25.17 (61) to the

credit of the general fund. Such deposits shall be deemed collected as of the date on which they are required to be deposited by this section, and available for distribution to counties, cities, villages and towns under s. 71.14 if they are received by the state by the 5th day of the 2nd succeeding calendar month after the close of each calendar quarter. With each deposit the employer shall include a deposit report on a form to be provided by the department. The department may, 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 public depository 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 semimonthly, monthly and quarterly deposit reports filed in respect to such withholding. Every employer who discontinues business prior to the end of a calendar year shall, within 30 days of such discontinuance, deposit withheld taxes not previously deposited and submit a deposit report concerning such deposit with the public depository and file a withholding report with the department covering the period from the beginning of the calendar year to the date of discontinuance. No employe shall have any right of action against an employer in regard to money deducted from wages and deposited with the public depository in compliance or intended compliance with this section.

(4m) Upon not less than 6 months' notice to the public depository designated under sub. (4), the secretary of revenue may direct that withheld taxes required to be reported and remitted by employers on and after a date specified be reported and remitted directly to the department of revenue. Every employer who deducts and withholds any amount under this section required to be reported and remitted on or after such date shall report and remit directly to the department. Amounts withheld shall be paid over a quarterly basis but if the amount deducted and withheld in any quarter exceeded $300, the department may require, by written notice to the employer, that amounts deducted and withheld after the date indicated on such notice be paid over a monthly basis. Employers who are required to file reports and pay over withheld taxes on a monthly, quarterly or annual basis, shall file such reports and pay over such taxes on or before the last day of the month next succeeding the withholding period. If the amount deducted and withheld in any quarter exceeded $5,000, the department may require by written notice to the employer, that for amounts deducted and withheld from the first day of the month through the 15th day of the month, the employer shall file such reports and pay over such taxes on or before the last day of such month; for amounts deducted and withheld from the 16th day of the month through the last day of the month, the employer shall file such reports and pay over such taxes on or before the 15th day of the next succeeding month.

(a) Such payments shall be deemed paid as of the date on which they are required to be paid by this section for purposes of distribution to counties, cities, villages and towns under s. 71.14 if they are received by the department by the 5th day of the 2nd succeeding calendar month after the close of each calendar quarter.

(b) With each payment the employer shall include a withholding report on forms provided by the department. The department may, when satisfied that the revenues will be adequately safeguarded, permit an employer whose withheld taxes do not exceed $50 per month to pay over withheld taxes and file withholding reports for longer than quarterly periods. Such permission may be revoked at any time. The department, if it deems it necessary in order to insure payment or to facilitate the collection by the state of the amount of taxes, may require reports or payments of the amount of withheld taxes for shorter than quarterly periods.

(c) On or before January 31 of each year every employer shall file with the department an annual withholding report on forms provided by the department showing the amount withheld from the wages paid each employe in the previous calendar year, the amount deposited or paid over in respect to each employe on wages paid in the previous calendar year and a reconciliation of the aggregate deposited or paid over in respect to each employe on wages paid in the previous calendar year with the aggregate of

the amounts shown on deposit and withholding reports filed in respect of such withholding.

(d) Every employer who discontinues his business prior to the end of a calendar year shall, within 30 days of such discontinuance, pay over withheld taxes not previously deposited or paid over, and shall file a withholding report with the department covering the period from the beginning of the calendar year to the date of discontinuance.

(e) No employe shall have any right of action against his employer in regard to money deducted from his wages and paid over to the department in compliance or intended compliance with this section.

(f) If the secretary of revenue elects to discontinue use of the public depository, reasonable notice of the change shall be communicated to employers subject to withholding.

(5) (a) The penalties provided by this section shall be paid upon notice and demand of the secretary of revenue 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.

(b) If any person required under this section to file a deposit report or withholding report files an incomplete or incorrect report, or fails to properly withhold or fails to properly deposit or pay over withheld funds, unless it can be shown that the filing or failure was due to good cause and not due to neglect, there shall be added to the tax 25% of the amount not reported or not withheld, deposited or paid over. 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 in this section.

(c) Any amount not deposited or paid over to the department within the time required shall be deemed delinquent and deposit reports or withholding reports filed after the due date shall be deemed late. Delinquent deposits or payments shall bear interest at the rate of 1.5% per month from the date deposits or payments are required under this section until deposited or paid over to the department. The department shall provide by rule for reduction of interest on delinquent deposits to 9% per annum in stated instances wherein the secretary of revenue determines reduction fair and equitable. In the case of a timely filed deposit or withholding report, withheld taxes shall become delinquent if not deposited or paid over on or before the due date of the report. In the case of no report filed or a report filed late, withheld taxes shall become delinquent if not paid over by the due date of the report. In the case of an assessment under par. (a), the amount assessed shall become delinquent if not paid on or before the first day of the calendar month following the calendar month in which the assessment becomes final, but if the assessment is contested before the tax appeals commission or in the courts, it shall become delinquent on the 30th day following the date on which the order or judgment representing final determination becomes final.

(d) In case of failure to file any withholding deposit or payment report required under sub. (4) on the due date prescribed therefor, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as withheld taxes on the report 5% of the amount if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate.

(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 public depository prescribed by sub. (4) or paid over to the department as prescribed by sub. (4m), 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.

(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 payroll 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), (6k), (6m) and (6p) 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), (6k), (6m) and (6p) for the taxable year in which such day falls.

(e) In lieu of the exemptions allowable in pars. (a) to (d) the employe may claim the same number of withholding exemptions for Wisconsin withholding tax purposes as for federal withholding tax purposes.

(10) The secretary of revenue 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 secretary of revenue, 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. 71.09 (8).

(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.

(14) An employer is not required to deduct and withhold any tax whenever an employe certifies to the employer, on a form prescribed by the secretary, that the employe incurred no liability for income tax imposed by this chapter for the employe's preceding taxable year and anticipates that the employe will incur no liability for the employe's current taxable year.

(19) Whenever it appears to the satisfaction of the secretary of revenue that with respect to the period beginning February 1, 1962, and ending December 31, 1962, the cost to the employer of withholding on the wages of nonresident employes who performed wage earning services in Wisconsin and in the same pay periods also performed wage earning services outside Wisconsin, would have been excessive in relation to the aggregate Wisconsin income tax liability of such nonresident employes on such wage earning services performed in Wisconsin and the employer failed to comply with the withholding provisions of ch. 71 in respect of such Wisconsin wages, the secretary, by agreement with such employer, may relieve such employer of the consequences of such failure to withhold upon payment by such employer to the department of the amount estimated by the secretary to equal the taxes, fees and interest that would be due from such employes on their Wisconsin wages. Any amount so paid by such employer may be deducted by such employer on the cash basis as a Wisconsin income tax paid. Any nonresident employe upon whose behalf such a payment is made, if not otherwise required to file a Wisconsin income tax return may, as a part of such agreement, be relieved from filing a return covering such taxable year and paying a tax on such income. If

any such nonresident employe had income having a Wisconsin income tax situs in a taxable year covered by such agreement, other than and in addition to his Wisconsin wages from such employer, his Wisconsin tax shall be computed on the aggregate of his net income having an income tax situs in Wisconsin (including his Wisconsin wages from such employer) but he shall be allowed as a credit against the tax so computed an amount determined by multiplying such tax by a fraction the numerator of which shall be his Wisconsin wages from such employer and the denominator of which shall be his total gross income having a Wisconsin income tax situs.

(20) No amount shall be withheld from the wages paid to a nonresident employe for services performed in this state if the employer reasonably estimates that during that calendar year the employe will earn less than $1,500; but whenever it appears that the employe will earn more than $1,500 in this state during the calendar year, the employer shall withhold, from wages paid thereafter, such additional amounts as the employer reasonably estimates will be required to offset the amounts not withheld from previous payments.

(21) "Person", as used in subs. (5) and (6), includes an officer or employe of a corporation or a member or employe of a partnership who, as such officer, employe or member, is under a duty to perform the act in respect of which the violation occurs.

History: 1971 c. 215; 1973 c. 243; 1975 c. 39, 104, 180, 199, 422.

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) upon which taxes are withheld by his employer pursuant to s. 71.20, subject to taxation under this chapter during the calendar year 1965, or any calendar or fiscal year beginning after January 1, 1965, but not later than June 1, 1967, 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. For the calendar year 1968 and corresponding fiscal years and for calendar and fiscal years thereafter every individual deriving income other than or in addition to wages as defined in s. 71.19 (1) upon which taxes are withheld by his employer pursuant to s. 71.20, subject to taxation under this chapter 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 $60 or more. Such declaration shall contain such information as the department by rule or forms prescribes. 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, 1966, 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 his first instalment of estimated taxes, and any excess from the succeeding instalments. 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 to 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 first day of the 3rd 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 15th 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 9% 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. This paragraph shall not be considered in connection with an underpayment of estimated tax in the taxable year 1972 of the individual.

(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 sub. (14) (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 department of revenue 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: 1971 c. 3, 125; 1975 c. 39.

Prepayments under (19) must be deducted in the year the taxes are assessed, not the year in which paid. Trepte v Dept. of Revenue, 56 W (2d) 81, 201 NW (2d) 567.

71.22 Declarations of estimated tax by corporations. (1) Every corporation subject to income or franchise taxation under this chapter shall file, at the time hereinafter prescribed, a declaration of estimated income or franchise tax, if the total tax based 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 or franchise tax required by sub. (1) shall be filed on or before the 15th day of the 3rd 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 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 or franchise 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.

(3a) If upon the filing of its complete franchise or income tax return or an amended return following the filing of such complete return, a corporation claims a refund of franchise or income taxes (previously paid with a tentative return or with declarations of estimated tax, or otherwise) it shall indicate on such return whether such refund, if approved, should be refunded or applied against any instalment of estimated tax. In the absence of such indication, the amount refundable shall be refunded and may not be claimed as payment on a declaration of estimated tax. No refund shall be made or credit applied prior to filing of the complete return.

(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 9% 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 on or measured by the income of the preceding year and such preceding year was a taxable year of 12 months. This paragraph shall not be considered in connection with an underpayment of estimated tax in the taxable year 1972 of the corporation.

(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: 1971 c. 125; 1975 c. 39.

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.

71.26 Time extension. For good cause shown upon application by an employer, the department 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) or (4m), but no such extension shall extend the time for deposit with the public depository or payment to the department of amounts required to be deducted and withheld pursuant to s. 71.20.

History: 1975 c. 180

71.301 Distributions of property to corporations. (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 corporation shareholder with respect to its stock shall be treated as provided in sub. (3).

(2) AMOUNT DISTRIBUTED. (a) *General rule.* For purposes of this section, the amount of any distribution shall be the amount of money received, plus whichever of the following is the lesser:

1. The fair market value of the other property received; or

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

(b) 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.

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 revenue.

(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 revenue 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 includable 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 revenue.

(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.

(3) DISTRIBUTEE AND SHAREHOLDER. In ss. 71.301 to 71.372, "distributee," "shareholder" or similar appellation, shall not include natural persons or fiduciaries for the purpose of determination of their taxable income or for the purposes of determining basis of stock owned by them.

History: 1973 c. 12 s. 37.

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) possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80% 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) In this section, "qualified electing shareholder", 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 in the case of a shareholder which is a corporation, only if evidence is submitted to the department of revenue which is satisfactory to it that written elections have been filed as provided by section 333 of the 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% of the total combined voting power exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(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 revenue, 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 revenue to the property sold or exchanged, over b. the basis, in the hands of the liquidating corporation, of the property sold or exchanged.

See note to Art. I, sec. 1, citing Simanco, Inc. v. Dept. of Revenue, 57 W (2d) 47, 203 NW (2d) 648.

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) REQUIREMENTS, MEETING. 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.

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 revenue 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 includable 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 revenue, 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 revenue.

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 of 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.

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 of reorganization under which such transfer was made.