Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

Tax 2.01	Residence.
Tax 2.02	Reciprocity.
Tax 2.03	Corporation returns.
Tax 2.04	Information returns and wage statements.
Tax 2.05	Transfers of capital stock, information return.
Tax 2.07	Earned income tax credit.
Tax 2.08	Returns of persons other than corporations.
Tax 2.085	Claim for refund on behalf of a deceased taxpayer.
Tax 2.09	Reproduction of franchise or income tax forms.
Tax 2.10	Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns.
Tax 2.105	Notice by taxpayer of federal audit adjustments and amended returns.
Tax 2.11	Credit for sales and use tax paid on fuel and electricity.
Tax 2.12	Claims for refund and other amended returns.
Tax 2.30	Property located outside Wisconsin — depreciation and sale.
Tax 2.31	Compensation received by nonresident members of professional athletic teams.
Tax 2.32	Economic development surcharge — gross receipts defined.
Tax 2.39	Apportionment method.
Tax 2.395	Alternative method of apportionment.
Tax 2.41	Separate accounting method.
Tax 2.44	Permission to change basis of allocation.
Tax 2.45	Apportionment in special cases.
Tax 2.46	Apportionment of apportionable income of interstate air carriers.
Tax 2.465	Apportionment of apportionable income of interstate air freight forwarders affiliated with a direct air carrier.
Tax 2.47	Apportionment of apportionable income of interstate motor carriers.
Tax 2.475	Apportionment of apportionable income of interstate railroads, sleeping car companies and car line companies.
Tax 2.48	Apportionment of apportionable income of interstate pipeline companies.
Tax 2.49	Apportionment of apportionable income of interstate financial institutions.
Tax 2.495	Apportionment of apportionable income of interstate brokers−dealers, investment advisers, investment companies, and underwriters.
Tax 2.50	Apportionment of apportionable income of interstate public utilities.
Tax 2.502	Apportionment of apportionable income of interstate telecommunications companies.
Tax 2.505	Apportionment of apportionable income of interstate professional sports clubs.
Tax 2.60	Definitions relating to combined reporting.
Tax 2.61	Combined reporting.
Tax 2.62	Unitary business.
Tax 2.63	Controlled group election.
Tax 2.64	Alternative apportionment for combined groups including specialized industries.
Tax 2.65	Designated agent of combined group.
Tax 2.66	Combined estimated tax payments.
Tax 2.67	Combined returns.
Tax 2.82	Nexus.
Tax 2.85	Penalty for failure to produce records under s. 71.80 (9m), Stats.
Tax 2.87	Reduction of delinquent interest rate under s. 71.82 (2) (b), Stats.
Tax 2.88	Interest rates.
Tax 2.89	Estimated tax requirements for short taxable years.
Tax 2.90	Withholding; wages.
Tax 2.91	Withholding; fiscal year taxpayers.
Tax 2.92	Withholding tax exemptions.
Tax 2.93	Withholding from wages of a deceased employee and from death benefit payments.
Tax 2.935	Reduction of delinquent interest rate under s. 71.82 (2) (d), Stats.
Tax 2.94	Tax−sheltered annuities.
Tax 2.95	Reporting of installment sales by natural persons and fiduciaries.
Tax 2.955	Credit for taxes paid to other states.
Tax 2.956	Historic structure and rehabilitation of nondepreciable historic property credits.
Tax 2.957	Relocated business credit or deduction.
Tax 2.96	Extensions of time to file corporation franchise or income tax returns.
Tax 2.98	Disaster area losses.
Tax 2.986	Registration of a business under s. 73.03 (69), Stats.
Tax 2.99	Dairy and livestock farm investment credit.

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

Note: Forms may be obtained from the department of revenue's web site at www.revenue.wi.gov.

Note: Section Tax 2.01 interprets s. 71.02, Stats.

History: 1−2−56; r. (1); renum. (2) to be (1); renum. (3) to be (2) and am., Register, September, 1964, No. 105, eff. 10−1−64; am. Register, February, 1975, No. 230, eff. 3−1−75; r. (1), renum. (2) and am., Register, July, 1987, No. 379, eff. 8−1−87; am. Register, February, 1990, No. 410, eff. 3−1−90.

Tax 2.02 Reciprocity. (1) PURPOSE. This section explains the reciprocity agreements between Wisconsin and other states.

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

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

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

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

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

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

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

(4) AGREEMENTS WITH OTHER STATES. (a) Wisconsin has formal reciprocity agreements with:

1. Kentucky, for the years beginning on and after January 1, 1961.

2. Illinois, for the years beginning on and after January 1, 1971.

3. Michigan, for income earned after October 1, 1967 and years beginning on and after January 1, 1968.

4. Minnesota, for the years beginning on and after January 1, 1968.

(b) Wisconsin practices reciprocity with Indiana, since prior to 1960, on the basis of an informal agreement and acquiescence by Wisconsin and Indiana.

(5) EFFECT OF RECIPROCITY. (a) Personal service income included under reciprocity agreements is taxed by an employee's state of residence rather than by an employee's state of employment. Wisconsin will not tax personal service income earned in

Wisconsin by residents of states with which Wisconsin has reciprocity, and those states may not tax personal service income which a Wisconsin resident earns in those states, except as described in subs. (6), (7), (8) and (9).

(b) For personal service income included under reciprocity agreements, an employer need only withhold income tax for the state of residence of an employee.

(c) Federal law regulates withholding on wages earned by employees engaged in interstate transportation activities.

Note: Additional information on withholding on wages earned by employees engaged in interstate transportation activities may be obtained by writing to Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

(6) PROVISIONS OF AGREEMENT WITH ILLINOIS. (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to employees for personal services." However, the agreement does not extend to fees of lawyers, accountants and other self−employed persons deriving personal service income, to lottery winnings, or to persons identified in pars. (c) and (d).

(b) The Illinois Income Tax Act, Article 15, section 1501 (a) (20), defines a resident as *"an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year."* Because of the differences in the definition of resident for Illinois and Wisconsin purposes, a person domiciled in Wisconsin may simultaneously be a resident of Illinois, or a person may be domiciled in Illinois but not be a resident of Illinois.

Example: A person is domiciled in Wisconsin and takes a job in Illinois. The person does not intend to give up his or her Wisconsin domicile, but instead intends to return to Wisconsin once his or her job in Illinois is completed, in 2 to 3 years. Assume that Illinois considers the person's stay in Illinois as other than temporary or transitory. Therefore, the person is a resident of Illinois. The person is also a resident of Wisconsin because he or she is still domiciled in Wisconsin.

Note: The term "temporary or transitory" as used in the definition of an Illinois resident set forth in sub. (6) (b) is not defined in either Illinois law or regulations. Therefore, whether or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

(c) The reciprocity agreement with Illinois does not apply to any form of compensation described in par. (a) paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of this person is taxable by Wisconsin. However, a credit against Wisconsin income tax may be claimed for income tax paid to Illinois.

(d) An individual who is domiciled in Illinois but is not a resident of Illinois is subject to the Wisconsin income tax on income earned in Wisconsin.

(7) PROVISIONS OF AGREEMENT WITH MICHIGAN. The reciprocity agreement with Michigan is limited to income from "personal services, including salaries, wages or commissions." The agreement does not include income which Michigan considers to be "business income," such as fees of self−employed persons such as professionals.

(8) PROVISIONS OF AGREEMENTS WITH INDIANA AND KENTUCKY. The reciprocity agreements with Indiana and Kentucky are limited to wages, salaries and commissions.

(9) PROVISIONS OF AGREEMENT WITH MINNESOTA. (a) The reciprocity agreement with Minnesota is limited to income from personal services, including wages, salaries, tips, fees, commissions, bonuses, or similar earnings, provided the taxpayer personally renders the services. The reciprocity exclusion for personal service income does not apply where the personal or professional service income is earned as a part of a business operated by the taxpayer which has employees that do more than incidental duties for the business, or where there is the sale or delivery of goods which is more than an incidental part of the business. A partner's salary from a partnership where the selling of goods or services of the employees is more than incidental is subject to the reciprocity exclusion, but the partnership profits are not excluded. Distributions from a tax−sheltered annuity are also considered subject to the reciprocity exclusion.

(b) To qualify for the reciprocity exclusion, the Minnesota agreement requires the taxpayer to have a place of abode in Wisconsin, and the taxpayer is required to customarily return to it at least once a month.

(10) PROCEDURE FOR NONRESIDENTS. (a) Nonresident persons, other than residents of Minnesota, employed in Wisconsin and residing in a state with which Wisconsin has reciprocity shall file form W−220, "Nonresident Employee's Withholding Reciprocity Declaration," with their Wisconsin employers to be exempt from withholding of Wisconsin income taxes. Upon receipt of this form, Wisconsin employers may not withhold Wisconsin income tax from Wisconsin personal service income of the employee.

(b) Persons who are residents of Minnesota employed in Wisconsin shall file form W−222, "Statement of Minnesota Residency," with their Wisconsin employers to be exempt from withholding of Wisconsin income taxes. Form W−222 should be filed within 30 days of beginning employment in Wisconsin, changing to a new employer in Wisconsin, or establishing Minnesota residency while continuing to work in Wisconsin. Upon receipt of this form, Wisconsin employers may not withhold Wisconsin income tax from Wisconsin personal service income of the employee. To continue the exemption from year to year, a new form W−222 is required to be filed by January 31 of each year.

(c) The reciprocity exclusion does not apply to Wisconsin lottery winnings of nonresident persons.

(11) PROCEDURE FOR WISCONSIN RESIDENTS. (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity shall file form 1−ES, "Wisconsin Estimated Tax Voucher," with the Wisconsin department of revenue if their out−of−state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to make payments of estimated tax.

(b) Wisconsin residents may have their employers cease withholding the other state's income tax from their personal service income and may claim a refund from that state if income taxes are withheld from their personal service income after the effective date of a reciprocity agreement.

(c) Wisconsin residents earning personal service income in states where it is taxable by the other state may claim a credit on their Wisconsin income tax returns for net income taxes paid to these states.

Note: Refer to s. Tax 2.955 for information on the credit for tax paid to other states.

(12) DELINQUENT TAXES. Reciprocity agreements do not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.91 (7), Stats.

Note: Forms may be obtained from the department of revenue's web site at www.revenue.wi.gov.

Note: Out−of−state employers of Wisconsin residents wishing to withhold Wisconsin income tax from those employees' incomes may contact Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

Note: The State of Maryland enacted an income tax law, Ch. 1, Laws 1992, 1st Spec. Sess., on May 1, 1992, which resulted in the termination of reciprocity between Wisconsin and Maryland, effective for taxable years beginning after December 31, 1991. Prior to enactment of Maryland Ch. 1, Laws 1992, 1st Spec. Sess., Wisconsin practiced reciprocity with Maryland since prior to 1960, based on an informal agreement and acquiescence by Wisconsin and Maryland. Under the provisions of prior Maryland law and s. 71.05 (2), Stats., a Wisconsin resident could exclude from Maryland taxation, the income from salaries, wages, and compensation for personal services to the extent Wisconsin taxed the income of and accorded similar treatment to Maryland residents.

Note: Section Tax 2.02 interprets ss. 71.05 (2) and 71.64 (8), Stats.

History: Cr. Register, April 1978, No. 268, eff. 5−1−78; r. and recr., Register, March, 1991, No. 423, eff. 4−1−91; am. (3) (a) (intro.), 1., (4) (a) 1. to 4., (b) (intro.), (5) (a), (6) (b), (7) and (8), r. (4) (b) 1. and 2. and (9), renum. (10) to (13) to be (9) to (12) and am. (10) (a), (b), (11) (a) and (12), Register, April, 1993, No. 448, eff. 5−1−93.

Tax 2.03 Corporation returns. (1) FORMS. The department shall provide forms for filing franchise or income tax returns

and credit claims. Except as provided in s. Tax 2.09 or as otherwise approved by the department, tax returns and credit claims shall only be filed using the forms prescribed by the department.

(2) INFORMATION RETURNS. Information returns required of corporations are specified in s. Tax 2.04.

(3) FILING RETURNS. (a) Except as provided in par. (b) and s. Tax 2.67 (2) (b), all forms and information required to be filed or furnished by corporations shall be filed or furnished by providing the information requested on the appropriate forms, signing the returns or forms as appropriate and submitting them by one of the following means:

1. Filing them by the use of electronic means as prescribed by the department.

2. Mailing them to the address specified by the department on the form or in the instructions.

3. Delivering them to the department or to the destination that the department or the department of administration prescribes.

(b) 1. The department may require the franchise or income tax return of a corporation be filed electronically. The department shall provide notification at least 90 days prior to the due date of the first franchise or income tax return required to be filed electronically of the requirement to file electronically. This paragraph does not apply to combined returns subject to the electronic filing requirement in s. Tax 2.67 (2) (b).

2. The secretary of revenue may waive the requirement to file the franchise or income tax return of a corporation electronically when the secretary determines that the requirement causes an undue hardship, if the person does all of the following:

a. Requests the waiver in writing using Form EFT−102, Electronic Filing or Electronic Payment Waiver Request.

Note: Form EFT−102 should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8949, Madison, WI 53708−8949. Form EFT−102 may be obtained at http://www.revenue.wi.gov/html/formpub.html, under either "Tax Return Information" or "Tax Return Guidelines."

b. Clearly indicates why the requirement causes an undue hardship.

3. In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

a. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the Internet.

b. Any other factor that the secretary determines is pertinent.

(c) If the return is a combined return, an officer of the designated agent corporation shall sign the combined return. Signing a return includes the process of electronically signing the return. See ss. Tax 2.03, 2.60, and 2.67 for additional rules relating to combined returns.

Note: Section Tax 2.03 interprets ss. 71.24 (1), (1m), and (3), 71.255 (1) (b) and (7), 71.365 (4) and (5), 71.44 (1) (a) and (c) and (1m), and 71.80 (18), Stats.

History: 1−2−56; am. Register, September, 1964, No. 105, eff. 10−1−64; am. Register, March, 1966, No. 123, eff. 4−1−66, am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1977, No. 261, eff. 10−1−77; am. Register, September, 1983, No. 333, eff. 10−1−82; am. (1) (a), (c) and (d), renum. (1) (f) to (j) and (2) to be (1) (g) to (k) and (3) and am. (1) (h) and (k) and (3), cr. (1) (f), (l) to (p) and (2), Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. (1), am. (3), Register, June, 1990, No. 414, eff. 7−1−90; r. and recr., Register, May, 1995, No. 473, eff. 6−1−95; CR 02−033: r. (1) (j), renum. (1) (k) to (x) to be (1) (j) to (w), am. (1) (n), (o) and (s) and (4), cr. (1) (x) Register October 2002 No. 562, eff. 11−1−02; correction in (1) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register June 2006 No. 606; CR 10−095: r. and recr. (1), (3), r. (4) Register November 2010 No. 659, eff. 12−1−10.

Tax 2.04 Information returns and wage statements.

(1) DEFINITIONS. In this section:

(a) "Pass−through entity" has the meaning given in s. 71.775 (1) (b), Stats.

(b) "Person" means an individual, trust, estate, partnership, limited liability company, association or corporation.

(2) COMPENSATION FOR SERVICES. Under ss. 71.65 (2), 71.71 (2), 71.72 and 71.80 (20), Stats., all persons carrying on activities within this state, whether taxable or not under ch. 71, Stats., are required to file with the department, on federal form W−2 or 1099−R, or on Wisconsin form 9b or other forms approved by the department, a statement of certain payments made within the preceding calendar year. As provided in sub. (6), the department may require such statement be filed electronically. For individuals who are residents of Wisconsin, the statement shall set forth the salaries, wages, bonuses, commissions, annuities, pensions, retirement pay, fees, or other remuneration paid for services whether subject to withholding or not. For individuals who are nonresidents, the statement shall include all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, except retirement plan distributions identified in s. Tax 3.085 as being exempt from Wisconsin income tax. A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b. The following shall also apply with respect to compensation for services:

(a) All payments which are wages within the definition under s. 71.63 (6), Stats., regardless of amount, shall be reported on federal form W−2. As provided in sub. (6), the department may require such form be filed electronically.

(b) All payments which are not wages within the definition under s. 71.63 (6), Stats., but from which Wisconsin income tax has been withheld, shall be reported on federal form W−2 or 1099−R, as appropriate. As provided in sub. (6), the department may require such form be filed electronically.

(c) Payments of $600 or more which are not wages within the definition under s. 71.63 (6), Stats., and from which no Wisconsin income tax has been withheld, shall be reported on Wisconsin form 9b or federal form 1099. As provided in sub. (6), the department may require such form be filed electronically. However, if the payment was to an employee for whom a form W−2 is required under par. (a) or (b), the payment, regardless of amount, shall be included on form W−2.

(d) All statements required shall be filed with the department by January 31. Form WT−7, "Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages," shall accompany the statements submitted, if the employer is required to be registered to withhold Wisconsin income taxes from employees' wages.

Note: Forms W−2, 1099−R, 9b, and 1099 that are not required to be filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to the department. Forms 9b or substitute forms filed on paper may be mailed to Wisconsin Department of Revenue, PO Box 8932, Madison, WI 53708−8932. Other forms may be mailed to Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708−8920.

(de) The department may require Form WT−7 be filed electronically. The department shall provide notification at least 90 days prior to the due date of the first Form WT−7 required to be filed electronically of the requirement to file electronically.

(dm) The secretary of revenue may waive the requirement for a person to file Form WT−7 electronically when the secretary determines that the requirement causes an undue hardship, if the person does all of the following:

1. Requests the waiver in writing using Form EFT−102, Electronic Filing or Electronic Payment Waiver Request.

Note: Form EFT−102 should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8949, Madison, WI 53708−8949. Form EFT−102 may be obtained at http://www.revenue.wi.gov/html/formpub.html, under either "Tax Return Information" or "Tax Return Guidelines."

2. Clearly indicates why the requirement causes an undue hardship.

(ds) In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the Internet.

2. Any other factor that the secretary determines is pertinent.

(e) Sections 71.65 (5) and 71.73 (2), Stats., permit a thirty−day extension of time to file the statements described in this subsection. A written request may be mailed or faxed to the department and to be effective shall be postmarked or faxed on or before the due date of the statements.

Note: Written requests for extensions may be mailed to Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8902, Madison, WI 53708−8902 or faxed to (608) 264−6884.

(3) RENTS AND ROYALTIES. Under ss. 71.70 and 71.80 (20), Stats., except as provided in par. (d), all persons making payments of rents and royalties of $600 or more to individuals who are residents of Wisconsin, regardless of where the property is located, and to nonresident individuals if the property is located in Wisconsin, shall file with the department, on form 9b or an approved substitute form, a statement of payments made in the preceding calendar year. As provided in sub. (6), the department may require such statement be filed electronically. The following shall also apply with respect to rents and royalties:

(a) A copy of federal form 1099−MISC may be filed in lieu of Wisconsin form 9b.

(b) Corporations shall file the statement with the department by March 15 and payers other than corporations shall file by April 15.

Note: Forms not required to be filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to Wisconsin Department of Revenue, PO Box 8932, Madison, WI 53708−8932.

(c) No extension of time for filing forms 9b or substitute forms to report payments of rents or royalties may be allowed.

(d) The requirement to file form 9b or a substitute form does not apply to persons other than corporations who do not deduct the payments in determining Wisconsin taxable income.

(4) GAMBLING WINNINGS. (a) Under s. 71.67 (4) (c), Stats., the administrator of the gaming commission's lottery division shall file with the department a statement of winnings for each lottery prize of $2,000 or more paid in the preceding calendar year.

(b) Under s. 71.67 (5) (d), Stats., all persons licensed to sponsor and manage races under s. 562.05 (1) (b) or (c), Stats., shall file with the department a statement of winnings for each pari−mutuel wager payment of more than $1,000 paid in the preceding calendar year.

(c) The winnings required to be reported in pars. (a) and (b) shall be reported on federal form W−2G or on an approved substitute form. As provided in sub. (6), the department may require such form be filed electronically.

(d) The statements required in pars. (a) and (b) shall be filed by January 31.

Note: Forms W−2G or substitute forms not required to be filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708−8920.

(e) No extension of time for filing forms W−2G or substitute forms to report payments of lottery prize winnings or pari−mutuel wager winnings may be allowed.

(5) DISALLOWANCE OF DEDUCTIONS. Items to be reported on forms W−2, 1099−R, 9b or substitute forms may be disallowed as deductions from gross income if not properly reported.

(6) ELECTRONIC FILING REQUIREMENT. (a) Under s. 71.80 (20), Stats., if a person is required to file 50 or more wage statements or 50 or more of any one type of information return with the department, the person shall file the statements or the returns electronically, by means prescribed by the department.

(b) If a payer participates in the combined federal/state filing program for forms 1099, the department shall waive the requirement to file those forms 1099 or comparable information returns electronically.

(c) The secretary of revenue may waive the requirement to file wage statements or information returns electronically when the secretary determines that the requirement causes an undue hardship, if the payer does all of the following:

1. Requests the waiver in writing at least 30 days before the due date for filing the wage statements or information returns using Form EFT−102, Electronic Filing or Electronic Payment Waiver Request.

Note: Form EFT−102 should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8949, Madison, WI 53708−8949. Form EFT−102 may be obtained at http://www.revenue.wi.gov/html/formpub.html, under either "Tax Return Information" or "Tax Return Guidelines."

2. Clearly indicates why the requirement causes an undue hardship.

(d) In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the payer from filing electronically.

Example: The payer does not have access to a computer that is connected to the Internet.

2. Any other factor that the secretary determines is pertinent.

(7) COMBINED FILING PROGRAM. Payers who participate in the combined federal/state filing program with the internal revenue service and report to the internal revenue service items which are required to be filed on Wisconsin form 9b or a substitute form, are not required to file separate information returns for those items with the department of revenue.

Note: Under the combined federal/state filing program, the internal revenue service will forward information from the information returns to the department of revenue.

(8) ELECTRONIC FILING REQUIREMENT FOR TAXES WITHHELD BY PASS−THROUGH ENTITIES. (a) Except as provided in par. (b), the department may require a pass−through entity to electronically file its return for nonresident withholding taxes under s. 71.775, Stats.

(b) The secretary of revenue may waive the requirement to electronically file the return under par. (a) when the secretary determines that the requirement causes an undue hardship, if the pass−through entity does all of the following:

1. Requests the waiver in writing using Form EFT−102, Electronic Filing or Electronic Payment Waiver Request.

Note: Form EFT−102 should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8949, Madison, WI 53708−8949. Form EFT−102 may be obtained at http://www.revenue.wi.gov/html/formpub.html, under either "Tax Return Information" or "Tax Return Guidelines."

2. Clearly indicates why the requirement causes an undue hardship.

(c) In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the pass−through entity from filing electronically.

Example: The pass−through entity does not have access to a computer that is connected to the Internet.

2. Any other factor that the secretary determines is pertinent.

Note: The requirement to file Wisconsin wage statements or information returns electronically for persons required to file 50 or more wage statements or 50 or more of any one type of information return with the department is effective January 1, 2010, as a result of the repeal and recreation of s. 71.80 (20), Stats., by 2009 Wis. Act 28.

Note: The requirement of payers to report lottery prize winnings and pari−mutuel wager winnings to the department is effective with winnings received by a payee on or after August 12, 1993, as a result of the creation of s. 71.67 (4) (c) and (5) (d), Stats., by 1993 Wis. Act 16.

Note: Section Tax 2.04 interprets ss. 71.26 (3) (e), 71.63 (3m), 71.65 (2), 71.67 (4) and (5), 71.70, 71.71 (2), 71.72, 71.738 (2m), 71.74 (4) and 71.80 (20), Stats.

History: 1−2−56; am. Register, September, 1964, No. 105, eff. 10−1−64, am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1977, No. 261, eff. 10−1−77; am. (1), (3), (4) and (6), cr. (7), Register, September, 1983, No. 333, eff. 10−1−83; r. and recr. Register, June, 1990, No. 414, eff. 7−1−90; r. and recr., Register, May, 1995, No. 473, eff. 6−1−95; emerg. am. (1) and (2) (d), cr. (1) (a) and (b), (2) (de), (dm) and (ds) and (8), eff. 12−28−05; CR 06−001: am. (1) and (2) (d), cr. (1) (a) and (b), (2) (de), (dm) and (ds) and (8), Register June 2006 No. 606, eff. 7−1−06; CR 10−095: am. (2) (intro.), (a) to (de), (dm) (intro.), 1., (ds) (intro.), 1., (e), (3) (intro.),

(b), (4) (c), (d), (8) (a), (b) (intro.), 1., (c) (intro.), 1., r. and recr. (6) Register November 2010 No. 659, eff. 12−1−10.

Tax 2.05 Transfers of capital stock, information return. (1) All corporations doing business within this state, whether subject to the franchise or income tax or not, shall file with the department of revenue on or before March 15 of each year reports of transfers of capital stock, including disposals, by individuals who were residents of Wisconsin during the preceding calendar year.

(2) Transfers of capital stock shall be reported on Wisconsin form 8 or on other substitute forms approved by the department and shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708.

Note: The filing requirement prescribed in s. Tax 2.05 was repealed by 2013 Wis. Act 54.

History: 1−2−56; am. Register, September, 1964, No. 105, eff. 10−1−64; am. Register, March, 1966, No. 123, eff. 4−1−66, am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1983, No. 333, eff. 10−1−83; am. Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. Register, February, 1990, No. 410, eff. 3−1−90.

Tax 2.07 Earned income tax credit. (1) CRITERIA FOR PROVIDING INFORMATION. The department has established the following criteria regarding the dissemination of information to the public concerning the federal and Wisconsin earned income tax credits:

(a) Disseminate information to potential claimants in the most cost−effective manner possible.

(b) Disseminate information to the public through multiple channels to increase the probability that potential claimants will become aware of the earned income tax credits.

(c) Utilize volunteer tax preparers and community−based organizations that have personal contact with potential claimants, to provide earned income tax credit information and assistance.

(d) Clarify the relationship between federal and Wisconsin earned income tax credits and coordinate outreach efforts with the internal revenue service, or "IRS."

(e) Provide sufficient information to allow potential claimants to self−evaluate their eligibility for the earned income tax credits.

(f) Provide convenient ways for potential claimants to obtain additional information, assistance and forms.

(2) METHODS OF PROVIDING INFORMATION. Methods the department uses to disseminate information to the public concerning the federal and Wisconsin earned income tax credits include the following:

(a) Produce an informational flyer, distribute copies through appropriate organizations having regular contact with potential earned income tax credit claimants throughout the state, and have additional copies available for distribution upon request.

Example: Copies of the informational flyer may be distributed to members of the Wisconsin legislature or to various sites such as municipal buildings, community agencies, or job service centers.

(b) In conjunction with the IRS, when training volunteers who provide free tax−filing assistance throughout Wisconsin, include training to identify potential earned income tax credit claimants and to assist them in claiming both the federal and Wisconsin credits.

(c) Highlight the Wisconsin earned income tax credit in the Wisconsin individual income tax and homestead credit booklets.

(d) Mail camera−ready copies of earned income tax credit informational flyers to large Wisconsin employers, and request them to make and distribute copies of the flyer to their employees as appropriate.

(e) Work with the IRS in providing joint efforts to publicize both the federal and Wisconsin earned income tax credits.

Note: For the 1993 tax−filing season, the department and the IRS jointly utilized the IRS toll−free telephone information line, to provide callers with information about both the federal and Wisconsin earned income tax credits.

(f) Annually produce a report summarizing the level of participation in and level of benefits provided by the earned income tax credit program.

(g) Work with other state agencies, public utilities, and other organizations to distribute information about the federal and Wisconsin earned income tax credit programs.

Note: The federal earned income tax credit, provided under section 32 of the Internal Revenue Code, is available to eligible individuals and married couples filing a joint income tax return, who have at least one qualifying child living with them. The federal credit consists of three parts, as follows:

A basic credit, computed based on the amount of adjusted gross income or earned income, and whether the individual or couple had one qualifying child or two or more qualifying children.

A health insurance credit, computed based on the amount of adjusted gross income or earned income, and the amount paid for health insurance that covered at least one qualifying child.

An extra credit for a child born during the taxable year, computed based on adjusted gross income or earned income.

Note: The Wisconsin earned income tax credit is available under s. 71.07 (9e), Stats., to full−year Wisconsin residents who are eligible to claim the federal earned income tax credit. The Wisconsin credit is computed as a percentage of the federal basic credit, dependent upon whether the individual or couple have one qualifying child, two qualifying children, or three or more qualifying children.

Note: Section Tax 2.07 interprets ss. 71.07 (9e) and 73.03 (48), Stats.

History: Cr. Register, November, 1993, No. 455, eff. 12−1−93.

Tax 2.08 Returns of persons other than corporations. (1) FORMS. The department shall provide official forms for filing income tax returns and credit claims. Except as provided in s. Tax 2.09 or otherwise approved by the department, tax returns and credit claims may only be filed using these official forms.

(2) INFORMATION RETURNS. Information returns required of persons other than corporations are specified in s. Tax 2.04.

(3) FILING RETURNS. (a) All forms and information required to be filed or furnished by persons other than corporations shall be filed or furnished by providing the information requested on the appropriate forms, signing the returns or forms as appropriate and submitting them by one of the following means:

1. Mailing them to the address specified by the department on the form or in the instructions.

2. Delivering them to the department or to the destination that the department or the department of administration prescribes.

3. Filing them by the use of electronic means as prescribed by the department.

Note: The destination for delivering forms that the department or the department of administration prescribes and the type of electronic means the department prescribes for filing forms shall be stated on the forms or in the instructions, on the department's Internet web site at www.revenue.wi.gov or in the department's quarterly newsletter titled "Wisconsin Tax Bulletin" or other written material.

(b) Except as provided in pars. (c) and (d), the department may require a tax return preparer or tax preparation firm that prepared the threshold number, as described in subds. 1. to 3., of Wisconsin individual income tax returns for the prior taxable year, to file individual income tax returns prepared by that tax return preparer or tax preparation firm electronically. The department shall notify tax return preparers and tax preparation firms by October 1 of any year of the requirement to file electronically. The requirement to file returns electronically shall be effective beginning January 1 of the year following notification. The threshold number of returns prepared in the prior taxable year is as follows:

1. For taxable year 2002, 200 or more returns.

2. For taxable years 2003 through 2009, 100 or more returns.

3. For taxable year 2010 and thereafter, 50 or more returns.

(c) Paragraph (b) does not apply to a return on which the taxpayer has indicated that the taxpayer did not want the return filed by electronic means.

(ce) Except as provided in par. (d), the department may require a composite individual income tax return filed by a pass−through entity on behalf of its nonresident partners, members, shareholders, or beneficiaries be filed electronically. The department shall provide notification at least 90 days prior to the due date of the first

composite income tax return required to be filed electronically of the requirement to file electronically.

(cm) Except as provided in par. (d), the department may require the income tax return or request for a closing certificate of a trust or estate be filed electronically. The department shall provide notification at least 90 days prior to the due date of the first income tax return or closing certificate required to be filed electronically of the requirement to file electronically.

(cs) Except as provided in par. (d), the department may require the income tax return of a partnership be filed electronically. The department shall provide notification at least 90 days prior to the due date of the first income tax return required to be filed electronically of the requirement to file electronically.

(d) The secretary of revenue may waive the requirement to file electronically when the secretary determines that the requirement causes an undue hardship, if the person otherwise required to file electronically does all of the following:

1. Requests the waiver in writing using Form EFT−102, Electronic Filing or Electronic Payment Waiver Request.

Note: Form EFT−102 should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, PO Box 8949, Madison WI 53708−8949. Form EFT−102 may be obtained at http://www.revenue.wi.gov/html/formpub.html, under either "Tax Return Information" or "Tax Return Guidelines."

2. Clearly indicates why the requirement causes an undue hardship.

(e) In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the Internet.

2. Any other factor that the secretary determines is pertinent.

Note: Forms not required to be filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to the address specified on the form or in the instructions.

Note: Section Tax 2.08 interprets ss. 71.01 (5g), 71.03 (2), 71.20 (1), 71.55 (3) and 71.80 (18), Stats.

History: 1−2−56; am. Register, February, 1958, No. 26, eff. 3−1−58; am. Register, February, 1960, No. 50, eff. 3−1−60; am. Register, September, 1964, No. 105, eff. 10−1−64; r. and recr., Register, March, 1966, No. 123, eff. 4−1−66; am. Register, February, 1975, No. 230, eff. 3−1−75; am. (1), Register, November, 1977, No. 263, eff. 12−1−77; am. (3), Register, February, 1978, No. 266, eff. 3−1−78; am. (1) (a) and (b), (2) and (3), renum. (1) (c) and (d) to be (1) (k) and (l) and am., cr. (1) (c) to (j), Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. (1), am. (3) (intro.), r. (3) (a) to (c), Register, June, 1990, No. 414, eff. 7−1−90; r. and recr. Register, May, 1995, No. 473, eff. 6−1−95; CR 01−143: am. (1) (a) 2., 3. and (b) 3., renum. (1) (a) 4. to 15., 17. to 20., 21., and 22. to 28., (b) 5., 6. and (3) to be (1) (a) 5., 6., 9. to 18., 19. to 22., 24., and 26. to 32., (b) 7., 8. and (3) (a) (intro.) and am. (1) (a) 6., 15. and 18., (b) 7., and (3) (a) (intro.), cr. (1) (a) 4., 7., 8., 23., 25., (b) 5. and 6., (3) (a) 1. to 3. and (b) to (e), r. (1) (a) 16. Register July 2002 No. 559, eff. 8−1−02; CR 10−095: r. and recr. (1), am. (3) (b) (intro.), 2., (3) (d) (intro.), 1., (e) 1., cr. (3) (b) 3., (ce), (cm), (cs) Register November 2010 No. 659, eff. 12−1−10.

Tax 2.085 Claim for refund on behalf of a deceased taxpayer. (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the claimant is unable to cash the refund check, the claimant shall file a completed form 804, entitled "Claim for Decedent's Wisconsin Income Tax Refund."

(2) If a refund is claimed on a joint Wisconsin income tax return of the surviving spouse and the decedent, the surviving spouse shall write "filing as surviving spouse" in the signature area of the return. If someone other than the surviving spouse is the personal representative, the personal representative shall also sign the joint return.

(3) Forms required to be filed under sub. (1) shall be mailed to Wisconsin Department of Revenue, Tax Operations Bureau — Mail Stop 3−164, P.O. Box 8903, Madison, WI 53708−8903.

Note: Section Tax 2.085 interprets s. 71.75 (10), Stats.

History: Cr. Register, October, 1976, No. 250, eff. 11−1−76; am. (1), Register, November, 1978, No. 275, eff. 12−1−78; am. (2), Register, September, 1983, No. 333, eff. 10−1−83; renum. (2) to be (3), cr. (2), Register, February, 1990, No. 410, eff. 3−1−90; CR 13−012: am. (1) to (3) Register August 2013 No. 692, eff. 9−1−13.

Tax 2.09 Reproduction of franchise or income tax forms. (1) GENERAL. Subject to the provisions of this section, the official Wisconsin franchise or income tax forms required to be filed with the department may be reproduced and the reproductions may be filed in lieu of the corresponding official forms. Any reproduction which varies from the official version in any particular way, except as authorized in this section, shall be submitted to the department for approval before it is used. The department may reject any reproduction which is in whole or in part illegible or which is of a format that has not been approved by the department.

(2) SPECIFICATIONS. The following specifications shall apply:

(a) Printing of reproductions shall be by conventional printing processes, photocopying, computer graphics or similar reproduction processes and shall duplicate the font sizes, graphics and format of the official form. Reproductions may be printed on one side or both sides of the paper.

(b) Reproductions of optical character reader−scannable, or OCR−scannable, documents shall bear an OCR−scannable line as prescribed for the specific document type. Photocopies of OCR−scannable forms may not be filed.

(c) The reproductions shall be on paper of substantially the same weight and texture, and of quality at least as good as that used in the official forms.

(d) In the reproduction of tax forms, official forms printed on colored paper may be reproduced on white paper, and black ink may be substituted for colored ink.

(e) The size of the reproduction, both as to dimensions of the paper and image reproduced on it, shall be the same as that of the official form, except that full−page official forms which are other than 8½ inches by 11 inches in size may be reproduced on 8½ inch by 11 inch paper.

(f) Except for returns executed by fiduciaries as provided in sub. (3) or returns filed electronically, all signatures required on returns which are filed with the department shall be original, affixed subsequent to the reproduction process.

(3) FIDUCIARIES. A fiduciary or the fiduciary's agent may use a facsimile signature in filing a tax return on form 2, subject to the following conditions:

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

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

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

Note: Written requests for approval of substitute forms should be mailed to Wisconsin Department of Revenue, Processing Forms Approval, P.O. Box 8903, Madison, WI 53708−8903.

Note: Section Tax 2.09 interprets ss. 71.03 (6) (a), 71.20 (1), 71.24 (1) and 71.44 (1) (a), Stats.

History: 1−2−56; am. Register, February, 1958, No. 26, eff. 3−1−58; am. Register, February, 1960, No. 50, eff. 3−1−60; am. (2), Register, March, 1966, No. 123, eff. 4−1−66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9−1−74; am. (intro.), (2), (6) (intro.) and (a), Register, November, 1977, No. 263, eff. 12−1−77; am. (3), Register, September, 1983, No. 333, eff. 10−1−83; correction in (5) made under s. 13.93 (2m) (b) 4., Stats., Register, July, 1987, No. 379; r. and recr. Register, May, 1996, No. 485, eff. 6−1−96; CR 10−095: am. (1) Register November 2010 No. 659, eff. 12−1−10.

Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (1) INDIVIDUALS AND FIDUCIARIES. At the time of filing Wisconsin income tax returns by individuals and fiduciaries, a complete copy of the federal income tax return for the same taxable year, including all schedules, statements, documents and

computations which affect the computation of Wisconsin income, credits or penalties, shall be included and filed with the Wisconsin return. Copies of the short form federal returns 1040A and 1040EZ are not required to be filed if a Wisconsin form 1A or WI−Z is being filed for the same taxable year. If the federal form is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designated by the electronic filer shall be included and filed with the Wisconsin return.

(2) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES TREATED AS PARTNERSHIPS. (a) Except as provided in par. (b), at the time of filing Wisconsin income tax returns by partnerships and limited liability companies treated as partnerships under s. 71.20 (1), Stats., a complete copy of the federal income tax return for the same taxable year, including all schedules, statements, documents and computations which affect the computation of Wisconsin income, deductions and credits, shall be included and filed with the Wisconsin return. If the federal form is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designated by the electronic filer shall be included and filed with the Wisconsin return.

(b) Copies of the federal schedules K−1 are not required to be filed for those partners or members for whom a Wisconsin schedule 3K−1 is being filed for the same taxable year. A Wisconsin schedule 3K−1 shall be filed in lieu of federal schedule K−1 for a partner or member if any of the following applies:

1. The computation of the Wisconsin income or deductions differs from the federal amount.

2. The partner or member is a nonresident of Wisconsin or part−year resident of Wisconsin and the partnership or limited liability company has activities within and without Wisconsin.

3. The partnership or limited liability company calculates any Wisconsin income tax credits.

Note: Section Tax 2.10 interprets ss. 71.03 (5) and 71.20 (1), Stats.

History: Register, December, 1965, No. 120, eff. 1−1−66; am. Register, June, 1990, No. 414, eff. 7−1−90; r. and recr. Register, May, 1995, No. 473, eff. 6−1−95.

Tax 2.105 Notice by taxpayer of federal audit adjustments and amended returns. (1) PURPOSE. This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin franchise or income tax and economic development surcharge purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(2) DEFINITION. In this section, "taxpayer" includes individuals, estates, trusts, partnerships, limited liability companies and corporations. For combined groups, "taxpayer" includes the designated agent of a combined group under s. 71.255 (1) (a), Stats., if any member of the combined group was the subject of a federal audit adjustment or amended return.

(3) GENERAL. (a) Under ss. 71.76 and 77.96 (4), Stats., a taxpayer meeting the conditions described in sub. (4) shall report to the department changes or corrections made to a tax return by the internal revenue service, or file with the department amended Wisconsin franchise or income tax returns or amended economic development surcharge returns reporting any information contained in amended returns filed 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. If such changes, corrections, or amended returns relate to income, credits claimed or carried forward, net business losses or net business losses carried forward, capital losses or capital losses carried forward, or any other item that is required to be included in a combined report under s. 71.255 (1) (b), Stats., the designated agent of the combined group shall report such changes or corrections or file amended combined returns.

Note: See s. Tax 2.65 for additional rules relating to the designated agent of a combined group.

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within 90 days of the date the department receives the taxpayer's report of federal adjustments or amended return described in par. (a). The 90−day limitation does not apply to instances where the taxpayer files an incorrect franchise or income tax return or economic development surcharge return with intent to defeat or evade the franchise or income tax or economic development surcharge assessment.

(4) TAXPAYER REQUIRED TO REPORT. (a) *Federal adjustments.* If the federal net income tax payable, a credit claimed or carried forward, a net operating loss carried forward or a capital loss carried forward on a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall report the adjustments to the department within 90 days after they become final. If such adjustments relate to income, credits claimed or carried forward, net business losses or net business losses carried forward, capital losses or capital losses carried forward, or any other item that is required to be included in a combined report under s. 71.255 (1) (b), Stats., the designated agent of the combined group shall report such adjustments. The following shall also apply with respect to federal adjustments:

1. 'Finality of federal adjustments.' For the purpose of determining when the federal adjustments become final, the following shall be deemed a final determination:

a. Payment of any additional tax, not the subject of any other final determination described in subd. 1. b., c., d. or e.

b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment. Federal form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," or 870−AD, "Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment," are the forms prescribed for this purpose.

c. Expiration of the 90−day time period, or the 150−day period in the case of a notice addressed to a person outside the United States, within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within that time.

d. A closing agreement entered into with the internal revenue service under section 7121 of the Internal Revenue Code.

e. A decision by the United States tax court or a judgment, decree or other order by a court of competent jurisdiction which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. A court of competent jurisdiction includes a United States district court, a court of appeals, a court of claims or the United States supreme court.

f. For combined groups, the "finality of federal adjustments" is determined on the basis of that particular combined group member the adjustments of which ultimately affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit, credit carryforward, net business loss, net business loss carryforward, capital loss or capital loss carried forward of the combined group to which that member belongs.

Note: Decisions of the U.S. tax court and other courts ordinarily become final as follows:

a. If no appeal is made of a U.S. tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable cases involving deficiencies of $10,000 or less heard by the U.S. tax court under section 7463 of the Internal Revenue Code become final 90 days after they are entered.

b. Appealed decisions of the U.S. tax court become final as set forth in section 7481 of the Internal Revenue Code.

c. A decision of a U.S. district court normally becomes final if not appealed to the U.S. court of appeals within 60 days of the judgment, decree or order.

d. A decision of the U.S. court of claims or the U.S. court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the U.S. supreme court within 90 days of the judgment or decree.

e. A decision of the U.S. supreme court is normally final upon the expiration of a period of 25 days from the date the decision is rendered, if a motion for reconsideration or rehearing is not filed within that time.

2. 'Information to report to department.' The taxpayer shall submit to the department a copy of the final federal audit report issued by the internal revenue service together with any other documents or schedules necessary to inform the department of the adjustments as finally determined. The report shall be included with an amended Wisconsin return if a Wisconsin refund is being claimed and may be, but is not required to be, included with an amended return if additional Wisconsin tax or economic development surcharge is due or if there is no change in tax or economic development surcharge.

3. 'Agreement with adjustments.' A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin franchise or income tax or economic development surcharge purposes unless a statement is included with the report to the department stating why the taxpayer believes the adjustments are incorrect.

(b) *Amended returns.* If a taxpayer files an amended federal tax return and the changes on the amended federal tax return affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall file with the department an amended Wisconsin return reflecting the same changes. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. If the changes described in this paragraph relate to income, credits claimed or carried forward, net business losses or net business losses carried forward, capital losses or capital losses carried forward, or any other item that is required to be included in a combined report under s. 71.255 (1) (b), Stats., the designated agent of the combined group shall file an amended combined return. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

(c) *Where and how to submit report or amended return.* An amended Wisconsin return or a taxpayer's report of federal adjustments submitted with an amended Wisconsin return shall be filed in accordance with the provisions of s. Tax 2.12 (5) and (6). A taxpayer's report of federal adjustments submitted to the department without an amended return shall be identified as reflecting federal adjustments made by the internal revenue service and shall be mailed to Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708−8906. The report submitted without an amended return may not be made a part of or attached to any Wisconsin tax return.

(5) ASSESSMENTS AND REFUNDS BY DEPARTMENT. If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after the adjustments become final or after an amended return is filed with the internal revenue service or another state, the department may make an assessment or issue a refund relating to the report or amended return as follows:

(a) *Assessments.* Under s. 71.77 (2), Stats., the department may make an assessment within 4 years from the date the original Wisconsin franchise or income tax return was filed. However, under s. 71.77 (7) (a), Stats., if the taxpayer reported less than 75% of the correct net income and the additional tax for the year exceeds $200 for a joint return, or $100 for a return other than a joint return, an assessment may be made within 6 years after the return was filed. If an assessment relates to a federal adjustment that affects a combined report, the department may issue such assessment to either the corporation whose income was adjusted for federal purposes or to the designated agent of the combined group, or both.

Note: See s. Tax 2.67 (4) for rules relating to the statute of limitations as applied to combined returns.

(b) *Refunds.* Under s. 71.75 (2), Stats., the department may issue a refund if an amended return is filed within 4 years of the unextended date the original Wisconsin franchise or income tax return was due.

(c) *Exceptions.* 1. An assessment may be made later than the 4− and 6−year periods provided in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report of federal adjustments or an amended Wisconsin return. However, the assessment made after the expiration of the 4− and 6−year periods shall only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department after the expiration of the 4−year period for filing an amended Wisconsin return as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax or economic development surcharge liability, may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustments.

3. The 90−day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of the 90 days.

4. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund shall only relate to those federal adjustments or the changes on the amended return. Notice of the assessment or refund shall be given to the taxpayer within 90 days of the date the department received the report of federal adjustments or an amended Wisconsin return from the taxpayer.

Examples: 1) Federal adjustments were made to an individual's 1989 calendar−year basis federal income tax return; the adjustments became final on June 1, 1994. On August 15, 1994, within 90 days after the adjustments became final, the department received the taxpayer's report of the adjustments. Although the 4−year period provided by s. 71.77 (2), Stats., for making adjustments to the 1989 Wisconsin return expired on April 15, 1994, the department had until November 13, 1994, 90 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) An individual filed an amended 1993 calendar−year basis New York return on June 1, 1994. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 12, 1994. Under the 4−year assessment period in s. 71.77 (2), Stats., the department has 4 years from April 15, 1994, the due date of the 1993 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(6) TAXPAYER'S FAILURE TO REPORT FEDERAL ADJUSTMENTS OR FILE AMENDED WISCONSIN RETURNS. (a) *Adjustments and amended returns relating to taxable year 1987 and thereafter.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return, relating to the taxable year 1987 and thereafter, within the 90−day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax or economic development surcharge relating to the adjustments or amended return within 4 years after discovery by the department.

Example: An individual taxpayer filed a 1993 calendar−year basis Wisconsin income tax return on April 15, 1994. The internal revenue service made adjustments to the 1993 federal income tax return which the taxpayer did not report to the department within 90 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on May 1, 1996. The department may issue an assessment for the adjustments any time on or before May 1, 2000.

(b) *Adjustments and amended returns relating to 1986 and prior taxable years.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return

which related to 1986 or prior taxable years within the 90−day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed or within 2 years after the date when the federal determination of tax becomes final, whichever is later. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar−year basis, is considered as filed on the last date prescribed by law under s. 71.77 (8), Stats.

Example: An individual taxpayer filed a 1986 income tax return on April 15, 1987. The taxpayer filed an amended return with Ohio on January 1, 1988. The result of the amended return was a reduction in the net tax paid to Ohio on income also reported to Wisconsin. The taxpayer did not notify the department within 90 days of filing the amended Ohio return. The department has until April 15, 1997, to issue an assessment for the Ohio amended return's effect on the Wisconsin credit for taxes paid to other states.

Note: Section 71.76, 1989 Stats., was amended by 1991 Wis. Act 39, effective for federal changes or corrections to a federal income tax return that became final on or after August 15, 1991, and for amended federal and other state returns filed on or after August 15, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, a taxpayer was required to report internal revenue service adjustments to taxable income that affected the income reportable or tax payable to Wisconsin, and to file an amended Wisconsin return if information contained on an amended federal or other state tax return affected income reportable or tax payable to Wisconsin.

Note: Section Tax 2.105 interprets ss. 71.255 (1) and (7), 71.75 (2), 71.76, 71.77 (2) and (7) and 77.96 (4), Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; correction in (3) (a) 1. a. made under s. 13.93 (2m) (b) 4., Stats., Register, July, 1987, No. 379; r. (2), (4) and (5) (d); renum. (1), (3), (5) (a) to (c) and (6) to be (2), (4), (6) and (7) and am. (2), (4) (a) 1.b., c. and e, (b), (6) (a) to (c) and (7), cr. (1), (3) and (5), Register, February, 1990, No. 410, eff. 3−1−90; r. and recr. Register, May, 1996, No. 485, eff. 6−1−96; CR 10−095: am. (1), (2), (3), (4) (a) (intro.), 2., 3., (b), (5) (a), (c) 2., (6) (a), cr. (4) (a) 1. f. Register November 2010 No. 659, eff. 12−1−10; CR 12−011: am. (1), (3) (a), (b), (4) (a) (intro.), 1. f., 2., 3., (b), (5) (c) 2., (6) (a) Register July 2012 No. 679, eff. 8−1−12.

Tax 2.11 Credit for sales and use tax paid on fuel and electricity. (1) DEFINITIONS. In this section:

(a) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step−by−step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities. However, fuel and electricity used directly in manufacturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

(b) "Manufacturing" has the meaning specified in s. 77.51 (7h) (a), Stats., by virtue of s. 71.28 (3) (a) 1., Stats.

(c) "Paid" has the meaning specified in s. 71.22 (8), Stats.

(d) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. 71.28 (3) (a) 2., Stats.

(2) CREDIT ALLOWABLE. (a) Under s. 71.28 (3), Stats., a corporation may reduce its income or franchise tax liability for the year by an amount equal to the Wisconsin state and county sales and use taxes it has paid on fuel and electricity consumed in manufacturing personal property within Wisconsin.

(b) If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(c) The credit is allowable for all Wisconsin and Wisconsin county sales and use taxes paid during the taxable year on fuel or electricity destined for manufacturing purposes, regardless of when the fuel or electricity was or is to be consumed.

Note: Refer to *Streets and Roads Construction Corporation v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. I−6239, July 28, 1981, and *Fort Howard Paper Company v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. I−8266, November 1, 1983.

(3) CARRY FORWARD OF UNUSED CREDIT. (a) If a corporation is entitled to a sales and use tax credit under s. 71.28 (3), Stats., the 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 each succeeding year up to a total of 15 years until the credit has been completely offset.

Note: The carry forward of the sales tax credit was increased from 5 to 15 years by 1985 Wis. Act 29, and the 15 year carry forward first applies to credits carried forward from the 1980 taxable year.

(b) The sales tax credit shall first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied.

(4) CREDIT INCLUDABLE IN NET INCOME. Under s. 71.26 (2), Stats., the credit computed for sales and use taxes paid on fuel and electricity consumed in manufacturing under s. 71.28 (3), Stats., shall be included in net income for the tax year. Except for tax−option corporations, the entire credit computed for the tax year is includable in net income, even though the credit is not entirely used or no income or franchise tax liability exists. Under s. 71.34 (1k) (e), Stats., tax−option corporations shall only include in net income the amount of credit computed under s. 71.28 (3), Stats., and used to offset the income or franchise tax liability of the current year.

Note: Section Tax 2.11 interprets ss. 71.26 (2), 71.28 (3) and 71.34 (1k) (e), Stats.

History: Cr. Register, February, 1978, No. 266, eff. 3−1−78; am. (2) (a) r. (1) (d), (2) (b) and (3) (a), renum. (3) (b) and (c) to be (3) (a) and (b), cr. (4), Register, September, 1983, No. 333, eff. 10−1−83; am. (1) (intro.) and (3), renum. (1) (a) to (c) to be (1) (d), (b) and (a) and am., cr. (1) (c), r. and recr. (2) and (4), Register, February, 1990, No. 410, eff. 3−1−90; corrections in (1) (b) and (4) made under s. 13.92 (4) (b) 7., Stats., Register April 2010 No. 652.

Tax 2.12 Claims for refund and other amended returns. (1) SCOPE. This section applies to amended Wisconsin franchise or income tax returns, including amended combined returns, amended partnership returns, amended economic development surcharge returns and amended farmland preservation credit and homestead credit claims.

(2) DEFINITIONS. In this section:

(a) "Claim for refund" means an amended Wisconsin return or credit claim as described in sub. (1), on which a refund is requested.

(b) "Timely filed," in the case of an amended return or credit claim, means either of the following:

1. If the amended return or credit claim is mailed, it is mailed in a properly addressed envelope with postage prepaid and is received by the department, or is received at the destination that the department or the department of administration prescribes, within 5 business days after the last day of the statutory limitation period or extended limitation period.

2. If the amended return or credit claim is not mailed, it is in the possession of the department, or is received at the destination that the department or the department of administration prescribes, prior to the expiration of the statutory limitation period or extended limitation period.

(3) GENERAL. (a) The department shall accept amended returns and credit claims to correct previously filed original, other amended or adjusted Wisconsin franchise or income tax returns, partnership returns, economic development surcharge returns or farmland preservation credit or homestead credit claims.

(b) A refund of taxes or credits under ch. 71, Stats., or economic development surcharge under s. 77.96 (4), Stats., may be claimed only by filing an amended return or credit claim, on a form and in the manner described in subs. (5) and (6).

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of

Wisconsin net franchise or income tax or economic development surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward.

(d) An amended Wisconsin return filed to report internal revenue service adjustments as provided in s. Tax 2.105 (4) (a) shall include a copy of the final federal audit report.

(e) An amended return or credit claim does not begin or extend the statute of limitation periods for assessing additional tax or economic development surcharge or claiming a refund.

(4) TIMELY FILING. (a) Except as provided in par. (b), if an amended return or credit claim shows a refund, it shall be filed within 4 years of the unextended due date of the original return.

(b) The 4−year filing limitation in par. (a) does not apply in the following situations:

1. Except as provided in subds. 3. and 4., a claim for refund may not be filed for any year covered by a field audit that resulted in a refund or no change in the tax owed, or in an assessment that has become final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015, Stats., provided the department advises the taxpayer that the field audit is final unless the taxpayer appeals the result.

2. Except as provided in subds. 3. and 4., a claim for refund may not be filed for any item of income or deduction assessed as a result of an office audit, provided the assessment has become final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015, Stats. Section 71.88 (1) (a), Stats., provides that a taxpayer may file a petition for redetermination within 60 days of receipt of a notice of additional assessment, refund or denial of refund. If a taxpayer does not file a petition for redetermination of a notice of assessment, refund or refund denial, the adjustments made in the notice are final and conclusive. The taxpayer is not entitled to a refund on any subsequent claim for refund based on the same adjustments as those in the notice of assessment, refund or denial of refund.

Examples: 1) Taxpayer A files an amended 2000 return to claim additional business expenses. The department allows only a portion of the claimed additional expenses, based on a difference in interpretation of the law. A notice of refund is issued March 1, 2003. The taxpayer does not file a petition for redetermination. In December 2003, the taxpayer files another amended return claiming the same additional business deductions as those disallowed in the prior notice of refund. The taxpayer is not entitled to a refund on the claim for refund. The March 1, 2003, notice of refund is final.

2) Taxpayer B files an amended 2000 return to claim additional business expenses. The department disallows a portion of the claimed additional expenses, due to lack of substantiation of the expenses as requested in a letter to the taxpayer. A notice of refund is issued March 1, 2003. The taxpayer does not file a petition for redetermination. In December 2003, the taxpayer submits adequate substantiation to support the full deduction. The deduction is not allowed and no additional refund will be issued. Since no petition for redetermination was filed for the March 1, 2003, notice of refund, that notice is final.

3) Taxpayer C files a timely 1998 return claiming a refund of earned income credit and excess income tax withheld. During the processing of the return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. The taxpayer does not respond to the request for additional information. A notice of refund is issued in July 1999, to refund the excess income tax withheld only. The taxpayer does not file a petition for redetermination. The taxpayer files a timely 1999 return claiming a refund of earned income credit and excess income tax withheld. During the processing of this return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. This letter requests the same information that was requested for the processing of the 1998 return. The taxpayer submits the additional information needed for both the 1998 and 1999 returns. Since the taxpayer did not submit a petition for redetermination for the 1998 notice of refund, that notice is final. A notice of refund for the earned income credit is issued for 1999 only.

3. a. For taxable years beginning on or after January 1, 2000, a claim for refund for each year for which an amount due is calculated as a result of items adjusted in an office audit or field audit assessment or refund may be filed within 4 years of the date of the adjustment notice, provided no petition for redetermination was filed and, if the adjustment notice was an assessment, the amount due was paid. No refund claim may be filed under this subd. 3. a. for any year that resulted in a refund or no change in the amount owed.

Examples: 1) Taxpayer D files a timely 2000 return. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer E files timely 2000 and 2001 returns. The department completes an audit of the returns and issues a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit for each year but also disallows a portion of the claimed business expenses for each year, with the net result being a refund for each year. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

3) Taxpayer F files a timely 2000 return on April 15, 2001. The department completes an office audit of this return by issuing a notice of additional tax due dated March 30, 2005. The notice of additional tax due allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses.

4) Taxpayer G files timely 2000 and 2001 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit resulting in a refund for 2000 and disallows a portion of the claimed business expenses for an assessment for 2001, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses for the year 2001.

5) Taxpayer H files timely 2000 and 2001 returns. The department completes an office audit of these returns by issuing a notice of additional tax due dated March 30, 2005. The notice of additional tax due allows an additional itemized deduction credit resulting in a refund for 2000 and disallows a portion of the claimed business expenses resulting in an assessment for 2001, with the net result being an assessment for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses for the year 2001.

b. For taxable years beginning prior to January 1, 2000, a claim for refund for each year for which an amount due is calculated as a result of items adjusted in an office audit or field audit net assessment may be filed within 2 years of the date of the assessment notice, provided no petition for redetermination was filed and the amount due was paid. No refund claim may be filed under this subd. 3. b. for any year that resulted in a refund or no change in the amount owed or, in the case of a multiple year audit resulting in a net refund, for any year for which an amount due is calculated.

Examples: 1) Taxpayer I files a timely 1999 return on April 15, 2000. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2004. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer J files timely 1998 and 1999 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, 2003. The notice of refund allows an additional itemized deduction credit resulting in a refund for 1998 and disallows a portion of the claimed business expenses for an assessment for 1999, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for 1998 or 1999.

4. A claim for refund of an overpayment attributable to a capital loss carryback may be filed by a corporation, or designated agent of a combined group, within 4 years after the due date, or extended due date, for filing the return for the taxable year of the capital loss that is carried back.

Note: For combined groups, see s. Tax 2.61 (6) (c) for rules applicable to capital gains and losses.

5. If the limitation period for making an assessment or refund has been extended by written agreement between a taxpayer and the department, a claim for refund relating to the year or years covered by the extension agreement may be filed during the extension period.

Note: For combined groups, refer to s. Tax 2.65 for rules applicable to the designated agent of a combined group.

6. An amended Wisconsin return filed under the provisions of sub. (3) (c) shall be filed with the department within 90 days after the date the amended federal or other state return is filed.

7. An amended Wisconsin return filed under the provisions of sub. (3) (d) shall be filed with the department within 90 days of the date on which the federal audit adjustments become final.

8. An amended Wisconsin return filed under the provisions of s. 71.30 (4), Stats., to claim a reduction of income resulting from a renegotiation or price redetermination of a defense contract or subcontract shall be filed within one year of the final determination.

Note: Refer to s. Tax 2.105 for additional information regarding amended Wisconsin returns required as a result of filing amended federal or other state returns, or reports required as a result of federal audit adjustments made by the internal revenue service.

(5) FORMS. (a) Except as provided in par. (b) or (c), a claim for refund shall be filed on the same form as the original form, in the manner prescribed in sub. (6).

(b) Except as provided in par. (c), a claim for refund shall be filed on a form 1X, in the manner prescribed in sub. (6), if any of the following apply:

1. The original return was filed on a form 1, 1A or WI−Z.
2. The original return was filed using "telefile" or "netfile."
3. The original credit claim was filed with a form 1 or 1A.

(c) The department may prescribe a special form for taxpayers to use in claiming a refund, to address a specific tax issue. In this situation, the special form may be used in lieu of the amended form prescribed in par. (a) or (b).

Example: Wisconsin form 1X−R was developed in 1993 to address the issue of the flow−through of interest exempt from Wisconsin taxes received from a qualified retirement plan.

(d) An amended Wisconsin return or credit claim filed for a purpose other than to request a refund is not required to be filed on a specific form.

(6) MANNER. (a) An amended return or credit claim shall be in writing, indicate the reporting period for which the change was made and contain a statement setting forth the specific grounds upon which the amended form is based.

(b) An amended return or credit claim other than form 1X shall be identified as an amended form by checking the "amended return" box if one is provided on the form or by marking "AMENDED" across the top of the first page of the amended form.

(c) A claim for refund may not be made a part of or attached to any original Wisconsin return or credit claim.

(d) An amended return or credit claim shall be mailed to the department at the address specified on the form or in its instructions.

Note: Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9 to create a recycling surcharge effective for taxable years beginning on or after January 1, 2000, and by 2011 Wis. Act 32 to change the recycling surcharge to the economic development surcharge effective July 1, 2011. For taxable years ending before April 1, 1999, subch. VII of ch. 77, Stats., provided for a temporary recycling surcharge; the term "economic development surcharge" as used in this section refers to the "temporary recycling surcharge" for those years and to the "recycling surcharge" prior to July 1, 2011.

Note: Section Tax 2.12 interprets ss. 71.255 (1), (4), and (7), 71.30 (4), 71.738 (2m), 71.74, 71.75, 71.76, 71.77, 71.80 (18) and 77.96 (4), Stats.

History: Cr. Register, August, 1976, No. 248, eff. 9−1−76; am. (1) (a), Register, September, 1983, No. 333, eff. 10−1−83; am, (1) (a) and (b), r. and recr. (1) (c) and (2), Register, February, 1990, No. 410, eff. 3−1−90; r. and recr. Register, May, 1996, No. 485, eff. 6−1−96; CR 02−033:am. (1), (3) (a), (b), (c) and (e), (4) (b) 1., 2., 4., 5., and (6) (b) to (d), r. and recr. (2), (4) (b) 3., and (5) (a), renum. and am. (5) (b) to be (5) (c), cr. (5) (b) and (d), Register October 2002 No. 562, eff. 11−1−02; CR 10−095: am. (1), (4) (b) 4. Register November 2010 No. 659, eff. 12−1−10; CR 12−011: am. (1), (3) (a) to (c), (e) Register July 2012 No. 679, eff. 8−1−12.

Cross Reference: See s. Tax 2.67 (2) (e) for rules relating to amended returns for combined groups.

Tax 2.30 Property located outside Wisconsin — depreciation and sale. (1) SCOPE. This section applies only with respect to resident individuals, estates, and trusts.

(2) DEFINITION. In this section, "Internal Revenue Code" means the Internal Revenue Code in effect for the taxable year specified in s. 71.01 (6), Stats.

Example: For taxable year 1988, "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 1987.

(3) RESIDENT INDIVIDUALS, ESTATES, AND TRUSTS. Income or loss derived from property and business located outside Wisconsin by resident individuals, estates, and trusts, is taxable or deductible as appropriate under ch. 71, Stats. Except as provided in sub. (4), the basis for depreciation and for determining gain or loss on disposition of property for these taxpayers is the same as the basis determined under the Internal Revenue Code, whether the property was acquired before becoming or while a resident of this state.

(4) EXCEPTIONS. (a) When an individual acquires a new residence, the adjusted basis of the new residence is not reduced for nonrecognized gain from the sale or exchange of an old residence located outside Wisconsin if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or

2. The sale or exchange of the old residence occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

(b) When an individual sells or exchanges a principal residence located outside Wisconsin and the nonrecognition of gain provisions do not apply, the adjusted basis of the residence sold or exchanged is not reduced for nonrecognized gain from any previous sale or exchange of a principal residence located outside Wisconsin if:

1. The previous sale or exchange occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or

2. The previous sale or exchange occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

Example: A taxpayer becomes a Wisconsin resident on July 1, 1988. Prior to becoming a Wisconsin resident the taxpayer had owned several different homes. Each time a new home was acquired, the federal nonrecognition of gain provisions applied with respect to the gain realized from the sale of the previous home. Upon becoming a Wisconsin resident, the taxpayer owned a home in Missouri with a federal adjusted basis of $65,000 ($95,000 cost, less $30,000 of gains postponed from prior sales). The Missouri home was sold for $97,000 in August 1988. The taxpayer decides not to purchase a new residence. The Wisconsin adjusted basis of the Missouri home is $95,000.

(c) For residential real property and certain agricultural real property placed in service during taxable year 1986, depreciation and gain or loss on disposition of the property shall be computed under the Internal Revenue Code in effect on December 31, 1980 unless:

1. The property is placed in service out−of−state by a taxpayer during taxable year 1986 before the taxpayer becomes a Wisconsin resident. In this case, the property's adjusted basis and depreciation are the same as the amounts allowable for federal tax purposes.

Example: A taxpayer becomes a Wisconsin resident on January 1, 1987. Prior to that date, the taxpayer is an Illinois resident. On July 1, 1986, the taxpayer purchases and places in service residential real property located in Illinois. On the taxpayer's 1987 Wisconsin return, the taxpayer's adjusted basis and depreciation on this property will be the same as the amounts shown on the taxpayer's 1987 federal return. The taxpayer does not have to recompute the basis of the property and depreciate it using one of the methods permitted under the December 31, 1980 Code.

2. The property located out−of−state is acquired in a transaction occurring in taxable year 1986 or thereafter where the basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor. The adjusted basis of the property on the date of the transfer is the same as the federal adjusted basis.

Example: A taxpayer is a Wisconsin resident. The taxpayer receives by gift on January 1, 1986, residential real property located in Illinois. The adjusted basis of the property to the donor, transferor, is $200,000. In acquiring the property by gift, the taxpayer, transferee, receives the same adjusted basis in the property as the transferor. The Wisconsin adjusted basis will be the federal adjusted basis on January 1, 1986.

Note: In the case of *Wisconsin Department of Revenue vs. Romain A. Howick*, 100 Wis. 2d 274 (1981), the Wisconsin supreme court held that for the purpose of determining a loss on a sale, the basis of property located outside Wisconsin acquired before the owner became a Wisconsin resident is the basis determined under the Internal Revenue Code. In this section the same principle is applied to gains realized on the disposition of such property. This principle was codified into s. 71.05 (1) (m), Stats., by 1985 Wis. Act 261, effective for the earliest taxable year in respect to which additional assessments or refunds may be made. Section 71.05 (1) (n) and (o), Stats., was also created by 1985 Wis. Act 261 to provide exceptions with respect to a principal residence effective for the same period of time. Section 71.05 (l), (m), (n), and (o), Stats., was renumbered s. 71.05 (12) (a), (b), and (c), Stats., by 1987 Wis. Act 312.

Note: Section 71.07 (1), Stats., was amended by Chapter 39, Laws of 1975, effective with the 1975 taxable year. Prior to the 1975 taxable year, income or loss derived from real property or tangible personal property followed the situs of the property from which derived. Section 71.07 (1), Stats., was renumbered ss. 71.04 (1) (a) and 71.362 (1), Stats., by 1987 Wis. Act 312.

Note: Section Tax 2.30 interprets ss. 71.05 (12) (a), (b) and (c), (15), (16), (17) and (18) and 71.04 (1) (a), Stats.)

History: Cr. Register, April, 1978, No. 268, eff. 5−1−78; r. and recr. (3), Register, July, 1982, No. 319, eff. 8−1−82; r. (2), renum. (1) to be (2) and am., cr. (1) and (4), am. (3), Register, June, 1990, No. 414, eff. 7−1−90.

Tax 2.31 Compensation received by nonresident members of professional athletic teams. (1) SCOPE. This section apportions and allocates to Wisconsin, in a fair and equitable manner, a nonresident employee's total compensation for services rendered in Wisconsin as a member of a professional athletic team. The section does not apply to employees domiciled in a state with which Wisconsin has a reciprocity agreement.

Note: Wisconsin has reciprocity agreements with Illinois, Indiana, Kentucky, Michigan and Minnesota.

(2) DEFINITIONS. In this section:

(a) Except as provided in subds. 1. and 2., "duty days" means all days during the taxable year from the beginning of a professional athletic team's official pre−season training period through the last game in which the team competes or is scheduled to compete and days on which a member of a professional athletic team renders a service for a team on a date outside this time period. Rendering a service includes conducting training and rehabilitation activities at the facilities of the team. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, days spent participating in instructional leagues, days spent at special games such as the "Pro Bowl" or an "all−star" game and days served with the team through all post−season games in which the team competes or is scheduled to compete. The following exceptions to this definition apply:

1. Duty days for any person who joins a professional athletic team after the beginning of the team's official pre−season training period shall begin on the day the person joins the team. Conversely, duty days for any person who leaves a professional athletic team before the last scheduled game shall end on the day the person leaves the team. Where a person switches professional athletic teams during a taxable year, separate duty day calculations shall be made for the periods the person was with each team.

2. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member has been suspended without pay and prohibited from performing any services for the team, may not be treated as duty days.

(b) "Member of a professional athletic team" includes employees who are active players, players on the disabled list or any other persons such as coaches, managers and trainers, and who are required to and do travel with and perform services on behalf of a professional athletic team on a regular basis.

(c) "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, hockey or soccer team.

(d) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year by the member for services rendered from the beginning of the official pre−season training period through the last game in which the team competes or is scheduled to compete during that taxable year, and during the taxable year on a date outside this time period. The compensation includes, but is not limited to, salaries, wages, bonuses as described in sub. (3) (c) and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. The compensation may not include strike benefits, severance pay, termination pay, contract or option year buy−out payments, expansion or relocation payments or any other payments not related to services rendered for the team.

Examples: Services rendered on a date that does not fall within the regular season include participation in:

1) Instructional leagues.

2) The "Pro Bowl."

3) Promotional caravans.

(3) METHOD OF ALLOCATION. (a) *General.* The allocation to Wisconsin of income earned by a nonresident employee as total compensation for services rendered as a member of a professional athletic team shall be made on the basis of a fraction, the numerator of which is the number of duty days spent within Wisconsin rendering services for the team in any manner during the taxable year and the denominator of which is the total number of duty days spent both within and outside Wisconsin during the taxable year.

(b) *Duty days during the taxable year.* Duty days shall be included in the fraction described in par. (a) for the taxable year in which they occur, including where a team's official pre−season training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one taxable year. The following additional provisions apply:

1. Days during which a member of a professional athletic team is on the disabled list, does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Wisconsin, may not be considered duty days spent in Wisconsin. However, all days on the disabled list shall be included in the total duty days spent both within and outside Wisconsin.

2. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event may not be considered duty days spent in Wisconsin but shall be considered in the total duty days spent both within and outside Wisconsin.

(c) *Bonuses.* Bonuses which shall be included for purposes of the allocation described in par. (a) are:

1. Performance bonuses earned as a result of play during the season, including bonuses paid for championship, playoff or "bowl" games played by a team or for selection to all−star league or other honorary positions.

2. Bonuses paid for signing a contract, unless all of the following conditions are met:

a. The payment of the signing bonus is not conditional upon the signee playing any games for the team or performing any subsequent services for the team, or even making the team.

b. The signing bonus is payable separately from the salary and any other compensation.

c. The signing bonus is nonrefundable.

Examples: The following examples illustrate the provisions of this subsection:

1) Player A, a member of a professional athletic team, is a nonresident of Wisconsin. Player A's contract for the team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a two−year contract which covers seasons that occur during taxable year 1/taxable year 2, and taxable year 2/taxable year 3. Player A's contract provides that A receive $500,000 for the season which occurs during taxable year 1/taxable year 2, and $600,000 for the season which occurs during taxable year 2/taxable year 3. Player A receives $550,000 from the contract during taxable year 2 ($250,000 for one−half the year 1/year 2 season and $300,000 for one−half the year 2/year 3 season). The portion of the compensation received by Player A for taxable year 2 which is allocable to Wisconsin is determined by multiplying the compensation Player A receives during the taxable year ($550,000) by a fraction, the numerator of which is the total number of duty days Player A spends rendering services for the team in Wisconsin during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of Player A's duty days spent both within and outside Wisconsin for the entire taxable year 2.

2) Player B, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team but is located in Wisconsin, B's team travels to Wisconsin for a game. The days B's team spends in Wisconsin for practice, games, meetings, etc., while B is present at the clinic, are not considered duty days spent in Wisconsin for Player B for that taxable year, but those days are included within total duty days spent both within and outside Wisconsin.

3) Player C, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Wisconsin as well as at personal facilities in Wisconsin. The days C performs rehabilitation exercises in the facilities of C's team are considered duty days spent in Wisconsin for Player C for that taxable year. However, days Player C spends at personal facilities in Wisconsin are not considered duty days spent in Wisconsin for Player C for that taxable year, but those days are included within total duty days spent both within and outside Wisconsin.

4) Player D, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, D travels to Wisconsin to participate in the annual all−star game as a representative of D's team. The days D spends in Wisconsin for practice, the game, meetings, etc., are considered to be duty days spent in Wisconsin for Player D for that taxable year, as well as included within total duty days spent both within and outside Wisconsin.

5) Assume the same facts as in example 4, except that Player D is not participating in the all−star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending the game solely as a spectator. The days Player D spends in Wisconsin for the game are not considered to be duty days spent in Wisconsin. However, those days are included within total duty days spent both within and outside Wisconsin.

6) Player E, a member of a professional athletic team, is a nonresident of Wisconsin. During the pre−season, E travels to Wisconsin to participate in a training camp which E's team conducts in Wisconsin. E performs no further services in Wisconsin. E's team does not play any regular season or playoff games in Wisconsin. The days E spends in Wisconsin at the team's training camp are considered to be duty days spent in Wisconsin for Player E for that taxable year.

(4) ALTERNATIVE METHODS OF ALLOCATION. It is presumed that application of the provisions of this section will result in a fair and equitable apportionment of compensation received by nonresident members of professional athletic teams. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion the compensation, the department may require the member of a professional athletic team to apportion and allocate the compensation under a method which the department prescribes, provided the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion compensation where the member demonstrates that the method provided under this section does not fairly and equitably apportion the compensation. The proposed method shall be fully explained on the member's Wisconsin income tax return.

Note: Section Tax 2.31 interprets ss. 71.02 and 71.04 (1) (a) and (11), Stats.
History: Cr. Register, May, 1996, No. 485, eff. 6−1−96.

Tax 2.32 Economic development surcharge — gross receipts defined. (1) PURPOSE. This section defines "gross receipts" for purposes of the economic development surcharge under subch. VII of ch. 77, Stats.

Note: For taxable years beginning before January 1, 2013, an economic development surcharge is imposed on: (a) individuals, estates, trusts, statutory employees and partnerships that have at least $4,000,000 in gross receipts from a trade or business for the taxable year; (b) corporations and insurers that have at least $4,000,000 in gross receipts from all activities for the taxable year; and (c) individuals, estates, trusts and partnerships engaged in farming that have at least $4,000,000 in gross receipts from farming for the taxable year. For taxable years beginning on or after January 1, 2013, an economic development surcharge is only imposed on corporations and insurers that have at least $4,000,000 in gross receipts from all activities for the taxable year.

(2) DEFINITIONS. In subch. VII of ch. 77, Stats., and this section:

(a) "Gross receipts from all activities of corporations" means the sum of the following items reportable by corporations other than those listed in pars. (c) and (d):

1. Gross receipts or sales reportable on line 1c of federal form 1120, U. S. corporation income tax return.

2. Gross dividends reportable on line 4 of federal form 1120.

3. Gross interest income reportable on line 5 of federal form 1120.

4. Gross rents reportable on line 6 of federal form 1120.

5. Gross royalties reportable on line 7 of federal form 1120.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on lines 8 and 9 of federal form 1120.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

Note: In this subsection, line numbers of forms refer to the 2011 forms.

(b) "Gross receipts from all activities of exempt organizations taxable as corporations" means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on line 1a of federal form 990−T, exempt organization business income tax return.

2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990−T.

3. Gross rents includable in computing rent income on line 6 of federal form 990−T.

4. Gross income from unrelated debt−financed property includable in computing unrelated debt−financed income on line 7 of federal form 990−T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990−T.

6. Gross investment income includable in computing investment income on line 9 of federal form 990−T.

7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990−T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990−T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(c) "Gross receipts from all activities of insurance companies" means the sum of the following items reportable by insurance companies:

1. Gross premiums earned reportable on lines 1 and 8 of schedule A on federal form 1120−PC, U. S. property and casualty insurance company income tax return.

2. Gross dividends reportable on line 2 of schedule A, or line 2 of schedule B if applicable, on federal form 1120−PC.

3. Gross interest income reportable on line 3a of schedule A, or line 1a of schedule B if applicable, on federal form 1120−PC.

4. Gross rents reportable on line 4 of schedule A, or line 3 of schedule B if applicable, on federal form 1120−PC.

5. Gross royalties reportable on line 5 of schedule A, or line 4 of schedule B if applicable, on federal form 1120−PC.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 6 and 7 of schedule A, or lines 5 and 7 of schedule B if applicable, on federal form 1120−PC.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(d) "Gross receipts from all activities of tax−option (S) corporations" means the sum of the following items reportable by S corporations:

1. Gross receipts or sales reportable on line 1c of federal form 1120S, U. S. corporation income tax return for an S corporation.

2. Gross rents includable in computing the income from real estate and other rental activities reportable on lines 2 and 3a of schedule K on federal form 1120S.

3. Gross interest income reportable on line 4 of schedule K on federal form 1120S.

4. Ordinary dividends reportable on line 5a of schedule K on federal form 1120S.

5. Gross royalties includable in computing royalty income reportable on line 6 of schedule K on federal form 1120S.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on line 4 of federal form 1120S and lines 7, 8a, and 9 of schedule K on federal form 1120S.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(3) COMBINED GROUPS. The economic development surcharge applies to each member of a combined group separately. See s. Tax 2.82 for rules pertaining to the imposition and calculation of the economic development surcharge for combined group members.

Note: Section Tax 2.32 interprets subch. VII of ch. 77, Stats.

Note: Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9 to replace the expired temporary recycling surcharge with a recycling surcharge, effective for taxable years beginning on or after January 1, 2000, and by 2011 Wis. Act 32 to change the recycling surcharge to the economic development surcharge effective July 1, 2011. This section applies to the economic development surcharge.

History: Cr. Register, August, 2000, No. 536, eff. 9−1−00; CR 10−095: am. (2) (g) (intro.), cr. (3) Register November 2010 No. 659, eff. 12−1−10; CR 12−011: am. (title), (1), (2) (a) 1., (d), 1., 3. to 6., (e) 1., (g) 1., 2., (h) 1., (3) Register July 2012 No. 679, eff. 8−1−12; CR 14−005: r. (2) (e) to (h) Register August 2014 No. 704, eff. 9−1−14.

Tax 2.39 Apportionment method. (1) GENERAL. Except as provided in sub. (3), any person, except resident individuals, resident estates, and resident trusts, engaged in business both in and outside this state shall apportion its apportionable income using the statutory apportionment method as provided in s. 71.04 (4) or 71.25 (6), Stats., when the person's business in this state is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis. However, if a corporation is in a combined group, the corporation's Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7) or (8), as applicable. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats.

Note: See s. Tax 2.62 for rules that apply to determining if a unitary business exists.

Note: A corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) "Apportionable income" has the meaning given in s. 71.25 (5) (a), Stats.

(ag) "Combined group" has the meaning given in s. 71.255 (1) (a), Stats.

(ar) "Commercial domicile" has the meaning given in s. 71.22 (1g), Stats.

(b) "Engaged in business in and outside this state" means having business activity which is sufficient to create nexus in this state and at least one other state or foreign country. For a combined group, the activities of the combined group are taken as a whole in determining if the combined group is engaged in business in and outside this state, as provided in s. 71.255 (5) (a), Stats.

(c) "Gross receipts" means gross sales less returns and allowances, plus service charges, freight, carrying charges or time−price differential charges incidental to the sales. Federal and state excise taxes, including sales and use taxes, shall be included as part of the receipts if the taxes are passed on to the purchaser or included as part of the selling price of the product.

(cm) "Intangible property" includes patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know−how, contracts, and customer lists. Intangible property does not include stocks, bonds, certificates of deposit, or other securities.

(d) "Nexus" means that a taxpayer's business activity in a state or foreign country is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. For a combined group, the activities of the combined group are taken as a whole in determining if the combined group has nexus in a state or foreign country, as provided in s. 71.255 (5) (a), Stats. Nexus may exist even if a state or foreign country does not impose a tax on the taxpayer. Conversely, voluntary filing and paying income or franchise taxes when not required to do so, or paying a fee for qualification, organization or for the privilege of doing business in that state or foreign country does not, in itself, create nexus.

Note: Refer to s. Tax 2.82 for a description of factors which are recognized in determining whether nexus exists.

Examples: 1) State A imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the $50 minimum tax, although it carries on no activities in State A. Corporation X does not have nexus in State A under these circumstances.

2) State B requires all nonresident corporations which qualify or register to do business in State B to pay to the secretary of state an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of $50 and a maximum fee of $500. State B also imposes a corporation income tax. Nonresident Corporation Y is qualified to do business in State B and pays the required fee to the secretary of state but does not carry on any activities in State B. Corporation Y does not have nexus in State B under these circumstances.

3) State C requires all nonresident corporations qualified or registered to do business in State C to pay to the secretary of state an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (1) outstanding capital stock, and (2) surplus and undivided profits. The fee or tax base attributable to State C is determined by a three−factor apportionment formula. Nonresident Corporation Z, which operates a plant in State C, pays the required fee or tax to the secretary of state. Corporation Z by virtue of its operation of a plant in State C has nexus in State C.

4) State D imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation W files a return based upon its business activities in the state but the amount of computed liability is less than the minimum tax. Corporation W pays the minimum tax. Corporation W has nexus in State D under these circumstances.

5) Corporation U is actively engaged in manufacturing farm equipment in State E. State E imposes a net income tax but exempts corporations engaged in manufacturing farm equipment. Corporation U has nexus in State E under these circumstances.

6) Corporation V has a sales office and warehouse located in State F. State F does not impose a corporation franchise or income tax. Corporation V has nexus in State F.

(e) "Nonapportionable income" has the meaning given in s. 71.25 (5) (b), Stats.

(f) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States. A foreign country is not a state.

(3) APPORTIONMENT FRACTION. (a) 1. For taxable years beginning before January 1, 2006, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 1. and 71.25 (10) (a) and (b) 1., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction as described in s. 71.04 (4) (a) or 71.25 (6) (a), Stats. Property, payroll, or sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of any of the apportionment factors.

2. If one of the factors described in subd. 1. is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

a. If either the property factor or payroll factor is omitted, the other factor shall represent 33.3333 percent of the fraction and the sales factor shall represent 66.6667 percent of the fraction.

b. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50 percent of the fraction.

3. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in s. 71.04 (4m) (a) 1., (b) 1., or (c) 1. or 71.25 (6m) (a) 1., (b) 1., or (c) 1., Stats.

(b) 1. For taxable years beginning after December 31, 2005, and before January 1, 2007, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 2. and 71.25 (10) (a) and (b) 2., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportion-

ment fraction as described in s. 71.04 (4) (b) or 71.25 (6) (b), Stats. Property, payroll, or sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of any of the apportionment factors.

2. If one of the factors described in subd. 1. is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

a. If either the property factor or payroll factor is omitted, the other factor shall represent 25 percent of the fraction and the sales factor shall represent 75 percent of the fraction.

b. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50 percent of the fraction.

3. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in s. 71.04 (4m) (a) 1., (b) 1., or (c) 1. or 71.25 (6m) (a) 1., (b) 1., or (c) 1., Stats.

(c) 1. For taxable years beginning after December 31, 2006, and before January 1, 2008, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 2. and 71.25 (10) (a) and (b) 2., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction as described in s. 71.04 (4) (c) or 71.25 (6) (c), Stats. Property, payroll, or sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of any of the apportionment factors.

2. If one of the factors described in subd. 1. is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

a. If either the property factor or payroll factor is omitted, the other factor shall represent 11.1111 percent of the fraction and the sales factor shall represent 88.8889 percent of the fraction.

b. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50 percent of the fraction.

3. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in s. 71.04 (4m) (a) 1., (b) 1., or (c) 1. or 71.25 (6m) (a) 1., (b) 1., or (c) 1., Stats.

(d) For taxable years beginning after December 31, 2007, persons engaged in business in and outside this state, except direct air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, and sleeping car companies, as defined in ss. 71.04 (8) (a) and (b) 2. and 71.25 (10) (a) and (b) 2., Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use only the sales factor to compute the apportionment fraction, as provided in s. 71.04 (4) (d) or 71.25 (6) (d), Stats. Sales related to the production of nonapportionable income may not be included in either the numerator or the denominator of the sales factor. If either the numerator or the denominator of the sales factor is zero or a negative number, the sales factor shall be determined as described in ss. 71.04 (4m) (a) 2., (b) 2., or (c) 2. or 71.25 (6m) (a) 2., (b) 2., or (c) 2., Stats.

Note: See ss. Tax 2.46, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, 2.502, and 2.505 for special apportionment fractions of interstate direct air carriers, motor carriers, railroads, sleeping car companies, pipelines, financial institutions, broker−dealers, investment advisers, investment companies, underwriters, public utilities, telecommunications companies, and professional sports clubs.

Note: Corporations that are in combined groups use a modified sales factor to compute their Wisconsin share of apportionable income of the entire combined group. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

(e) The apportionment method may be used only if the taxpayer or combined group is engaged in business both in Wisconsin and at least one other state or foreign country and its business in Wisconsin is an integral part of a unitary business. For a combined group that has made the controlled group election provided in s. 71.255 (2m), Stats., the entire combined group's business is deemed to be a single unitary business.

Note: See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations. A qualifying combined group may also petition for an alternative apportionment method. See s. Tax 2.64 for details.

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

Note: Refer to ss. 71.04 (5) and 71.25 (7), Stats.

(b) *Owned property.* Property owned by the taxpayer is valued at its original cost for purposes of computing the property factor. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes, prior to any adjustments, at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements to the property and partial disposition of the property, by reason of sale, exchange, abandonment or other means. If the original cost of property is unascertainable, the property shall be included in the factor at its fair market value as of the date of acquisition by the taxpayer. Any subsequent adjustments, other than depreciation or amortization, to net income which affect property, such as capitalizations of repairs and adjustments to inventory, shall also be included in the property factor. The original cost of depletable property such as mines, oil and gas wells and timber shall be reduced by any extraction to the extent that cost depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes. Pollution abatement equipment or waste treatment facilities written off as an expense under s. 71.04 (2b) and (2g), 1985−86 or prior years Stats., but still in use, shall be included at original cost.

Note: Refer to ss. 71.04 (5) (c) and 71.25 (7) (c), Stats.

(c) *Rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined at arm's length for purposes of computing the property factor. Net annual rental is the annual rental paid by the taxpayer, or allocated by the department pursuant to s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., less any annual rental received by the taxpayer from sub−rentals. In exceptional cases this definition of net annual rental may result in a negative value or clearly inaccurate valuation. In these exceptional instances, any other method which will properly reflect the net annual rental value may be required by the department or may be requested by the taxpayer; however, in no case may the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the rental value of the part of the property used by the taxpayer in the production of apportionable income bears to the total rental value of the same rental property.

(cm) *Annual rental.* In this subsection, annual rental:

1. Is the amount paid as rental for the property for a 12−month period. Where property is rented for less than a 12−month period,

the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. Where a taxpayer has rented property for a term of 12 or more months and the tax period for which the property factor is being computed covers a period of less than 12 months, such as may be due to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized; however, if the rental term is for less than 12 months, the rent shall be adjusted accordingly.

2. Is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

a. Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise.

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities or janitor services. If a payment includes rent and other charges unsegregated, such as rental charges for public warehouses, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items.

3. Does not include incidental day−to−day expenses such as hotel or motel accommodations, daily rental of automobiles or royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from the property, whether denominated as royalty, advanced royalty, rental, delay rental or otherwise.

Note: Refer to ss. 71.04 (5) (c) and 71.25 (7) (c), Stats.

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

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

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

Note: Refer to ss. 71.04 (5) (d) and 71.25 (7) (d), Stats.

(5) PAYROLL FACTOR. (a) *Numerator; denominator.* The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income and the denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income. Compensation is paid in Wisconsin and included in the numerator if, as provided in ss. 71.04 (6) (b) and 71.25 (8) (b), Stats., one of the following applies:

1. The individual's service is performed entirely within Wisconsin.

Example: Corporation A has a manufacturing plant located in Wisconsin. The compensation of an Illinois resident who works at the Wisconsin manufacturing plant is included in the numerator of the payroll factor since the employee's service is performed entirely in Wisconsin.

2. The individual's service is performed within and without Wisconsin, but the service performed without Wisconsin is incidental to the individual's service within Wisconsin.

Example: Corporation B has its headquarters and a manufacturing plant in Wisconsin. Corporation B also has a manufacturing plant located in Indiana. The manager of the Wisconsin manufacturing plant spends two weeks during the tax year at the manufacturing plant located in Indiana training the new plant manager. The compensation of the Wisconsin plant manager is included in the numerator of the payroll factor because the purposes performed in Indiana is incidental to the service performed in Wisconsin.

3. A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin.

Example: Corporation C has a sales office located in Wisconsin. A salesperson working out of the Wisconsin office solicits sales in Wisconsin, Minnesota and Iowa. Since a portion of the salesperson's service is performed in Wisconsin and the salesperson's base of operations is in Wisconsin, the compensation of the salesperson is included in the numerator of the payroll factor.

4. A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

5. A portion of the service is performed within Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.

Example: Corporation E is headquartered in and has its sales office in Indiana and maintains inventory in Wisconsin. A Wisconsin resident salesperson solicits sales in Wisconsin and Minnesota. The compensation of the Wisconsin salesperson is included in the numerator of the payroll factor since a portion of the salesperson's service is performed in Wisconsin, the salesperson is a resident of Wisconsin and the salesperson is directed or controlled from Indiana but performs no services in Indiana.

6. The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Example: Corporation F has its sales office in Wisconsin. A salesperson resides in Nebraska and solicits sales in Nebraska and Kansas. Corporation F does not have nexus in Nebraska or Kansas. The salesperson returns to the Wisconsin sales office for two weeks each year for meetings and training. The compensation of the Nebraska salesperson is included in the numerator of the payroll factor since he is directed from an office in Wisconsin, returns to Wisconsin periodically for business purposes and Corporation F does not have nexus in Nebraska.

Note: Refer to ss. 71.04 (6) (a) and (b) and 71.25 (8) (a) and (b), Stats.

(b) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services in Wisconsin for at least 5 days during the year. The compensation of any one employee may not be split between 2 or more states during the year; however, this does not apply if the employee is transferred or changes positions during the year.

(c) *Compensation.* Compensation includes:

1. Wages, salaries, commissions and any other form of remuneration paid to employees for personal services including amounts contributed to a qualified cash or deferred arrangement under section 401 (k) of the Internal Revenue Code on behalf of employees who have elected to participate in the plan. However, matching contributions to the trust by an employer under section 401 (k) of the Internal Revenue Code are not included since the employees do not have a right to receive the matching contributions directly in cash.

2. The value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that these amounts constitute income to the recipient under the federal Internal Revenue Code for the year for which the payroll factor is computed. In the case of employees not subject to the federal Internal Revenue Code, such as citizens of foreign countries employed in foreign coun-

tries, the determination of whether the benefits or services constitute income to the employees shall be made as though the employees are subject to the federal Internal Revenue Code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., to a related corporation, as defined in section 267 (f) (1) of the Internal Revenue Code, as consideration for the performance of personal services. As provided in s. 71.25 (8) (d), Stats., the recipient of these fees may not include the compensation paid to its employees with respect to the personal services in either the numerator or denominator of its payroll factor and the situs of the fees is in Wisconsin if the services fulfill one of the requirements of par. (a). Except for these management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

Examples: 1) Corporation A, headquartered in Illinois, owns 100% of the stock of Corporation B which is headquartered in Wisconsin. Employees of Corporation A perform all the accounting functions for Corporation B. For these services Corporation A charged $30,000 of office payroll as management fees to Corporation B, which paid that amount to Corporation A. If the employees of Corporation A that performed the accounting services for Corporation B were based in Illinois and spent only part of their time in Wisconsin while performing these services, no portion of the $30,000 is includable in the numerator of the payroll factor of Corporation B because the services do not meet the requirements of par. (a). The entire $30,000 is includable in the denominator of the payroll factor of Corporation B. If Corporation A files a Wisconsin return on the apportionment basis, it may not include in its computation of the payroll factor the $30,000 paid to its employees for services they performed for Corporation B.

2) Corporation C, headquartered in Wisconsin, owns 100% of the stock of Corporation D which is also headquartered in Wisconsin. Employees of Corporation C prepare all tax returns for Corporation D. For these services Corporation C charged $20,000 of tax department payroll as management fees to Corporation D, which paid that amount to Corporation C. All of the services were performed in Wisconsin. The $20,000 is included in both the numerator and denominator of the payroll factor of Corporation D. Corporation C may not include the $20,000 in either the numerator or denominator of its payroll factor.

Note: Refer to ss. 71.04 (6) (d) and 71.25 (8) (d), Stats.

(d) *Excludable compensation.* Compensation paid to produce nonapportionable income or losses or income exempt from taxation under ch. 71, Stats., may not be included in the numerator or denominator of the payroll factor.

Note: Refer to ss. 71.04 (6) (c) and 71.25 (8) (c), Stats.

(6) SALES FACTOR. (a) *Numerator; denominator.* The numerator of the sales factor shall include the taxpayer's gross receipts from sales that are in this state and the denominator shall include the taxpayer's gross receipts from sales everywhere during the taxable year. Gross receipts that are not derived in the production of apportionable income and items described in ss. 71.04 (7) (f) and 71.25 (9) (f), Stats., may not be included in the sales factor.

Note: A corporation that is a combined group member must adjust its sales factor numerator and denominator as described in s. Tax 2.61 (7).

(b) *Sales of tangible personal property attributable to Wisconsin.* 1. Gross receipts from the sales of tangible personal property, except sales to the federal government as described in subd. 4., are in Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin regardless of the f.o.b. point or other conditions of the sales. Some situations in which property is considered to be delivered or shipped to a purchaser within Wisconsin are if:

a. The property is picked up outside Wisconsin by a purchaser having a Wisconsin business location and the purchaser returns to Wisconsin with the property.

Example: Corporation B is a Minnesota brewer that sells beer to a Wisconsin purchaser to be picked up at the brewer's shipping dock in Minnesota. The purchaser is a beer distributor which used its own vehicle to pick up the beer and haul it back to Wisconsin. Corporation B is subject to the tax by the state of Wisconsin. These dock sales are assigned to Wisconsin in Corporation B's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's location is in Wisconsin and the product is shipped to Wisconsin. Therefore, Corporation B, for Wisconsin franchise tax purposes, will include the amount of this dock sale in both the numerator and the denominator of the sales factor.

Note: In *Pabst Brewing Co. v. Wisconsin Department of Revenue* (Ct. App. Dist. IV, 1986), 130 Wis. 2d 291, the taxpayer sold beer to an Illinois distributor who picked it up in its own truck at the taxpayer's Wisconsin shipping dock and hauled it to Illinois. The Court held that the sales were not Wisconsin sales, since the location of the purchaser, rather than the location of the pickup of the product, controlled the determination of where the sale was assigned for purposes of the sales factor. The Court noted that if the sales were assigned to Wisconsin, the method of delivery, a condition of the sale, would be the determinative, which is contrary to statute. These sales are referred to as "dock sales," which are those sales where a purchaser uses its owned or rented vehicles or a common carrier it has made arrangements with to take delivery of the product at the seller−taxpayer's shipping dock.

b. The taxpayer, at the designation of the purchaser, or the purchaser delivers to or has the property shipped to a recipient other than the purchaser within Wisconsin.

Example: Corporation M is a Wisconsin manufacturer that sells plumbing ware to an Illinois wholesaler and retailer to be picked up at the manufacturer's shipping dock in Wisconsin. The purchaser has its corporate headquarters in Illinois. The purchaser uses its own vehicle to pick up plumbing ware and haul it to the job site of the purchaser's customer. The customer is a plumbing contractor that is working on a new motel being constructed in Madison, Wisconsin. These dock sales are assigned to Wisconsin in Corporation M's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's customer's location is in Wisconsin and the product is shipped to Wisconsin. The delivery to the plumbing contractor was at the designation of the purchaser and that is where the product was delivered. Therefore, Corporation M, for Wisconsin franchise tax purposes, is required to include the amount of this dock sale in both the numerator and the denominator of the sales factor.

c. The shipment by either the taxpayer or the purchaser terminates in Wisconsin, even though the property is subsequently transferred by the purchaser to another state.

Example: Corporation B has a Wisconsin manufacturing plant which makes engines for an Indiana based manufacturer. Title to the engines passes to the purchaser after the engines are tested. Corporation B, at the direction of the purchaser, ships the tested engines to a public warehouse in Wisconsin. The warehouse stores the engines until directed to ship them by the purchaser. These sales are included in the numerator of the sales factor for Corporation B since the public warehouse is considered to be a business location of the Indiana purchaser and the warehouse is located in Wisconsin.

d. The recipient is in Wisconsin, even though the property is ordered from outside Wisconsin.

Example: Corporation A manufactures batteries at a location in Wisconsin. It sells batteries to an Illinois retailer which operates stores nationwide. The purchaser orders the batteries from its Illinois location and directs Corporation A to ship the batteries to its warehouse in Wisconsin. These sales are included in the numerator of the sales factor since the batteries were shipped to a Wisconsin location.

e. The property is being shipped by a seller or purchaser from one state to a consignee in another state and is diverted while enroute to a purchaser in Wisconsin, or the designee of a purchaser who is in Wisconsin.

Example: Corporation X, a manufacturer located in Superior, Wisconsin, sells a portion of its manufactured product via a consignment arrangement with a retailer−consignee in Chicago, Illinois. Pursuant to an order from the Chicago consignee for additional inventory, Corporation X ships via its own trucks additional inventory of its product to Chicago. After entering Illinois but before reaching Chicago, the driver receives instructions from the consignee to deliver the entire load to a customer in Beloit, Wisconsin. Since the property was shipped to a purchaser in Wisconsin, the sale is attributable to Wisconsin and the gross receipts from the sale are included in both the numerator and denominator of Corporation X's sales factor.

2. If the taxpayer does not have nexus in the state of destination, the sale is attributed to Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin. For taxable years beginning before January 1, 2009, the amount included in the numerator of the sales factor shall be 50% of the gross receipts from the sale. For taxable years beginning on or after January 1, 2009, the amount included in the numerator of the sales factor shall be the total gross receipts from the sale. For purposes of this subdivision:

a. Sales are attributed to Wisconsin even though the taxpayer has a certificate of authority in the state of destination but the business activities in the destination state do not result in nexus based on the standards in s. Tax 2.82.

b. Sales are not attributed to Wisconsin if the taxpayer is incorporated in the state of destination other than Wisconsin.

3. If a taxpayer's salesperson located in an office in Wisconsin makes a sale to a purchaser in another state in which the taxpayer does not have nexus and the property is not shipped or delivered from Wisconsin, the following rules apply:

a. If the taxpayer has nexus in the state from which the property is delivered or shipped, then the sale is in that state.

b. If the taxpayer does not have nexus in the state from which the property is delivered or shipped, then the sale is in Wisconsin. For taxable years beginning before January 1, 2009, the amount included in the numerator of the sales factor shall be 50% of the gross receipts from the sale. For taxable years beginning on or

after January 1, 2009, the amount included in the numerator of the sales factor shall be the total gross receipts from the sale.

4. With respect to sales to the federal government:

a. Gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, in Wisconsin regardless of the f.o.b. point or other conditions of sale. For purposes of this section, only sales for which the federal government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the federal government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the federal government, do not constitute sales to the federal government.

b. Gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin and the taxpayer does not have nexus in the destination state. For taxable years beginning before January 1, 2009, the amount included in the numerator of the sales factor shall be 50% of the gross receipts from the sale. For taxable years beginning on or after January 1, 2009, the amount included in the numerator of the sales factor shall be the total gross receipts from the sale.

5. For purposes of applying subds. 2. to 4., whether the taxpayer has nexus in the destination state is determined using the same standards as set forth in s. Tax 2.82.

(c) *Leases, rentals, or licensing of tangible personal property attributable to Wisconsin.* 1. Except as described in subd. 2., the numerator of the sales factor includes gross receipts from the lease, rental, licensing, or other use of tangible personal property owned by the taxpayer and the sublease of tangible personal property if the property is located in this state during the entire period of lease, rental, licensing, sublease, or other use. If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are included in the numerator of the sales factor to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the number of days the property is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the property is leased, rented, licensed, or subleased in all states having jurisdiction to tax the taxpayer during the taxable year.

2. Gross receipts from the lease, rental, or licensing of moving property, including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned by the taxpayer and the sublease of moving property are included in the numerator of the sales factor to the extent that the property is used in this state. The proportion of use of moving property in this state is determined as follows:

a. The proportion of use of a motor vehicle or rolling stock in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the motor vehicle or rolling stock by a fraction having as a numerator the number of miles traveled within this state by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of miles traveled by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year.

b. The proportion of use of an aircraft in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a fraction having as a numerator the number of takeoffs and landings of the aircraft in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of takeoffs and landings of the aircraft while leased, rented, licensed, or subleased in the taxable year.

c. The proportion of a vessel or mobile equipment in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the vessel or mobile equipment by a fraction having as a numerator the number of days that the vessel or mobile equipment is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the vessel or mobile equipment is leased, rented, licensed, or subleased in the taxable year.

d. If the taxpayer is unable to determine the use of moving property under subd. 2. a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable year, the moving property is conclusively deemed to be used in the state in which the property is located at the time that the lessee, licensee, or sublessee takes possession of the property.

(d) *Sales, leases, rentals, or licensing of real property attributable to Wisconsin.* The numerator of the sales factor includes gross receipts from the sale, lease, rental, licensing, or other use of real property owned by the taxpayer if the real property is located in this state and gross receipts from the sublease of real property if the real property is located in this state.

(e) *Receipts attributable to Wisconsin from the use of computer software.* Receipts attributable to Wisconsin from providing the use of computer software are determined as provided in ss. 71.04 (7) (df) and 71.25 (9) (df), Stats.

Note: For taxable years beginning after December 31, 2004 and before January 1, 2009, subd. 3. of ss. 71.04 (7) (df) and 71.25 (9) (df), Stats., provided that if the taxpayer is not subject to income tax in the state in which the gross receipts are considered received but the taxpayer's commercial domicile is in Wisconsin, 50 percent of the taxpayer's receipts from the transaction are included in the numerator of the sales factor. This provision was repealed by 2009 Wis. Act 28.

(f) *Sales of services attributable to Wisconsin.* Sales of services are attributable to Wisconsin if the benefit of the service is received in Wisconsin, as provided in ss. 71.04 (7) (dh) and 71.25 (9) (dh), Stats.

Note: For taxable years beginning after December 31, 2004 and before January 1, 2009, subd. 4. of ss. 71.04 (7) (dh) and 71.25 (9) (dh), Stats., provided that if the taxpayer is not subject to income tax in the state in which the benefit of the service is received, 50 percent of the taxpayer's receipts from the transaction are included in the numerator of the sales factor to the extent the taxpayer's employees or representatives performed the service from a location in Wisconsin. This provision was repealed by 2009 Wis. Act 28.

(g) *Receipts from intangible property for taxable years beginning before January 1, 2009.* For taxable years beginning before January 1, 2009, the numerator of the sales factor includes gross receipts from the sale, licensing the use of, or other use of intangible property, if the income producing activity occurs in this state during the taxable year. If the income producing activity occurs in and outside this state, the gross receipts shall be allocated between those states having jurisdiction to tax the taxpayer based on the direct costs of performance. For purposes of this paragraph, "income producing activity" means the act or acts engaged in by the taxpayer, or persons acting on behalf of the taxpayer, for the ultimate purpose of obtaining gains or profit, and "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

Note: Refer to ss. 71.04 (7) (d), (df), and (dh) and 71.25 (9) (d), (df), and (dh), 2007−08 Stats., as affected by 2005 Wis. Act 25.

(h) *Receipts from intangible property for taxable years beginning on or after January 1, 2009.* For taxable years beginning on or after January 1, 2009, the amount includable in the numerator of the sales factor for gross receipts from the sale of, license of, or allowing use of intangible property in this state is determined as provided in ss. 71.04 (7) (dj) and (dk) and 71.25 (9) (dj) and (dk), Stats. For purposes of applying these paragraphs, the following rules apply:

1. To determine the purchaser's or licensee's use of intangible property in this state, factors that may be considered include the

number of licensed sites in each state, the volume of property manufactured, produced, or sold pursuant to the arrangement at locations in this state, or other data that reflects the relative usage of the intangible property in this state.

2. If the purchaser's or licensee's billing address or commercial domicile is in this state, that billing address or commercial domicile may not conclusively determine that the transaction is in this state except in cases where the location of use of the intangible property cannot be determined. If the location of use of the intangible property cannot be determined, subds. 3. and 4. apply.

3. If the location of use of the intangible property cannot be determined, the gross receipts from the sale of, license of, or other receipts from allowing use of intangible property are in this state if the purchaser's or licensee's commercial domicile is in this state.

4. If subd. 3. would otherwise apply except that the state of the purchaser's or licensee's commercial domicile cannot be determined, the gross receipts from the sale of, license of, or allowing use of intangible property are in this state if the purchaser or licensee is billed for the purchase, license, or use of the intangible property at a location in this state.

(i) The provisions of pars. (c) to (h) shall also apply to sales to the federal government.

Note: Section Tax 2.39 interprets ss. 71.04 (4), (4m), (5), (6), (7), (10), and (11), 71.25 (5), (6), (6m), (7), (8), (9), (11), and (15), and 71.255 (5), Stats.

Note: The provisions of s. Tax 2.39 first apply for taxable years beginning on January 1, 2005. For returns required under combined reporting, the provisions of s. Tax 2.39 first apply for taxable years beginning on January 1, 2009.

History: Cr. Register, August, 1973, No. 212, eff. 9−1−73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12−1−73; cr. (intro.), Register, January, 1978, No. 265, eff. 2−1−78; r. and recr. Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (f), (4) (c), (cm) 2. a. and (f), r. (6) (b) 2. b., renum. (6) (b) 2. c. to be (6) (b) 2. b., Register, May, 1995, No. 473, eff. 6−1−95; emerg. am. (3) (a) (intro.), eff. 9−19−98; am. (3) (a) (intro.), Register, March, 1999, No. 519, eff. 4−1−99; CR 06−063: am. (1) and (2) (a), (b) and (e), (6) (a) and (b) 4. a., r. and recr. (3) and (6) (c), r. (6) (b) 4. b. and (7), renum. (6) (b) 4. c. to be (6) (b) 4. b. and am., Register November 2006 No. 611, eff. 12−1−06; EmR0943: eff. 12−31−09 and CR 10−001: am. (1), (2) (b), (d), (3) (d), (e), (6) (b) 1. d., 2. (intro.), 3. b., 4. b., and (6) (c) (title), cr. (2) (ag), (ar), (cm), (6) (b) 5., and (d) to (i), r. (6) (c) 1. to 4., 7. and 8., renum. (6) (c) 5. and 6. to be (6) (c) 1. and 2. and am. (6) (c) 1. and 2. d. Register June 2010 No. 654, eff. 7−1−10; correction in (2) (cm) made under s. 13.92 (4) (b) 4., Stats., Register June 2010 No. 654.

Tax 2.395 Alternative method of apportionment. (1) DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of part or all of its property and employees to one or more subsidiaries in exchange for 100% of the subsidiary's stock.

(b) "Corporation" means a corporation for profit that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23 (1) or (2), Stats.

(c) "Subsidiary" means a corporation that files an application under this section with a corporation that directly or indirectly owns 100% of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25 (6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have owed if corporate restructuring had not occurred and results in at least $2 million of additional Wisconsin tax liability.

Note: This definition applies only for purposes of s. 71.25 (14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23 (1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation together with its subsidiary may file an application on or before January 1, 2000 to use an alternative method of apportionment under this section if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25 (10) (a), Stats., a public utility as defined in s. 71.25 (10) (b), Stats., or a tax−option corporation as defined in s. 71.34 (2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) The corporation retains direct or indirect ownership of 100% of the subsidiary's stock and the subsidiary has not been engaged in business in or outside this state since the date of its incorporation.

(d) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25 (6), Stats., would result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) CONTENT OF THE APPLICATION. The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the present method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is being audited by the department at the time of the application.

Note: The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708−8933.

(4) ALTERNATIVE METHODS OF APPORTIONMENT. The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.

2. If the customer receives the benefit of the service in more than one state, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25 (14) (c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. (a) Except as provided in par. (b), once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the alternative apportionment method is no longer appropriate as determined under sub. (7) (b).

(b) Notwithstanding par. (a), the aggregate of the corporation's and the subsidiaries' Wisconsin tax liability shall be the greater of the Wisconsin tax liability calculated using the approved alternative apportionment or the Wisconsin tax liability calculated as if the corporate restructuring had not taken place.

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT. (a) 1. If the department upon audit or review finds that the use of the apportionment method prescribed in s. 71.25 (6), Stats., does not result in an unfair representation of the degree of business activity in this state for the first taxable year for which an alternative method of apportionment was approved, the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25 (6), Stats.

2. If the department upon audit or review finds that the use of the alternative apportionment method in subsequent taxable years is no longer appropriate as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25 (6), Stats., for each of the subsequent taxable years.

(b) In determining whether a corporation may continue to use the alternative method of apportionment, the department shall look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25 (6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub. (8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment method, in a subsequent taxable year the corporation may request a new alternative method of apportionment. The department shall submit the new proposed alternative method of apportionment to the co−chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25 (14) (c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub. (6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25 (6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material relative to its business activity. The returns shall be filed with the department's audit bureau.

Note: The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

Note: Section Tax 2.395 interprets s. 71.25 (14), Stats.

History: Emerg. cr. eff. 9−19−98; cr. Register, March, 1999, No. 519, eff. 4−1−99.

Tax 2.41 Separate accounting method. (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: the ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business.

(a) Federal income taxes are based upon income and should, therefore, be allocated to Wisconsin business on the basis of income. Federal income taxes are deductible for income years through 1974 only on the cash basis, and the allocation to Wisconsin business for any year, therefore, must be based upon the ratio of income within Wisconsin to the total income of the year on which the federal income taxes are assessed, even though that ratio differs from the ratio of the year in which the taxes are actually paid. Federal income taxes are not deductible for income years 1975 and thereafter.

(b) The relationship of the general overhead items to Wisconsin operations will determine whether the home office income and expense should be allocated to the Wisconsin business. Miscellaneous income, such as income from intangibles and income from tangible property used in the business, and such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Net rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation but are taxable in full if the property is located in Wisconsin. Gross rentals must be reduced by all expenses related to such investment property.

Note: Section Tax 2.41 interprets ss. 71.04 (4) and 71.25 (6), Stats.

History: 1−2−56; am. Register, February, 1958, No. 26, eff. 3−1−58; am. Register, November, 1977, No. 263, eff. 12−1−77.

Tax 2.44 Permission to change basis of allocation. Except when income must be reported on the apportionment

basis, permission to make a change either from separate accounting to apportionment, or vice versa shall be obtained in writing from the department upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906 before the end of the tax year for which the change is desired.

Note: Section Tax 2.44 interprets ss. 71.04 (4) and 71.25 (6), Stats.

History: 1−2−56, am. Register, September, 1964, No. 105, eff. 10−1−64; am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1983, No. 333, eff. 10−1−83; corrections made under s. 13.93 (2m) (b) 6., Stats., Register, March, 1999, No. 519.

Tax 2.45 Apportionment in special cases. When the business of any person, other than an interstate professional sports club or "financial organization" or"public utility," as defined in s. 71.25 (10), Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of the person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in s. 71.25 (6), Stats., or by separate accounting in view of the unitary nature of the business, the department will substitute in the place of some or all of the statutory apportionment factors another factor or other factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation the taxpayer, at the time of the assessment, will be apprised of the factors used in the formula adopted.

Note: Section Tax 2.45 interprets s. 71.25 (12), Stats.

History: Cr. Register, December, 1956, No. 12, eff. 1−1−57; am. Register, August, 1973, No. 212, eff. 9−1−73; am. Register, September, 1983, No. 333, eff. 10−1−83; am. Register, July, 1989, No. 403, eff. 8−1−89.

Tax 2.46 Apportionment of apportionable income of interstate air carriers. (1) GENERAL. The apportionable income of an air carrier engaged in business in and outside this state shall be apportioned to Wisconsin as described in this section, except if the air carrier is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7).

Note: An air carrier that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITION. In this section, "engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(3) APPORTIONMENT FORMULA COMPUTATION. An air carrier that is engaged in business in and outside this state shall apportion its apportionable income to this state on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

(a) The ratio which the aircraft arrivals and departures within this state scheduled by such carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period; provided that in the case of nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures.

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

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

Note: Air carriers that are in combined groups must adjust the numerator and denominator of each of these factors and then convert the arithmetical average of these factors to the modified sales factor. The modified sales factor then determines the company's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

Note: Section Tax 2.46 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Cr. Register, December, 1956, No. 12, eff. 1−1−57; am. (intro.). Register, August, 1973, No. 212, eff. 9−1−73; EmR0943: emerg. r. and recr. eff 12−31−09; CR 10−001: r. and recr. Register June 2010 No. 654, eff. 7−1−10; correction to (1) (title) made under s. 13.92 (4) (b) 2., Stats., Register June 2010 No. 654.

Tax 2.465 Apportionment of apportionable income of interstate air freight forwarders affiliated with a direct air carrier. (1) GENERAL. The apportionable income of a qualified air freight forwarder affiliated with a direct air carrier and engaged in business in and outside this state shall be apportioned to Wisconsin as described in this section, except if the qualified air freight forwarder is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7).

Note: A qualified air freight forwarder that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) An air freight forwarder is "affiliated" with a direct air carrier if all of the following apply:

1. The air freight forwarder owns or controls either directly or indirectly at least 80% of the ownership interests of the direct air carrier, or at least 80% of the ownership interests of the air freight forwarder is owned or controlled either directly or indirectly by the direct air carrier, or at least 80% of the ownership interests of both the air freight forwarder and the direct air carrier is owned or controlled either directly or indirectly by the same interests.

2. The air freight forwarder is principally engaged in the business of air freight forwarding.

3. The air freight forwarder's air freight forwarding business is carried on principally with the direct air carrier.

(b) "Combined group" has the same meaning as in s. Tax 2.60 (2) (a).

(c) "Direct air carrier" means a business entity principally engaged in air transportation through the direct operation of aircraft under a certificate issued by the federal aviation administration.

(d) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(e) "Originating revenue in this state" means all revenue derived from shipments that were first physically consigned to a qualified air freight forwarder in this state for transportation, regardless of the method or methods of transportation.

(f) "Qualified air freight forwarder" means a person to whom all of the following apply:

1. The person is engaged primarily in the facilitation of the transportation of property by air.

2. The person does not operate aircraft.

3. The person is in the same combined group as an affiliated direct air carrier.

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning on or after January 1, 2014, a qualified air freight forwarder that is engaged in business in and outside this state shall apportion its apportionable income to this state on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

(a) The ratio which aircraft arrivals and departures within this state scheduled by the affiliated direct air carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such direct air carrier during the same period; provided that if the affiliated direct air carrier conducts nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures.

(b) The ratio which the revenue tons handled by the affiliated direct air carrier at airports within this state during the calendar or

fiscal year bears to the total revenue tons handled at airports within and without this state during the same period.

(c) The ratio which such qualified air freight forwarder's originating revenue in this state for the calendar or fiscal year bears to the total revenue of such qualified air freight forwarder within and without this state for the same period.

History: CR 13−078: cr. Register April 2014 No. 700, eff. 5−1−14.

Tax 2.47 Apportionment of apportionable income of interstate motor carriers. (1) GENERAL. The apportionable income of a motor carrier engaged in business in and outside this state shall be apportioned to Wisconsin as described in this section, except if the motor carrier is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7).

Note: A motor carrier that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(1m) DEFINITIONS. In this section:

(a) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(b) "Ton mile" means the movement of one ton of persons or property, or both, the distance of one mile. For carriage of persons, each person shall be considered the equivalent of 200 pounds.

(2) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning on or after January 1, 1997, a motor carrier that is engaged in business in and outside this state shall apportion its apportionable income to this state on the basis of the arithmetical average of the following 2 factors:

(a) The ratio of the gross receipts from carriage of persons or property, or both, first acquired for carriage in Wisconsin to the total gross receipts from carriage of persons or property, or both, everywhere.

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

Note: Motor carriers that are in combined groups must adjust the numerator and denominator of each of these factors and then convert the arithmetical average of these factors to the modified sales factor. The modified sales factor then determines the company's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

(3) SUBSTITUTION OF FACTORS. Whenever gross receipts data is not available the department may authorize or direct substitution of a similar factor, such as gross tonnage, and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor, such as revenue miles.

(4) MERCANTILE AND MANUFACTURING BUSINESSES. This section does not apply to any mercantile or manufacturing business which engages in some interstate carriage as an incident of the mercantile or manufacturing business.

Note: Section Tax 2.47 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Cr. Register, April, 1966, No. 124, eff. 5−1−66; am. (intro.). Register, August, 1973, No. 212, eff. 9−1−73; r. and recr. Register, October, 1996, No. 490, eff. 1−1−97; EmR0943: emerg. am. (title), (2) (title) and (intro.), cr. (intro.), r. and recr. (1), eff. 12−31−09; CR 10−001: am. (title), (2) (title) and (intro.), r. and recr. (1), cr. (1m) Register June 2010 No. 654, eff. 7−1−10; correction to (1) (title) made under s. 13.92 (4)(b) 7., Stats., Register June 2010 No. 654.

Tax 2.475 Apportionment of apportionable income of interstate railroads, sleeping car companies and car line companies. (1) GENERAL. The apportionable income of a railroad, sleeping car company, or car line company engaged in business in and outside this state shall be apportioned to Wisconsin as described in this section, except if the company is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7).

Note: A railroad, sleeping car company, or car line company that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(1m) DEFINITIONS. (a) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(b) "Gross receipts from carriage" means gross receipts received for the carriage of property or persons net of interline payments made to other railroads as a result of the interchange of carriage between and among railroads. Gross receipts from carriage includes interline payments received from other railroads.

(c) "Revenue ton mile" means the movement of one net ton of property or persons, or both, the distance of one mile, for consideration. For carriage of persons, each person shall be considered the equivalent of 150 pounds, and the average weight of the contents of head end cars, or "baggage cars," is considered to be 4 tons.

(2) INTERSTATE RAILROADS AND SLEEPING CAR COMPANIES. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income for taxable years beginning on or after January 1, 1991, the apportionable income of a railroad or sleeping car company engaged in business in and outside this state shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 factors:

(a) The ratio of the gross receipts from carriage of property or persons, or both, first acquired for carriage in Wisconsin to the total gross receipts from carriage of property or persons, or both, everywhere.

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

Note: Railroads and sleeping car companies that are in combined groups must adjust the numerator and denominator of each of these factors and then convert the arithmetical average of these factors to the modified sales factor. The modified sales factor then determines the company's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

(3) SUBSTITUTION OF FACTORS. Whenever gross receipts data is not available the department may authorize or direct substitution of a similar factor, such as gross tonnage, and whenever revenue ton mile data is not available the department may similarly authorize substitution of a similar factor, such as revenue miles.

(4) CAR LINE COMPANIES. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income for taxable years beginning on or after January 1, 1991, the income of a car line company engaged in business in and outside this state shall be allocated or apportioned to Wisconsin as provided in s. 71.04 (4) or 71.25 (6), Stats., and s. Tax 2.39.

Note: Section 71.26 (1) (a), Stats., was amended by 1991 Wis. Act 39, effective for taxable years beginning on or after January 1, 1991. For taxable years beginning before January 1, 1991, railroads, sleeping car companies and car line companies were exempt from Wisconsin franchise and income taxation.

Note: Section Tax 2.475 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Emerg. cr. eff. 2−17−92; cr. Register, August, 1992, No. 440, eff. 9−1−92; EmR0943: emerg. am. (title), (2) (intro.) and (4), cr. (intro.) and (1) (a), renum. (1) (a) and (b) to be (1) (b) and (c), eff. 12−31−09; CR 10−001: am. (title), (2) (intro.) and (4), r. and recr. (1), cr. (1m) Register June 2010 No. 654, eff. 7−1−10; corrections to (1) (title) and (1m) (title) made under s. 13.92 (4) (b) 2., Stats., Register June 2010 No. 654.

Tax 2.48 Apportionment of apportionable income of interstate pipeline companies. (1) GENERAL. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income, the apportionable income of a pipeline company engaged in business in and outside this state shall be apportioned to Wisconsin on the basis of the arithmetical average of the 3 factors in subs. (3), (4) and (5), except if the pipeline company is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7).

Note: A pipeline company that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) "Compensation" includes:

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

2. The value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return

for personal services, provided that these amounts constitute income to the recipient under the federal Internal Revenue Code for the year for which the payroll factor is computed. In the case of employees not subject to the federal Internal Revenue Code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employees shall be made as though the employees are subject to the federal Internal Revenue Code.

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

(am) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

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

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

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

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

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

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

(4) PAYROLL FACTOR. (a) *Numerator; denominator.* The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income. The denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income.

(b) *Compensation paid in Wisconsin.* Except as provided in par. (c), compensation is paid in Wisconsin if one of the following applies:

1. The individual's service is performed entirely within Wisconsin.

Example: Corporation A has a terminal located in Wisconsin. The compensation of an Illinois resident who works at the Wisconsin terminal is included in the numerator of the payroll factor since the employee's service is performed entirely in Wisconsin.

2. The individual's service is performed within and without Wisconsin, but the service performed without Wisconsin is incidental to the individual's service within Wisconsin.

Example: Corporation B has its headquarters and a storage and distribution facility in Wisconsin. Corporation B also has a distribution facility located in Indiana. The manager of the Wisconsin storage and distribution facility spends two weeks during the tax year at the storage and distribution facility located in Indiana training the new facility manager. The compensation of the Wisconsin facility manager is included in the numerator of the payroll factor because the service performed in Indiana is incidental to the service performed in Wisconsin

3. A portion of the service is performed within Wisconsin and the base of operations of the individual is in Wisconsin.

Example: Corporation C has a sales office located in Wisconsin. A salesperson working out of the Wisconsin office solicits sales in Wisconsin, Minnesota and Iowa. Since a portion of the salesperson's service is performed in Wisconsin and the salesperson's base of operations is in Wisconsin, the compensation of the salesperson is included in the numerator of the payroll factor.

4. A portion of the service is performed within Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

5. A portion of the service is performed within Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.

Example: Corporation E is headquartered in and has its sales office in Indiana. It has a terminal located in Wisconsin. A Wisconsin resident salesperson solicits sales in Wisconsin and Minnesota. The compensation of the Wisconsin salesperson is included in the numerator of the payroll factor since a portion of the salesperson's service is performed in Wisconsin, the salesperson is a resident of Wisconsin, and the salesperson is directed or controlled from Indiana but performs no service in Indiana.

6. The individual is neither a resident of nor performs services in Wisconsin, but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Example: Corporation F has its sales office in Wisconsin. A salesperson resides in Nebraska and solicits sales in Nebraska and Kansas. Corporation F does not have nexus in Nebraska or Kansas. The salesperson returns to the Wisconsin sales office

for two weeks each year for meetings and training. The compensation of the Nebraska salesperson is included in the numerator of the payroll factor since the salesperson is directed from an office in Wisconsin, returns to Wisconsin periodically for business purposes and Corporation F does not have nexus in Nebraska.

(c) *Management fee situs.* The situs of management or service fees described in sub. (2) (a) 3. is in Wisconsin to the extent the related corporation's employees performing the services meet one of the requirements in par. (b).

(d) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services for at least 5 days during the year. The compensation of any one employee may not be split between 2 or more states during the year; however, this does not apply if the employee is transferred or changes positions during the year.

(e) *Excluded compensation.* Compensation related to the operation, maintenance, protection or supervision of real or tangible and intangible personal property used in the production of nonapportionable income, and amounts paid to retired employees shall be excluded from both the numerator and the denominator of the payroll factor. Except for management or service fees paid to a related corporation, payments made to an independent contractor or any other person not properly classifiable as an employee are also excluded.

(f) *Elimination of factor.* In any case in which the company has no employees nor pays management or service fees to a related corporation, or in which the department determines that employees are not a substantial income producing factor, the department may order or permit the elimination of the payroll factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

(5) TRAFFIC UNIT FACTOR. The numerator shall be the total number of traffic units in Wisconsin during the tax period. The denominator shall be the total number of traffic units everywhere during the tax period.

Note: Pipeline companies that are in combined groups must adjust the numerator and denominator of each of these factors and then convert the arithmetical average of these factors to the modified sales factor. The modified sales factor then determines the company's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

Note: Section Tax 2.48 interprets s. 71.25 (10) (c), Stats.

History: Cr. Register, November, 1969, No. 167, eff. 12−1−69; am. (intro.), Register, August, 1973, No. 212, eff. 9−1−73; am. (1) (intro.), r. (1) (a), (b) and (c), r. and recr. (2), cr. (3), (4) and (5), Register, June, 1991, No. 426, eff. 7−1−91; reprinted to restore dropped copy in (3) (e), Register, March, 1999, No. 519; EmR0943: eff. 12−31−09 and CR 10−001: am. (title) and (1), cr. (2) (am) Register June 2010 No. 654, eff. 7−1−10.

Tax 2.49 Apportionment of apportionable income of interstate financial institutions. (1) SCOPE. A financial institution that is engaged in business both in and outside this state shall apportion its apportionable income as provided in this section, except if the financial institution is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7). Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats.

Note: A financial institution that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) "Billing address" means the address indicated in the taxpayer's books and records on the first day of the taxable year, or on a later date in the taxable year when the customer relationship began, to which a taxpayer under this section regularly sends any notice, statement, or bill to the taxpayer's customer. The billing address of a customer who is a natural person means the address of that person's domicile.

(b) "Borrower located in this state" means either of the following:

1. A borrower that is engaged in a trade or business and uses the loan proceeds in trade or business activities in this state. If it cannot be determined where the funds are used, "borrower located in this state" means a borrower whose billing address is in this state.

2. A borrower whose billing address is in this state, but is not engaged in a trade or business.

(c) "Commercial domicile" means the location from which a trade or business is principally managed and directed. If the taxpayer is organized under the laws of a foreign country, the commonwealth of Puerto Rico, or any territory or possession of the United States, "commercial domicile" shall be deemed for the purposes of this section to be the state of the United States or the District of Columbia from which the taxpayer's trade or business in the United States is principally managed and directed. It shall be rebuttably presumed that the location from which a trade or business is principally managed and directed is the state of the United States or the District of Columbia at which the greatest number of the taxpayer's employees work, have their office or base of operations, or are directed or controlled, as of the last day of the taxable year.

(d) "Credit card" includes a credit card, debit card, purchase card, charge card, and a travel or entertainment card.

(dm) "Credit card bank" means an institution that is primarily engaged in credit card operations, which does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, and which does not engage in the business of making commercial loans.

(e) "Credit card issuer's reimbursement fee" means the fee that a taxpayer receives from a merchant's bank because a person to whom the taxpayer has issued a credit card has paid for merchandise or services sold by the merchant with the credit card.

(f) "Domicile" means a natural person's true, fixed, and permanent home where that person intends to remain permanently and indefinitely and to which, whenever absent, that person intends to return. A natural person may have only one domicile at any time.

(fm) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(g) "Financial institution" means any financial organization whether incorporated or organized under federal law or under the laws of any state or foreign country that is one of the following:

1. A bank holding company as defined in s. 221.0901 (2) (c), Stats., including a federal bank holding company, an in−state bank holding company, an out−of−state bank holding company, and a foreign bank holding company.

2. A bank as defined under 12 USC 1841 (c), including a national bank organized and existing as a national bank association pursuant to the provisions of 12 USC ch. 2 and a state bank organized and operating under ch. 221, Stats.

3. A savings and loan holding company as defined under 12 USC 1467a (1) (D) or s. 215.01 (24m), Stats.

4. A savings bank holding company as defined in s. 214.01 (1) (tm), Stats.

5. A savings association or federal savings bank as defined in 12 USC 1813 (b), including a savings and loan association, building and loan association, or cooperative bank, and an association as defined in s. 215.01 (1), Stats., and a savings bank as defined in s. 214.01 (1) (t), Stats.

6. A trust company operating as a fiduciary under ch. 223, Stats., or a corporation, limited liability company, association, partnership, business trust, or other legal entity authorized to act as a trustee, personal representative, executor, administrator, guardian, conservator, assignee, or agent or in any other fiduciary capacity for individuals and businesses in the administration of trust funds, estates, and custodial arrangements, in stock and bond transfer and registration, in fiduciary investment and estate planning, and other related services.

7. An industrial bank, industrial loan company, or similar organization as described in 12 USC 1841 (c) (2) (H).

8. A safe deposit company that maintains vaults for the deposit and safe−keeping of valuables and rents compartments or boxes to customers who have exclusive access to these compartments or boxes, subject to the oversight and under the rules and regulations of the company.

9. A private banker including an unincorporated entity operated as a partnership that specializes in investing and managing the money of private clients.

10. Any corporation engaged in international or foreign banking that is organized under the provisions of 12 USC 611 to 633.

11. Any agency or branch of a foreign depository as defined in 12 USC 3101.

12. Any credit union to the extent not exempt under s. 71.26 (1) (a), Stats., and s. 186.113 (20), Stats.

13. A production credit association organized under 12 USC 2071 or a land bank created under the Federal Farm Loan Act.

14. A consumer finance company, small loan company, or a sales finance company licensed under ch. 218, Stats.

15. A mortgage banker as defined in s. 224.71 (3), Stats.

16. A credit card bank.

17. Any subsidiary of an entity described in subds. 1. to 16., if a significant purpose for the subsidiary is to hold investments or if the subsidiary primarily functions to hold investments, as provided in s. 71.25 (10) (a) 2., Stats.

(h) "Guarantor of a loan located in this state" means a guarantor whose billing address is in this state.

(hm) "Intangible property" has the same meaning as in s. Tax 2.39 (2) (f).

(i) "Investment banking services" include assisting business customers in obtaining new financing by underwriting and selling new securities issued by the customer to the public.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of an extension of credit from another. "Loans" include participations, syndications, and leases treated as loans for federal income tax purposes. "Loans" do not include properties treated as loans under section 595 of the Internal Revenue Code prior to its repeal by P.L. 104−188; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non−interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit, or other mortgage−backed or asset−backed security; and other similar items.

(k) "Loan secured by real property" means that any of the collateral used to secure a loan or other obligation at the time the original loan or obligation was incurred or during the current taxable year is real property. A loan secured by real property includes an installment sales contract for real property. An "agricultural lien" as defined in s. 409.102 (1) (b), Stats., or a "fixture filing" as defined in s. 409.102 (1) (js), Stats., does not by itself constitute a loan secured by real property.

(L) "Loan secured by tangible personal property" means that any of the collateral used to secure a loan or other obligation, other than a loan secured by real property, at the time the original loan or obligation was incurred or during the current taxable year is tangible personal property. A loan secured by tangible personal property includes an installment sales contract for tangible personal property.

(m) "Loan servicing fees" include fees or charges for originating and processing loan applications, such as prepaid interest and loan discounts, and for collecting, tracking, and accounting for loan payments received. "Loan servicing fees" also include gross receipts from the sale of loan servicing rights.

(n) "Merchant discount" means the fee or negotiated discount that is charged to a merchant for accepting a credit card as payment for merchandise or services that are sold to the credit card holder.

(o) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral.

Note: In a loan participation, the credit originator initially makes the loan and subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(p) "Person" means a natural person, estate, trust, partnership, limited liability company, corporation, or any other business entity.

(q) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is regularly maintained, occupied, or used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(s) "Syndication" means an extension of credit in which 2 or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxpayer" means a financial organization that is subject to apportionment under this section.

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning after December 31, 2005, a financial institution that is engaged in business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The financial institution shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats. The financial institution shall apportion its remaining net income to this state as follows:

(a) For taxable years beginning after December 31, 2005, and before January 1, 2007, apportionable income shall be apportioned using an apportionment fraction composed of a receipts factor under sub. (4) representing 60% of the fraction and a payroll factor under sub. (5) representing 40% of the fraction.

(b) For taxable years beginning after December 31, 2006, and before January 1, 2008, apportionable income shall be apportioned using an apportionment fraction composed of a receipts factor under sub. (4) representing 80% of the fraction and a payroll factor under sub. (5) representing 20% of the fraction.

(c) For taxable years beginning before January 1, 2008, in any case in which the financial institution has no employees nor pays management or service fees to a related entity, or in which the department determines that employees are not a substantial income producing factor, the department may order or permit the elimination of the payroll factor.

(d) For taxable years beginning after December 31, 2007, apportionable income shall be apportioned using an apportionment fraction composed of the receipts factor under sub. (4).

Note: Financial institutions that are in combined groups use the receipts factor numerator and denominator to compute the modified sales factor, which then determines the financial institution's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

(4) RECEIPTS FACTOR. The receipts factor is the ratio of the taxpayer's receipts in this state to the taxpayer's total receipts everywhere during the taxable year. Interest, dividends, gross receipts or net gains from sales of securities held for investment purposes, and other income from investment assets may not be included in the receipts factor. The receipts factor shall include all of the following items:

Note: A financial institution that is a combined group member must adjust its receipts factor numerator and denominator as described in s. Tax 2.61 (7).

(a) *Gross receipts from the lease of real property.* The numerator of the receipts factor includes gross receipts from the lease,

rental, or licensing of real property owned by the taxpayer if the real property is located in this state and gross receipts from the sublease of real property if the real property is located in this state.

(b) *Gross receipts from the lease of tangible personal property.* 1. Except as described in subd. 2., the numerator of the receipts factor includes gross receipts from the lease, rental, or licensing of tangible personal property owned by the taxpayer and the sublease of tangible personal property if the property is located in this state during the entire period of lease, rental, licensing, sublease, or other use. If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are included in the numerator of the receipts factor to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the number of days the property is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the property is leased, rented, licensed, or subleased in all states having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in the taxable year.

2. Gross receipts from the lease, rental, or licensing of moving property, including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned by the taxpayer and the sublease of moving property are included in the numerator of the receipts factor to the extent that the property is used in this state. The proportion of use of moving property in this state is determined as follows:

a. The proportion of use of a motor vehicle or rolling stock in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the motor vehicle or rolling stock by a fraction having as a numerator the number of miles traveled within this state by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of miles traveled by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year.

b. The proportion of use of an aircraft in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a fraction having as a numerator the number of takeoffs and landings of the aircraft in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of takeoffs and landings of the aircraft while leased, rented, licensed, or subleased in the taxable year.

c. The proportion of use of a vessel or mobile equipment in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the vessel or mobile equipment by a fraction having as a numerator the number of days that the vessel or mobile equipment is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the vessel or mobile equipment is leased, rented, licensed, or subleased in the taxable year.

d. If the taxpayer is unable to determine the use of moving property under subd. 2. a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable year, the moving property is conclusively deemed to be used in the state in which the property is located at the time that the lessee, renter, licensee, or sublessee takes possession of the property.

(c) *Gross interest and other fees from loans secured by real property.* 1. The numerator of the receipts factor includes gross interest, fees, points, charges, and penalties from loans secured by real property if the real property securing the loan is located in this state. If the real property securing the loan is located in both this state and one or more other states or foreign countries, the gross interest, fees, points, charges, and penalties shall be divided among those states or foreign countries having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the fair market value of the real property securing the loan located in each state or foreign country.

2. The determination of whether the real property securing a loan is located in this state shall be made at the time the original agreement was made and for each subsequent taxable year.

(d) *Gross interest and other fees from loans secured by tangible personal property.* 1. The numerator of the receipts factor includes gross interest, fees, points, charges, and penalties from loans secured by tangible personal property if the tangible personal property securing the loan is located in this state as described in par. (b). If the tangible personal property securing the loan is located in both this state and one or more other states or foreign countries, the gross interest, fees, points, charges, and penalties shall be divided among those states or foreign countries having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the fair market value of the tangible personal property securing the loan located in each state or foreign country.

2. The determination of whether the tangible personal property securing a loan is located in this state shall be made at the time the original agreement was made and for each subsequent taxable year.

(e) *Gross interest and other fees from loans not secured by real or tangible personal property.* The numerator of the receipts factor includes interest, fees, points, charges, and penalties from loans that are not secured by real or tangible personal property if the loan borrower is located in this state.

(f) *Net gains from the sale of loans.* The numerator of the receipts factor includes net gains from the sale of loans, determined as follows:

1. The amount of net gains, but not less than zero, from the sale of loans secured by real property located in this state. If the real property securing the loan is located in both this state and one or more other states or foreign countries, the net gain shall be divided among those states or foreign countries having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the fair market value of the real property securing the loan located in each state or foreign country.

2. The amount of net gains, but not less than zero, from the sale of loans secured by tangible personal property located in this state as described in par. (b). If the tangible personal property securing the loan is located in both this state and one or more other states or foreign countries, the net gain shall be divided among those states or foreign countries having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the fair market value of the tangible personal property securing the loan located in each state or foreign country.

3. The amount of net gains, but not less than zero, from the sale of loans not secured by real or tangible personal property if the loan borrower is located in this state.

(g) *Gross receipts from credit card receivables.* The numerator of the receipts factor includes gross interest, fees, points, charges, and penalties from credit card receivables and gross receipts from annual fees and other fees charged to credit card holders if the billing address of the credit card holder is in this state.

(h) *Net gains from the sale of credit card receivables.* The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables if the billing address of the credit card holder is in this state.

(i) *Credit card issuer's reimbursement fees.* The numerator of the receipts factor includes the taxpayer's credit card issuer's reimbursement fees if the billing address of the credit card holder is in this state.

(j) *Gross receipts from merchant discount.* The numerator of the receipts factor includes gross receipts from merchant discount

if the merchant's trade or business is located in this state. If the merchant's trade or business is located in and outside this state, the numerator includes only receipts from merchant discounts on sales made in this state. If the location of a sale cannot be determined, the numerator includes the merchant discount on the sale if the merchant's commercial domicile is in this state. The receipts shall be computed net of any credit card holder charge backs but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its credit card holders.

(k) *Loan servicing fees.* 1. The numerator of the receipts factor includes loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, and secured by real property located in this state. If the real property securing the loan is located in both this state and one or more other states or foreign countries, the loan servicing fees shall be divided among those states or foreign countries having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the fair market value of the real property securing the loan located in each state or foreign country. If the location of the real property securing the loan cannot be determined, the numerator includes the loan servicing fees if the loan borrower or guarantor of the loan is located in this state.

2. The numerator of the receipts factor includes loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, and secured by tangible personal property located in this state as described in par. (b). If the tangible personal property securing the loan is located in both this state and one or more other states or foreign countries, the loan servicing fees shall be divided among those states or foreign countries having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the fair market value of the tangible personal property securing the loan located in each state or foreign country. If the location of the tangible personal property securing the loan cannot be determined, the numerator includes the loan servicing fees if the loan borrower or guarantor of the loan is located in this state.

3. The numerator of the receipts factor includes loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, and not secured by real or tangible personal property if the loan borrower or guarantor of the loan is located in this state.

(L) *Gross receipts from travelers checks, cashiers checks, certified checks, and money orders*. The numerator of the receipts factor includes gross fees or other charges for the issuance of travelers checks, cashiers checks, certified checks, and money orders if the checks or money orders are purchased in this state.

(m) *Gross receipts from automated teller machines.* The numerator of the receipts factor includes gross receipts from the usage of automated teller machines located in this state.

(n) *Gross receipts from safety deposit boxes.* The numerator of the receipts factor includes gross receipts from the rental of safety deposit boxes if the boxes are located in this state.

(o) *Gross receipts from maintaining accounts.* The numerator of the receipts factor includes gross receipts from the maintenance of accounts, including but not limited to service charges for maintaining accounts, overdraft charges, charges for copies of statements and checks, and fees for account reconciliation, if either of the following applies:

1. The service is provided to an account holder that is not engaged in a trade or business, and the account holder's billing address is in this state.

2. The service is provided to an account holder that is engaged in a trade or business, the account holder maintains a regular place of business in this state, and the service received relates to the business in this state. If the account holder receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the account holder, in the regular course of the account holder's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the account holder's billing address is in this state.

(p) *Gross receipts from electronic funds transfer.* The numerator of the receipts factor includes electronic funds transfer fees if either of the following applies:

1. The service is provided to a customer that is not engaged in a trade or business, and the customer's billing address is in this state.

2. The service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in this state, and the service received relates to the business in this state. If the customer receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the customer, in the regular course of the customer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the customer's billing address is in this state.

(q) *Gross receipts from cash management services.* The numerator of the receipts factor includes the gross amount of any fees or charges generated from cash management services, including but not limited to lockbox services, depository transfer checks, and payables management, if the service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in this state, and the service received relates to the business in this state. If the customer receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the customer, in the regular course of the customer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the customer's billing address is in this state.

(r) *Gross receipts from international trade services.* The numerator of the receipts factor includes the gross receipts from international trade services, including but not limited to letters of credit and bankers acceptance notes, if the service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in this state, and the service received relates to the business in this state. If the customer receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the customer, in the regular course of the customer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the customer's billing address is in this state.

(s) *Gross receipts from data processing services, document imaging services, and microfilming services.* The numerator of the receipts factor includes the gross receipts from data processing services, document imaging services, and microfilming services if the service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in this state, and the service received relates to the business in this state. If the customer receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the customer, in the regular course of the customer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the customer's billing address is in this state.

(t) *Gross receipts from research services.* The numerator of the receipts factor includes gross receipts from research services if either of the following applies:

1. The service is provided to a customer that is not engaged in a trade or business, and the customer's billing address is in this state.

2. The service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in this state, and the service received relates to the business in this state. If the customer receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the customer, in the regular course of the customer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the customer's billing address is in this state.

(u) *Gross receipts from trust services.* The numerator of the receipts factor includes gross receipts from trust services if either of the following applies:

1. The service is provided to a customer that is not engaged in a trade or business, and the customer's billing address is in this state.

2. The service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in this state, and the service received relates to the business in this state. If the customer receives the service in more than one state or the state in which the service is received cannot be determined, the service is received in this state if the customer, in the regular course of the customer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the services are received in this state if the customer's billing address is in this state.

(v) *Gross receipts from investment banking services.* The numerator of the receipts factor includes gross receipts, including commissions, management fees, or underwriting fees, earned from investment banking services if either of the following applies:

1. The issuer of the securities is not engaged in a trade or business, and the issuer's billing address is in this state.

2. The issuer of the securities is engaged in a trade or business, the issuer of the securities maintains a regular place of business in this state, and the securities relate to that person's business in this state. If the securities relate to that person's regular place of business in more than one state, the receipts from the performance of the service are included in the numerator of the receipts factor according to the portion of the service received in this state. If the regular place of business to which the securities relate cannot be determined, the service is received in this state if the issuer of the securities, in the regular course of the issuer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the service is received in this state if the issuer's billing address is in this state.

(w) *Gross receipts from security brokerage services.* 1. The numerator of the receipts factor includes fees, commissions, margin interest, and other gross receipts from security brokerage services if the customer's billing address is in this state.

2. The numerator of the receipts factor includes net gains, net of commissions, but not less than zero, from sales of trading assets if the customer's billing address is in this state. "Trading assets" include securities, commodities, and related financial instruments that a taxpayer acquires and holds for sale in its inventory account. The receipts factor does not include gross receipts or net gains from sales or other dispositions of investment assets.

(x) *Gross receipts from other services.* The numerator of the receipts factor includes gross receipts from services that are not described in pars. (a) to (w) if the purchaser of the service received the benefit of the service in this state under any of the following circumstances:

1. The benefit of a service is received in this state if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to an individual who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

2. If the purchaser of a service receives the benefit of a service in more than one state, the gross receipts from the performance of the service are included in the numerator of the receipts factor according to the portion of the service received in this state.

(y) *Gross receipts from computer software.* 1. The numerator of the receipts factor includes gross receipts from the use of computer software if the purchaser or licensee uses the computer software at a location in this state.

2. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state, for personal use in this state, or if the purchaser or licensee is an individual whose domicile is in this state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts shall be divided among those states having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in this state, the department may consider the number of users in each state where the computer software is used, the number of site licenses or workstations in this state, and any other factors that reflect the use of computer software in this state.

(z) *Gross royalties and other gross receipts from intangibles.* 1. The numerator of the receipts factor includes gross royalties and other gross receipts received for the use of intangible property if the user, purchaser, or licensee uses the intangible property at a location in this state.

2. Intangible property is used at a location in this state if the user, purchaser, or licensee uses the property in the operation of a trade or business at a location in this state, for personal use in this state, or if the user, purchaser, or licensee is an individual whose domicile is in this state. If the user, purchaser, or licensee uses the intangible property in more than one state, the gross royalties and other gross receipts from the sale or use of the intangible property shall be divided among those states having jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer in proportion to the use of the intangible property in those states. To determine intangible property use in this state, the department may consider the number of licensed sites in each state, the volume of property manufactured, produced, or sold at locations in this state, or any other factors that reflect the use of the intangible property in this state.

(ze) *Gross receipts from services provided to regulated investment companies.* 1. Except as provided in subd. 2., the numerator of the receipts factor includes gross receipts and net gain described under pars. (a) to (z) from services provided to or on behalf of a regulated investment company, as defined in section 851 of the Internal Revenue Code. The regulated investment company is considered the purchaser or consumer of the services.

2. At the taxpayer's option, the portion of the gross receipts received from a regulated investment company from the sale of administration, distribution, or management services shall be included in the numerator of the receipts factor as described in subd. 3. A taxpayer that makes this election shall use this method to determine the receipts included in the numerator of the receipts factor from each regulated investment company for or on behalf

of which it performs services and shall compute the receipts from each regulated investment company separately. For purposes of this subdivision:

a. "Administration services" include clerical, accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal, and tax services provided for a regulated investment company but only if the provider of the services also provides, or is affiliated with a person that provides, distribution or management services to the regulated investment company.

b. "Distribution services" include advertising, servicing investor accounts, marketing, or selling shares of the regulated investment company. In the case of advertising, servicing, or marketing shares, the services shall be performed by a person that is or, in the case of a closed end company, was either engaged in the service of selling the shares or affiliated with a person that is engaged in the service of selling the shares. In the case of an open end company, the service of selling shares shall be performed pursuant to a contract entered into under 15 USC 80a−15(b).

c. "Management services" include rendering investment advice directly or indirectly to a regulated investment company, determining when sales and purchases of securities are to be made on behalf of the regulated investment company, selling or purchasing securities constituting assets of a regulated investment company, and related activities, but only if the activities are performed pursuant to a contract with the regulated investment company entered into under 15 USC 80a−15(a), for a person that has entered into the contract with the regulated investment company or for a person that is affiliated with a person that has entered into the contract with a regulated investment company.

d. A person is affiliated with another person if each person is a member of the same affiliated group, as defined under section 1504 of the Internal Revenue Code without regard to sub. (b) of section 1504.

e. Receipts received from a regulated investment company include amounts received directly or indirectly from the regulated investment company and amounts received from shareholders in the regulated investment company.

3. The numerator of the receipts factor includes the sum of receipts determined by multiplying the gross receipts from the sale of administration, distribution, and management services provided to or on behalf of each separate regulated investment company by a fraction, computed as follows:

a. The numerator of the fraction is the sum of the monthly percentages determined for each month of the regulated investment company's taxable year for federal income tax purposes, which taxable years ends within or at the same time as the taxpayer's taxable year, but excluding any month during which the regulated investment company had no outstanding shares. The monthly percentage for each month is determined by dividing the number of shares in the regulated investment company that are owned on the last day of the month by shareholders whose domicile or commercial domicile is in this state by the total number of shares in the regulated investment company outstanding on that date.

b. The denominator of the fraction is the number of monthly percentages.

(zm) *Other sales.* The numerator of the receipts factor includes all other receipts described in s. Tax 2.39 (6) (b) to (i), to the extent not described in this subsection.

(zs) *Receipts not taxed.* For taxable years beginning before January 1, 2009, fifty percent of the taxpayer's receipts that are apportioned under this section to a state which does not have jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer shall be included in the numerator of the apportionment fraction if the taxpayer's employees or representatives performed such services from a location in this state. With regard to receipts described in pars. (a) to (ze), this paragraph does not apply to taxable years beginning on or after January 1, 2009.

(5) PAYROLL FACTOR. The payroll factor is the ratio of the total compensation paid to employees located in this state to the total compensation paid to employees located everywhere, determined in accordance with the provisions of ss. 71.04 (6) and 71.25 (8), Stats., and s. Tax 2.39 (5). "Compensation paid to employees" includes deductible management or service fees paid to a related entity directly or indirectly for the performance of personal services, and the situs of the fees is in this state if the services are performed in this state. The recipient of the fees may not include the compensation paid to its employees with respect to the personal services in either the numerator or denominator of its payroll factor.

Note: The provisions of s. Tax 2.49 first apply for taxable years beginning on January 1, 2006.

History: Cr. Register, August, 1973, No. 212, eff. 9−1−73; am. (1) (b), Register, July, 1978, No. 271, eff. 8−1−78; corrections in (1) (b) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1999, No. 519; CR 04−031: r. and recr. Register June 2006 No. 606, eff. 7−1−06; correction in (4) (zm) made under s. 13.93 (2m) (b) 7., Stats., Register November 2006 No. 611; corrections in (1) and (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register April 2010 No. 652; EmR0943: eff. 12−31−09 and CR 10−001: am. (1), (2) (h), (3) (intro.), (4) (intro.), (z) 1., (zm) and (zs), cr. (2) (dm), (fm), (g) 16., 17., (hm) and (3) (d), r. (3) (c), renum. (3) (d) to be (3) (c) Register June 2010 No. 654, eff. 7−1−10.

Tax 2.495 Apportionment of apportionable income of interstate brokers−dealers, investment advisers, investment companies, and underwriters. (1) SCOPE. A brokerage house, investment adviser, investment company, or underwriter that is engaged in business both in and outside this state shall apportion its apportionable income as provided in this section, except if the brokerage house, investment adviser, investment company, or underwriter is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7). Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats.

Note: A brokerage house, investment adviser, investment company, or underwriter that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) "Billing address" means the address indicated in the taxpayer's books and records on the first day of the taxable year, or on a later date in the taxable year when the customer relationship began, to which a taxpayer regularly sends any notice, statement or bill to the taxpayer's customer. The billing address of a customer who is a natural person means the address of that person's domicile.

(b) "Brokerage commission" includes, but is not limited to, all sales fees on agency or principal transactions whether charged explicitly or implicitly.

(c) "Brokerage house" means a firm or place where a broker−dealer conducts business.

(d) "Broker−dealer" means a person engaged in the business of effecting transactions in securities, commodities, and related financial instruments for the account of another or for the person's own account. "Broker−dealer" does not include a sales agent; an issuer with respect to purchasing and selling the issuer's own securities; a bank, savings institution, or trust company, when effecting transactions for its own account or as an agent; a person in that person's capacity as a personal representative, executor, administrator, holder of power of attorney, guardian, trustee of a testamentary or inter vivos trust, conservator, or pledgee; or any other person excluded from the definition of "broker−dealer" in s. 551.102 (4), Stats.

(e) "Commercial domicile" means the location from which a trade or business is principally managed and directed. If the taxpayer is organized under the laws of a foreign country, the commonwealth of Puerto Rico, or any territory or possession of the

United States, "commercial domicile" shall be deemed for the purposes of this section to be the state of the United States or the District of Columbia from which the taxpayer's trade or business in the United States is principally managed and directed. It shall be rebuttably presumed that the location from which a trade or business is principally managed and directed is the state of the United States or the District of Columbia at which the greatest number of the taxpayer's employees work, have their office or base of operations, or are directed or controlled, as of the last day of the taxable year.

(em) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(f) "Investment adviser" has the meaning given in 15 USC 80b−2 (a) (11).

(g) "Investment company" has the meaning given in 15 USC 80a−3.

(h) "Person" means a natural person, estate, trust, partnership, limited liability company, corporation, or any other business entity.

(i) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is regularly maintained, occupied, or used by employees of the taxpayer.

(j) "Sales agent" means any individual other than a broker−dealer who represents a broker−dealer or issuer in effecting or attempting to effect transactions in securities. A sales agent includes a partner, officer, or director of a broker−dealer or issuer, or a person occupying a similar status or performing similar functions.

(k) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(L) "Taxpayer" means a broker−dealer, investment adviser, investment company, or underwriter who is subject to apportionment under this section.

(m) "Trading assets" include securities, commodities, and related financial instruments that a taxpayer acquires and holds for sale in its inventory account.

(n) "Underwriter" includes all persons described under 15 USC 77b (a) (11).

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning after December 31, 2005, a broker−dealer, investment adviser, investment company, or underwriter that is engaged in business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The broker−dealer, investment adviser, investment company, or underwriter shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats. The broker−dealer, investment adviser, investment company, or underwriter shall apportion its remaining net income to this state as follows:

(a) For taxable years beginning after December 31, 2005, and before January 1, 2007, apportionable income shall be apportioned using an apportionment fraction composed of a receipts factor under sub. (4) representing 60% of the fraction, a payroll factor under sub. (5) representing 20% of the fraction, and a property factor under sub. (6) representing 20% of the fraction.

(b) For taxable years beginning after December 31, 2006, and before January 1, 2008, apportionable income shall be apportioned using an apportionment fraction composed of a receipts factor under sub. (4) representing 80% of the fraction, a payroll factor under sub. (5) representing 10% of the fraction, and a property factor under sub. (6) representing 10% of the fraction.

(c) In any case in which the taxpayer has no employees nor pays management or service fees to a related entity, or in which the department determines that employees are not a substantial income producing factor, the department may order or permit the elimination of the payroll factor. In any case in which the taxpayer has no property, or in which the department determines that property is not a substantial income producing factor, the department may order or permit the elimination of the property factor. This subsection does not apply to taxable years beginning after December 31, 2007.

(d) For taxable years beginning after December 31, 2007, apportionable income shall be apportioned using an apportionment fraction composed of the receipts factor under sub. (4).

Note: Brokers−dealers, investment advisers, investment companies, and underwriters that are in combined groups use the receipts factor numerator and denominator to compute the modified sales factor, which then determines the company's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

(4) RECEIPTS FACTOR. The receipts factor is the ratio of the taxpayer's receipts in this state to the taxpayer's total receipts everywhere during the taxable year. Interest, dividends, gross receipts or net gains from sales of securities, and other income from investment assets held by a taxpayer in the taxpayer's investment account may not be included in the receipts factor. The receipts factor shall include the items described in pars. (a) to (h).

Note: A broker−dealer, investment adviser, investment company, or underwriter that is a combined group member must adjust its receipts factor numerator and denominator as described in s. Tax 2.61 (7).

(a) *Gross brokerage commissions.* The numerator of the receipts factor includes gross brokerage commissions earned if the billing address of the customer is in this state.

(b) *Gross margin interest.* The numerator of the receipts factor includes total margin interest earned on behalf of brokerage accounts owned by customers if the billing address of the customer is in this state.

(c) *Gross account maintenance fees.* The numerator of the receipts factor includes account maintenance fees received on behalf of brokerage accounts owned by customers if the billing address of the customer is in this state.

(d) *Gross receipts from trading assets.* 1. Except as provided in subds. 1m. and 2., the numerator of the receipts factor includes gross receipts, net of commissions, from sales of trading assets, if the day−to−day decisions regarding the trading assets occur at a location in this state. If the day−to−day decisions regarding the trading assets occur at locations both in and outside this state, the assets shall be considered to be located at the location where the trading policies and guidelines are established. It shall be rebuttably presumed that the location where the trading policies and guidelines are established is at the taxpayer's commercial domicile.

1m. Except as provided in subd. 2., at the election of the taxpayer, for taxable years beginning after December 31, 2014, the numerator of the receipts factor includes gross receipts, net of commissions, from sales of trading assets if the customer's billing address is in this state. Once made, an election under this subdivision cannot be revoked without prior consent from the department. If a request to change an election has been approved by the department, the change becomes effective with the first taxable year ending on or after approval by the department.

2. If the inclusion of gross receipts results in substantial distortion of the receipts factor, the department may order or permit the substitution of net gain, net of commissions, from sales of trading assets.

(e) *Investment company receipts.* The numerator of the receipts factor includes gross payments received on investment contracts issued by the taxpayer and held by customers if the billing address of the customer is in this state. "Investment contract" includes any bonds, shares, coupons, certificates of membership, or other obligations or agreements issued by the taxpayer to return to the holders or owners money or anything of value at some future date.

(f) *Gross receipts from underwriting services.* The numerator of the receipts factor includes gross receipts, including gross com-

missions, gross management fees, or gross underwriting fees, earned in performing underwriting activities on behalf of the issuer of the securities if either of the following applies:

1. The issuer of the securities is not engaged in a trade or business, and the issuer's billing address is in this state.

2. The issuer of the securities is engaged in a trade or business, the issuer of the securities maintains a regular place of business in this state, and the securities relate to that person's business in this state. If the securities relate to that person's regular place of business in more than one state, the receipts from the performance of the service are included in the numerator of the receipts factor according to the portion of the service received in this state. If the regular place of business to which the securities relate cannot be determined, the service is received in this state if the issuer of the securities, in the regular course of the issuer's business, ordered the service from an office in this state. If the ordering office cannot be determined, the service is received in this state if the issuer's billing address is in this state.

(g) *Other gross receipts or net gains.* The numerator of the receipts factor includes any other gross receipts or net gains as provided in s. Tax 2.49 (4).

(h) *Receipts not taxed.* For taxable years beginning before January 1, 2009, fifty percent of the taxpayer's receipts that are apportioned under this section to a state which does not have jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer shall be included in the numerator of the apportionment fraction if the taxpayer's commercial domicile is in this state. With regard to receipts described in pars. (a) to (f), this paragraph does not apply to taxable years beginning on or after January 1, 2009.

(5) PAYROLL FACTOR. The payroll factor is the ratio of the total compensation paid to employees located in this state to the total compensation paid to employees located everywhere, determined in accordance with the provisions of ss. 71.04 (6) and 71.25 (8), Stats., and s. Tax 2.39 (5). "Compensation paid to employees" includes deductible management or service fees paid to a related entity directly or indirectly for the performance of personal services, and the situs of the fees is in this state if the services are performed in this state. The recipient of the fees may not include the compensation paid to its employees with respect to the personal services in either the numerator or denominator of its payroll factor.

(6) PROPERTY FACTOR. The property factor is determined in accordance with the provisions of ss. 71.04 (5) and 71.25 (7), Stats., and s. Tax 2.39 (4).

Note: The provisions of s. Tax 2.495 first apply for taxable years beginning on January 1, 2006.

History: CR 04−031: cr. Register June 2006 No. 606, eff. 7−1−06; corrections in (1), (2) (d) and (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register April 2010 No. 652; EmR0943: eff. 12−31−09 and CR 10−001: am. (1), (3) (intro.), (4) (intro.) and (h), cr. (2) (em) and (3) (d), r. (3) (c), renum. (3) (d) to be (3) (c) Register June 2010 No. 654, eff. 7−1−10; **CR 14−077: am. (4) (d) 1., cr. (4) (d) 1m. Register May 2015 No. 713, eff. 6−1−15.**

Tax 2.50 Apportionment of apportionable income of interstate public utilities. (1) SCOPE. A public utility that is engaged in business both in and outside this state shall apportion its apportionable income as provided in this section, except if the public utility is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7). Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats.

Note: A public utility that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(b) "Payroll factor" means the payroll fraction computed under s. 71.04 (6) or 71.25 (8), Stats., and s. Tax 2.39.

(c) "Property factor" means the property fraction computed under s. 71.04 (5) or 71.25 (7), Stats., and s. Tax 2.39.

(d) "Public utility" means any business entity that owns or operates any plant, equipment, property, franchise, or license for the production, transmission, sale, delivery, or furnishing of electricity, water, or steam the rates of charges for goods or services of which have been established or approved by a federal, state, or local government or governmental agency.

(e) "Sales factor" means the sales fraction computed under ss. 71.04 (4m) and (7) or 71.25 (6m) and (9), Stats., and s. Tax 2.39.

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning after December 31, 2004, a public utility that is engaged in business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The public utility shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats. The public utility shall apportion its remaining net income to this state as follows:

(a) For taxable years beginning before January 1, 2006, apportionable income shall be apportioned using an apportionment fraction obtained by taking the arithmetical average of the sales factor, property factor, and payroll factor.

(b) For taxable years beginning after December 31, 2005, and before January 1, 2007, apportionable income shall be apportioned using an apportionment fraction composed of the sales factor representing 60% of the fraction, the property factor representing 20% of the fraction, and the payroll factor representing 20% of the fraction.

(c) For taxable years beginning after December 31, 2006, and before January 1, 2008, apportionable income shall be apportioned using an apportionment fraction composed of the sales factor representing 80% of the fraction, the property factor representing 10% of the fraction, and the payroll factor representing 10% of the fraction.

(d) For taxable years beginning after December 31, 2007, apportionable income shall be apportioned using an apportionment fraction composed of the sales factor.

Note: Public utilities that are in combined groups must adjust the numerator and denominator of the sales factor as described in s. Tax 2.61 (7).

Note: The provisions of s. Tax 2.50 first apply for taxable years beginning on January 1, 2005.

Note: Section Tax 2.50 interprets ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats.

History: Cr. Register, August, 1973, No. 212, eff. 9−1−73; am. (1), Register, February, 1990, No. 410, eff. 3−1−90; emerg. r. and recr. eff. 12−5−05; CR 05−117: r. and recr. Register June 2006 No. 606, eff. 7−1−06; corrections in (1) and (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register April 2010 No. 652; EmR0943: eff. 12−31−09 and CR 10−001: am. (1) and (3) (intro.), renum. (2) (a) to (d) to be (2) (b) to (e), cr. (2) (a) Register June 2010 No. 654, eff. 7−1−10.

Tax 2.502 Apportionment of apportionable income of interstate telecommunications companies. (1) SCOPE. A telecommunications company that is engaged in business both in and outside this state shall apportion its apportionable income as provided in this section, except if the telecommunications company is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7). Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats.

Note: A telecommunications company that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITIONS. In this section:

(a) "Cable television service" means cable service as defined in 47 USC 522(6) when provided over a cable system as defined in 47 USC 522(7).

(am) "Engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(b) "Payroll factor" means the payroll fraction computed under s. 71.04 (6) or 71.25 (8), 2001 Stats., and s. Tax 2.39.

(c) "Property factor" means the property fraction computed under s. 71.04 (5) or 71.25 (7), 2001 Stats., and s. Tax 2.39.

(d) "Telecommunications company" means any person that owns, operates, manages, or controls any plant or equipment used to furnish telecommunications services and cable television services within this state directly or indirectly to the public and derives at least 70% of its gross income for the current taxable year from the provision of telecommunications services and cable television services, excluding internet service and the resale of telecommunications by telecommunications resellers as defined in s. 196.01 (9), Stats. For purposes of the 70% test, gross income does not include interest, dividends, rents, royalties, capital gains or ordinary gains from asset dispositions, other than in the normal course of business. "Telecommunications company" does not include internet service providers.

(e) The following terms have the same definitions as provided in ss. 77.51 and 77.522 (4) (a), Stats.:

1. "Ancillary services" (s. 77.51 (1ba), Stats.).
2. "Call−by−call basis" (s. 77.522 (4) (a) 2., Stats.).
3. "Communications channel" (s. 77.522 (4) (a) 3., Stats.).
4. "Customer" (s. 77.522 (4) (a) 4., Stats.).
5. "Customer channel termination point" (s. 77.522 (4) (a) 5., Stats.).
6. "Home service provider" (s. 77.522 (4) (a) 7., Stats.).
7. "Interstate telecommunications services" (s. 77.51 (5n), Stats.).
8. "Intrastate telecommunications services" (s. 77.51 (5r), Stats.).
9. "Mobile telecommunications service" (s. 77.522 (4) (a) 8., Stats.).
10. "Place of primary use" (s. 77.522 (4) (a) 9., Stats.).
11. "Postpaid calling service" (s. 77.522 (4) (a) 10., Stats.).
12. "Prepaid calling service" (s. 77.51 (10d), Stats.).
13. "Prepaid wireless calling service" (s. 77.51 (10f), Stats.).
14. "Private communication service" (s. 77.51 (10s), Stats.).
15. "Service address" (s. 77.51 (17m), Stats.).
16. "Telecommunications services" (s. 77.51 (21n), Stats.).

(3) APPORTIONMENT FORMULA COMPUTATION. For taxable years beginning after December 31, 2004, a telecommunications company that is engaged in business in and outside this state shall determine its net income for state franchise or income tax purposes as provided in this section. The telecommunications company shall first deduct from its total net income its nonapportionable income, less related expenses. Nonapportionable income shall be allocated as provided in s. 71.25 (5) (b), Stats. The telecommunications company shall apportion its remaining net income to this state using an apportionment fraction obtained by taking the arithmetical average of the property factor, payroll factor, and sales factor. The sales factor is determined as prescribed in subs. (4) and (5), as applicable.

(4) SALES FACTOR FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 2009. For taxable years beginning before January 1, 2009, the sales factor is the sales factor as would be determined under s. 71.25 (9), 2001 Stats.

(5) SALES FACTOR FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2009. For taxable years beginning on or after January 1, 2009, the sales factor is determined as provided in s. 71.25 (9), Stats., as effective for the current taxable year. For purposes of computing the numerator of a telecommunications company's sales factor under this subsection, the following rules apply:

(a) *General.* Except as provided otherwise in par. (b) to (f), gross receipts from the sale of a telecommunications service or mobile telecommunications service are in this state if the customer's place of primary use of the service is in this state.

(b) *Telecommunications services on call−by−call basis.* Gross receipts from the sale of telecommunications services sold on an individual call−by−call basis are in this state if either of the following applies:

1. The call both originates and terminates in this state.
2. The call either originates or terminates in this state and the service address is located in this state.

(c) *Postpaid calling services, prepaid calling services, and prepaid wireless calling services.* Gross receipts from the sale of postpaid calling services, prepaid calling services, and prepaid wireless calling services are in this state if the origination point of the telecommunication signal, as first identified by the service provider's telecommunication system or, if the system used to transport telecommunication signals is not the seller's, as identified by information received by the seller from its service provider, is located in this state.

(d) *Private communication services.* The following gross receipts from the sale of private communication services are in this state:

1. Any separate charge attributable to a customer channel termination point located within this state.
2. If all customer channel termination points are located entirely in this state, the gross receipts attributable to those customer channel termination points.
3. Fifty percent of the gross receipts attributable to segments of a channel between two customer channel termination points located in different states, if one of those customer channel termination points is located in this state.
4. If the segments are not charged separately, the gross receipts attributable to segments of a communications channel that is located in this state and in more than one other state or equivalent jurisdiction, computed based on a percentage determined by dividing the number of customer channel termination points in this state by the total number of customer channel termination points in all jurisdictions where segments of the communications channel are located.

(e) *Ancillary services.* Gross receipts from the sale of ancillary services are in this state if the customer's place of primary use is in this state.

(f) *Carrier network access and sales for resale.* The following gross receipts from carrier network access and from the sale of telecommunications services for resale are in this state:

1. Gross receipts from access fees attributable to intrastate telecommunications service that both originates and terminates in this state.
2. Where subd. 1. does not apply, 50 percent of the gross receipts from access fees attributable to interstate telecommunications service if the interstate call either originates or terminates in this state.
3. Gross receipts from interstate end user access line charges, including the surcharge approved by the federal communications commission and levied pursuant to 47 CFR 69, if the customer's service address is in this state.
4. Gross receipts from sales of telecommunications services to other telecommunication service providers for resale if the reseller's sale to the customer would be sourced to this state under the rules of this subsection, provided the information is readily available to make that determination. If the information is not readily available, the taxpayer must use a reasonable and consistent method to determine the amount of gross receipts from sales for resale that are derived from Wisconsin, based on the information that is available.

(g) *Other sales.* Sales other than those described in pars. (a) to (f) are in this state if so determined under s. 71.25 (9), Stats., and s. Tax 2.39.

Note: Telecommunications companies that are in combined groups must adjust the numerator and denominator of each of their apportionment factors and then convert the arithmetical average of these factors to the modified sales factor. The modi-

fied sales factor then determines the company's Wisconsin share of the combined group's apportionable income. See s. 71.255 (5), Stats., and s. Tax 2.61 (7) for details.

Note: The provisions of s. Tax 2.502 first apply for taxable years beginning on January 1, 2005.

Note: Section Tax 2.502 interprets ss. 71.04 (8) (b) and (c) and 71.25 (10) (b) and (c), Stats.

History: Emerg. cr., eff. 12−5−05; CR 05−117: cr. Register June 2006 No. 606, eff. 7−1−06; corrections in (1) and (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register April 2010 No. 652; EmR0943: eff. 12−31−09 and CR 10−001: am. (1) and (3), cr. (2) (am), (e), (4) and (5), r. (2) (d) and (f), renum. (2) (e) to be (2) (d) and am. Register June 2010 No. 654, eff. 7−1−10; correction in (5) (f) 3. made under s. 13.92 (4) (b) 4., Stats., Register June 2010 No. 654.

Tax 2.505 Apportionment of apportionable income of interstate professional sports clubs. (1) SCOPE. The apportionable income of professional sports clubs engaged in business in and outside Wisconsin during the year shall be apportioned to Wisconsin using the apportionment fraction described in s. 71.25 (6), Stats., and the apportionment formula computation described in s. 71.25 (6m), Stats., if applicable, except if the professional sports club is in a combined group, its Wisconsin share of the combined group's apportionable income is computed as provided in s. 71.255 (5), Stats., and further detailed in s. Tax 2.61 (7). The property, payroll, and sales factors described in s. 71.25 (6) and (6m), Stats., shall be determined as described in this section.

Note: A professional sports club that is a corporation may be in a combined group for taxable years beginning on or after January 1, 2009. See s. Tax 2.61 (2) for a description of corporations required to use combined reporting.

(2) DEFINITION. In this section, "engaged in business in and outside this state" has the same meaning as in s. Tax 2.39 (2) (b).

(3) PROPERTY FACTOR. The property factor is a fraction as defined in s. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), Stats., and s. Tax 2.39 (4). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

Note: The property factor does not apply to taxable years beginning after December 31, 2007.

(4) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), Stats., and s. Tax 2.39 (5). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with internal revenue service ruling 71−137, Cum. Bull., 1971−1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

Note: The payroll factor does not apply to taxable years beginning after December 31, 2007.

(5) SALES FACTOR. The sales factor is a fraction as defined in s. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 (6) and the following rules:

(a) *Gate receipts.* Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numerator of the sales fraction for taxpayers whose home facility is in Wisconsin shall include all gate receipts from games played in its home facility. The numerator of the sales fraction for taxpayers whose home facility is outside Wisconsin shall include the percentage of gate receipts received from games played in Wisconsin.

(b) *Radio and television receipts.* Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in Wisconsin in proportion to the number of games played in Wisconsin to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in Wisconsin if the games are played in Wisconsin.

(c) *Concession income and miscellaneous income.* Concession income is assigned to the numerator if the concession is operated within Wisconsin. Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the numerator if the activity is conducted within Wisconsin.

(d) *Player contracts, franchises, and similar sources.* Income from player contract transactions, franchise fees, and other similar sources shall be excluded from the numerator and the denominator of the sales fraction.

Note: Professional sports clubs that are in combined groups must adjust the numerator and denominator of the sales factor as described in s. Tax 2.61 (7).

Note: The provisions of s. Tax 2.505 first apply for taxable years beginning on January 1, 2005.

Note: Section Tax 2.505 interprets s. 71.25 (6), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1−1−81; am. (1) to (3) (intro.), (c) and (d), Register, July, 1989, No. 403, eff. 8−1−89; emerg. am. (title), (intro.) to (3) (intro.) and (d) (title), eff. 10−12−07; CR 07−091: am. (title), (intro.) to (3) (intro.) and (d) (title) Register March 2008 No. 627, eff. 4−1−08; EmR0943: emerg. am. (intro.), renum. (1) to (3) to be (2) to (4), cr. (1), eff. 12−31−09; CR 10−001: renum. (intro.) and (1) to (3) to be (1) and (3) to (5) and am. (1), cr. (2) Register June 2010 No. 654, eff. 7−1−10; correction to (1) (title) made under s. 13.92 (4) (b) 2., Stats., Register June 2010 No. 654.

Tax 2.60 Definitions relating to combined reporting. (1) PURPOSE. This section provides definitions applicable to ss. Tax 2.61, 2.62, 2.63, 2.64, 2.65, 2.66, and 2.67, which interpret the combined reporting provisions of s. 71.255, Stats.

(2) DEFINITIONS. (a) "Combined group" has the meaning given in s. 71.255 (1) (a), Stats. The following subdivisions clarify this meaning:

1. If a group of corporations satisfies all three conditions described in s. Tax 2.61 (2) (a), it is considered a combined group even if the group is not eligible to apportion its income because all corporations in the group do business solely in Wisconsin.

2. A combined group remains in existence for as long as two or more corporations meet all three conditions described in s. Tax 2.61 (2) (a) with regard to the same unitary business. The mere addition of new members or departure of existing members does not create a new combined group.

3. Any commonly controlled group that has made a controlled group election is a combined group, and each member of a commonly controlled group that has made the controlled group election is a combined group member.

(b) "Combined group member" means a corporation for which any part of the corporation's net income or loss is subject to combination and therefore required to be included in a combined report, or any member of a commonly controlled group that is subject to a controlled group election.

(c) "Combined report" has the meaning given in s. 71.255 (1) (b), Stats. A combined report is considered a return filed pursuant to ss. 71.24 (1) or (1m) or 71.44 (1) or (1m), Stats., as applicable, by each corporation included in the combined report. For this reason, the term "combined return" is used throughout the rules of this chapter to refer to a combined report.

(d) "Combined return" has the same meaning as "combined report" as explained in par. (c). In general, a combined return includes the computation of combined unitary income, the apportionment of the income to each combined group member, as applicable, any separate entity items, loss carryforwards, and credits of each combined group member, and the net tax and economic development surcharge liability of each combined group member. To be considered complete, a combined return shall contain all the items required in s. Tax 2.67 (2) (c).

(e) "Combined unitary income" means the combined group's net income or loss attributable to the unitary business which is subject to combination under s. 71.255, Stats., before apportionment and net business loss carryforwards. Combined unitary income excludes any amounts that are not subject to combination because of the water's edge rules.

(f) "Controlled group election" means an election to include every member of the commonly controlled group in the combined group as provided by s. 71.255 (2m), Stats., and further described in s. Tax 2.63.

(g) "Corporation" includes corporations, publicly traded partnerships treated as corporations in section 7704 of the Internal Revenue Code, limited liability corporations treated as corporations under the Internal Revenue Code, joint stock companies, associations, common law trusts and all other entities treated as corporations under section 7701 of the Internal Revenue Code, unless the context requires otherwise in this chapter or in ch. 71, Stats.

(h) "Designated agent" means the corporation in the combined group responsible for acting on behalf of the group for matters relating to the combined return, as further described in s. Tax 2.65.

(i) "Income" and "net income" include net losses, unless the context requires otherwise.

(j) "Intercompany transaction" means a transaction between two members of the same combined group.

(k) "Internal Revenue Code" has the meaning given in ss. 71.22 (4) and (4m) and 71.42 (2), Stats., as applicable.

(L) "Nonincludable corporation" means a corporation that is not required to use combined reporting even if it satisfies all three conditions described in s. Tax 2.61 (2) (a). A nonincludable corporation cannot be a combined group member even if the nonincludable corporation is a member of a commonly controlled group which has made the controlled group election.

(Lm) "Pre−2009 net business loss carryforward" has the meaning given to "pre−2009 net business loss carry−forward" in s. 71.255 (6) (bm) 1., Stats.

(m) "Separate entity item" means a combined group member's item of net income or loss or apportionment factor amount which is not subject to combination but instead must be accounted for on a separate entity basis. Separate entity items may include those listed in s. Tax 2.61 (5) (b) to (g). Net business loss carryforwards may be separate entity items if they are non−sharable loss carryforwards as provided in s. Tax 2.61 (9).

(n) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(o) "Unitary business income" means the net income or loss derived from the unitary business, whether or not the income or loss is subject to combination. "Unitary business" is explained further in s. Tax 2.62.

(p) "Unitary combination" means the computation of combined unitary income and of each member's share of the combined unitary income.

(q) "Water's edge rules" means the rules provided under s. Tax 2.61 (4) under which some or all of a corporation's items attributable to a unitary business are not subject to combination because of the degree of the corporation's activity outside the United States.

Note: Section Tax 2.60 interprets s. 71.255, Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; CR 12−006: cr. (2) (Lm) Register July 2012 No. 679, eff. 8−1−12; CR 12−011: am. 2.60 (2) (d) Register July 2012 No. 679, eff. 8−1−12.

Tax 2.61 Combined reporting. (1) SCOPE. Section 71.255, Stats., generally requires corporations that are commonly controlled and engaged in a unitary business to compute their net income on a combined basis. This section explains when combined reporting is required and how to compute a corporation's net income and tax liability under combined reporting. Subsections (2) to (4) describe who must use combined reporting and what income is subject to combination. Subsections (5) to (9) explain how to compute the taxable income of a combined group member, including net business loss carryforwards. Subsection (10) provides rules relating to credits and credit carryforwards.

(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) *General.* A corporation is required to use combined reporting if it satisfies each of the following three conditions:

1. The corporation is a member of a "commonly controlled group" as defined in s. 71.255 (1) (c), Stats. See sub. (3) for rules that apply to identifying a commonly controlled group of corporations.

2. The corporation is engaged in a "unitary business," as defined in s. 71.255 (1) (n), Stats., with one or more other corporations in its commonly controlled group, or the commonly controlled group makes a controlled group election. See s. Tax 2.62 for rules to determine whether corporations are engaged in a unitary business. See s. Tax 2.63 for rules pertaining to the controlled group election.

3. The corporation has unitary business income that is subject to combination under the water's edge rules described in sub. (4).

(b) *Effect of controlled group election.* If a controlled group election applies as indicated in par. (a) 2., all corporations in the commonly controlled group are deemed to be engaged in the same unitary business, and all of their net income or loss and apportionment factors are deemed to be derived from that unitary business. In general, this means that if the controlled group election applies, all members of the commonly controlled group are included in a combined report. However, despite this election, a corporation may be required to exclude some or all of its net income, loss, and apportionment factors from the unitary combination if so required under the water's edge rules described in sub. (4).

(c) *Corporations treated as pass−through entities.* Except as provided in par. (f), corporations that are included in the definition of "pass−through entity" in s. 71.255 (1) (m), Stats., including tax−option corporations, real estate investment trusts, regulated investment companies, real estate mortgage investment conduits, and financial asset securitization investment trusts, are nonincludable corporations. However, to the extent the net income or loss of these corporations is included in the net income of, or distributed to, a combined group member, the net income or loss is subject to combination to the extent derived from the unitary business and otherwise subject to combination under the water's edge rules described in sub. (4). The provisions of s. 71.255 (1) (m), Stats., do not affect the taxation of tax−option corporations, real estate investment trusts, regulated investment companies, real estate mortgage investment conduits, or financial asset securitization investment trusts, other than to exclude them from combined reporting except where their inclusion is required under par. (f).

(d) *Tax exempt organizations.* A corporation that is exempt from income and franchise taxes under ss. 71.26 (1) or 71.45 (1), Stats., is a nonincludable corporation except to the extent it has unrelated business taxable income as defined in section 512 of the Internal Revenue Code. The net unrelated business taxable income, and any corresponding apportionment factors are subject to combination to the extent the net income or loss is derived from the unitary business and is otherwise subject to combination under the water's edge rules described in sub. (4).

(e) *Disregarded entities.* An entity that is disregarded as a separate entity for federal income tax purposes under section 7701 of the Internal Revenue Code is considered a branch or division of its owner for Wisconsin income and franchise tax purposes. A corporation shall include the net income or loss and apportionment factors of any disregarded entity of which it is an owner in the combined report to the extent they would be included if the corporation itself earned the income. The water's edge rules described in sub. (4) do not apply to disregarded entities except insofar as the rules apply to the owner of the disregarded entity.

(f) *Other provisions that may apply.* Nothing in ss. Tax 2.60 to 2.67 is intended or should be construed as a waiver of the department's authority under s. 71.255 (2) (f), Stats., or any other authority granted to the department by law. Section 71.255 (2) (f), Stats., provides the following:

1. The department may require that a combined report include the items of any person or entity who is not otherwise a combined

group member but who is a member of the unitary business, in order to reflect proper apportionment of income of the entire unitary business.

2. If the reported income or loss of a combined group member engaged in a unitary business with a person or entity who is not otherwise a combined group member represents an avoidance or evasion of tax by either party, the department may require all or any part of the income or loss and apportionment factors of either party to be included in or excluded from a combined report, or may require the use of a different apportionment factor or factors.

(3) COMMONLY CONTROLLED GROUP. In general, s. 71.255 (1) (c), Stats., provides that a commonly controlled group exists in cases where there is common ownership or control of stock representing more than 50 percent of the voting power of the corporations in the group. The corporations in a commonly controlled group shall be determined as provided in s. 71.255 (1) (c), Stats., which is further explained in the following paragraphs:

(a) *Stock attribution rules.* For purposes of s. 71.255 (1) (c) 1. and 2., Stats., a shareholder is considered to have indirect ownership of stock or indirectly own stock if the shareholder has constructive ownership of the stock by operation of section 318 of the Internal Revenue Code, except as provided in subds. 1. and 2.

Example: Corporation A owns stock representing 40% of the voting power of Corporation B and has a 50% interest in Partnership C. Partnership C owns stock representing 30% of the voting power of Corporation B. By operation of section 318 of the Internal Revenue Code, Corporation A constructively owns stock representing 55% (= 40% + (50% x 30%)) of the voting power of Corporation B.

1. In applying section 318(a)(2) of the Internal Revenue Code, if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of an entity, it shall be considered to own all of the stock or other ownership or control interests owned by that entity.

Example: Corporation D owns stock representing 10% of the voting power of Corporation E and has a 75% interest in Partnership F. Partnership F owns stock representing 45% of the voting power of Corporation E. Corporation D is considered to constructively own stock representing 55% (= 10% + 45%) of the voting power of Corporation E. This is because Corporation D owns more than 50% of Partnership F and is therefore considered to own all of the Corporation E stock owned by Partnership F.

2. If a person has an option to acquire stock or other ownership interests in an entity, the stock or ownership interests are not considered owned by the person unless the department determines it to be necessary to prevent tax avoidance.

(b) *Common owner or owners.* The common owner or owners need not be combined group members, and the common owner or owners may be persons other than corporations.

(c) *Multiple unitary businesses.* A commonly controlled group may be engaged in one or more unitary businesses. Therefore, a commonly controlled group may contain more than one combined group.

(d) *Voting power.* 1. A shareholder has ownership or control of stock representing more than 50 percent of the voting power of a corporation only if the shareholder has ownership or control of more than 50 percent of the total combined voting power of all classes of stock of the corporation entitled to vote.

2. A group of two or more corporations need not be commonly owned to be commonly controlled. As provided in s. 71.255 (1) (c) 3., Stats., a group of corporations may be a commonly controlled group if stock representing more than 50 percent of the voting power in each corporation are interests that cannot be separately transferred. If a group of 2 or more corporations would be considered stapled entities under section 269B of the Internal Revenue Code and the regulations that interpret it, without regard to whether the corporations are foreign or domestic, the corporations shall be considered part of a commonly controlled group.

3. The mere ownership of stock entitled to vote does not by itself mean that the shareholder owning the stock has the voting power of the stock. If there is any agreement, whether express or implied, that any shareholder will not vote its stock or will vote it only in a specified manner, or that shareholders owning stock having 50 percent or less of the total combined voting power will exercise voting power normally possessed by a majority of stockholders, the department may presume that the nominal ownership of the voting power is not determinative of which shareholders actually hold the voting power and may disregard the nominal ownership. This presumption may be rebutted by the taxpayer.

4. If a shareholder owns shares of stock of a corporation which has another class of stock outstanding, the voting power of that other class of stock will be deemed owned by any person or persons on whose behalf it is exercised if the facts indicate that the shareholders of that other class of stock do not exercise their voting rights independently or fail to exercise their voting rights. If the voting power in that other class of stock is not exercised and the percentage of voting power of that class of stock is substantially greater than its proportionate share of the corporate earnings, the department may presume that the principal purpose of the arrangement was avoid the inclusion of the corporation in the commonly controlled group and may disregard the voting power of the class of stock that was not exercised. This presumption may be rebutted by the taxpayer.

(4) WATER'S EDGE. This subsection describes how a corporation that is otherwise a combined group member must determine and report items that are not subject to combination due to the extent of the corporation's activities outside the United States, as provided in s. 71.255 (2), Stats. In general, the corporation must consider whether it is a foreign corporation or domestic corporation, whether it qualifies as an "80/20 corporation," and whether its income is from foreign sources or U.S. sources. The following rules apply:

(a) *Qualifying as a "foreign corporation".* For purposes of the water's edge rules in pars. (d) and (e), a "foreign corporation" means any corporation that is not incorporated, organized, or created in the United States or under the laws of the United States or any state. For purposes of determining whether a corporation is a foreign corporation or a domestic corporation, the following rules apply:

1. If, for federal purposes, a corporation is treated as created or organized under the laws of both the U.S. and a foreign jurisdiction, it is a domestic corporation.

2. A foreign corporation that domesticates and is treated by a state as organized under the laws of that state is a domestic corporation.

3. If an entity is organized in a foreign country and is recognized in that country as a corporation, but the entity's owner elects to treat that entity as a branch for U.S. taxation purposes or the entity is a disregarded entity, the entity shall be treated as a branch of its owner.

(b) *Qualifying as an "80/20 corporation".* 1. For purposes of the water's edge rules in pars. (d) and (e), a corporation is an "80/20 corporation" if 80 percent or more of its worldwide gross income during the testing period is "active foreign business income" as defined in section 861(c)(1)(B) of the Internal Revenue Code.

2. The testing period for purposes of subd. 1. is the tested corporation's taxable year that would be included in the combined group's taxable year, as determined by s. 71.255 (8), Stats. If the tested corporation was not otherwise eligible to be a combined group member for any part of that taxable year (for example, the corporation did not satisfy the conditions in sub. (2) (a) 1. or 2.), the testing period is the portion of that taxable year in which the corporation was otherwise eligible to be a member.

3. An 80/20 corporation may be either a foreign corporation or a domestic corporation.

4. For purposes of this paragraph, a corporation's active foreign business income includes gross income attributed from subsidiary corporations as provided in section 861(c)(1)(B) of the Internal Revenue Code, but only to the extent the gross income of

the subsidiary corporations is derived from the combined group's unitary business.

5. A disregarded entity's active foreign business income and worldwide gross income shall be combined with those of its owner for purposes of applying the test in subd. 1.

(c) *Foreign source income.* 1. For purposes of the water's edge rules in pars. (d) and (e), income is foreign source income if it is from sources without the United States as provided in sections 861 through 865 of the Internal Revenue Code, except as provided in subd. 2. "United States" has the same meaning as in sections 861 through 865 of the Internal Revenue Code.

2. For a foreign corporation, foreign source income does not include income that is subject to United States taxation because it is effectively connected with the conduct of a trade or business within the United States under sections 861 through 865 of the Internal Revenue Code, even if the income is otherwise from sources without the United States. However, this subdivision shall be disregarded in applying the test under par. (b) 1.

3. All income that is not foreign source income is U.S. source income.

(d) *Water's edge rules for domestic corporations.* 1. A domestic corporation that is not an 80/20 corporation shall include in the unitary combination all net income or loss from the unitary business regardless of whether it is foreign source income or U.S. source income, and any apportionment factors related to that net income or loss.

2. A domestic corporation that is an 80/20 corporation is a consolidated foreign operating corporation. A consolidated foreign operating corporation shall include in the unitary combination its net income or loss from the unitary business to the extent it is both U.S. source income and is income described in s. 71.255 (2) (d), Stats., and any apportionment factors related to that net income or loss. The consolidated foreign operating corporation may not include in the unitary combination any foreign source income, income not described in s. 71.255 (2) (d), Stats., expenses or deductions related to the excluded income as provided in sub. (6) (h), or apportionment factors related to the excluded income. However, the excluded income may still be taxable as described in par. (h). The income described in s. 71.255 (2) (d), Stats., is explained further in par. (f).

(e) *Water's edge rules for foreign corporations.* 1. A foreign corporation that is not an 80/20 corporation shall include in the unitary combination its net income or loss from the unitary business to the extent it is U.S. source income, and any apportionment factors related to that net income or loss. The corporation may not include in the unitary combination any foreign source income, expenses or deductions related to the excluded income as provided in sub. (6) (h), or apportionment factors related to the excluded income. However, this foreign source income may still be taxable as described in par. (h).

2. Except as provided in subd. 3., a foreign corporation that is an 80/20 corporation may not include any income, expenses, or apportionment factors in the unitary combination, but may still have taxable income as described in par. (h).

3. A foreign corporation that is an 80/20 corporation but elects to be included in a federal consolidated return for the taxable year shall be treated as if it is a domestic corporation, in which case the rules of par. (d) 2. apply to the corporation. This subdivision applies regardless of whether the combined group has made the controlled group election.

(f) *Includable income of consolidated foreign operating corporations.* The net income that a consolidated foreign operating corporation shall include in a unitary combination, as described in par. (d) 2., includes the items described in subds. 1. to 5. to the extent the income is U.S. source income and from the unitary business, regardless of whether earned or incurred directly by that corporation or by a pass−through entity in which the corporation has an interest:

1. Interest income or income generated from intangible property, whether or not the income is derived from persons or entities related to the consolidated foreign operating corporation. Income generated from intangible property includes income related to the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property; income from factoring transactions or discounting transactions; royalty, patent, technical, and copyright fees; and licensing fees. For purposes of this subdivision, "intangible property" has the meaning given in s. 71.22 (3h), Stats.

2. Income derived from interest expenses or intangible expenses that were paid, accrued, or incurred by combined group members to or for the benefit of the consolidated foreign operating corporation; to the extent those amounts were not already included under subd. 1. For purposes of this subdivision, "interest expenses" has the meaning given in s. 71.22 (3m), Stats., and "intangible expenses" has the meaning given in s. 71.22 (3g), Stats.

3. Dividend income received from a real estate investment trust that is not a qualified real estate investment trust as defined in s. 71.22 (9ad), Stats.

4. Gains or losses derived from the sale or lease of real or personal property located in the United States.

5. Expenses or deductions related to the income, gains, and losses described in subds. 1. to 4., determined in the manner provided in sub. (6) (h).

(g) *Applicability of federal treaties.* If a corporation's income is not included in gross income for federal income tax purposes under the provisions of a federal treaty, the income is not included in gross income for Wisconsin purposes and shall not be included in combined unitary income.

(h) *Taxation of income not subject to combination under water's edge.* Any income, expenses, and apportionment factors that are excluded from the unitary combination under pars. (d) and (e) shall be taken into account by the separate corporation that earned the income. The following rules apply to determining and reporting Wisconsin net income or loss not subject to combination under the water's edge rules:

1. The net income or loss is presumed to be from a unitary business and therefore apportionable.

2. The corporation's nexus depends on whether the corporation is a "combined group member" as defined in s. Tax 2.60 (2) (b). If the corporation is a combined group member, the provisions of subd. 3. apply. If the corporation is not a combined group member, the provisions of subd. 4. apply.

3. Under s. 71.255 (5) (a), Stats., a corporation that is a combined group member is doing business in this state if any member of the combined group is doing business in this state relating to the unitary business. If the corporation is a combined group member because of the controlled group election, that corporation is doing business in this state if any member of the combined group is doing business in this state. In either case, an apportioned share of the corporation's net income or loss that is not subject to combination under the water's edge rules may be taxed by Wisconsin. "Doing business in this state" is defined in s. 71.22 (1r), Stats., and further explained in s. Tax 2.82.

4. If the corporation is not a combined group member, s. 71.255 (5) (a), Stats., does not apply. Instead, the corporation is doing business in this state if, when considered as a separate entity, it is "doing business in this state" as defined in s. 71.22 (1r), Stats., and further explained in s. Tax 2.82. For example, and without limitation, the corporation may have nexus in this state if any agent of the corporation, including a member of the combined group, acts on the corporation's behalf in this state in a manner that would create nexus under s. 71.22 (1r), Stats., s. Tax 2.82, or otherwise.

5. The provisions of ss. 71.26 (2) (a) 7. and 71.45 (2) (a) 16., Stats., requiring an addition modification for interest expenses,

rent expenses, intangible expenses, and management fees paid, accrued, or incurred to a related entity, apply to any amounts not subject to combination which were paid, accrued, or incurred by the corporation to any related entity, even if the related entity was a combined group member.

6. The numerator and denominator of the apportionment ratio shall include only that corporation's apportionment factors attributable to unitary business income that is not subject to combination. Intercompany transactions may not be eliminated from the apportionment factors unless the department determines those transactions have no economic substance as determined under the provisions of ss. 71.30 (2m) or 71.80 (1m), Stats., as applicable, or if the department determines that those transactions have no business purpose other than tax avoidance. If the corporation is a combined group member, it must apply the provisions of sub. (7) (c) in computing the amount of throwback sales includable in the numerator.

7. Income separately apportioned as described in this paragraph may be reported on a designated line of the combined return, supported by a department−prescribed schedule, instead of reporting that income on a separate return. This separately apportioned income shall be considered a separate entity item. See s. Tax 2.67 (2) (d) for filing requirements relating to separate entity items.

Examples: 1) A, B, and C are corporations in a commonly controlled group and engaged in a unitary business. All of the income of the corporations is derived from the unitary business. A and B are incorporated in Delaware. C is incorporated in France. The income of A and B is derived exclusively from U.S. sources. Ninety percent of C's worldwide gross income is active foreign business income. The remaining 10% of C's worldwide gross income is U.S. source income, some of which has situs in Wisconsin. C has agents acting on its behalf in Wisconsin which create nexus because their activities exceed the protection of P.L. 86−272. Since C is a foreign 80/20 corporation, none of its net income, expenses, or apportionment factors may be included in the unitary combination. Thus, C is not a combined group member.

However, C is subject to tax on an apportioned share of its worldwide net income, to the extent the income is not exempt by federal treaty. In determining the apportioned share, the numerator and denominator of C's apportionment factors are its numerator and denominator computed for C on a separate entity basis. Since C is not a combined group member, it cannot consider the activities of A or B when it computes its throwback sales for purposes of the numerator. C is required to report this income to Wisconsin as a separate entity item.

2) Combined Group DE consists of Member D and Member E. Both D and E are Delaware corporations. All of the income of D and E is derived from the unitary business. All of D's income is from sources within the U.S. However, 85% of E's worldwide gross income is active foreign business income, making E a domestic 80/20 corporation. E has total of $150,000 of income from the unitary business, net of expenses. Of this amount, $100,000 is derived from intangible property and $50,000 is derived from service fees. D and E must include in the unitary combination all of D's income, expenses, and apportionment factors and E's income, expenses, and apportionment factors only to the extent related to its income derived from intangible property. Since E is a domestic 80/20 corporation and service fees are not one of the types of income subject to combination for a domestic 80/20 corporation, E's service fee income, and expenses and apportionment factors relating to that income, must be excluded from the unitary combination.

However, E is subject to tax on an apportioned share of its service fee income. E has nexus in Wisconsin because it is a member of Group DE, which is doing business in Wisconsin. In determining the apportioned share, the numerator and denominator of E's apportionment factors are its numerator and denominator including only the factors relating to its service fee income and computed for E on a separate entity basis. However, since E is a combined group member, it may consider the activities of D when it computes its throwback sales for purposes of the numerator. E is required to report this income to Wisconsin as a separate entity item.

(5) TAXABLE INCOME OF A COMBINED GROUP MEMBER. The taxable income of a combined group member consists of the components listed in this subsection. For purposes of pars. (c) and (d), a "distinct business activity" means a business activity that is not unitary with the combined group's unitary business. For purposes of determining the expenses and deductions attributable to each component, the provisions of sub. (6) (h) apply. A combined group member's taxable income is the total of all of the following:

(a) Its apportioned share of the combined unitary income, as computed under subs. (6) and (7), or, in the case of a combined group where all members are doing businesses solely within Wisconsin, its unitary business income subject to combination as computed under subs. (6) and (8). A corporation may have a share of combined unitary income or unitary business income from more than one combined group, in which case s. Tax 2.67 (2) (d) 4. applies.

(b) An apportioned share of the unitary business income not subject to combination under the water's edge rules of sub. (4), or in the case of a combined group where all members are doing business solely within Wisconsin, its total unitary business income not subject to combination under the water's edge rules of sub. (4).

(c) An apportioned share of income from a distinct business activity conducted within and outside this state wholly by the member.

(d) Its income from a distinct business activity conducted entirely within this state wholly by the member.

(e) Its nonbusiness income or loss allocable to this state.

(f) Its income realized from the purchase and subsequent sale or redemption of lottery prizes, if the winning tickets were originally bought in this state.

(g) To the extent not included in combined unitary income under par. (a), any income, loss, or deduction allocated or apportioned in an earlier year which is taken into account as Wisconsin source income or loss during the taxable year, other than a net business loss carryforward. Under this paragraph, non−sharable net capital loss carryovers may be used to offset the taxable income of a combined group member, as described in sub. (6) (c).

(h) Its net business loss carryforward, including any other combined group members' net business loss carryforwards which may offset the member's share of combined unitary income under the provisions of sub. (9).

(6) COMPUTATION OF COMBINED UNITARY INCOME. This subsection interprets s. 71.255 (4), Stats., relating to a combined group's computation of business income subject to combination, which is called "combined unitary income" for purposes of this section. The steps to compute combined unitary income are as follows:

(a) *General.* 1. Compute the sum of each combined group member's net income determined under the Internal Revenue Code before Wisconsin modifications, without regard to net capital gain or loss, net gain or loss under section 1231 of the Internal Revenue Code, net gain or loss from involuntary conversions, or deductions for charitable contributions. Compute this income as if the member were not consolidated for federal purposes.

2. Defer or recognize any intercompany income, expense, gain, or loss between combined group members as described in par. (b), except to the extent the income, expense, gain, or loss is excluded from the combined unitary income because it does not relate to the unitary business or is not subject to combination under the water's edge rules of sub. (4).

3. Add net capital gain includable in the combined unitary income, applying the loss limitation as described in par. (c) and using the federal basis of assets. Any differences between the federal and Wisconsin basis of assets, including basis differences that arise from the application of par. (f), are accounted for as Wisconsin modifications under subd. 6. The Wisconsin basis of a corporation's depreciable property for the first year the corporation becomes taxable in Wisconsin equals its federal basis as of the beginning of the taxable year in which the corporation becomes taxable in Wisconsin, as required under s. 71.265, Stats. The federal basis shall be computed under the Internal Revenue Code in effect for Wisconsin purposes as required under ss. 71.22 (4) and (4m), 71.42 (2), and 71.26 (3) (y), Stats.

Note: Under ss. 71.22 (4) and (4m), 71.26 (3) (y), and 71.42 (2), Stats., the federal bonus depreciation provisions in section 168(k) of the Internal Revenue Code are excluded from the Internal Revenue Code in effect for Wisconsin purposes. Therefore, the federal basis computed under subd. 3. must be computed without regard to any bonus depreciation claimed for federal purposes.

4. Subtract any net section 1231 loss or net loss from involuntary conversions that results from the aggregation in par. (c) 1.

5. Subtract the charitable contributions deduction includable in the combined unitary income, computed as described in par. (d).

6. Apply Wisconsin addition and subtraction modifications provided in ss. 71.26 and 71.45, Stats., as applicable. For interest expenses, rent expenses, intangible expenses, and management fees paid, accrued, or incurred between combined group members, including pass−through entities owned by those members to the extent of their distributive shares of income, the addition modifications for related entity expenses under ss. 71.26 (2) (a) 7. and 71.45 (2) (a) 16., Stats., are not required to the extent the recipient of the income includes the income in the combined unitary income.

7. Subtract any dividends that qualify for elimination under par. (e) to the extent the dividends did not qualify for a subtraction modification under subd. 6.

8. If a combined group member is an insurance company, subtract the portion of net income attributable to the insurance company's life insurance operations as determined using s. 71.45 (2) (b), Stats.

9. Subtract the income, as modified by subds. 6. to 8., which is not includable in combined unitary income because it is not derived from the unitary business or is not subject to combination under the water's edge rules of sub. (4). The income subtracted under this subdivision shall be net of any directly or indirectly related expenses as provided in par. (h). The amount subtracted under this subdivision may not duplicate any amounts already subtracted.

(b) *Intercompany transactions*. Defer or recognize any intercompany income, expense, gain, or loss between combined group members that would be deferred or recognized between those members under 26 CFR 1.1502−13 as if the combined group were a federal consolidated group, except that the provisions for intercompany dividends are excluded and replaced with par. (e). This paragraph does not apply to intercompany transactions which occurred in taxable years beginning before January 1, 2009 or to intercompany transactions where the income, expense, gain, or loss would not otherwise be subject to combination. For modifications to 26 CFR 1.1502−13 that are necessary in the case of a combined group doing business solely in this state, see sub. (8). Any deferred intercompany income, expense, gain, or loss that is recognized under this paragraph shall be recognized by the same combined group member that deferred the income, expense, gain, or loss. The deferred income, expense, gain, or loss shall be recognized when required under 26 CFR 1.1502−13 as if the combined group were a federal consolidated group, or when any of the following apply:

1. The buyer resells the object of the deferred intercompany transaction to an entity that is not a member of the combined group.

2. The object of the deferred intercompany transaction is used outside the combined group's unitary business as a result of the buyer's resale, conversion, or transfer of the asset.

3. The buyer and seller are no longer members of the same combined group, regardless of whether they are in the same unitary business.

Example: S and B are combined group members. S has land with a basis of $130,000 at the end Year 1. In Year 2, S sells the land to B for $100,000. B holds the land until Year 3, when it sells it to X, a person outside the combined group, for $110,000. Assume both sales are otherwise includable in the combined unitary income. Applying 26 CFR 1.1502−13 to S and B in the manner described in this paragraph, S would not recognize any gain or loss on the sale of the land to B in Year 2. However, in Year 3, S would recognize a $30,000 loss and B would recognize a simultaneous $10,000 gain. Thus, in Year 2, the combined group cannot include S's $30,000 loss on sale of land in its combined unitary income, but in Year 3, the combined group can include a $20,000 loss on sale of land (the net amount of S's Year 2 loss and B's Year 3 gain) in its combined unitary income. However, the capital loss limitation may limit this loss, as described further in par. (c).

(c) *Capital gains and losses*. Compute the capital loss limitation so that it applies to the combined group as a whole, to the extent the capital gains and losses are derived from the unitary business and otherwise subject to combination. Rules to determine the capital loss limitation, the assignment of capital gains and losses to members, and the amounts available for carryover, are as follows:

1. For short−term capital gains or losses, long−term capital gains or losses, section 1231 gains or losses, and involuntary conversions, aggregate all combined group members' amounts within each class of gain or loss. Except as provided in subd. 8., include sharable net capital loss carryovers as described in subd. 2. but not non−sharable net capital loss carryovers.

2. A combined group member's sharable net capital loss carryover is any available net capital loss carryover which would be a sharable loss carryforward under sub. (9) (a) if it were a net business loss carryforward. A non−sharable net capital loss carryover is any available net capital loss carryover which would be a non−sharable loss carryforward under sub. (9) (b) if it were a net business loss carryforward. Net capital loss carryovers that are otherwise non−sharable may be included in the aggregation under subd. 1. if they were carryovers of a subgroup as described in sub. (9) (e) 1., but only in an amount not exceeding the net capital gain the subgroup would have if its amounts were not aggregated with those of the other combined group members.

3. Determine and apply the capital loss limitation under section 1211 of the Internal Revenue Code for the combined group based on the aggregate amounts computed in subd. 1. The provisions of 26 CFR 1.1502−22 and 1.1502−23, and the regulations which they reference, shall apply for this purpose, except that the separate return limitation year provisions are excluded and replaced with the provisions of this paragraph and except to the extent otherwise inconsistent with ss. 71.26 and 71.45, Stats., and the provisions of this section.

4. If the result is a net capital gain for the group, the net capital gain shall be apportioned to Wisconsin for the members in the same manner as all other combined unitary income as described in sub. (7), except that if the combined group is doing business solely in Wisconsin, the net capital gain is assigned to the members as described in sub. (8) (b). If the result is a net capital loss for the group, the net capital loss shall be assigned to the members that would have a net capital loss from the unitary business if their amounts were not aggregated with those of the other members of the combined group, in proportion to the amount of that net capital loss.

Examples: 1) Combined Group PQR consists of Member P, Member Q, and Member R. In Group PQR's unitary combination for 2010, P, Q, and R aggregate their short term capital gains and losses (including sharable capital loss carryovers), long−term capital gains and losses, section 1231 gains and losses, and involuntary conversions, and compute a total of $20,000 in net capital gain for Group PQR. P's Wisconsin apportionment percentage computed under sub. (7) is 10%; Q's is 25%; and R's is 50%. P's apportioned share of this net capital gain is $2,000 (= $20,000 x 10%), Q's apportioned share is $5,000 (= $20,000 x 25%) and R's apportioned share is $10,000 (= $20,000 x 50%).

2) Combined Group STU consists of Member S, Member T, and Member U. In the taxable year 2010, S, T, and U have the following capital gains and losses and section 1231 gains and losses attributable to the unitary business and subject to combination:

	Member S	Member T	Member U
Long term capital gain			$5,000
Short term capital loss	($12,000)	($6,000)	
Section 1231 gain/loss	($500)	$2,000	$1,500

When S, T, and U aggregate each class of capital gains and losses and section 1231 gains and losses, Group STU has a net capital loss of $10,000. However, if S, T, and U's capital gains and losses and section 1231 gains and losses were not aggregated with one another, S would have a net capital loss of $12,000 (its section 1231 loss would be treated as ordinary under section 1231(a)(2) of the Internal Revenue Code), T would have a net capital loss of $4,000, and U would have a net capital gain of $6,500. Thus, the amount of Group STU's net capital loss that would be assigned to S is $7,500 (= ($12,000 / $16,000) x $10,000) and the amount that would be assigned to T is $2,500 (= ($4,000 / $16,000) x $10,000). None of the net capital loss would be assigned to U since it did not contribute to Group STU's net capital loss.

5. After applying subd. 4., each member computes its net capital gain or loss from separate entity items without considering capital loss carryover amounts. If the result is a net capital loss,

the loss may not be deducted except as provided in subd. 6. If the result is a net capital gain, the member may subtract from that amount, subject to the capital loss limitation, any current year net capital loss from the unitary business as computed in subd. 4. and any available net capital loss carryovers, whether they are sharable or non−sharable. The current year net capital loss from the unitary business shall be considered used before the net capital loss carryovers. Any remaining carryover may be used as provided in subd. 6.

Example: Assume the same facts as Example 2 in subd. 4. Assume also that S has a $10,000 long term capital gain from separate entity items in 2010 and a net capital loss carryover of $3,000 which was incurred in 2008. Since the current year net capital loss from the unitary business is considered used before the net capital loss carryover, at the end of 2010 S would have a remaining 2008 net capital loss carryover of $500 (= $10,000 − $7,500 current year net capital loss from unitary business − $3,000 net capital loss carryover).

6. If a member has a share of net capital gain from the unitary business as computed in subd. 4., the member may use any available net capital loss, including current year net capital loss from separate entity items and net capital loss carryovers, to offset that net capital gain. If the group uses apportionment, the member uses the available net capital loss by claiming a deduction equal to the amount of the available net capital loss that does not exceed the group's net capital gain from the unitary business, multiplied by the member's apportionment percentage from the unitary combination. The current year net capital loss from separate entity items shall be considered used before the net capital loss carryovers.

Example: Assume the same facts as Example 1 in subd. 4. Assume that Q has a $5,000 long term capital gain from separate entity items and a net capital loss carryover of $6,000 which was incurred in 2008. Since the net capital loss carryover was incurred in a taxable year beginning before 2009, it is non−sharable and could not be used in computing the aggregate net capital gain or loss of the unitary business as described in subd. 1. However, Q may use the non−sharable loss carryover to offset its net capital gain from separate entity items. After doing this, Q has a $1,000 available net capital loss (= $5,000 − $6,000) to use against its share of the $20,000 net capital gain from the unitary business. To use the remaining carryover, Q may claim an additional capital loss deduction of $250 (= $1,000 available carryover x 25% apportionment percentage). After claiming this deduction, Q would have no remaining net capital loss carryover.

7. After each member applies subds. 4. to 6., as applicable, the member may carry back or carry forward any remaining net capital loss carryover as provided in section 1212 of the Internal Revenue Code and may share that carryover to the extent it is a sharable carryover. The sharable carryovers available for use in the aggregation under subd. 1. are determined without regard to when any non−sharable carryovers were incurred and are applied in the order the underlying sharable loss was incurred. The carryovers available to offset the member's net capital gain under subds. 5. and 6. are applied in the order the underlying loss was incurred. If the carryover available to offset the member's net capital gain under subds. 5. and 6. consists of both a sharable and non−sharable amount incurred in the same taxable year, the carryover is applied from the sharable and non−sharable amounts on a pro rata basis according to the amount of each type of carryover available from that year.

Example: Member L is a member of Combined Group LM. Group LM uses a calendar year. At the beginning of 2012, L has the following available net capital loss carryovers:

Year Incurred	Sharable Carryover	Non−sharable Carryover
2008	−−	$2,500
2009	$4,000	$0
2010	$0	$500
2011	$10,000	$2,000

Since the sharable net capital loss carryovers available for use in the aggregation under subd. 1. are determined without regard to when any non−sharable carryovers were incurred, the total sharable carryover that L may include in Group LM's computation of aggregate net capital gain or loss for the year 2012 is $14,000 (= $4,000 + $0 + $10,000). Assume $12,000 of this amount is absorbed in the aggregation. Since carryovers are applied in the order incurred, L's remaining sharable carryover of $2,000 is from its 2011 net capital loss. This carryover is available to L to offset against its net capital gain from separate entity items for 2012.

Assume L has a net capital gain from separate entity items of $4,000 and applies its available net capital loss carryover to offset this amount. Since carryovers are applied in the order incurred, $2,500 of the amount used is from its 2008 non−sharable carryover and $500 is from its 2010 non−sharable carryover. Since the remaining $1,000 carryover used is from 2011 where L has both a sharable and a non−sharable carryover, the amount of each carryover used is determined on a pro rata basis. Since L has $2,000 in sharable carryover from 2011 and $2,000 in non−sharable carryover from 2011, the remaining $1,000 carryover used is applied equally from the sharable and non−sharable carryovers. Thus, at the end of its 2012 taxable year, L has $1,500 in sharable carryovers and $1,500 in non−sharable carryovers available to carry forward or carry back.

8. If a member has sharable net capital loss carryovers, that member may choose not to use them in the aggregation under subd. 1. If more than one member includes sharable net capital loss carryovers in the aggregation under subd. 1., the amount of each member's carryover used shall be computed on a pro rata basis according to the amount of carryover each member included in the aggregation.

Example: Combined Group QR consists of Member Q and Member R. Group QR is on a calendar year. For 2010, Q and R have the following amounts:

	Member Q	Member R
Sharable net capital loss carryover at beginning of year	($10,000)	($5,000)
Long term capital gain	$6,000	$2,000
Section 1231 gain/loss	($2,000)	$3,000

Assume the long term capital gains and section 1231 gains and losses are derived from Group QR's unitary business and are subject to combination. Before applying the carryovers, Group QR has an aggregate net capital gain of $9,000 (= $6,000 + $2,000 + ($3,000 − $2,000)). Both Q and R use their sharable net capital loss carryovers to offset this amount. The amount used from Q's sharable carryover is $6,000 (= $9,000 x ($10,000 / $15,000)) and the amount used from R's sharable carryover is $3,000 (= $9,000 x ($5,000 / $15,000)). After applying these carryovers, Q's remaining sharable carryover is $4,000 (= $10,000 − $6,000) and R's remaining sharable carryover is $2,000 (= $5,000 − $3,000).

(d) *Charitable contributions.* Compute the charitable contributions deduction limitation so that it applies to the combined group as a whole. Rules to determine the charitable contributions deduction limitation are as follows:

1. Compute the aggregate total deductions for charitable contributions for the taxable year, and any carryforwards of those deductions, for all combined group members.

2. Determine and apply the charitable contributions deduction under Internal Revenue Code section 170, before any Wisconsin modifications under ss. 71.26 or 71.45, Stats., as if the combined group were a consolidated group for federal purposes. The provisions of 26 CFR 1.1502−24, and the regulations which it references, shall apply for this purpose, except to the extent otherwise inconsistent with ss. 71.26 and 71.45, Stats., and the provisions of this section.

Example: Combined Group GH consists of Member G and Member H. G incurred $5,000 in charitable contribution deductions relating to the unitary business in Year 1, while H incurred $15,000 in charitable contribution deductions. Assume the federal taxable income upon which the charitable contribution limitation (10% of adjusted taxable income) would be based is $50,000 for G and $30,000 for H. Applying 26 CFR 1.1502−24 to Group GH in the manner described in this paragraph, Group GH would include a charitable contribution deduction of $8,000 (= lesser of ($5,000 + $15,000) or (($50,000 + $30,000) x 10%)) in its combined unitary income.

3. Any unused charitable contribution deduction after applying subd. 2. is assigned to the member that incurred the expense and is available to that member to offset its net income, if any, from separate entity items, subject to the limitation of section 170 of the Internal Revenue Code. Any of a member's remaining unused charitable contribution may be carried over by that member and used in subsequent years, subject to the carryover period provided in section 170 of the Internal Revenue Code. The unused carryover may either be shared in a subsequent combined report in the manner described in subd. 2. or may be used by that member specifically.

Example: Assume the same facts as in the example for subd. 2. After the computation of Group GH's combined unitary income for Year 1, the amount of unused charitable contribution deduction available to G would be $3,000 (= $12,000 unused deduction x ($5,000 / $20,000)) and the amount available to H would be $9,000 (= $12,000 x ($15,000 / $20,000)). Assume G has separate entity items in Year 1 and the adjusted federal taxable income from those items is $20,000. G may deduct $2,000 (= $20,000 x 10%) of its unused deduction against its income from separate entity items. Assume H does not have separate entity items in Year 1 and both G and H are in Group GH in Year 2. In Year 2, Group GH could include $10,000 of charitable contribution deduction carryover from Year 1 ($1,000 from G and $9,000 from

H) in its combined unitary income, subject to the limitations of section 170 of the Internal Revenue Code.

(e) *Dividends.* Eliminate dividends paid between members of the same combined group, but only if the dividends were paid from earnings and profits attributable to net income or loss that was includable in that group's combined unitary income in the current taxable year or a prior taxable year, and only to the extent the dividend does not exceed the payee's basis in the payer's stock. The following rules apply in determining the dividends that may be eliminated under this paragraph:

1. The elimination of dividends applies only to the extent that the dividends received deduction provided in ss. 71.26 (3) (j) or 71.45 (2) (a) 8., Stats., does not apply.

2. For purposes of this paragraph, dividends are treated as paid out of current earnings and profits, and if the dividends paid exceed current earnings and profits, then the dividends are treated as paid out of earnings and profits accumulated in preceding years, beginning with the year closest to the current year (LIFO rule). With respect to an individual taxable year, dividends are treated as paid from all earnings and profits earned in that taxable year on a pro rata basis according to the proportion of net income that was included in the combined unitary income for that taxable year (pro rata rule). Earnings and profits are determined as provided in par. (g).

Note: See the examples under subds. 4. and 5. for application of the LIFO and pro rata rules.

3. A combined group member's earnings and profits attributable to the unitary business that were generated in its taxable years beginning before January 1, 2009, shall be deemed to be earnings and profits attributable to combined unitary income if the corresponding net income would have been included in the group's combined unitary income in those years had s. 71.255, Stats., been in effect and required combined reporting in those years.

4. To the extent that a dividend is paid out of earnings and profits that were generated while the payer was not, or in the case of subd. 3. would not have been, a member of the combined group, the dividend may not be eliminated.

Example: Combined Group MN consists of Member M and Member N. The combined group was formed when Corporation M acquired 60% of Corporation N on June 1, 2009. Group MN uses a calendar year. During 2010, N paid a dividend to M of $500,000. N's current earnings and profits for 2010, before accounting for the distribution to M, are $100,000. N's earnings and profits attributable to its 2009 calendar year are $1,000,000, of which $50,000 (5% of the total) were earned while N was a member of Group MN. Assume N had no separate entity items while it was a member of Group MN. Also assume M did not deduct any foreign taxes attributable to the dividend and N has sufficient stock basis. Applying the LIFO and pro rata rules of subd. 2., the amount of dividend that qualifies for elimination from Group MN's combined unitary income in 2010 is $120,000 (= $100,000 + (5% x $400,000)). Under the pro rata rule, 95%, or $380,000, of dividends paid out of N's 2009 earnings and profits are considered to be paid from pre−acquisition earnings and profits.

5. To the extent that a dividend is paid out of earnings and profits that were generated in taxable years when the payer was, or in the case of subd. 3. would have been, a member of the combined group for all or a portion of the taxable year, any portion of the dividend attributable to separate entity items may not be eliminated.

Example: Combined Group GH consists of Member G and Member H. G owns 55% of H. Group GH is on a calendar year and both G and H were members of the group for the entire taxable year. During 2010, H paid a dividend of $1,000,000 to G. H's current year earnings and profits are $2,500,000. Of these earnings and profits, $250,000 (10% of the total) is attributable to separate entity items of H. Assume G did not deduct any foreign taxes attributable to the dividend and H has sufficient stock basis. Applying the pro rata rule of subd. 2., the amount of dividend that qualifies for elimination from Group GH's combined unitary income is $900,000 (= $1,000,000 x 90%). Under the pro rata rule, 10%, or $100,000, of dividends paid out of H's current year earnings and profits are considered to be attributable to separate entity items.

6. The amount of dividends eliminated under this paragraph may not exceed the payee's basis in stock of the payer as determined under par. (f).

7. The amount of dividends eliminated under this paragraph shall be net of any taxes paid on the dividends to a foreign nation if those taxes were claimed as a deduction under ch. 71, Stats.

(f) *Stock basis adjustments.* A combined group member's basis in stock of a subsidiary that is a member of the same combined group shall be adjusted to reflect the subsidiary's distributions and items of income, gain, deduction and loss taken into account while the subsidiary was a member of the combined group. Except as provided in subds. 1. to 4. and except to the extent otherwise inconsistent with this section or ss. 71.26 or 71.45, Stats., the provisions of 26 CFR 1.1502−32, and the regulations which it references, shall apply in determining the amount of basis adjustment as if the Wisconsin combined group is a federal consolidated group:

1. A basis adjustment may not be made for the subsidiary's distributions or items of income, gain, deduction, or loss taken into account for the subsidiary's taxable years beginning before January 1, 2009.

2. A basis adjustment may not be made for the subsidiary's items of income, gain, deduction, or loss to the extent those items were not included in the group's combined unitary income. In the case of tax−exempt income, a basis adjustment may not be made to the extent the income is attributable to items that were not included in the combined unitary income.

3. An adjustment to reduce basis shall be made for the subsidiary's distributions to the extent those distributions are from earnings and profits attributable to items that were included in the group's combined unitary income, or from earnings and profits attributable to items deemed to be included in the group's combined unitary income under par. (e) 3. for purposes of the dividend elimination under par. (e). For purposes of determining the amount of basis reduction under this subdivision, the LIFO and pro rata rules of par. (e) 2. apply.

Example: Combined Group CD consists of Member C and Member D. C owns 65% of D. Group CD is on a calendar year. At the beginning of taxable year 2009, C's basis in the stock of D is $2,000,000. In the group's taxable year 2009, D has $100,000 of net income, all of which is included in Group CD's 2009 combined unitary income. During 2009, D pays a dividend of $300,000 to C. Assume the entire dividend from D to C qualifies for elimination under par. (e) 3. and is eliminated from Group CD's combined unitary income in 2009. C's basis in the stock of D as of the beginning of 2010 is $1,800,000 (= $2,000,000 + $100,000 – $300,000).

4. A basis adjustment may not be attributed to a subsidiary from a lower−tier subsidiary's items of income, gain, deduction, or loss, except to the extent that the lower−tier subsidiary's items of income, gain, deduction, or loss originated in taxable years beginning on or after January 1, 2009 and were included in the combined unitary income of that same unitary business.

Example: Combined Group QRS consists of Member Q, Member R, and Member S. Q owns all the stock of R, and R owns all the stock of S. Group QRS is on a calendar year. As of the beginning of 2009, Q had an unadjusted basis of $500,000 in R stock, which includes R's unadjusted basis of $200,000 in S stock under the rules of 26 CFR 1.1502−32. In the group's 2009 taxable year, R had a total of $80,000 of net income and S had a total of $150,000 of net income. Of S's net income, $20,000 was attributable to overseas operations, the income from which was not included in combined unitary income under the water's edge rules. Neither R nor S made any distributions in 2009. At the end of 2009, Q's basis in R stock is $710,000 (= $500,000 + $80,000 + $150,000 − $20,000). Q's basis in R stock cannot include any amounts attributed from S that are attributable to separate entity items.

(g) *Earnings and profits.* A combined group member's earnings and profits shall be adjusted to reflect the undistributed earnings and profits of any subsidiary that is a member of the same combined group, subject to the following rules and limitations:

1. Except as provided in subd. 2. and except to the extent otherwise inconsistent with this section or ss. 71.26 or 71.45, Stats., the provisions of 26 CFR 1.1502−33, and the regulations which it references, shall apply in determining earnings and profits as if the Wisconsin combined group is a federal consolidated group.

2. Undistributed earnings and profits attributed to a subsidiary of a combined group member from any lower−tier subsidiary may not be included in the combined group member's earnings and profits or its subsidiary's earnings and profits except to the extent the lower−tier subsidiary's earnings and profits are attributable to net income that was, or in the case of par. (e) 3. would have been, included in the group's combined unitary income.

Example: Combined Group EFG consists of Member E, Member F, and Member G. E owns all the stock of F, and F owns all the stock of G. Group EFG is on a calendar year. During the taxable year 2009, E has current year earnings and profits of $300,000 and F has current year earnings and profits of $500,000, both exclusive of any amounts attributed from subsidiaries. Assume these amounts are attributable

entirely to items included in Group EFG's 2009 combined unitary income. G has current year earnings and profits of $400,000. However, $50,000 of this amount is attributable to overseas operations, the income from which was not included in combined unitary income under the water's edge rules. Assume none of the corporations made distributions in 2009. F's total current year earnings and profits are $850,000 (= $500,000 + ($400,000 − $50,000 attributed from G)), and E's current year earnings and profits are $1,150,000 (= $300,000 + $850,000 attributed from F).

(h) *Allocation of expenses and deductions.* 1. Combined unitary income shall exclude any expenses or deductions that are directly or indirectly related to income that is not subject to combination. If any expense or amount otherwise deductible is indirectly related both to income subject to combination and income not subject to combination, a reasonable proportion of the expense or amount shall be allocated to each type of income, in light of all the facts and circumstances.

2. The allocation in subd. 1. shall be made according to the methods required or allowed for federal income tax purposes under the applicable sections of the Internal Revenue Code, including their corresponding regulations, except that section 265 of the Internal Revenue Code and its corresponding regulations are modified as provided in s. 71.26 (3) (L), Stats. For example, and without limitation, the allocation may be required under section 482 of the Internal Revenue Code or, for an expense related to foreign source income, under sections 861 to 865 of the Internal Revenue Code.

3. For purposes of applying this paragraph, a combined group member's income from outside the unitary business shall be treated as income of an affiliated corporation, and if a combined group member has U.S. source income excluded from the unitary combination under s. Tax 2.61 (4) (f), that U.S. source income shall be treated as foreign source income.

(7) APPORTIONMENT OF COMBINED UNITARY INCOME. A combined group is considered to be a single taxpayer for purposes of determining whether it is engaged in business both within and outside Wisconsin. For combined groups engaged in business both within and outside Wisconsin, the combined unitary income is apportioned to the combined group members as provided in s. 71.255 (5), Stats. Under this section, each member's share of the combined unitary income is the product of the combined unitary income and the member's modified sales factor ratio. The following rules apply to this computation:

(a) *Numerator of modified sales factor.* 1. For combined group members required to use the sales factor as provided in s. 71.25 (6) and (9), Stats., the numerator of the member's modified sales factor ratio is the numerator of its sales factor as determined under s. 71.25 (9), Stats., and s. Tax 2.39 as if it were not a member of a combined group, except as provided in subd. 5. and pars. (c) to (e).

2. For combined group members that are insurers subject to tax under subch. VII of ch. 71, Stats., the numerator of the member's modified sales factor is the numerator of its premiums factor as determined under s. 71.45 (3) (a), Stats., as if it were not a member of a combined group, except as provided in subd. 5. and pars. (d) and (e).

3. For combined group members that are "financial organizations" as defined in s. 71.25 (10), Stats., the numerator of the member's modified sales factor is the numerator of its receipts factor as determined under ss. Tax 2.49 or 2.495, as applicable, as if it were not a member of a combined group, except as provided in subd. 5. and pars. (c) to (e).

4. For combined group members that are required to apportion their income using more than one factor under s. 71.25 (10), Stats., and ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, the numerator of the member's modified sales factor is determined as provided in par. (g).

5. The numerator of the modified sales factor may not include sales, premiums, or receipts which are not included in the combined unitary income as computed in sub. (6).

(b) *Denominator of modified sales factor.* The denominator of a combined group member's modified sales factor ratio is the sum of the separate company denominators of each combined group member, so that each member of the combined group has the same modified sales factor denominator. Each combined group member's separate company denominator is determined as follows:

1. For combined group members required to use the sales factor as provided in s. 71.25 (6) and (9), Stats., the member's separate company denominator for purposes of the modified sales factor is the denominator of its sales factor as determined under s. 71.25 (9), Stats., and s. Tax 2.39 as if it were not a member of a combined group, except as provided in subd. 5. and pars. (d) and (e).

2. For combined group members that are insurers subject to tax under subch. VII of ch. 71, Stats., the member's separate company denominator for purposes of the modified sales factor is the denominator of its premiums factor as determined under s. 71.45 (3) (a), Stats., as if it were not a member of a combined group, except as provided in subd. 5. and pars. (d) and (e).

3. For combined group members that are "financial organizations" as defined in s. 71.25 (10), Stats., the member's separate company denominator for purposes of the modified sales factor is the denominator of its receipts factor as determined under ss. Tax 2.49 or 2.495, as applicable, as if it were not a member of a combined group, except as provided in subd. 5. and pars. (d) and (e).

4. For combined group members that are required to apportion their income using more than one factor under s. 71.25 (10), Stats., and ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, the member's separate company denominator for purposes of the modified sales factor is determined as provided in par. (g).

5. The separate company denominator for purposes of the modified sales factor may not include sales, premiums, or receipts which are not included in the combined unitary income as computed under sub. (6).

(c) *Throwback sales.* If a combined group member's sale of tangible personal property is destined for a state in which any member of the combined group has nexus under the standards set forth in s. Tax 2.82, and that nexus relates to the unitary business, the sale may not be included in the numerator of the member's modified sales factor. If a combined group member is subject to the controlled group election, that member's numerator shall not include sales destined for a state in which any member of the combined group has nexus under the standards set forth in s. Tax 2.82.

(d) *Intercompany transactions.* 1. Any transaction between members of the same combined group shall be excluded from the numerator and denominator of the modified sales factor. However, if the seller subsequently recognizes income or loss from the intercompany transaction under the provisions of s. 71.255 (4) (g), Stats., and sub. (6) (b), the seller's modified sales factor shall include any factors corresponding to that income or loss in the year it recognizes the income or loss.

2. If a combined group member sells an item or service to another combined group member and the purchaser subsequently resells it to a third party outside of the combined group, the situs of the sale between the combined group members and the sale from the purchasing member to the third party shall both be determined based on the situs of the sale from the purchasing member to the third party, and the purchasing member shall exclude from the numerator and denominator of the modified sales factor the amount the selling member already included under subd. 1. attributable to the item or service that was resold.

Example: Combined Group YZ consists of Member Y and Member Z. Group YZ is on a calendar year. On December 30, 2009, Y sells a widget with a cost of $400 to Z, for $600. Y ships the widget to Z's warehouse in Wisconsin. On January 30, 2010, Z resells the widget to Q, an unrelated third party, for $700. Z ships the widget to Q's headquarters in Illinois. Assume both the sale by Y and the sale by Z are subject to combination, and assume that Z has nexus in Illinois. In 2009, Y did not recognize any gain on the sale to Z because the gain was deferred under the provisions of s. 71.255 (4) (g), Stats., and sub. (6) (b). Since the gain on the sale was not recognized, Y cannot include the $600 sale in its apportionment factors for 2009. In 2010, the year the widget was resold by Z, Y must include its $200 of gain on the sale to Z (= $600 − $400) in combined unitary income. Y must also include the sale amount of $600 in the modified sales factor denominator for 2010. Z must include its $100 gain

on the sale to Q (= $700 − $600) in combined unitary income for 2010. However, since $600 of Z's sales price has already been included in the combined group's modified sales factor, Z may only include $100 of the sale amount in the modified sales factor denominator. Neither Y nor Z include these amounts in their modified sales factor numerators since both sales have a situs in Illinois where Z has nexus. Under the provisions of par. (c), Z's nexus in Illinois applies to both itself and Y for purposes of applying the throwback rule.

3. If an item or service is sold between more than two combined group members before it is sold to a customer outside of the combined group, the situs of these intercompany sales shall be the situs of the ultimate sale to the customer outside of the combined group, and each purchasing combined group member shall exclude from the numerator and denominator of the modified sales factor the amount its selling member already included under subd. 1.

(e) *Pass−through entities.* A combined group member's numerator and denominator for purposes of the modified sales factor generally includes the apportionment factors of pass−through entities owned directly or indirectly by the member, in proportion to the combined group member's distributive share of the pass−through entity's net income or loss included in the combined unitary income. However, a combined group member's modified sales factor may not include apportionment factors of a real estate investment trust, regulated investment company, real estate mortgage investment conduit, or financial asset securitization investment trust. Additionally, subds. 1. and 2. apply in order to avoid duplication. For purposes of subds. 1. and 2., "sale" includes sales as defined in s. 71.25 (9), Stats., premiums under s. 71.45 (3) (a), Stats., or receipts under ss. Tax 2.49 or 2.495, as applicable, which would otherwise be included in a combined group member's modified sales factor.

1. If a sale is made by a combined group member to a pass−through entity which is more than 50 percent owned, directly or indirectly, by members of the combined group as provided in subd. 3., the selling member shall subtract from its modified sales factor numerator and denominator, as applicable, an amount equal to the gross receipts of the sale multiplied by the sum of all combined group members' interests in the pass−through entity as of the date of the sale. This subdivision applies to the extent the gross receipts of the sale are otherwise includable in combined unitary income. For purposes of this subdivision, a combined group member's interest in the pass−through entity as of the date of the sale means the percentage of the pass−through entity's income or loss that is allocable to the member in the taxable year of the sale.

Examples: 1) Combined Group LM consists of Member L and Member M. L owns a 40% interest in Partnership P. M owns a 60% interest in Partnership P. On March 1, 2010, L sells a widget to Partnership P for $10,000, and this sale is includable in Group LM's combined unitary income. In its computation of apportionment factors for 2010, L must subtract an amount of $10,000 (= $10,000 x (40% + 60%)) from the modified sales factor denominator and, if applicable, from its numerator.

2) Assume the same facts as Example 1, except that Member L owns a 25% interest and M owns a 50% interest in Partnership P. In its computation of apportionment factors for 2010, L must subtract an amount of $7,500 (= $10,000 x (25% + 50%)) from the modified sales factor denominator and, if applicable, from its numerator.

2. If a sale is made by a pass−through entity to a combined group member and more than 50 percent of the pass−through entity is directly or indirectly owned by members of the combined group as provided in subd. 3., each member with an interest in the pass−through entity shall subtract from its modified sales factor numerator and denominator, as applicable, any amount attributable to the sale. This subdivision applies to the extent the gross receipts of the sale are otherwise includable in combined unitary income.

Example: Combined Group ST consists of Member S and Member T. S owns a 20% interest in Partnership R. T owns an 80% interest in Partnership R. On October 1, 2010, Partnership R sells a widget to S for $20,000, and this sale is includable in Group ST's combined unitary income. In its computation of apportionment factors for 2010, S must subtract an amount of $4,000 (= $20,000 x 20%) from its sales factor denominator and, if applicable, from its numerator. Similarly, T must subtract an amount of $16,000 (= $20,000 x 80%) from its sales factor denominator and, if applicable, from its numerator.

3. For purposes of subds. 1. and 2., a pass−through entity is owned more than 50 percent by combined group members if the aggregate amount of the combined group members' interests in the pass−through entity, without regard to any agreement to allocate gains or losses on a basis other than their capital interests, is more than 50 percent, or the combined group members taken as a whole have more than 50 percent of the management rights of the pass−through entity, as evidenced by the terms of the agreement under which the pass−through entity was formed, voting rights, provisions of state or federal law, or otherwise.

(f) *Special rules for zeroes and negative numbers in factors.* This paragraph applies the special rules in ss. 71.25 (6m) and 71.45 (3e), Stats., to combined group members as follows:

1. If both the numerator and denominator of a member's modified sales factor are zero, none of the combined unitary income shall be apportioned to the member. The member's separate company denominator has no effect on this determination.

2. If the numerator of a member's modified sales factor is a negative number, none of the combined unitary income shall be apportioned to the member. The member's separate company denominator has no effect on this determination.

3. If the numerator of a member's modified sales factor is a positive number and the denominator is a negative number or zero, all of the combined unitary income shall be apportioned to the member. The member's separate company denominator has no effect on this determination. If this subdivision would result in apportioning all of the combined unitary income to more than one member, the combined unitary income shall be apportioned to the members having positive modified sales factor numerators in proportion to the amounts of their numerators.

Example: Combined Group XY consists of Member X and Member Y. In its taxable year 2009, Group XY has combined unitary income of $50,000. X and Y have the following apportionment factors:

	Member X	Member Y
Modified Sales Factor Numerator	$5,000	$15,000
Separate Company Denominator	($10,000)	$5,000

The modified sales factor denominator, or sum of the separate company denominators, is ($5,000). The amount of combined unitary income that would be apportioned to X is $12,500 (= $50,000 x ($5,000 / $20,000)). The combined unitary income that would be apportioned to Y is $37,500 (= $50,000 x ($15,000 / $20,000)).

(g) *Multiple factor formulas.* If a combined group member is required under s. 71.25 (10), Stats., to use an apportionment formula prescribed in ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, the member's modified sales factor is computed as follows:

1. The numerator of the modified sales factor is the product of the member's apportionment percentage computed under ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502, as applicable, as if the member were not a member of a combined group except as provided in subds. 3. to 5., and the member's separate company denominator determined in subd. 2.

2. Except as provided in subds. 3. to 5., the member's separate company denominator for purposes of the modified sales factor is the member's total company sales that would be includable in the sales factor computed under s. 71.25 (9), Stats., as if the member were required to use the sales factor and were not a member of a combined group.

3. Neither the numerator nor denominator shall include amounts that are not included in or directly related to income included in the combined unitary income as computed under sub. (6).

4. Intercompany transactions shall be excluded or recognized in the numerator and denominator, as applicable, in the manner described in par. (d).

5. To the extent the computation in this paragraph involves the sales factor as provided in s. 71.25 (9), Stats., the provisions of pars. (c) and (e) apply.

(h) *Alternative apportionment.* 1. The provisions of s. Tax 2.395 may apply to combined group members. The determination of whether an alternative apportionment method under s. Tax 2.395 may be used is made for each corporation within the com-

bined group rather than for the combined group itself. If the alternative apportionment method employed under s. Tax 2.395 is a formula that includes multiple factors, that corporation shall compute its modified sales factor in the manner described in par. (g).

2. Notwithstanding the provisions of s. Tax 2.395, a qualifying combined group may petition the department to use an alternative apportionment method, as provided in s. Tax 2.64.

(i) *Apportionment factors for dual−sourced income.* If a corporation is eligible to exclude foreign source income from combined unitary income under sub. (4) (d) to (f) and the Internal Revenue Code requires the corporation to source a transaction both within the United States and without the United States, the corporation shall exclude from its modified sales factor any amounts attributable to the portion of the transaction that constitutes foreign source income under sub. (4) (c). The amounts excluded from the modified sales factor under this paragraph shall be the amounts includable in the modified sales factor as if the transaction was sourced entirely within the United States, multiplied by the percentage of the transaction's gross receipts that constitutes foreign source income under sub. (4) (c).

(8) INCOME COMPUTATION FOR GROUPS DOING BUSINESS SOLELY IN WISCONSIN. For combined groups that are engaged in business solely in Wisconsin, and therefore not eligible to use apportionment, each member's net income subject to combination is determined on a separate entity basis and then adjusted to reflect the member's status as a combined group member. These incomes are added together to arrive at the combined unitary income. Therefore, if some combined group members have net income from the unitary business and others in the same group have net loss from the unitary business, the combined group's tax liability is based on the total aggregate net income or loss of the unitary business. When each member computes its share of the combined unitary income, the provisions of sub. (6) apply, except that the modifications in pars. (a) to (d) are required:

(a) *Intercompany transactions.* To the extent that sub. (6) (b) does not apply, intercompany transactions that consist of interest or other expenses paid, accrued, or incurred by one member to another are disregarded so that they neither increase nor decrease a member's net income or loss. This paragraph does not apply to intercompany transactions which occurred in taxable years beginning before January 1, 2009 or to intercompany transactions where the income, expense, gain, or loss would not otherwise be subject to combination.

(b) *Capital gains and losses.* 1. The net capital gain or loss, after applying any sharable net capital loss carryover, is first determined for the combined group as a whole in the manner described in sub. (6) (c) 1. to 3. If the result is a net capital gain for the group, the net capital gain is assigned to the members that would have a net capital gain from the unitary business if they were not members of the combined group, in proportion to the amount of that net capital gain. If the result is a net capital loss for the group, the net capital loss is assigned to the members that would have a net capital loss from the unitary business if they were not members of the combined group, in proportion to the amount of that net capital loss.

Note: See Example 2 under sub. (6) (c) 4. for an example of this assignment method.

2. After applying subd. 1., each member computes its net capital gain or loss from separate entity items and applies the provisions of sub. (6) (c) 5. to 7., except that in applying the provisions of sub. (6) (c) 6., the applicable apportionment percentage is one hundred percent.

(c) *Basis adjustments*. A combined group member's basis in stock of a subsidiary that is a member of the same combined group shall be adjusted in the manner prescribed in sub. (6) (f). Intercompany interest and other expenses shall be included in these adjustments, even if those transactions were disregarded in the computation of the member's income for the taxable year as provided in par. (a).

(d) *Earnings and profits.* A combined group member's earnings and profits shall be adjusted to reflect the undistributed earnings and profits of a subsidiary that is a member of the same combined group in the manner prescribed in sub. (6) (g). Intercompany interest and other expenses shall be included in these adjustments, even if those transactions were disregarded in the computation of the member's income for the taxable year as provided in par. (a).

(9) NET BUSINESS LOSSES. A combined group member may carry forward its net business loss as provided in ss. 71.26 (4) and 71.45 (4), Stats. A net business loss carryforward is an attribute of the separate corporation rather than of the combined group. However, s. 71.255 (6) (b) and (bm), Stats., provides that a combined group member may share all or a portion of its net business loss carryforward with the other members of its combined group if certain conditions are met. This subsection explains which net business loss carryforwards are sharable, how to compute the sharable amount, and how to apply the shared losses. The following rules apply:

(a) *Sharable loss carryforwards.* A combined group member may share its net business loss carryforward incurred in a taxable year beginning on or after January 1, 2009 with other combined group members to the extent that all of the following conditions are met:

1. The net business loss is attributable to combined unitary income included in a combined report.

2. The member originally computed the net business loss in the combined report for the same combined group as the combined group that will use the shared loss carryforward, regardless of whether corporations have joined or left the combined group in the intervening years.

3. The member is still a member of the combined group described in subd. 2. for the year the loss carryforward will be shared.

(b) *Non−sharable loss carryforwards.* A combined group member's net business loss carryforward incurred in a taxable year beginning on or after January 1, 2009 that cannot be shared with other combined group members includes amounts attributable to the following:

2. Net business losses attributable to separate entity items.

3. Net business losses attributable to a different unitary business.

(c) *Order of carryforwards.* A combined group member shall apply net business loss carryforwards in the following order:

1. Net business loss carryforwards incurred by that same member in taxable years beginning before January 1, 2009, in the order that the underlying net business losses were incurred.

2. Sharable and non−sharable net business loss carryforwards under par. (d) incurred in taxable years beginning on or after January 1, 2009, in the order that the underlying net business losses were incurred. If the net business loss carryforward to be used consists of both a sharable amount and a non−sharable amount incurred in the same taxable year, the amount of sharable and non−sharable carryforward used shall be determined on a pro rata basis according to the amount of each type of carryforward available from that year.

3. For loss carryforwards shared in a taxable year that begins after December 31, 2011, pre−2009 net business loss carryforwards under par. (dm).

Example: Combined Group EFG consists of Member E, Member F, and MemberG. E has the following loss carryforwards:

Year Incurred	Sharable Carryforward	Non−sharable Carryforward
2008	−−	($10,000)
2009	($6,000)	($2,000)

In 2010, E's share of combined unitary income plus its separate entity items equal $14,000. After using its carryforwards to offset this income, E has $4,000 of remaining net business loss carryforward (= ($10,000) + ($6,000) + ($2,000) + $14,000).

Of this amount, a portion is a sharable carryforward that may be applied against F and G's shares of combined unitary income in the manner described in par. (d). Since loss carryforwards are applied in the order incurred, the $10,000 carryforward from 2008 is used in its entirety, and $4,000 of the 2009 carryforward is used. The portion of E's remaining carryforward from 2009 that is sharable is $3,000 (= $4,000 x [$6,000 / $8,000]) and the portion that is non−sharable is $1,000 (= $4,000 x [$2,000 / $8,000]).

In 2012, E has the following loss carryforwards:

Year Incurred	Sharable Carryforward	Non−sharable Carry-forward
2009	($3,000)	($1,000)
2010	−−	−−
2011	($4,000)	($6,000)

In addition, E has a pre−2009 net business loss carryforward of $3,000. E's share of combined unitary income plus its separate entity items for 2012 equal $16,000. After using its carryforwards to offset this income, E has $1,000 of remaining net business loss carryforward (= ($3,000) + ($3,000) + ($1,000) + ($4,000) + ($6,000) + $16,000). Since the loss carryforwards are first applied to the net business loss carryforwards incurred in 2009 and after, the $4,000 carryforward from 2009 and the $10,000 carryforward from 2011 are used in their entirety. The remaining $2,000 of loss carryforwards are applied to the pre−2009 net business loss carryforward. The remaining pre−2009 net business loss carryforward is $1,000.

(d) *Method of sharing.* The amount of net business loss carryforward under par. (c) 2. eligible for sharing shall be computed and assigned as follows:

1. Each combined group member shall first apply its total available net business loss carryforward against its total Wisconsin income as computed under sub. (5) (a) to (g), including net income or loss attributable to separate entity items. A combined group member's net business loss carryforward shall be considered used against its net income from separate entity items before its share of combined unitary income.

2. Each member shall then separate any remaining net business loss carryforward into the sharable amount and the non−sharable amount, as applicable, using the ordering rules in par. (c). The sharable net business loss carryforward amounts for each combined group member shall then be aggregated, except that any combined group member that elects not to share its sharable amount as provided in par. (h) may exclude some or all of its sharable amount from the aggregate sharable amount.

3. Except as provided in par. (g), relating to insurance companies, the aggregate sharable amount shall be assigned to each combined group member in proportion to its share of combined unitary income as computed in subs. (6) to (8), net of any losses from separate entity items or loss carryforwards already applied. The sharable amount may only be assigned to a member to the extent the member's share of combined unitary income has not already been offset by losses taken into account under subd. 1. An amount may not be assigned to a combined group member whose share of combined unitary income, net of any losses already applied by the member under subd. 1., is zero or less.

4. Any remaining sharable amount remains an attribute of the corporation that originally incurred the loss. The aggregate sharable amount used under subd. 3. shall be considered used proportionately from the sharable net business loss carryforwards of the corporations which contributed to the aggregate sharable amount.

Example: Combined Group ABCD consists of Member A, Member B, Member C, and Member D. The corporations have the following net business loss carryforwards and net income amounts in 2010:

	Member A	Member B	Member C	Member D
Net business loss carryforward – 1/1/2010	($28,000)	($24,000)	($1,000)	$0
Share of combined unitary income	$3,000	$10,000	$20,000	$20,000
Net income from separate entity items	$1,000	($2,000)	$3,000	($15,000)
Remaining net business loss carry-forward	($24,000)	($16,000)	$0	$0

Assume all of A and B's net business loss carryforwards are sharable. The aggregate sharable amount is $40,000 (= $24,000 + $16,000). This amount may be allocated to C and D based upon their respective shares of combined unitary income after applying any losses from separate entity items. C's adjusted share of combined unitary income is $20,000 (its $1,000 carryforward is considered used against its $3,000 net income from separate entity items before its share of combined unitary income) and D's adjusted share of combined unitary income is $5,000 (= $20,000 − $15,000). The aggregate sharable amount exceeds the sum of C and D's adjusted shares of the combined unitary income, which is $25,000 (= $20,000 + $5,000). Thus, C and D's adjusted shares of combined unitary income are fully offset by the aggregate sharable amount.

After the aggregate sharable amount is applied, the remaining aggregate sharable amount is $15,000 (= $40,000 − $25,000). Since the remaining sharable amount remains an attribute of the corporation that originally incurred the loss, at the end of 2010, A would have $9,000 (= $15,000 x ($24,000 / $40,000)) in remaining net business loss carryforward, and B would have $6,000 (= $15,000 x ($16,000 / $40,000)) in remaining net business loss carryforward.

(dm) *Pre−2009 net business loss carryforwards.* 1. For a combined group member's first taxable year beginning after December 31, 2011, the member may, after using the pre−2009 net business loss carryforward to offset its own income for the taxable year, and after using sharable losses to offset its own income for the taxable year, use 5 percent of the pre−2009 net business loss carryforward to offset the income of all other members of the combined group for the taxable year and for each of the 19 subsequent taxable years.

Example: Member A of Wisconsin Combined Group ABC has pre−2009 net business loss carryforwards of $100 million as of December 31, 2008. A's share of the combined group's income is $2 million in 2009, $3 million in 2010, and $5 million in 2011. A's one−time calculation of the annual 5% sharable amount is $4.5 million, computed as follows: [$100 million pre−2009 net business loss carryforward less the taxable income offset by the net business loss carryforward ($2 million in 2009, $3 million in 2010, and $5 million in 2011) multiplied by 5 percent].

In 2012 Member A's share of the combined group's Wisconsin income is $1 million. Member A first applies its pre−2009 net business loss carry−forward against its $1 million share of the combined group's Wisconsin income. The remaining members of the group may use the $4.5 million sharable loss to offset the remaining group income on a proportionate basis. Assuming the combined group has enough income in 2012 to fully use the entire $4.5 million in pre−2009 net business loss carryforward, the pre−2009 net business loss carryforward available in 2013 is $84.5 million ($90 million total sharable loss less $1 million of Member A's income offset by the net business loss carry−forward, less $4.5 million sharable loss utilized by the corporation in 2012). If Member A's share of the combined group's income is $0 for all the remaining years of the pre−2009 carry−forward, and the remaining members of the combined group were eligible to share the full $4.5 million net business loss carry−forward each year, the sharable pre−2009 net business loss available in 2031 will be $3.5 million ($4.5 million annual sharable loss computed in 2012 less $1 million loss used by Member A in 2012).

2. Except as provided in par. (g), relating to insurance companies, the sharable pre−2009 net business loss carryforward under subd. 1. shall be assigned to each combined group member in proportion to its share of combined unitary income as computed in subs. (6) to (8), net of any losses from separate entity items or loss carryforwards already applied. An amount may not be assigned to a combined group member whose share of combined unitary income is zero or less. Any remaining sharable amount becomes part of the combined group's pre−2009 net business loss carryforward that may be shared by all combined group members in subsequent years.

Example: Member D of Combined Group DEF has a pre−2009 net business loss carry−forward of $2 million as of January 1, 2012. The 5% sharable amount allowed to members E and F in each year for taxable years 2012 through 2031 is $100,000 ($2 million net business loss carryforward multiplied by 5%). Member E's proportional share of the $100,000 sharable net business loss in 2012 is $30,000. After using all other allowable losses, Member E has $20,000 in income remaining to offset against its share of the pre−2009 net business loss carryforward. The remaining $10,000 net business loss carryforward not used by Member E in 2012 becomes part of the combined group's pre−2009 net business loss carryforward that may be shared by all combined group members in 2013 and is in addition to the 5% net business loss carryforward previously computed. As a result, the net business loss carryforward available in 2013 is $110,000 ($100,000 combined group yearly sharable loss plus Member E's $10,000 proportional share of the $100,000 loss in 2012 that was not fully utilized by Member E in 2012).

3. Notwithstanding the provisions of ss. 71.26 (4) (a) and 71.45 (4) (a), Stats., under ss. 71.26 (4) (b) and 71.45 (4) (b), Stats., any unused pre−2009 net business loss carryforward under subd. 1. may be offset against the income of the members of the combined group for the 20 taxable years that begin after December 31, 2011.

Example: As of December 31, 2008, Member G of Combined Group GHI has a loss carryforward of $30,000 that is in the 14th year of the 15 year carryforward period under s. 71.26 (4) (a), Stats. Member G does not have any income to offset the $30,000 loss carryforward in its taxable years beginning in 2009, 2010, or 2011. For taxable years beginning on or after January 1, 2012, Member G is allowed to use the $30,000 pre−2009 net business loss carryforward to offset any of its own income first, then offset its proportional share of Combined Group GHI's income, and finally, any

remaining loss may be shared proportionately among the other members of Combined Group GHI. Under s. 71.26 (4) (b), Stats., Member G's pre−2009 net business loss carryforward of $30,000 begins a new carryforward period of 20 years from its taxable year beginning in 2012.

(e) *Departing combined group members.* Except as provided in subds. 1. and 2., if a corporation leaves a combined group or is no longer eligible to be a combined group member, the corporation's remaining net business loss carryforward may not be shared with any other combined groups but shall be available only to that corporation. The following exceptions apply:

1. If a subgroup of two or more corporations leaves a combined group on the same date and immediately thereafter the corporations become a separate combined group or together become members of a new combined group, those corporations may share their remaining sharable net business loss carryforwards attributable to the former combined group with one another. For purposes of the computations in par. (d), the new combined group's combined unitary income shall be used in place of the former combined group's combined unitary income. This subdivision also applies to combined groups that merge to become a new combined group by operation of the controlled group election as described in s. Tax 2.63 (2) (c).

2. If a corporation leaves a combined group or is no longer eligible to be a combined group member, but subsequently rejoins the combined group, the corporation may share its net business loss carryforward with that combined group to the extent the carryforward otherwise qualifies as a sharable loss carryforward under par. (a).

(f) *New combined group members.* If a new member joins the combined group or is formed within the combined group, the member may use the net business loss carryforwards shared by other combined group members in the same manner as described in this subsection, even if those losses originated before the new member was part of the group.

(g) *Special rules for insurance companies.* Under s. 71.45 (4), Stats., the net business loss of an insurance company cannot include the dividends received deduction provided in s. 71.26 (3) (j), Stats. Further, an insurance company may not use net business loss carryforwards in cases where its franchise or income tax liability is limited by two percent of its gross premiums as provided in s. 71.46 (3), Stats. Therefore, the following rules apply:

1. For purposes of applying s. 71.45 (4), Stats., if a dividend qualified for both the dividends received deduction under s. 71.26 (3) (j), Stats., and the elimination of dividends under sub. (6) (e), the dividend is considered to be eliminated under sub. (6) (e) rather than deducted under s. 71.26 (3) (j), Stats.

2. If an insurance company is a member of a combined group that is engaged in business both within and outside Wisconsin and has a net business loss, the dividends received deduction that shall be added back to that loss includes the insurance company's apportioned share of the total dividends received deduction which was deducted from the combined unitary income under s. 71.26 (3) (j), Stats., regardless of whether the insurance company was the combined group member which received the dividend.

3. If an insurance company is a combined group member and its tax liability measured by its total Wisconsin net income as provided in sub. (5), including any net business loss carryforwards available from other combined group members, exceeds two percent of its gross premiums as defined in s. 76.62, Stats., plus 7.9 percent of the income described in sub. (5) (f), its tax liability shall be limited to two percent of the gross premiums plus 7.9 percent of the income described in sub. (5) (f). If the insurance company's tax liability is limited in this manner, its business loss carryforwards may not be shared with any other combined group members, and if the group is otherwise sharing loss carryforwards, loss carryforwards may not be assigned to the insurance company.

(h) *Elections.* 1. Although a combined group member is entitled to the benefit of a net business loss carryforward, the member may elect not to use a portion or any of the available net business loss carryforward for a taxable year. This election does not reduce the amount of carryforward available for the following taxable year nor suspend the carryforward period provided in ss. 71.26 (4) and 71.45 (4), Stats.

2. A combined group member may also elect not to share a portion or any of its sharable net business loss carryforward with other combined group members. However, if the corporation shares any part of its sharable net business loss carryforward, the shared amount shall be divided among all members in the manner prescribed in this subsection, except as otherwise provided in pars. (d), (e) 1., and (g) 3. A combined group member's election under this subdivision is effective only for the taxable year in which the election is made and shall have no effect on the member's ability to share net business loss carryforwards in future taxable years.

(i) *Applicability of Internal Revenue Code.* 1. Notwithstanding the provisions of this subsection, the total amount of net business loss carryforward that may be used by a combined group member or shared with other combined group members for a taxable year is limited by section 382 of the Internal Revenue Code as provided in s. 71.26 (3) (n), Stats. Section 382 of the Internal Revenue Code shall be applied without regard to the federal consolidated return regulations under section 1502 of the Internal Revenue Code.

2. If a combined group member is acquired by another combined group member, section 381 of the Internal Revenue Code controls whether the acquiring corporation may succeed to the target corporation's net business loss carryforwards. Wisconsin follows section 381 of the Internal Revenue Code, but modifies it in s. 71.26 (3) (n), Stats., so that it applies to Wisconsin net business loss carryforwards instead of federal net operating loss carryovers. If the acquirer succeeds to the target corporation's net business loss carryforwards, the target corporation's carryforwards shall be treated as originally incurred by the acquiring corporation and shall maintain their character as sharable or non−sharable.

3. The separate return limitation year provisions of the federal regulations under section 1502 of the Internal Revenue Code do not apply to net business loss carryforwards. The provisions of this subsection apply in place of these limitations.

(10) CREDITS. A credit is an attribute of the separate corporation rather than of the combined group, and credits are computed for each corporation separately. However, s. 71.255 (6) (c), Stats., provides that a combined group member may share all or a portion of its research credits with the other members of the combined group. For purposes of this subsection, the term "research credit" means only the research expense credit under ss. 71.28 (4) or 71.47 (4), Stats., and the research facilities credit under ss. 71.28 (5) or 71.47 (5), Stats. This subsection explains how credits are computed and applied as well as the special rules that apply to research credits.

(a) *Nonrefundable credits other than research credits.* A combined group member's nonrefundable credits other than research credits, including carryforwards of those credits, may only be used by that combined group member to offset the tax liability attributable to its own taxable income as computed under sub. (5).

(b) *Refundable credits.* Any refundable credits computed by a combined group member shall be claimed on the combined return and refunded to the designated agent to the extent not used to offset the total tax liability reported on the combined return.

(c) *Sharing of research credits*. If a combined group member computes a research credit, or has a carryforward of a research credit, the member may share a portion or all of the credit with the other members. For purposes of determining the sharable amount, the provisions of sub. (9) (e) and (f) apply to available research credits in the same manner as they apply to net business loss carryforwards. Research credit carryforwards incurred in taxable years beginning before January 1, 2009 are sharable to the extent the corporation with the credits would have been a member of the

combined group had s. 71.255, Stats., been in effect and required combined reporting in those years. The method of sharing these credits is as follows:

1. Each combined group member shall first apply its total available credits, including its research credits, against its gross tax liability, if any, including its tax liability attributable to separate entity items. A combined group member's available credits shall be considered used against its tax liability from separate entity items before its tax liability from its share of combined unitary income. Available credits shall be used in the order specified in s. 71.30 (3), Stats. A combined group member may elect to apply a carryforward of a research credit before applying the research credit computed for the current taxable year.

2. Each member shall then separate any remaining available research credit into the sharable and non−sharable amount, as applicable. The ordering rules provided in sub. (9) (c), relating to net business loss carryforwards, also apply to research credit carryforwards. The sharable research credits for each combined group member shall then be aggregated, except that any combined group member that elects not to share its sharable amount may exclude some or all of its sharable amount from the aggregate sharable amount.

3. The sharable amount shall be assigned to each combined group member in proportion to its tax liability from its share of combined unitary income. The sharable amount may only be assigned to a member to the extent the member's tax liability from combined unitary income has not already been offset by other credits and carryforwards applied by that member under subd. 1. An amount may not be assigned to a combined group member whose tax liability from combined unitary income has been fully offset by other credits.

4. Any remaining sharable amount remains an attribute of the corporation that originally generated the credit. The aggregate sharable amount used under subd. 3. shall be considered used proportionately from the sharable research credits of the corporations which contributed to the aggregate sharable amount.

Example: Combined Group FGH consists of Member F, Member G, and Member H. F, G, and H have the following amounts in 2010:

	Member F	Member G	Member H
Current year research expense credit	($3,000)		
Current year economic development credit			($17,000)
Research expense credit carryforward	($20,000)	(16,000)	
Tax liability from combined unitary income	$8,000	$5,000	$20,000
Tax liability from separate entity items	_____	$1,000	$2,000
Net tax	$0	$0	$5,000
Remaining available research expense credit	($15,000)	($10,000)	

Assume all of the research expense credit carryforward is sharable. The aggregate sharable amount is $25,000 (= $15,000 + $10,000). This amount may be assigned to H to the extent of its tax liability from its share of the combined unitary income after applying its own credits. After H applies its own credits, the remaining tax liability from combined unitary income is $5,000 (= ($17,000) + $2,000 + $20,000; its $17,000 economic development credit is applied against tax liability from separate entity items before tax liability from combined unitary items). Since this amount is less than the aggregate sharable amount, the entire remainder of H's tax liability from combined unitary income ($5,000) is offset by the aggregate sharable amount.

After the aggregate sharable amount is applied, the remaining aggregate sharable amount is $20,000 (= $25,000 − $5,000). Since the remaining sharable amount remains an attribute of the corporation that originally generated the credit, at the end of 2010, F would have $12,000 (= $20,000 x ($15,000 / $25,000)) in remaining research credit carryforward, and G would have $8,000 (= $20,000 x ($10,000 / $25,000)) in remaining research credit carryforward.

5. The provisions of sub. (9) (h), as they relate to elections applicable to net business loss carryforwards, apply also to available research credits under this paragraph.

(d) *Exception for funded research*. If a combined group member incurs expenses that are otherwise qualified research expenses under section 41(d) of the Internal Revenue Code but for the fact that the research is funded by another combined group member, the expenses shall be considered qualified research expenses of the combined group member performing the research, and the reimbursement from the combined group member funding the research may not be considered a qualified research expense of the funding member. Regardless of where the funding member is located, the research must be performed in this state to qualify for the research credit for Wisconsin purposes.

Example: Combined Group AB consists of Member A and Member B. In Year 1, B performs research that would be "qualified research" under section 41(d) of the Internal Revenue Code, except for the fact that A and B have entered into a contract where A provides funding for all of B's research at a markup of 10%. Neither A nor B perform any other research. During Year 1, A paid B $220,000 for research services, all of which would be "qualified research" for B if the research were not funded by A. On AB's Year 1 combined return, B may include $200,000 of qualified research expenses (= $220,000 − $20,000 markup) in its computation of the research credit. However, A may not compute any research credit. Since A and B are members of the same combined group, the funding arrangement between A and B is ignored for purposes of computing the research credit.

(e) *Applicability of Internal Revenue Code*. The provisions of sub. (9) (i), as they relate to net business loss carryforwards, also apply to carryforwards of credits under this subsection.

Note: Section Tax 2.61 interprets s. 71.255, Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; CR 12−006: am. (9) (intro.), (a) (intro.), 1., (b) (intro.), r. (9) (b) 1., r. and recr. (9) (c) Register July 2012 No. 679, eff. 8−1−12; CR 13−078: am. (7) (a) 4., (b) 4., (g) (intro.), 1. Register April 2014 No. 700, eff. 5−1−14.

Cross Reference: See s. Tax 2.60 for definitions that relate to this section.

Tax 2.62 Unitary business. (1) SCOPE. Section 71.255 (2) (a), Stats., provides that a corporation engaged in a unitary business with one or more other corporations in the same commonly controlled group is generally required to determine its share of income from that unitary business using a combined report. Section 71.255 (1) (n), Stats., defines "unitary business." The purpose of this section is to provide further interpretation of the meaning of "unitary business."

(2) GENERAL. A unitary business is a single, commonly controlled economic enterprise for which the components of the enterprise are sufficiently interdependent, integrated, and interrelated through their activities to such a degree that if the enterprise is doing business both within and outside a state, the state is permitted under the U. S. Constitution to tax a fairly apportioned share of the total net income of the enterprise.

(a) *Commonly controlled*. A unitary business may consist of a single entity or a group of two or more related entities, including corporations, tax−option corporations, partnerships, limited liability companies, sole proprietorships, estates, and trusts. A group of related entities may satisfy the commonly controlled requirement of a unitary business if they are related in any of the following ways:

1. The entities are related under the provisions of section 267 of the Internal Revenue Code which disallow losses on sales between related persons. By reference, this includes the rules in section 707(b) of the Internal Revenue Code, relating to partnerships.

2. The entities are related under section 1563 of the Internal Revenue Code, which defines a "controlled group of corporations" for federal income tax purposes.

3. The entities are corporations in the same "commonly controlled group" for Wisconsin purposes. "Commonly controlled group" has the meaning given in s. 71.255 (1) (c), Stats., as further interpreted by s. Tax 2.61 (3).

(b) *Components of enterprise*. The components of a commonly controlled economic enterprise may consist either of divisions of a single entity or of multiple entities, or both. For purposes of this section, the term "participants" is used to describe these components of an economic enterprise.

(c) *Sufficiently interdependent, integrated, and interrelated*. 1. In general, the participants in a commonly controlled economic enterprise are considered a unitary business if their activities generate a synergy and mutual benefit that produces a sharing or

exchange of value among them and a significant flow of value to the separate parts. Subsection (3) presents indicators that sharing or exchange and flow of value are present.

2. The participants in a commonly controlled economic enterprise may also be considered a unitary business if there is unity of operation and use, as further explained in sub. (4).

3. Under s. 71.255 (1) (n), Stats., the definition of "unitary business" shall be construed to the broadest extent permitted by the U.S. Constitution. Thus, case law provides additional guidance to determine whether a unitary business exists. Subsection (5) presents factors that have been considered by the U.S. Supreme Court to be determinative of a unitary business.

(d) *Fairly apportioned.* If a unitary business has nexus in Wisconsin and is doing business both within and outside Wisconsin, an apportioned share of the unitary business's net income is taxable by Wisconsin under the rules of this paragraph. If a unitary business is doing business only in Wisconsin, no apportionment applies and all of the unitary business's income is taxable by Wisconsin unless specifically exempt. The following rules apply to the apportionment of income of a unitary business:

1. For any participant in the unitary business that is not a member of a commonly controlled group of corporations as provided in s. Tax 2.61 (3), the participant's income from the unitary business is generally apportioned in the manner provided by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable. However, the participant may be required to apportion its income under the combined reporting rules provided in s. Tax 2.61 if certain conditions apply, as further explained in s. Tax 2.61 (2) (f).

2. For any participant in the unitary business that is a member of a commonly controlled group of corporations as provided in s. Tax 2.61 (3), the participant's income from the unitary business shall be apportioned under the combined reporting rules provided in s. Tax 2.61.

3. A corporation that is engaged in the unitary business may have both apportionable income and nonapportionable income, as provided in s. 71.25 (5), Stats.

(e) *Members of unitary business that are not in combined group.* It is possible that one or more members of a unitary business may not be members of a combined group. Members of a unitary business that may not be members of a combined group include the following:

1. Individuals or entities that are considered "pass−through entities" for purposes of combined reporting under s. 71.255 (1) (m), Stats. This includes partnerships, limited liability companies treated as partnerships, tax−option corporations, estates, trusts, real estate investment trusts, regulated investment companies, real estate mortgage investment conduits, and financial asset securitization investment trusts.

2. Corporations whose net income and apportionment factors are not subject to combination under the water's edge rules of s. Tax 2.61 (4).

3. Corporations that are related under the rules of sections 267 or 1563 of the Internal Revenue Code but are not in a "commonly controlled group" as provided under s. Tax 2.61 (3).

(f) *Members of combined group that are not in unitary business.* A combined group may include corporations that are not engaged in a unitary business if the combined group's designated agent has properly made the controlled group election as provided in s. Tax 2.63.

(3) SHARING, EXCHANGE, AND FLOW OF VALUE. (a) *General.* Participants in a commonly controlled economic enterprise have sharing or exchange of value among them and a significant flow of value to the separate parts, and thus are a unitary business, if any of the following are true:

1. The participants in the enterprise contribute or are expected to contribute in a nontrivial way to each other's profitability.

2. Each participant in the enterprise is either dependent on, or is depended upon by, one or more other participants in the enterprise for achieving one or more nontrivial business objectives.

3. The economic enterprise offers one or more participants some economies of scale or economies of scope that benefit the enterprise.

4. The prices charged on transactions between participants in the enterprise are inconsistent with the arms−length principle. However, if these prices are consistent with the arms−length principle, that fact does not negate in any way the existence of a unitary business (*Exxon Corp. v. Dept. of Revenue of Wisconsin*, 447 U.S. 207, 100 S. Ct. 2109 (1980)).

(b) *Examples of flow of value.* Activities between participants that constitute a flow of value between them include any of the following:

1. Assisting in acquisition of assets.

2. Assisting with filling personnel needs.

3. Lending funds, guaranteeing loans, or pledging assets.

4. Interplay in the area of corporate expansion, including but not limited to common future planning or development of the enterprise.

5. Providing technical assistance, general operational guidance, or overall operational strategic advice.

6. Supervising.

7. Sharing use of trade names, patents, or other intellectual property.

(4) UNITY OF OPERATION AND USE. This subsection explains when participants in a commonly controlled economic enterprise are considered a unitary business because they have unity of operation and use.

(a) *General.* If the participants in a commonly controlled economic enterprise have both unity of operation and unity of use, they shall be considered engaged in a unitary business.

(b) *Unity of operation.* Unity of operation means there is functional integration among the participants, and is evidenced generally by shared support functions. Activities that indicate unity of operation include:

1. Centralized purchasing, marketing, advertising, accounting, or research and development.

2. Intercorporate sales or leases, including equipment and real estate.

3. Intercorporate services, including administrative, data management, computer support, employee benefits, human resources, insurance, tax compliance, legal, financial, and cash management services.

4. Intercorporate debts.

5. Intercorporate use of proprietary materials, including trade names, trademarks, service marks, patents, copyrights, and trade secrets.

(c) *Unity of use.* Unity of use is evidenced generally by centralized management or use of centralized policies. Factors that indicate unity of use include:

1. Centralized executive force.

2. Interlocking directorates or corporate officers.

3. Intercompany employee transfers.

4. Common employee and executive training programs.

5. Common hiring and personnel policies.

6. Common recruiting programs.

7. Common employee handbooks.

8. Common employee benefit programs.

(5) FACTORS CONSIDERED BY U.S. SUPREME COURT. Since, as provided in s. 71.255 (1) (n), Stats., the definition of "unitary business" shall be construed to the broadest extent permitted by the U.S. Constitution, case law provides further guidance to determine whether a unitary business exists. Subsections (3) and (4)

are reflective of that case law. Factors that have been considered by the U.S. Supreme Court to be determinative of a unitary business include:

(a) Unity of use and management (*Butler Bros. v. McColgan*, 315 U.S. 501, 508, 62 S. Ct. 701, 704 (1942)).

(b) A concrete relationship between the out−of−state and the in−state activities that is established by the existence of the unitary business (*Container Corp. of America v. Franchise Tax Bd. of California*, 463 U.S. 159, 167, 103 S. Ct. 2983, 2941 (1983)).

(c) Functional integration, centralization of management, and economies of scale (*Mobil Oil Corp. v. Comm'r of Taxes of Vermont*, 445 U.S. 425, 438, 100 S. Ct. 1223, 1232 (1980)).

(d) Substantial mutual interdependence (*F.W. Woolworth Co. v. Taxation and Revenue Dept. of New Mexico*, 458 U.S. 354, 371, 102 S. Ct. 3128, 3139 (1982)).

(e) Some sharing or exchange of value not capable of precise identification or measurement — beyond the mere flow of funds arising out of a passive investment or a distinct business operation (*Container*, 463 U.S. at 166, 103 S. Ct. at 2940).

(6) PRESUMPTIONS. The presumptions in pars. (a) to (g) apply when determining whether participants in a commonly controlled economic enterprise are considered a unitary business. Any of these presumptions may be rebutted by the taxpayer or by the department. However, the noncontrolling factors in par. (h) may not be used to rebut these presumptions.

(a) *Horizontal integration.* An entity or commonly controlled group of entities is presumed to be engaged in a unitary business when all of its activities are in the same general line of business.

(b) *Vertical integration.* An entity or commonly controlled group of entities is presumed to be engaged in a unitary business when its various divisions, segments, branches, or affiliates are engaged in different steps in a vertically structured enterprise.

(c) *Centralized management.* An entity or commonly controlled group of entities that might otherwise be considered as engaged in more than one unitary business is presumed to be engaged in one unitary business when there is strong central management coupled with the existence of centralized departments or affiliates for such functions as financing, advertising, research and development, or purchasing.

(d) *Different business segments.* An entity operating different business segments within the organizational structure of the single business entity is presumed to be engaged in a single unitary business with respect to the business segments.

(e) *Newly acquired corporations.* 1. Except as provided in subd. 2., when a corporation acquires another corporation so that the acquired corporation is a member of a commonly controlled group for the first time, it shall be presumed that the acquiring and acquired corporations are not engaged in a unitary business for the purchaser's taxable year that includes the acquisition. If the purchaser is already a combined group member, the taxable year that includes the acquisition is the taxable year of the combined group.

2. The presumption against unity in subd. 1. shall not apply if, immediately preceding the acquisition, the acquiring and acquired corporations were engaged in a unitary business apart from being in the same commonly controlled group, or if the designated agent of the combined group has properly made the controlled group election as provided in s. Tax 2.63.

3. If either the taxpayer or the department rebuts the presumption in subd. 1., the provisions of s. 71.255 (9), Stats., relating to part−year members of a combined group, shall apply.

(f) *Newly formed corporations.* Where a corporation or more than one corporation forms, or has formed, a new corporation, it shall be presumed that the formed corporation is engaged in a unitary business with the forming corporation or corporations from the date of its formation.

(g) *Refusal to provide information.* The department's determination of whether an entity is engaged in a unitary business is presumed to be correct if the taxpayer unreasonably refuses to provide information pertinent to the determination of a unitary business.

(h) *Noncontrolling factors.* The following factors may not negate the presumptions in pars. (a) to (g):

1. The use of arms−length pricing for sales, exchanges, or transfers between entities (*Exxon Corp. v. Dept. of Revenue of Wisconsin*, 447 U.S. 207, 100 S. Ct. 2109 (1980)).

2. The fact that a business uses a separate accounting system, including separate accounting by division, by entity, by geographical area, by business function, or by business segment.

(7) PASSIVE HOLDING COMPANIES. (a) A passive holding company that is in a commonly controlled economic enterprise and holds intangible assets that are used by the enterprise in a unitary business shall be deemed to be engaged in the unitary business, even if the holding company's activities are primarily passive.

(b) A passive parent holding company that directly or indirectly controls one or more operating company subsidiaries engaged in a unitary business shall be deemed to be engaged in a unitary business with the subsidiary or subsidiaries, even if the holding company's activities are primarily passive.

(8) PASS−THROUGH ENTITIES. For purposes of pars. (a) and (b), "pass−through entity" includes a partnership, limited liability company treated as a partnership, tax−option corporation, estate, or trust, but does not include corporations treated as real estate investment trusts, regulated investment companies, real estate mortgage investment conduits, or financial asset securitization investment trusts.

(a) For purposes of determining the scope of the unitary business, any business conducted by a pass−through entity that is controlled directly or indirectly by a corporation shall be treated as conducted by the corporation to the extent of the corporation's distributive share of the pass−through entity's income, regardless of the percentage of the corporation's ownership interest.

(b) Any business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a pass−through entity if the requirements of s. 71.255 (1) (n), Stats., are otherwise met with respect to the corporations' interests in the pass−through entity and the corporations are members of the same commonly controlled group.

Note: Section Tax 2.62 interprets s. 71.255 (1) (n), Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; correction in (8) (intro.) and renumbering of (7) (a), (b), (8) (a) and (b) made under s. 13.92 (4) (b) 1. and 7., Stats., Register April 2010 No. 652; CR 13−078: am. (2) (d) 1. Register April 2014 No. 700, eff. 5−1−14.

Cross References: See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.61 (2) for more information on determining whether corporations are required to use combined reporting. See s. Tax 2.63 for more information on the controlled group election.

Tax 2.63 Controlled group election. (1) SCOPE. Section 71.255 (2m), Stats., allows a commonly controlled group of corporations to elect to include every member of the commonly controlled group in a single combined group for combined reporting purposes. This section provides rules relating to making the election, continuity of the election, and limitations of the election.

(2) MAKING THE ELECTION. Preapproval by the department is not required to make the election. The designated agent of the combined group shall make the election on behalf of the group as described in this subsection. Paragraph (c) provides rules relating to identifying the designated agent in cases where a commonly controlled group consists of corporations that previously filed as more than one combined group.

(a) *Time period for making election.* The designated agent shall make the election on an original, timely filed combined return which includes all members of the commonly controlled group. A return shall be considered timely if it is filed by the designated agent on or before the due date of the return, including applicable extensions. If the return is timely filed without an

extension, the designated agent may make the election by filing an amended combined return on or before the end of the automatic 7−month extension period provided in s. 71.24 (7) or 71.44 (3), Stats. A return filed after the end of the automatic 7−month extension period, whether an original or amended return, may not constitute a valid controlled group election for the taxable year to which the return applies, although an election may be filed for a subsequent taxable year subject to the limitation in sub. (3) (c).

(b) *Method of election and required documentation.* 1. For the first year the designated agent makes the election, the designated agent shall check a designated line of the combined return to indicate that a controlled group election is in effect.

2. For the first year the designated agent makes the election, the designated agent shall include a statement with the combined return which lists every corporation that is a member of the commonly controlled group, and indicates that each corporation has agreed to be bound by the election and that the election shall apply to any member that subsequently enters the group.

(c) *Multiple former combined groups.* 1. If a commonly controlled group consists of corporations that previously filed as more than one combined group, the controlled group election creates a new combined group. For purposes of application of loss carryforwards and research credits under s. Tax 2.61, each former combined group included in the new combined group is a subgroup as described in s. Tax 2.61 (9) (e) 1. and the corporations within each subgroup are eligible to share loss carryforwards and research credits from taxable years prior to the election with all the members of that subgroup, to the extent sharing would otherwise be allowed under s. Tax 2.61 (6) (c), (9), and (10).

2. A new combined group described in subd. 1. shall appoint the designated agent of one of the former combined groups to be the designated agent, and the provisions of s. Tax 2.65 apply to that designated agent. The corporation that files the first combined return under the election shall be deemed the appointed designated agent for the new combined group.

(3) CONTINUITY OF ELECTION. (a) *Ten−year period.* The controlled group election is binding for and applicable to all members of the commonly controlled group for the taxable year for which the election is made and for the next nine taxable years. The election is also binding on any corporations that join the commonly controlled group during the period the election is in effect. Any corporation that departs the commonly controlled group is not bound by the election for the taxable years after its departure from the group, except if par. (b) applies or if the corporation rejoins the commonly controlled group.

(b) *Reorganizations*. 1. When a merger or acquisition occurs between two combined groups where the acquiring group has not made the controlled group election but the target group has made the controlled group election, the controlled group election of the target group terminates on the date of the transaction. However, the designated agent of either the acquiring group or the target group may make the controlled group election with respect to all corporations that are in its commonly controlled group as determined after considering the effect of the merger or acquisition, provided the requirements in sub. (2) are met and the election is not precluded by par. (c).

2. When a merger or acquisition occurs between two combined groups where the acquiring group has made the controlled group election but the target group has not made the controlled group election, all corporations in the commonly controlled group as determined after considering the effect of the merger or acquisition are bound by the acquirer's controlled group election.

3. When a merger or acquisition occurs between two combined groups that have both made the controlled group election, the expiration date of the controlled group election for the entire commonly controlled group as determined after considering the effect of the merger or acquisition is the expiration date of the acquirer's controlled group election.

4. When a commonly controlled group that has made the controlled group election divests stock of one or more subgroups of members so that the subgroups are no longer in the commonly controlled group, those subgroups are no longer bound by the controlled group election, except if both the book value of total assets of a subgroup and its total fair market value are greater than those of the divesting group, then the subgroup is bound by the controlled group election and the controlled group election of the divesting group terminates on the date of the transaction.

(c) *Renewal.* 1. After the ten−year period described in par. (a), the designated agent may renew the election for another ten taxable years, without prior written approval from the department. The renewal shall be made on an original, timely filed return for the first taxable year after completion of the ten−year period. Except as provided in subd. 3., the requirements for a renewal of an election are the same as for making the original election as described in sub. (2).

2. If the election is not timely renewed as provided in subd. 1., the election is considered to be revoked by the designated agent. In the case of a controlled group election that is not timely renewed, a new election may not be permitted in any of the next three taxable years.

3. The designated agent may renew the election on an amended return filed after the end of the automatic 7−month extension period provided in s. 71.24 (7) or 71.44 (3), Stats., only if the original return was consistent with the controlled group election remaining in place and that the failure to comply with the requirements of sub. (2) was due to oversight or mistake.

Note: Section Tax 2.63 interprets s. 71.255 (2m), Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; CR 12−011: r. (4) Register July 2012 No. 679, eff. 8−1−12; correction in (3) (a), (b) 1. under s. 13.92 (4) (b) 7. Register July 2012 No. 679.

Cross References: See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.61 (2) (b) for more information on the effect of the controlled group election. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.67 for more information on combined returns.

Tax 2.64 Alternative apportionment for combined groups including specialized industries. (1) SCOPE. Section 71.255 (5) (a), Stats., provides that a combined group is generally required to use the modified sales factor method to apportion its combined unitary income. However, s. 71.255 (5) (b), Stats., provides that a qualifying combined group may petition the department to use an alternative apportionment method. This section provides rules relating to the eligibility requirements, continuity, and limitations of this privilege.

(2) ELIGIBILITY REQUIREMENTS. (a) *Qualifying combined group.* A qualifying combined group is a combined group for which 30 percent or more of the combined unitary income would, in the absence of combined reporting, be required to be apportioned using more than one factor under a method described in ss. Tax 2.46, 2.465, 2.47, 2.475, 2.48, 2.50, or 2.502.

(b) *Requirements for petition.* The designated agent of the combined group requesting an alternative apportionment method shall file a petition no less than 60 days before filing the first original, timely filed return using the alternative method. If a return using the modified sales factor method has already been timely filed without an extension, the designated agent may file an amended return using the alternative method if it files a petition no less than 60 days before the end of the automatic 7−month extension period provided in ss. 71.24 (7) or 71.44 (3), Stats., as applicable, and the petition is approved by the department. The petition shall include the following:

1. The full name, address, and federal employer identification number of each member of the combined group.

2. The combined group's taxable year for which the alternative apportionment method as requested would begin to be effective.

3. A description of the alternative apportionment method requested.

4. A complete and precise statement of the reasons for the modification requested, including why the modified sales factor method would result in an unfair representation of the degree of unitary business activity in this state. This statement shall provide clear and convincing evidence of its assertions.

5. A calculation of the combined group's tax liability for the first taxable year to which the petition applies and for the previous taxable year, using the apportionment method prescribed in s. 71.255 (5) (a), Stats., for both years. For the previous taxable year's computation, this amount shall be computed as if a combined report including those same corporations were required in the previous taxable year, even if it was before s. 71.255, Stats., was in effect.

6. A calculation of the combined group's tax liability for the first taxable year to which the petition applies and for the previous taxable year, similar to the calculation in subd. 5., but using the requested apportionment method instead of the modified sales factor method.

7. A calculation of each combined group member's tax liability for the first taxable year to which the petition applies and for the previous taxable year, similar to the calculations in subds. 5. and 6., computed as if each corporation were not a member of the combined group and using the method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

8. A statement as to whether any combined group member is being audited by the department at the time of the petition.

(c) *Limitation.* The department may not grant a taxpayer's petition for an alternative apportionment method if the alternative method would result in a lower tax liability than the sum of the tax liabilities of the combined group members computed as if they were not members of a combined group and using the apportionment method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

(d) *Approval or rejection.* 1. The petition shall be approved by the department in writing. The department shall approve or reject the petition within 45 days after receiving it. However, failure of the department to act within 45 days or acceptance of a return using the alternative apportionment method does not constitute approval of the petition or method used. The department may, after receipt and review of the petition, require additional information necessary to determine whether the modified sales factor method does not fairly represent the degree of unitary business activity in this state. If the department does not have all the required information to approve the petition, the 45−day period described in this paragraph is suspended until the information is provided. Filing of a petition does not affect the accrual of interest on underpayment of estimated taxes.

2. If the designated agent timely files a petition as described in par. (b) but does not receive an order from the department approving or rejecting the petition before the due date of the return, the designated agent must file the return using the modified sales factor method. If the department subsequently approves the petition, the designated agent may amend the return using the approved method, in which case the amended return must contain the attachments described in par. (e).

(e) *Attachments to return.* For each combined return on which the alternative apportionment method is used, the designated agent shall include the following documentation with the return:

1. A copy of the department's written approval for the alternative apportionment method.

2. A calculation of the combined group's tax liability computed as if it used the modified sales factor method instead of the alternative apportionment method.

3. A calculation of each combined group member's tax liability for the taxable year included in the combined return computed as if each corporation were not a member of the combined group and using the apportionment method prescribed by ss. Tax 2.39, 2.395, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

(3) CONTINUITY AND LIMITATIONS. (a) *Continuity.* 1. If the department approves the alternative apportionment method, the combined group engaged in that unitary business shall continue to use the alternative apportionment method for six taxable years following the first year for which the alternative method was approved, except as provided in par. (b).

2. No later than 60 days before filing the first return for a period subsequent to the expiration of the seven−year period in subd. 1., the designated agent of the combined group shall file a new petition with the department in order to continue using the alternative apportionment method. The new petition is subject to the same requirements as the original petition except that the designated agent shall include the calculations described in sub. (2) (b) 5. to 7. for the first year to which the renewed election applies and each of the years to which the previous election applied.

(b) *Limitations.* 1. If the sum of the tax liabilities of the combined group members for the taxable year computed as if they were not combined group members, as reported in the attachment described in sub. (2) (e) 3., is greater than the combined group's tax liability using the alternative apportionment method, the combined group may not use the alternative method for the taxable year. Instead, the combined group shall use the modified sales factor method. For each of the remaining taxable years in the seven−year period described in par. (a) 1., the combined group shall use the alternative apportionment method to the extent the limitations of this paragraph do not apply.

2. If the combined group is no longer a qualifying combined group as described in sub. (2) (a), the combined group may no longer use the alternative apportionment method beginning with the year the combined group no longer qualifies. If it subsequently becomes a qualifying combined group in a later taxable year, the designated agent of the group may file a new petition for an alternative apportionment method.

Note: Mail petitions for alternative apportionment methods to: Administration Technical Services — Corporations Unit, Wisconsin Department of Revenue, P.O. Box 8933, Mail Stop 6−40 Madison, WI 53708−8933.

Note: This section interprets s. 71.255 (5) (b), Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; CR 13−078: am. (2) (a), (b) 7., (c), (e) 3. Register April 2014 No. 700, eff. 5−1−14.

Cross References: See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.67 for more information on combined returns.

Tax 2.65 Designated agent of combined group. **(1)** SCOPE. Section 71.255 (7), Stats., requires every combined group to have a designated agent to act on behalf of the group. This section provides rules relating to identifying the designated agent and describes the scope and limitations of the agency relationship.

(2) IDENTIFYING DESIGNATED AGENT. (a) *Eligibility.* The combined group may select any member as the designated agent, subject to a limitation that the designated agent's taxable year shall be the same as the combined group's taxable year.

(b) *Creation of agency.* A combined group shall appoint a designated agent. The corporation which files, or will file, the first combined return for the combined group is deemed to be appointed as the designated agent. If no combined return is filed, the department shall appoint the parent corporation of the combined group to be the designated agent, or if there is no parent corporation, the department may appoint any corporation in the combined group to be the designated agent.

(c) *Continuity of agency into future years.* Once a member of the combined group is appointed as the designated agent, it shall remain the designated agent of that group for all future years unless one of the following applies:

1. The designated agent leaves the combined group, in which case the corporation which files, or will file, the first combined

return after the date the designated agent leaves is deemed to be appointed as the new designated agent.

2. Except as provided in subd. 3., the combined group, or portion of the combined group that includes the designated agent, is acquired by another combined group, in which case the corporation which files, or will file, the first combined return after the date of the acquisition is deemed to be appointed as the new designated agent.

3. The designated agent ceases to exist, in which case the designated agent shall notify the department in writing that another member of the combined group (or successor corporation of any member of the combined group) will thereafter act as designated agent for that taxable year and any prior taxable years. The member appointed for that taxable year and any prior taxable years need not be the new designated agent for all future taxable years. The substitute designated agent will succeed to the rights and responsibilities of the former designated agent and may in turn appoint another designated agent for future taxable years. If the designated agent fails to notify the department in writing of the new designated agent, the department may select a surviving member of the combined group to act as the designated agent.

4. Where subd. 2. does not apply, the designated agent is still a member of the combined group but submits a written request to the department for another combined group member to act as designated agent, and the department grants the request.

Note: Send requests to change the combined group's designated agent and notifications of successor designated agents to: Corporation Processing Unit, Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708−8908.

(d) *Continuity of agency for prior years.* The designated agent of a combined group for a prior taxable year shall continue to act as the designated agent for that taxable year unless the designated agent ceases to exist, in which case par. (c) 3. applies, or the designated agent submits a written request to the department for another combined group member to act as designated agent, and the department grants the request.

Note: Send requests to change the combined group's designated agent and notifications of successor designated agents to: Corporation Processing Unit, Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708−8908. However, if the request relates to prior taxable years that are under audit, the designated agent may submit the written request to the department's representative that has notified the designated agent of the audit.

(e) *Designated agent for purposes of resolving disputes over combined group membership.* If the department determines that one or more corporations are members of a combined group and no combined return was filed, the group of corporations the department asserts is a combined group may appoint a member of that group as the designated agent solely for purposes of contesting the department's determination. The appointment of a designated agent under this paragraph may not be construed as a concession by either the corporations or the department regarding the existence of a combined group or the proper composition of a combined group.

(3) SCOPE AND LIMITATIONS OF AGENCY. (a) *Duties of designated agent.* The designated agent is generally required to act on behalf of the combined group in its own name in all matters relating to the combined return. This includes performing the following duties:

1. Filing the combined return, including the reporting of any separate entity items attributable to combined group members.

2. Filing any extension of time to file the combined return.

3. Filing any amended combined returns or claims for refunds or credits relating to the combined return, including any separate entity items attributable to combined group members.

4. Sending and receiving all correspondence with the department regarding the combined return, except that if correspondence relates to separate entity items or a payment made by another member of the combined group as provided in s. Tax 2.66 (2), the department may send the correspondence to that other member or the designated agent, or both.

5. Remitting taxes applicable to the combined return, including estimated taxes, except as otherwise provided in s. Tax 2.66.

6. Participating on behalf of the group in any investigation or hearing by the department regarding the combined return, including producing all information requested and filing any appeal. Unless provided otherwise in writing, any appeal filed by the designated agent relating to the combined return shall be considered filed by all members of the combined group, including any corporations that were not included in the combined return but which the department asserts are members the combined group.

7. Executing waivers, closing agreements, powers of attorney, and other documents relating to the combined return. Unless the department and taxpayer agree otherwise in writing, any waiver, closing agreement, power of attorney, or other document executed by the designated agent relating to the combined return shall be considered executed by all members of the combined group, including any corporations that were not included in the combined return but which the department asserts are members of the combined group.

8. Receiving assessment notices regarding the combined return. Subject to par. (f), a notice received by the designated agent is considered received by all members of the combined group, including any corporations that were not included in the combined return but which the department asserts are members the combined group. If a notice relates to separate entity items that are attributable to a combined group member other than the designated agent, the designated agent may submit a written request to the department to reissue the notice or a portion of the amount of the notice to the combined group member responsible for the separate entity items. The designated agent shall submit the written request on or before the due date shown on the notice.

Note: Send written requests to reissue notices relating to separate entity items to: Wisconsin Department of Revenue, Mail Stop 5−257, P.O. Box 8906, Madison, WI 53708−8906.

9. Receiving any refunds relating to the combined return.

(b) *Exclusivity.* Except as provided in this paragraph, no person other than the designated agent shall have authority to act for or represent itself or the combined group regarding the duties listed in par. (a). A combined group member, or a corporation which the taxpayer asserts is a combined group member, may assume any of the duties listed in par. (a) under any of the following conditions:

1. By election of the designated agent or the applicable combined group member, a combined group member may perform any of the duties listed in par. (a) to the extent those duties relate to separate entity items. This may include the filing of a separate return to report the member's separate entity items, subject to the requirements of par. (c).

2. A combined group member may make estimated payments on its own behalf to the extent allowed in s. Tax 2.66 (2).

3. If a combined return was filed, the department may allow any corporation which it asserts should be added to or eliminated from the combined group to represent itself after receipt of a written request from the corporation. However, that corporation shall still be bound by any action taken by the designated agent before the corporation's request to represent itself has been accepted by the department.

Note: A corporation that wishes to represent itself should submit the written request to the department's representative that has notified the corporation of the department's assertion.

(c) *Reporting of separate entity items.* If a combined group member chooses to file a separate Wisconsin return to report its separate entity items rather than having the designated agent include them in the combined return in the manner described in s. Tax 2.67 (2) (d) 3., the member shall consider the totality of its share of items from the combined return plus its separate entity items for purposes of applying any limitations, so that its total net tax plus economic development surcharge does not differ from the amount that would have been due if the separate entity items had

been included in the combined return. The combined group member shall submit a copy of the combined return with its separate return.

(d) *Unauthorized acts.* The department is not bound by unauthorized acts made with respect to a combined return by a corporation that is not the designated agent. The department may choose to receive the benefits or assume the obligations of unauthorized acts, in which case the department is bound only if it takes affirmative steps to expressly manifest its intent to receive the benefits or assume the obligations of the acts.

(e) *Failure to act.* If the designated agent is unable or unwilling to fulfill its obligations with respect to the combined return, is unresponsive, or has not been identified to the department, the department may appoint a new designated agent, or it may deal directly with any member of the combined group in respect to its share of the combined return items in which case each member shall have full authority to act for itself.

(f) *Joint and several liability.* Under s. 71.255 (1) (n), Stats., the members of a combined group shall be jointly and severally liable for the combined tax, penalty, and interest attributable to the combined unitary income, net of any loss carryforwards and credits applied. This paragraph does not apply to any tax, interest, or penalty attributable to separate entity items. Although the department may send correspondence, notices, refunds, assessments, or other documents relating to any combined group member's separate entity items to the designated agent, and the designated agent may choose to pay any tax, interest, or penalty on behalf of a combined group member, the tax, interest, or penalty attributable to separate entity items is ultimately the responsibility of the combined group member or members to which the separate entity items are attributable.

(g) *Confidentiality provisions.* The designated agent is an agent under s. 71.78 (4) (e), Stats. Therefore, the department may provide information relating to any member of the combined group to the designated agent, including information relating to the member's separate entity items.

Note: This section interprets s. 71.255 (7), Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; CR 12−011: am. (3) (c) Register July 2012 No. 670, eff. 8−1−12.

Cross References: See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.66 for more information on combined estimated tax requirements. See s. Tax 2.67 for more information on combined returns.

Tax 2.66 Combined estimated tax payments. **(1)** SCOPE. In general, s. 71.255 (7) (b) 5., Stats., provides that only the designated agent of a combined group may make estimated tax payments applicable to a combined return. This section provides exceptions to the general rule, explains the estimated tax requirements, and provides rules for applying estimated payments and overpayments.

(2) SEPARATE ESTIMATED PAYMENTS. (a) *When separate estimated payments are allowed.* Although the designated agent is always authorized to make estimated payments on behalf of any and all of its combined group members, a combined group member other than the designated agent may make estimated payments on its own behalf if any of the following apply:

1. For the first taxable year for which a combined group files a combined return, any member of the group may make estimated payments on its own behalf.

2. For the first taxable year for which a corporation is a member of a combined group, that corporation may make estimated payments on its own behalf.

3. Any combined group member may make estimated payments on its own behalf to the extent those payments relate to separate entity items.

(b) *Reporting of separate estimated payments.* If a combined group member other than the designated agent makes separate estimated payments and applies those payments to the combined return, the designated agent shall notify the department of those payments on a department−prescribed form filed with the combined return. This notification authorizes the department to apply the separate estimated payments to the combined return.

Note: The form prescribed for notifying the department of separate estimated payments to be applied to the combined return is Part IV of Form 4M, Combined Group Member−Level Data.

(3) DETERMINATION OF REQUIRED ESTIMATED PAYMENTS. (a) *General.* If a combined return is filed, the amount of any addition to tax under s. 71.84 (2), Stats., shall be computed as if the combined group were one corporation. "Tax shown on the return" and "tax for the taxable year" as defined in s. 71.29 (1) (b), Stats., have the same meaning with respect to a combined return as to a separate return.

(b) *Computation of thresholds.* Since, as provided in par. (a), "tax shown on the return" has the same meaning with respect to a combined return as to a separate return, the amounts of the following thresholds are the same regardless of the number of combined group members included in the combined return:

1. Section 71.29 (7), Stats., which provides that no interest on underpayment is required if the tax shown on the return for the taxable year is less than $500.

2. Section 71.29 (9), Stats., which provides that for corporations that have Wisconsin net incomes of less than $250,000 and whose preceding taxable year was a 12−month taxable year, estimated payments may be based on the lesser of 90 percent of tax shown on the return for the current taxable year or the tax shown on the return for the preceding year.

(c) *Effect of separate entity items.* The amount of net income and tax shown on a combined return includes net income and tax attributable to separate entity items. If the combined return includes separate entity items of a corporation that would otherwise be a combined group member except that it has no items that are subject to combination under the water's edge rules of s. Tax 2.61 (4), the corporation is considered a combined group member for purposes of determining required estimated payments.

Example: Combined Group AB consists of Member A and Member B. Group AB filed a combined return for calendar year 2010. The 2010 return includes $30,000 of net tax attributable to Member A's items and $20,000 attributable to Member B's items, including $5,000 attributable to B's separate entity items. The 2010 combined return also includes $10,000 of net tax from the separate entity items of Corporation C, which would be a combined group member except that none of its items are subject to combination under the water's edge rules. If Group AB is not eligible to base its estimated taxes on its 2009 net tax under the provisions of par. (b), Group AB's required estimated tax payments for purposes of its 2010 combined return are $54,000 (= ($30,000 + $20,000 + $10,000) x 90%).

(d) *Annualized income installment method.* For purposes of the annualized income installment method provided in s. 71.29 (9) (c) and (10) (c), Stats., the previous year's apportionment percentage for a combined group equals the sum of the combined group members' modified sales factor numerators as determined under s. Tax 2.61 (7) (a) for the combined group's preceding taxable year, divided by the combined group's modified sales factor denominator as determined under s. Tax 2.61 (7) (b) for the combined group's preceding taxable year.

(e) *Change in membership.* For purposes of applying par. (a) and except as provided in par. (f), the combined group's "tax shown on the return" for the current taxable year or the preceding taxable year is the tax shown on the combined return for the applicable year, without regard to corporations that have joined or left the group.

Example: Group JK files a combined return for the calendar year 2009. During 2010, Member J acquires L and L becomes a member of the combined group. If the group qualifies to determine its estimated tax obligations for 2010 based on its preceding year's tax liability, its preceding year's tax liability only includes the tax shown on Group JK's 2009 combined return; it does not include any tax liability from L's 2009 separate return.

(f) *First combined return year.* The following rules apply to the computation of required estimated payments for the first year that a combined group files a combined return:

1. If the total of the combined group's Wisconsin net income reported on the combined return is less than $250,000, the required estimated payments may be based on the sum of the

members' tax shown on their Wisconsin returns for the preceding year as provided by s. 71.29 (9) (a) 2., Stats., but only if all combined group members filed a Wisconsin return which covered a full 12 months in the preceding taxable year. If a member was included in the combined return of another combined group in the preceding taxable year, its tax shown on the return for that year is the tax attributable to the sum of its share of combined unitary income and income from separate entity items reported on that return.

2. If one or more combined group members did not file a Wisconsin return which covered 12 months in the preceding taxable year, the combined group shall base its required estimated payments on 90 percent of the tax shown on the combined return as provided under s. 71.29 (9) (a) 1. or (10) (b), Stats., as applicable.

3. The previous year's apportionment percentage for purposes of the annualized income installment method equals the sum of the current combined group members' apportionment factor numerators from their returns for the preceding taxable year, divided by the sum of the apportionment factor denominators from their returns for the preceding taxable year. If a member was included in the combined return of another combined group in the preceding taxable year, its apportionment percentage for this purpose is its modified sales factor numerator for that taxable year as determined under s. Tax 2.61 (7) (a), divided by its separate company denominator for that taxable year as determined under s. Tax 2.61 (7) (b).

4. For purposes of subds. 1. to 3., if a combined group member has a taxable year different than the combined group's taxable year, the member's preceding taxable year is its taxable year most recently ended before the first day of the combined group's taxable year.

(4) RULES FOR APPLYING ESTIMATED PAYMENTS AND OVERPAYMENTS. (a) *Separate returns filed in year following combined return year.* If a combined group terminates and the former members properly file separate returns in the subsequent year, any combined estimated payments made for that year shall be credited against the separate tax liabilities of the former members of the combined group in the manner allocated by the designated agent. The designated agent shall notify the department of the manner in which the payments are to be allocated. The designated agent may make this notification in correspondence to the department unless the department prescribes a specific form for this purpose, in which case the prescribed form shall be used. In either case, the notification shall be submitted to the department separately from any return.

(b) *Combined estimated payments but no combined return.* If combined estimated payments are made for a taxable year but no combined return is filed for that year or for the previous year, the estimated payment shall only be credited to the corporation that made the payment.

(c) *Overpayments.* 1. If a combined group member has a credit for an overpayment of taxes from a prior taxable year when it was not a combined group member, the member may, through its designated agent, authorize the department to apply some or all of the credit against the total tax liability reported on the combined return. To carry out this authorization, the designated agent shall file a department−prescribed form with the combined return to notify the department of the amount to be applied. Alternatively, the member may file a claim for refund of the overpayment, in which case the overpayment shall be refunded to that member.

Note: The form prescribed for notifying the department of a member's prior year overpayments to be applied to the combined return is Part IV of Form 4M, Combined Group Member−Level Data.

2. If a corporation leaves a combined group that has an overpayment of taxes carried over from a prior combined return year, the designated agent may allocate a portion of that overpayment to the former member. The designated agent shall notify the department of the amount to be allocated to the former member. The designated agent may make this notification in correspondence to the department unless the department prescribes a specific form for this purpose, in which case the prescribed form shall be used. In either case, the notification shall be submitted to the department separately from any return.

(d) *Erroneous combined estimated payments.* If a designated agent makes estimated payments on the erroneous premise that a corporation is an eligible member of the combined group, and discovers the error prior to the time the combined group and the corporation file their respective returns, the designated agent may allocate some or all of the combined estimated payments to the corporation. The designated agent shall notify the department of the amount to be allocated. The designated agent may make this notification in correspondence to the department unless the department prescribes a specific form for this purpose, in which case the prescribed form shall be used. In either case, the notification shall be submitted to the department separately from any return. The combined group and the corporation shall each compute their addition to tax under s. 71.84 (2), Stats., as if the estimated payments allocated to the corporation had actually been paid by it rather than by the combined group.

(e) *Erroneous separate estimated payments.* If a corporation makes separate estimated payments on the erroneous premise that it is not a combined group member, the following rules apply:

1. If the corporation discovers the error prior to the time the designated agent files the combined return for the taxable year, and the corporation has not filed a separate return for the period that should have been included in that combined return or otherwise received a refund of the separate estimated payments, the corporation may apply the separate estimated payments to the combined return. The designated agent shall report the separate estimated payments in the manner described in sub. (2) (b).

2. If the corporation discovers the error prior to the time the designated agent files the combined return for the taxable year, but the corporation has already filed a separate return for the period that should have been included in the combined return, the corporation shall file an amended separate return showing no net income, overpayment, or underpayment, and stating that the corporation will join in the filing of a combined return and identifying the designated agent of the combined group. Unless the corporation specifies otherwise on the amended return, the department will not refund the erroneously paid amounts. When the designated agent files the combined return including that corporation, the corporation may apply the separate estimated payments to the combined return unless the corporation specified otherwise on its amended return or has otherwise received a refund of the separate estimated payments. The designated agent shall report the separate estimated payments so applied in the manner described in sub. (2) (b).

3. If the corporation discovers the error after the designated agent has filed the combined return for the taxable year, but the corporation has not filed a separate return or otherwise received a refund of the separate estimated payments, the designated agent shall file an amended combined return and apply the corporation's separate estimated payments to the amount due on the amended combined return. The designated agent shall report the separate estimated payments so applied in the manner described in sub. (2) (b).

4. If the corporation discovers the error after the designated agent has filed the combined return for the taxable year and after the corporation has already filed a separate return for the period that should have been included in the combined return, the corporation shall file an amended separate return and the combined group shall file an amended combined return. The provisions of subd. 2. apply with respect to the amended separate return. The corporation may apply the separate estimated payments to the amended combined return unless the corporation specified otherwise on its amended return or has otherwise received a refund of the separate estimated payments. The designated agent shall

report the separate estimated payments so applied in the manner described in sub. (2) (b).

Note: If an allocation described in sub. (4) (a), (c) 2., or (d) is necessary and the department has not prescribed a form to use to notify the department of the allocation, send correspondence notifying the department of the allocation to: Corporation Processing Unit, Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708−8908.

Note: Section Tax 2.66 interprets ss. 71.255 (7), 71.29, and 71.84 (2), Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10.

Cross References: See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.67 for more information on combined returns.

Tax 2.67 Combined returns. (1) SCOPE. This section provides rules relating to the filing of combined returns by corporations required to use combined reporting under s. 71.255, Stats. This section explains the filing requirements for combined returns, provides rules relating to defining the taxable year included in a combined return, and describes how interest, penalties, and statutes of limitations apply to combined returns.

(2) FILING REQUIREMENTS FOR COMBINED RETURNS. (a) *General.* The designated agent of a combined group shall file a combined return on behalf of the group. For each combined group member included in the combined return, the combined return satisfies the member's requirement for filing returns under ss. 71.24 (1) or (1m) or 71.44 (1) or (1m), Stats., as applicable. The combined return shall be filed by the date provided in ss. 71.24 (1), (1m), and (7) or 71.44 (1), (1m), and (3), Stats., as applicable.

(b) *Electronic filing.* All combined returns shall be filed electronically. The secretary of revenue may waive the requirement to file a combined return electronically when the secretary determines that the requirement causes an undue hardship, if the person requests the waiver in writing and clearly indicates why the requirement causes an undue hardship. In determining whether the electronic filing requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing electronically.

Example: The person does not have access to a computer that is connected to the Internet.

2. Any other factor that the secretary determines is pertinent.

Note: Written requests should be e−mailed to DORWaiverRequest@revenue.wi.gov, faxed to (608) 267−1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5−77, P.O. Box 8949, Madison, WI 53708−8949.

Note: Forms not filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to the address specified on the form or in the instructions.

(c) *Components of combined return.* A combined return shall include the following items, and shall be considered incomplete if any of these items are excluded:

1. One Wisconsin Form 4, Income or Franchise Tax Return, for the combined group as a whole.

2. One Wisconsin Form 4R, Federal Taxable Income Reconciliation for Combined Groups, for the combined group as a whole. The purpose of Form 4R is to reconcile federal taxable income per the federal consolidated return and separate returns, as applicable, with the amount on Form 4, line 1. Form 4R shall be considered complete only if the designated agent submits a supporting schedule which identifies each corporation to which each reconciling amount is attributable, and a schedule which identifies each corporation in the commonly controlled group which is not included in either the federal consolidated return or the combined return.

3. One Wisconsin Form 4M, Combined Group Member−Level Data, for each member of the combined group. The purpose of Form 4M is to identify the members of the combined group, provide information regarding the member's items included in the combined return, and account for payments to be applied to the combined return.

4. If the combined group is using apportionment, one Wisconsin Form 4A, Apportionment Data for Combined Groups, and the apportionment factor computation for each member of the combined group as performed on Form 4A−1, Apportionment Data for Single Factor Formulas, or Form 4A−2, Apportionment Data for Multiple Factor Formulas, as applicable.

5. Any other required supporting forms and schedules listed in s. Tax 2.03, as applicable. Unless stated otherwise in the instructions, supporting forms and schedules shall be prepared separately for each combined group member.

6. A copy of the complete federal return for each combined group member, including all supporting schedules and any amended returns, for the member's taxable year included in the combined return. For combined group members that also file in a federal consolidated return, any of the following alternatives shall be considered to satisfy this requirement:

a. A copy of the federal consolidated return, including all supporting forms, schedules, and statements for each corporation included in the consolidated return, as submitted to the internal revenue service.

b. Pro forma federal returns prepared separately for each combined group member, including all supporting forms and schedules prepared separately for each combined group member.

c. A spreadsheet showing the line−by−line computation of taxable income of each combined group member included in the federal consolidated return, including consolidating adjustments, plus the supporting forms, schedules, and statements filed with the internal revenue service pertaining to each member. The supporting statements shall include balance sheets as of the beginning and end of the tax year, a reconciliation of income per books with income per return, and a reconciliation of retained earnings, to the extent the member was required to submit these items to the internal revenue service.

7. For combined groups that also file in a federal consolidated return, a copy of federal Form 851, Affiliations Schedule.

(d) *Separate entity items.* 1. Subject to the provisions of s. Tax 2.65 (3) (b), if any combined group member has separate entity items, the designated agent shall include those separate entity items in the combined return. If a corporation that would otherwise be a combined group member has no items that are subject to combination under the water's edge rules of s. Tax 2.61 (4), the designated agent may include that corporation's separate entity items in the combined return, in which case the combined return shall include the items specified in sub. (2) (c) 3., 5., and 6. and subd. 3. for that corporation as if it is a combined group member. Alternatively, the corporation may file a separate Wisconsin return to report those items.

2. The joint and several liability provisions of s. Tax 2.65 (3) (f) do not apply to any tax, interest, or penalty attributable to separate entity items. Although the department may send correspondence, notices, refunds, assessments, or other documents relating to any combined group member's separate entity items to the designated agent, and the designated agent may choose to pay any tax, interest, or penalty on behalf of a combined group member, the tax, interest, or penalty attributable to separate entity items is ultimately the responsibility of the combined group member or members to which the separate entity items are attributable.

3. The separate entity net income or loss and apportionment factors included in the combined return shall be reported on Wisconsin Form 4N, Nonapportionable and Separately Apportioned Income. The designated agent shall complete and submit Form 4N with the combined return for each applicable corporation and carry forward the total Form 4N amounts to the appropriate line on Form 4. For purposes of the requirement of s. 71.255 (2) (d), Stats., separate entity items reported on Form 4N shall be considered filed on a separate return. However, for purposes of determining a combined group member's net income, tax, interest, underpayment interest, economic development surcharge, and the

statute of limitations, the separate entity amounts shall be added to its amounts, if any, computed in the unitary combination.

4. If a corporation is a member of more than one combined group at the same time, the corporation shall include its separate entity items, if any, in the combined return of only one group.

(e) *Amended returns.* If a corporation erroneously fails to join in the filing of a combined return, the designated agent shall file an amended combined return adding the corporation and, if a separate return was filed by the corporation, the corporation shall file an amended separate return showing no net income, overpayment, or underpayment, and stating that the corporation has joined in the filing of a combined return and identifying the designated agent of the combined group in which the corporation has been included.

(3) TAXABLE YEAR OF COMBINED RETURN. The taxable year included in a combined return is the combined group's taxable year as determined in s. 71.255 (8), Stats. For purposes of determining the taxable year and the items includable in the combined group's taxable year, the following rules apply:

(a) *Combined group's taxable year.* If two or more members of the combined group file in a federal consolidated return, the combined group's taxable year is the taxable year of that federal consolidated return. If no federal consolidated return applies or there is more than one federal consolidated return, the combined group's taxable year is the taxable year of the designated agent. In any case, s. Tax 2.65 (2) (a) requires that the designated agent's taxable year shall be the same as the combined group's taxable year.

(b) *Methods for members with differing taxable year*s. If the taxable year of a combined group member differs from the taxable year of the combined group, the designated agent shall include that member's net income or loss and apportionment factors in the combined return by using one of the following methods:

1. Preparing a separate income statement from the member's books and records for the months included in the combined group's taxable year and using that income statement to determine the amounts includable in the combined return.

2. Using the net income or loss for the member's taxable year that ends during the combined group's taxable year to determine the amounts includable in the combined return.

(c) *Election of method.* If the designated agent converts a combined group member's taxable year to the combined group's taxable year as described in par. (b) 1. or 2., it shall use the same method for each combined group member subject to the election. Once the designated agent files the first combined return including a member whose taxable year is properly converted, the designated agent may not file an amended return to change the election, except that if the original return was not filed under extension, the designated agent may file an amended return to change the election on or before the end of the automatic seven−month extension period provided in ss. 71.24 (7) or 71.44 (3), Stats., as applicable. The designated agent shall use the same method in each subsequent taxable year unless it obtains written approval from the department to use the other method.

Note: Send written requests for approval to change the election to: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906.

(d) *Part−year members.* If, during a combined group's taxable year, a corporation ceases to be a member of the combined group or a new corporation becomes a member, the designated agent shall include that corporation's items attributable to the portion of the taxable year that the corporation was a member in the combined return covering the combined group's entire taxable year. For the portion of the taxable year when the corporation was not a member of the combined group, the corporation shall file a separate return or file in the combined return of another combined group, as applicable.

(4) INTEREST, PENALTIES, AND STATUTES OF LIMITATIONS. (a) *Interest.* For purposes of computing interest on late payments by or on behalf of combined group members, the following rules apply:

1. Interest shall be assessed to the designated agent of a combined group based upon the combined tax liability or deficiency shown on the combined return for the combined group's taxable year. However, the joint and several liability provisions of s. Tax 2.65 (3) (f) do not apply to any interest attributable to separate entity items. If a notice of an interest amount due is attributable to separate entity items of a combined group member other than the designated agent, the designated agent may pay the amount due or may submit a written request to the department to reissue the notice or a portion of the amount assessed to the combined group member responsible for the separate entity items. The designated agent shall submit the written request on or before the due date shown on the notice.

Note: Send written requests to reissue notices relating to separate entity items to: Wisconsin Department of Revenue, Mail Stop 5−257, P.O. Box 8906, Madison, WI 53708−8906.

2. An extension filed by the designated agent shall be considered an extension filed by all members of the combined group. However, the extension filed by the designated agent does not apply to affiliated corporations that are not combined group members, even if those corporations will be included in the combined return under the provisions of par. (d) 2.

3. Interest due to underpayment of estimated taxes shall be computed based on the estimated tax requirements and other provisions described in s. Tax 2.66.

4. If a corporation erroneously fails to join in the filing of the combined return, all payments, credits, and other amounts collected from the corporation which are properly attributable to the combined group's taxable year and attributable to a period of time that the corporation was a member of the combined group shall be treated as having been paid by the combined group.

(b) *Late filing fees.* If a combined group fails to timely file a combined return and the late filing fee under s. 71.83 (3), Stats., applies, the amount of the late filing fee shall be the amount provided in s. 71.83 (3), Stats., regardless of the number of combined group members.

(c) *Failure to file.* For purposes of the penalty provided in s. 71.83 (1) (a) 1., Stats., the following rules apply:

1. A corporation which erroneously fails to join in the filing of a combined return, but which timely files a separate Wisconsin return or joins in the timely filing of a combined return for another combined group, may not be subject to a penalty for failure to file. In determining whether the return is timely filed, the taxable year of the erroneously filed return shall be used, rather than the taxable year of the combined group with which the corporation should have filed.

2. A corporation which erroneously fails to join in the filing of a combined return and which fails, without reasonable cause, to timely file a separate Wisconsin return or join in the timely filing of a combined return for another combined group, shall be subject to the penalty computed based on its share of tax required to be reported on the combined return for its proper combined group, including its tax attributable to separate entity items. Except as provided in sub. (2) (d) 2., the members of the combined group shall be jointly and severally liable for the penalty because under s. 71.255 (1) (n), Stats., joint and several liability may apply to penalties and it is the duty of the designated agent to include the corporation in the combined return. The department may send a notice of assessment of the penalty to the designated agent instead of the corporation which was erroneously omitted from the combined return.

(d) *Statutes of limitations.* 1. The designated agent's filing of a combined return shall be considered to be a return filed by each combined group member whose items are included in the combined unitary income reported on that return.

2. If a combined return includes separate entity items of a corporation that would otherwise be a combined group member but for the water's edge rules of s. Tax 2.61 (4), the designated agent's filing of the combined return shall be considered to be a return filed by that corporation.

3. For purposes of the statute of limitations in s. 71.77 (7) (a), Stats., allowing the department to make an assessment within six years after the filing of a return, the statute of limitations shall be determined for each combined group member separately based on its total net income reported on its return, which is its net income or loss from the unitary combination as included in the combined return, plus its net income or loss from separate entity items. The six−year statute of limitations applies if a combined group member's total net income reported on its return is less than 75 percent of the net income properly assessable and the tax attributable to the additional income is in excess of $100. The designated agent shall be responsible for any combined group member's return that is open under the 6−year statute of limitations, subject to the provisions of s. Tax 2.65 (3) (f), even if the designated agent's return, as included in the combined return, is not open under the six−year statute of limitations.

Note: Section Tax 2.67 interprets ss. 71.24 (1), (1m), and (7), 71.255 (1) (b), (7) (b), (8), and (9), 71.44 (1), (1m), and (3), 71.77, 71.82, and 71.83, Stats.

History: EmR1001: emerg. cr. eff. 1−15−10; CR 09−064: cr. Register April 2010 No. 652, eff. 5−1−10; CR 12−011: am. (2) (d) 3. Register July 2012 No. 679, eff. 8−1−12.

Cross References: See s. Tax 2.60 for definitions that relate to this section. See s. Tax 2.65 for more information on the duties of the designated agent. See s. Tax 2.66 for more information on combined estimated tax requirements.

Tax 2.82 Nexus. (1) BACKGROUND AND SCOPE. (a) Every domestic corporation, one incorporated under Wisconsin's laws, except those exempt under ss. 71.26 (1) and 71.45 (1), Stats., and every licensed foreign corporation, one not incorporated in Wisconsin, is required to file a complete corporation franchise or income tax return, form 4 or 5, regardless of whether or not business was transacted.

(b) A foreign corporation is "licensed" if it has obtained a Certificate of Authority from the department of financial institutions to transact business in this state pursuant to s. 180.1501, Stats. A licensed foreign corporation is presumed to be subject to Wisconsin franchise or income taxes.

(c) An unlicensed foreign corporation is subject to Wisconsin franchise or income taxes if it has nexus with Wisconsin. The purpose of this rule is to provide guidelines for determining what constitutes nexus, that is, what business activities are needed for a foreign corporation to be subject to Wisconsin franchise or income taxes. The rule also explains how nexus applies to a foreign corporation in the context of s. 71.255, Stats., relating to combined reporting, and s. 77.93, Stats., relating to the economic development surcharge.

(2) DEFINITIONS. In this section:

(a) "Business location" includes a repair shop, parts department, purchasing office, employment office, warehouse, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employees or customers. A residence of an employee or representative is not ordinarily considered a business location of the employer unless the facts indicate otherwise. Facts that may indicate a residence of an employee or representative is a business location include the following: a portion of the residence is used exclusively for the business of the employer, the employee is reimbursed or paid a flat fee for the use of this space by the employer; the employee's phone number is listed in the yellow pages or on the Internet under the name of the employer; the employee uses supplies, equipment or samples furnished by the employer; or the space is used by the employee to interview prospective employees, hold sales meetings, or discuss business with customers.

(b) "Loans" include any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of an extension of credit from another. "Loans" include participations, syndications, and leases treated as loans for federal income tax purposes. "Loans" do not include properties treated as loans under section 595 of the Internal Revenue Code prior to its repeal by P.L. 104−188; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non−interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; or interests in a real estate mortgage investment conduit or other mortgage−backed or asset−backed security.

(c) "Representative" includes an employee, independent contractor, or any other person or entity engaged in substantial activities that helped the taxpayer to establish or maintain a market in this state.

Note: Under *Tyler Pipe Industries, Inc. v. Washington State Dept. of Revenue*, 483 US. 232 (1987), the U.S. Supreme Court held that it made no difference whether the taxpayer's representatives were classified as independent contractors or employees. Also see *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960).

(3) FEDERAL LIMITATIONS ON TAXATION OF FOREIGN CORPORATIONS. (a) *Federal constitutional provisions.* 1. Article I, Section 8 of the U.S. Constitution grants congress the power to regulate commerce with foreign nations and among the several states. States are prohibited from levying a tax which imposes a burden on interstate or foreign commerce. However, this does not mean states may not impose any tax on interstate commerce. A state tax on net income from interstate commerce which is fairly attributable to the state is constitutional. (*Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S. Ct. 357.)

2. Section I of the 14th Amendment protects taxpayers within any class against discrimination and guarantees a remedy against illegal taxation.

(b) *Federal Public Law 86−272.* 1. Under Public Law 86−272, a state may not impose its franchise or income tax on a business selling tangible personal property, if the only activity of that business is the solicitation of orders by its salesperson or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be limited to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation under Public Law 86−272 is lost.

2. This law, enacted by congress in 1959, does not extend to:

a. Those businesses which sell services, real estate or intangibles in more than one state;

b. Domestic corporations; or

c. Foreign nation corporations, that is, those not incorporated in the United States.

3. If the following activities are the only activities in Wisconsin of a foreign corporation selling tangible personal property, the corporation is not subject to Wisconsin franchise or income taxes under P.L. 86−272:

a. Usual or frequent activity in Wisconsin by employees or representatives soliciting orders for tangible personal property which orders are sent outside this state for approval or rejection.

b. Solicitation activity by non−employee independent contractors, conducted through their own office or business location in Wisconsin.

(4) WHAT CONSTITUTES NEXUS. If a foreign corporation undertakes one or more of the following activities, it is considered to have nexus and shall be subject to Wisconsin franchise or income taxes:

(a) *General.* Any of the following activities constitute nexus:

1. Maintenance of any business location in Wisconsin, including any kind of office.

2. Ownership of real estate in Wisconsin.

3. Ownership of a stock of goods in a public warehouse or on consignment in Wisconsin.

4. Ownership of a stock of goods in the hands of a distributor or other non−employee representative in Wisconsin, if used to fill orders for the owner's account.

5. Usual or frequent activity in Wisconsin by employees or representatives soliciting orders with authority to accept them.

6. Usual or frequent activity in Wisconsin by employees or representatives engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, repair of equipment).

7. Other usual and frequent activities by employees or representatives in Wisconsin such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for customer personnel in the operation, or repair and maintenance of the taxpayer's products.

8. Operation of mobile stores in Wisconsin, such as trucks with driver−salespersons, regardless of frequency.

9. Leasing of tangible property and licensing of intangible rights for use in Wisconsin.

10. The sale of other than tangible personal property such as real estate, services and intangibles in Wisconsin.

11. The performance of construction contracts and personal services contracts in Wisconsin.

12. Engaging in substantial activities that help to establish and maintain a market in Wisconsin.

(b) *"Doing business in this state"*. Additionally, if a corporation has any of the activities that are specifically included in the statutory definition of "doing business in this state" (s. 71.22 (1r), Stats.), the corporation has nexus except where prohibited by P.L. 86−272. Therefore, the following activities constitute nexus in Wisconsin to the extent sub. (3) (b) 3. does not apply:

1. Issuing credit cards, debit cards, or travel and entertainment cards to customers in Wisconsin.

2. Regularly selling products or services of any kind or nature to customers in Wisconsin that receive the product or service in Wisconsin.

3. Regularly soliciting business from potential customers in Wisconsin.

4. Regularly performing services outside Wisconsin for which the benefits are received in Wisconsin.

5. Regularly engaging in transactions with customers in Wisconsin that involve intangible property and result in receipts flowing to the corporation from within Wisconsin.

6. Holding loans secured by real or tangible personal property located in Wisconsin.

7. Owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in Wisconsin, regardless of the percentage of ownership.

8. Owning, directly or indirectly, an interest in a limited liability company that does business in Wisconsin, regardless of the percentage of ownership, if the limited liability company is treated as a partnership for federal income tax purposes.

(c) *Nexus for entire taxable year.* If a corporation has nexus in Wisconsin for any part of its taxable year, it is considered to have nexus in Wisconsin for its entire taxable year, regardless of whether the activity that created the nexus took place throughout the year.

Example: Corporation W is a calendar year corporation that operates five retail stores, one of which is in Wisconsin. The stores constitute a unitary business. Corporation W is not in a combined group. In the year 2010, Corporation W operated one store in Wisconsin. On August 31, 2010, Corporation W sold the Wisconsin store to Corporation Y but continued to operate the other stores outside Wisconsin. Between September 1, 2010 and December 31, 2010, Corporation W had no activities that would create nexus in Wisconsin. Corporation W is considered to have nexus in Wisconsin for its entire taxable year. Therefore, on its 2010 Wisconsin Form 4, Corporation W must compute its apportioned share of Wisconsin income based on its apportionable income from all of its stores for the entire year 2010. In addition, the numerator of the sales factor in its apportionment computation must include sales shipped to Wisconsin customers for the entire year 2010.

(d) *How to obtain ruling.* Paragraph (a) and the statutory definitions summarized in par. (b) as to what activities constitute nexus are not all−inclusive. A ruling may be requested about a particular foreign corporation as to whether it is subject to Wisconsin franchise or income taxes by writing to the Wisconsin Department of Revenue, Audit Technical Services Section, P.O. Box 8906, Madison, WI 53708.

Note: Section 71.23 (3), Stats., provides specific activities that do not constitute nexus in Wisconsin even if they exceed the protection of P.L. 86−272.

(5) NEXUS FOR COMBINED GROUP MEMBERS. (a) *General.* For a combined group, nexus is determined for the unitary business as a whole, as provided in s. 71.255 (5) (a), Stats. Therefore, if a member of a combined group has nexus in Wisconsin and that nexus is attributable to the combined group's unitary business, all members of the combined group have nexus in Wisconsin.

Example: Assume the same facts as the example in sub. (4) (c). In addition, assume Corporation Y is a member of Combined Group XYZ, which reports on a calendar year. Although Group XYZ operated numerous stores outside Wisconsin for the entire year, none of the members of Group XYZ had any nexus−creating activities in Wisconsin until July 1, 2010, when Corporation Y set up a temporary office in Wisconsin in anticipation of the purchase of the store from Corporation W. However, Corporation Z had sales shipped to Wisconsin customers during 2010. Since Corporation Y established nexus in Wisconsin during the year, Group XYZ is considered to have nexus in Wisconsin for its entire taxable year. Therefore, Group XYZ must file a combined Wisconsin Form 4 for the year 2010. On the combined return, Group XYZ must include its apportionable income for the entire taxable year (from all stores) in the combined unitary income to be apportioned. The Wisconsin share of the combined unitary income for Corporation Y and Corporation Z is then determined as described in s. 71.255 (5), Stats., and s. Tax 2.61 (7). Assuming all of Group XYZ's Wisconsin sales are attributable to Corporations Y and Z, Corporations Y and Z would be the only corporations in the group with Wisconsin income.

(b) *Effect of controlled group election.* For a combined group that has made the controlled group election provided in s. 71.255 (2m), Stats., the entire commonly controlled group's business is deemed to be a single unitary business, and the commonly controlled group becomes a combined group. Therefore, if a combined group has made the controlled group election and at least one member of the combined group has nexus in Wisconsin, all members of the combined group have nexus in Wisconsin.

Note: See s. Tax 2.62 for further discussion of the concept of a unitary business. Also see s. Tax 2.61 (4) (h) for details of how a corporation's nexus may be affected by the water's edge rules of combined reporting, and how these water's edge rules may affect taxation of a corporation's income from a unitary business.

(6) NEXUS FOR ECONOMIC DEVELOPMENT SURCHARGE. If a corporation has nexus under this section, the corporation is considered to be doing business in this state for purposes of s. 77.93, Stats., relating to the economic development surcharge. Therefore, if a corporation, other than a corporation exempt from taxation, has nexus and has at least $4,000,000 of gross receipts from all activities for the taxable year, the corporation is subject to the economic development surcharge. The economic development surcharge applies to each member of a combined group separately.

Note: See s. Tax 2.32 for a description of what constitutes gross receipts for purposes of applying the $4,000,000 threshold.

Examples: 1) Corporation A is incorporated outside Wisconsin and is not a member of a combined group. Corporation A is licensed to do business in Wisconsin, but all of its activities in Wisconsin are protected by P.L. 86−272. Therefore, Corporation A does not have nexus. Corporation A is not subject to the economic development surcharge because it does not have nexus in Wisconsin.

2) Assume the same facts as Example 1, except that Corporation A is in Combined Group ABCD, which consists of Corporations A, B, C, and D. Corporation D has a warehouse and several stores in Wisconsin that are part of the combined group's common unitary business. Since Corporation D has nexus in Wisconsin, all corporations in the combined group have nexus in Wisconsin. Corporations A, B, and D have sales to Wisconsin customers but Corporation C does not. The gross receipts, Wisconsin income, gross tax, and resulting economic development surcharge for each corporation in the group are as follows:

Corporation	Gross Receipts	Wisconsin Income	Gross Tax	Surcharge
A	**$10,000,000**	**$100,000**	**$7,900**	**$237**
B	**$3,000,000**	**$400,000**	**$31,600**	**$0**
C	**$50,000,000**	**$0**	**$0**	**$25**
D	**$100,000,000**	**$6,000,000**	**$474,000**	**$9,800**

The Wisconsin income and gross tax are computed using the method described in s. Tax 2.61. Since the economic development surcharge applies to each member of a combined group separately:

• Corporation A is subject to the economic development surcharge because its gross receipts are at least $4,000,000.

• Corporation B is not subject to the economic development surcharge because its gross receipts are less than $4,000,000.

• Corporation C is subject to the minimum $25 economic development surcharge because its gross receipts are at least $4,000,000 and it has no gross tax liability.

• Corporation D is subject to the maximum $9,800 economic development surcharge because its gross tax of $474,000 multiplied by the economic development surcharge rate of 3% exceeds $9,800. The amount in excess of $9,800 is not imposed even though the other members have economic development surcharge liability of less than $9,800.

Note: Section Tax 2.82 interprets ss. 71.22 (1r), 71.23 (1) and (2), 71.255 (5), and 77.93, Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; correction in (3) (b) 1. made under s. 13.93 (2m) (b) 5., Stats., Register, November, 1993, No. 455; EmR0943: emerg. r. and recr. eff. 12−31−09; CR 10−001: r. and recr. Register June 2010 No. 654, eff. 7−1−10; CR 12−011: am. (1) (c), (6) Register July 2012 No. 679, eff. 8−1−12.

Tax 2.85 Penalty for failure to produce records under s. 71.80 (9m), Stats. (1) GENERAL. A person who fails to produce records or documents, as provided under ss. 71.74 (2) and 73.03 (9), Stats., that were requested by the department may be subject to any of the following penalties under s. 71.80 (9m), Stats.:

(a) The disallowance of deductions, credits, exemptions or income inclusion to which the requested records relate.

(b) In addition to any other penalties that the department may impose, a penalty for each violation that is equal to the greater of $500 or 25% of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

(2) DEFINITIONS. In this section:

(a) "Disallowance," "inclusion," or "adjustment" means that an item is disallowed, included or adjusted through action taken by the department when a proposed assessment or refund or notice of assessment or refund is issued to a taxpayer.

(b) "Records" include both paper and electronic formats. Examples include bills, receipts, invoices, contracts, letters, memos, accounting statements or schedules, general ledgers, journal entries, and board of director's minutes. "Records" do not include items protected by attorney−client privilege, if the taxpayer provides a brief description or summary of the contents of each record, the date each record was prepared, the person or persons who prepared each record, the person to whom each record was directed, or for whom each record was prepared, the purpose in preparing each record, and how each element of the privilege is met as to each record.

(c) "Records requested were not provided" means that all records requested were not provided to the department within the time specified by the department.

(d) "Written request for records" includes requests made by letter, e−mail, fax or any other written form.

(e) "Provided" means the records are provided by electronic means or in paper format to the address specified by the department in its written request for records. If the address specified by the department is the person's location, the records are considered provided on the date the person notifies the department they are available for review at that location.

(3) PROCEDURES. The penalties in this section may be imposed if the records requested were not provided and the department provided the notifications in pars. (a) and (b) regarding the records requested. The number of days established by the department for the person to respond to the record requests should be reasonable based on the facts of each situation.

(a) A first written request for records where the department allowed the person a minimum of 30 days from the date of request for the records to be provided.

(b) After the time period to respond to the first written request has expired as provided in par. (a), a second written request for records where the department allowed the person a minimum of 30 days from the date of request for the records to be provided. This second written request for records shall include a statement explaining that if the requested records are not provided by the date specified, the penalties provided by s. 71.80 (9m), Stats., may be imposed.

Examples: 1) The department issues a first written request for records to Corporation A on September 1, 2009, allowing Corporation A until October 6, 2009, to provide the records requested. Corporation A does not provide the requested records to the department by October 6, 2009. The department issues a second written request for records to Corporation A on October 21, 2009, allowing Corporation A until November 30, 2009, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80 (9m), Stats. Corporation A does not provide the requested records by November 30, 2009. Therefore, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records relate and impose a penalty equal to the greater of $500 or 25% of the additional tax on the adjustments made resulting from Corporation A not providing the records requested.

2) The department issues a first written request for records to Corporation B on December 21, 2009, allowing Corporation B until January 20, 2010, to provide the records requested. Corporation B does not provide the requested records to the department by January 20, 2010. The department issues a second written request for records to Corporation B on February 8, 2010, allowing Corporation B until March 10, 2010, to provide the records requested. Included in this second written request for records is a notification regarding the penalties provided by s. 71.80 (9m), Stats. Corporation B provides records to the department by March 10, 2010, but the department determines that the taxpayer did not provide some of the records requested by March 10, 2010. Therefore, since the taxpayer did not provide all of the records requested by March 10, 2010, the department may disallow the deductions, credits, or exemptions or include in Wisconsin income the additional income to which the requested records that were not provided relate and impose a penalty equal to the greater of $500 or 25% of the additional tax on the adjustments made resulting from the requested records that were not provided.

(4) WAIVER OF PENALTIES. (a) The penalties in this section may be waived if the person whose records were requested can show that, under all the facts and circumstances, its response to the written request for records or its failure to respond to the written request for records was reasonable or justified by factors beyond the person's control. In determining whether the penalties will be waived, the department may consider any of the following factors:

1. Death of the taxpayer, tax preparer, accountant or other responsible party.

2. Onset of debilitating illness or injury of the taxpayer, tax preparer, accountant or other responsible party.

3. Natural disaster such as tornado, flood or fire.

4. Records that were destroyed due to events beyond control of the taxpayer or other responsible party and not due to neglect.

5. Any other facts and circumstances that the department believes pertinent.

(b) Providing requested records after the time period required for providing the records has expired, as provided in sub. (3), shall result in a reduction of the penalties provided in sub. (1) (a) and (b) if the department determines that these records support a reduction in the disallowance or inclusion previously made by the department.

Examples: 1) Since Corporation C does not provide the records requested by the date specified in a second written request for records to support interest expense deducted, the department issues a proposed audit report to Corporation C disallowing all the interest expense previously deducted, which represents the penalty provided in s. 71.80 (9m) (a), Stats. Additional tax of $100,000 and the penalty as provided in s. 71.80 (9m) (b), Stats., of $25,000 results in the proposed audit report from disallowing this interest expense. Corporation C provides the records requested 26 days after the department issues the proposed audit report but before the notice of assessment is issued and explains, without any further detail, that they were too busy with other aspects of their business to respond to the two written requests for records by the dates specified. In this situation, the failure to provide the records requested is not reasonable or justified by factors beyond the person's control. In addition, the records provided do not support a reduction of the interest expense disallowed in the proposed audit report. Therefore, the interest expense adjustment is not modified so the proposed additional tax of $100,000 and the original proposed penalty as provided in s. 71.80 (9m) (b), Stats., of $25,000 remain.

2) Since Mr. Smith does not provide the records requested regarding his business, which primarily receives payments in cash, to support the reported gross receipts by the date specified in a second written request for records, the department issues a notice of assessment to Mr. Smith including an estimated amount into income for unreported receipts, which represents the penalty provided in s. 71.80 (9m) (a), Stats. Additional tax of $60,000, a negligence penalty of $15,000 and the penalty as provided in s. 71.80 (9m) (b), Stats., of $15,000 results in the assessment from including these estimated receipts. Mr. Smith appeals the assessment, provides the records that were requested during the audit, and explains that he forgot to provide the records that were previously requested. In this situation, the failure to provide the records

requested is not reasonable or justified by factors beyond the person's control. However, the records provided show that unreported receipts were only 20% of the amount previously included by the department as estimated unreported receipts. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from $60,000 to $12,000, the negligence penalty is reduced from $15,000 to $3,000 and the original penalty as provided in s. 71.80 (9m) (b), Stats., is reduced from $15,000 to $3,000.

3) Assume the same facts as Example 2, except that Mr. Smith explains that he did not previously provide the requested records because his accountant had possession of them and was in the hospital when the records were requested during the audit. In this situation the failure to provide the records requested is reasonable or justified by factors beyond the person's control. Therefore, the unreported receipts adjustment is modified to reduce the additional tax from $60,000 to $12,000, the negligence penalty is reduced from $15,000 to $3,000 and the original penalty as provided in s. 71.80 (9m) (b), Stats., of $15,000 is waived.

History: EmR0929: emerg. cr. eff. 10−19−09; CR 09−087: cr. Register June 2010 No. 654, eff. 7−1−10; correction in (3) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register June 2010 No. 654.

Tax 2.87 Reduction of delinquent interest rate under s. 71.82 (2) (b), Stats. (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, WI 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(e) For combined group members, the designated agent is charged with this responsibility.

Note: See s. Tax 2.65 for rules relating to the designated agent.

(2) FACTORS FOR SECRETARY'S CONSIDERATION. In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) Any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

Note: Section Tax 2.87 interprets ss. 71.255 (7) (b) and 71.82 (2) (b), Stats.

History: Cr. Register, February, 1979, No. 278, eff. 3−1−79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10−1−83; CR 10−095: cr. (1) (e) Register November 2010 No. 659, eff. 12−1−10.

Tax 2.88 Interest rates. (1) INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT. Unpaid individual income or corporate franchise or income taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(2) INTEREST ON DELINQUENT TAXES. Any individual income or corporate franchise or income tax delinquencies shall include interest at the rate of 1.5% per month from the date on which the taxes became delinquent until the taxes are paid.

(3) INTEREST ON REFUNDS. (a) Any refund of individual income or corporate franchise or income taxes shall include interest at the rate of 3% per year from the due date of the return to the date paid by the department, except as provided in par. (b).

(b) No interest may be allowed on income and franchise taxes if the refund is certified on a refund roll within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This treatment shall apply to a refund of taxes resulting from an overpayment of estimated tax as well as from withheld taxes.

(4) INTEREST ON DEPOSIT OF CONTESTED TAXES. Any refund of an amount deposited with the department pursuant to s. 71.90 (1), Stats., shall include interest at the rate of 3% per year from the date the funds were deposited to the date refunded.

(5) EXTENSION PERIODS. If an extension of time is granted for filing an individual income or a corporate franchise or income tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 12% per year. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent and shall be subject to delinquent interest under sub. (2) from the end of the extension period until paid.

Note: 2013 Wis. Act 20 reduced the rate of interest on refunds of taxes and refunds of the deposit of contested taxes from 9% to 3%. The 3% rate applies to refunds paid on or after July 2, 2013, regardless of the taxable periods to which the refunds pertain.

Note: Any individual income or corporate franchise or income taxes which were delinquent before November 1, 1975 were subject to delinquent interest at the rate of 1% per month from the date the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until paid.

Note: For any tax refunded from a return which had a filing due date prior to November 1, 1975, interest was computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid by the department.

Note: Section Tax 2.88 interprets ss. 71.03 (7), 71.24 (7), 71.44 (3), 71.82 (1) and (2) (a) and 71.90 (1), Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; r. and recr. (1), (3) and (4), Register, September, 1983, No. 333, eff. 10−1−83; renum. (2) to (4) to be (3), (2) and (5) and am., cr. (4), Register, July, 1989, No. 403, eff. 8−1−89; CR 14−005: am. (3) (a), (4) Register August 2014 No. 704, eff. 9−1−14.

Tax 2.89 Estimated tax requirements for short taxable years. (1) GENERAL. Under ss. 71.09 and 71.29, Stats., certain corporations and persons other than corporations shall make estimated tax payments. For short taxable years, estimated tax payments shall be made in accordance with this section.

Note: For taxable years beginning on or after January 1, 1994, and ending before April 1, 1999, estimated tax includes the temporary recycling surcharge under s. 77.93, Stats.

(2) DEFINITIONS. In this section:

(a) "Corporation" includes corporations, tax−option (S) corporations, insurance companies, publicly traded partnerships treated as corporations in section 7704 of the Internal Revenue Code, limited liability companies treated as corporations under the Internal Revenue Code, joint stock companies, associations, common law trusts, regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, nuclear decommissioning trust funds and virtually exempt entities as defined in s. 71.29 (1) (c), Stats.

(b) "Estimated tax payable" means the amount calculated under s. 71.09 (13) or 71.29 (9) or (10), Stats.

(c) "Persons other than corporations" includes individuals, estates, trusts other than those treated as corporations in par. (a), partnerships except publicly traded partnerships treated as corporations in section 7704 of the Internal Revenue Code and limited liability companies treated as partnerships under the Internal Revenue Code.

(d) "Short taxable year" means a period of less than 12 months.

(3) NUMBER OF INSTALLMENT PAYMENTS REQUIRED. (a) For short taxable years, the following number of estimated tax installment payments shall be made:

1. For periods of one month or less, none.
2. For periods of 2 to 3 months, one.
3. For periods of 4 to 6 months, 2.
4. For periods of 7 to 9 months, 3.
5. For periods of 10 to 11 months, 4.

(b) Except as provided in par. (c), for purposes of determining the required number of estimated tax installment payments under par. (a), a portion of a month shall be treated as a full month.

(c) If a short taxable year terminates before the end of a month and another taxable year begins at that time, for estimated tax installment purposes the first taxable period shall be treated as ending on the last day of that month and the second taxable period shall be treated as beginning on the first day of the following month.

Note: Refer to the examples of the estimated tax payment requirements for short taxable years involving a portion of a month that follow sub. (7) (b) 4.

(4) DUE DATES OF INSTALLMENT PAYMENTS FOR CORPORATIONS. For short taxable years, corporations, or the designated agent as provided in s. Tax 2.65 (3) (a) 5., shall make estimated tax installment payments on or before the 15th day of each of the following months:

(a) For periods of 2 to 3 months, the last month of the taxable year.

(b) For periods of 4 to 6 months, the 3rd and last months of the taxable year.

(c) For periods of 7 to 9 months, the 3rd, 6th and last months of the taxable year.

(d) For periods of 10 to 11 months, the 3rd, 6th, 9th and last months of the taxable year.

(5) DUE DATES OF INSTALLMENT PAYMENTS FOR PERSONS OTHER THAN CORPORATIONS. (a) Except as provided in pars. (b) and (c), for short taxable years, persons other than corporations shall make estimated tax installment payments on or before the 15th day of each of the following months:

1. For periods of 2 to 3 months, the first month following the close of the taxable year.

2. For periods of 4 to 6 months, the 4th month of the taxable year and the first month following the close of the taxable year.

3. For periods of 7 to 9 months, the 4th and 6th months of the taxable year and the first month following the close of the taxable year.

4. For periods of 10 to 11 months, the 4th, 6th and 9th months of the taxable year and the first month following the close of the taxable year.

(b) If a person other than a corporation files an income tax return on or before the last day of the first month following the close of the taxable year and pays the full amount computed on that return as payable, that person need not make the last payment of estimated tax.

(c) Instead of making estimated tax installment payments, a farmer or fisher as defined in s. 71.09 (1) (a), Stats., may either pay the estimated tax in full by the 15th day of the first month after the close of the taxable year or file the tax return on or before the first day of the 3rd month following the close of the taxable year and pay the full amount computed on that return as payable.

(6) COMPUTATION OF ESTIMATED TAX PAYABLE. Corporations and persons other than corporations shall make estimated tax payments equal to the lesser of the following amounts:

(a) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(b) For individuals, corporations having less than $250,000 of Wisconsin net income and estates and trusts having less than $20,000 of Wisconsin taxable income for the current taxable year, the tax shown on the return for the preceding taxable year, provided the taxpayer filed a return for the preceding year covering a full 12−month year. When the current year is a short taxable year and the preceding year was a period of 12 months, the tax shown on the return for the preceding taxable year may be prorated based on the number of months in the short taxable year.

Example: Corporation A receives federal approval to change its taxable year from a calendar year to a fiscal year ending on June 30. To make the change, Corporation A files a franchise or income tax return for the period beginning January 1 and ending June 30. On this short−period return, it reports net tax of $8,000. Corporation A's Wisconsin net income for the current taxable year is less than $250,000. Therefore, its estimated tax payable is the lesser of 90% of the tax shown on its current year return or 100% of the tax shown on its prior year return, provided it had filed a tax return for that year covering a 12−month period. The tax shown on Corporation A's return for the preceding taxable year, a 12−month period, was $6,000. Corporation A's estimated tax payable for the current taxable year is $3,000, $6,000 prior year's tax x 6 months/12 months.

Note: Corporations having Wisconsin net income of $250,000 or more for the current taxable year and estates or trusts having Wisconsin taxable income of $20,000 or more for the current taxable year may not calculate their estimated tax payable under par. (b).

(c) Ninety percent of the tax calculated by annualizing the taxable income earned for the months in the taxable year ending before the due date of the installment. The following special rules apply:

1. Corporations which determine their Wisconsin net incomes under the apportionment method may compute their annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the installment for which the income is being annualized and the apportionment percentage on that return is greater than zero. A corporation that has at least $250,000 of Wisconsin net income for the current taxable year may also compute annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the 3rd installment, the apportionment percentage on that return is greater than zero, and the apportionment percentage used in computing the first 2 installments is not less than the apportionment percentage used on that return.

2. Entities subject to tax on unrelated business taxable income and trusts and estates shall annualize their incomes for the months in the taxable year ending one month before the installment due date.

(7) PORTION OF ESTIMATED TAX PAYABLE IN EACH INSTALLMENT. The portion of the estimated tax payable in each installment depends on when the taxpayer determines that the taxable year will be a period of less than 12 months and the number of installment payments required, as follows:

(a) If an event that will terminate the taxable year before the end of the 12th month occurs after the taxpayer has begun making estimated tax payments, the initial estimated tax installment payments shall be based on 25% of the estimated tax payable, with the last payment adjusted for the difference between the estimated tax liability and the amount previously paid.

Examples: 1) Corporation B, which has been filing tax returns on a calendar−year basis, receives federal approval to change its taxable year to a fiscal year ending on July 31. To make the change, Corporation B files a franchise or income tax return for the short taxable year beginning January 1 and ending July 31. Since this is a period of 7 months, Corporation B must make 3 estimated tax payments. Twenty−five percent of the estimated tax shall be paid for each of the installments due March 15 and June 15. The balance of the estimated tax shall be paid on or before July 15. If Corporation B's estimated tax payable is $80,000, Corporation B must pay $20,000, 25% x $80,000 estimated tax payable, for each of the installments due March 15 and June 15 and $40,000, 50% x $80,000 estimated tax payable, for the installment due July 15.

2) Corporation C, a calendar−year filer, merges into Corporation D on October 6. As a result, Corporation C files its final franchise or income tax return for the short taxable year beginning January 1 and ending October 6. Corporation C must make 4 estimated tax payments, each for 25% of the estimated tax payable. The installments must be paid on or before March 15, June 15, September 15 and October 15. If Corporation C's estimated tax payable is $100,000, Corporation C must pay $25,000, 25% x $100,000 estimated tax payable, for each installment.

(b) If an event that will result in a taxable year of less than 12 months occurs before the taxpayer has begun making estimated tax payments, installment payments shall be made as follows:

1. If one installment is due, all of the estimated tax shall be paid at that time.

2. If 2 installment payments are due, 75% of the estimated tax shall be paid for the first installment and 25% shall be paid for the remaining installment.

3. If 3 installment payments are due, 50% of the estimated tax shall be paid for the first installment and 25% shall be paid for each of the 2 remaining installments.

4. If 4 installment payments are due, 25% of the estimated tax shall be paid for each installment.

Examples: 1) Corporation E owns 100% of the stock of Corporation F. The corporations file consolidated federal income tax returns on a calendar−year basis. On March 10, Corporation E sells all of the stock of Corporation F to third parties, severing the affiliated group. For federal purposes, Corporations E and F file a consolidated return for the period from January 1 through March 10. Corporation F files a separate federal return for the period from March 11 through December 31. Since the taxable period for Wisconsin purposes is the same as the federal taxable year, Corporation F must also file 2 short−period Wisconsin returns. For the first taxable year, Corporation F must make one estimated tax installment payment for 100% of the estimated tax liability on or before March 15. For the second short period, Corporation F must make 3 estimated tax installment payments. The first payment for 50% of the estimated tax liability is payable on or before June 15. Since March is the last month of the first short period, April is treated as the first month of the second short period. The second and third payments, each for 25% of the estimated tax, are due on or before September 15 and December 15, respectively. If Corporation F's estimated tax for the period beginning March 11 and ending December 31 is $150,000, Corporation F must pay $75,000, 50% x $150,000 estimated tax payable, for the first installment and $37,500, 25% x $150,000 estimated tax payable, for each of the remaining 2 installments.

2) Corporation G buys 100% of the stock of Corporation H on August 29. Both corporations compute their incomes on a calendar−year basis. Corporations G and H file a consolidated federal income tax return for the period from August 30 through December 31. Corporation H files a separate federal return for the period from January 1 through August 29. Since the taxable year is the same for Wisconsin and federal purposes, Corporation H must file 2 short−period Wisconsin returns. For the first short taxable year, 3 estimated tax installment payments are required, due on or before March 15, June 15 and August 15. Twenty−five percent of the estimated tax shall be paid for each of the installments due March 15 and June 15 and the balance of the estimated tax shall be paid for the installment due August 15. For the second short period, 2 installments are payable on or before November 15 and December 15. Since August is the last month of the first short period, September is treated as the first month of the second short period. The first installment payment, due November 15 is for 75% of the estimated tax and the payment due December 15 is for 25% of the estimated tax.

(8) ANNUALIZED INCOME INSTALLMENT PAYMENTS. Under ss. 71.09 (13) (d) and 71.29 (9) (c), Stats., taxpayers may compute estimated tax installment payments by annualizing income for the months in the taxable year ending before the installment payment's due date. Corporations that are subject to a tax on unrelated business taxable income and virtually exempt entities may compute estimated tax installment payments by annualizing income for the months in the taxable year ending before the date one month before the due date for the installment payment. Annualized income installment payments shall be computed as follows:

(a) *Computation of annualized income.* Taxpayers shall annualize income for the annualization period as follows:

1. Compute the Wisconsin net income for the annualization period, excluding adjustments which remain constant from period to period, such as net business loss carryforwards and the amortization of adjustments for changes in the method of accounting.

2. Calculate the annualization factor for the annualization period by dividing the number of months in the taxable year by the number of months in the annualization period.

3. Multiply the amount computed in subd. 1. by the annualization factor computed in subd. 2.

4. Subtract from the result in subd. 3. any adjustments excluded from the calculation of Wisconsin net income in subd. 1. which remain constant for each period. Individuals shall also subtract the standard deduction.

Example: Corporation J's taxable year begins January 1 and ends May 10. It has Wisconsin net income of $200,000 for the period from January 1 through February 28. Corporation J's annualization factor for that period is 2.5, calculated by dividing the 5 months of the taxable year by the 2 months of the annualization period. The annualized income for that period is $500,000, which is $200,000 Wisconsin net income x 2.5 annualization factor.

(b) *Computation of installment payments.* Taxpayers shall calculate their estimated tax installment payments based on annualized income for the annualization period as follows:

1. Determine the gross tax on the amount calculated under par. (a).

2. Subtract from the gross tax under subd. 1. any allowable tax credits, excluding estimated tax paid.

3. Multiply the net tax computed in subd. 2. by the applicable percentage from sub. (7).

Example: Corporation K, a calendar year filer, merges into Corporation L on July 14. Corporation K elects the annualized income method for determining whether it paid sufficient estimated tax. Corporation K's Wisconsin net income is $300,000 for the first 2 months of the taxable year, $1,400,000 for the first 5 months of the taxable year, and $1,800,000 for the first 6 months of the taxable year. Corporation K has $9,000 of tax credits and its net tax due for the year ending July 14 is $135,000. Therefore, Corporation K's estimated tax payable is $121,500. For Corporation K's 7−month year, the annualization factors are 3.5 (7 months/2 months), 1.4 (7 months/5 months), and 1.167 (7 months/6 months). Corporation K calculates its required estimated tax payments as follows:

	First 2 months	**First 5 months**	**First 6 months**
Wisconsin net income	$300,000	$ 1,400,000	$1,800,000
Annualization factor	3.5	1.4	1.167
Annualized income	$1,050,000	$ 1,960,000	$2,100,600
Annualized gross tax	82,950	154,840	165,947
Tax credits	9,000	9,000	9,000
Annualized net tax	$ 73,950	$ 145,840	$156,947
Applicable percentage	22.5%	45%	90%
Portion of annualized tax	$ 16,639	$65,628	$141,252
25% of estimated tax	30,375	60,750	121,500
Amount payable in preceding periods	0	16,639	60,750
Installment payable	$ 16,639	$44,111	$ 60,750

Note: After the end of the taxable year, persons other than corporations shall use schedule U and corporations shall use form 4U to determine whether they have made sufficient estimated tax payments. Taxpayers with short taxable years shall adjust the computations on those forms as provided in this section.

(9) COMBINED GROUPS. For purposes of estimated tax requirements, a combined group of corporations under s. 71.255 (1) (a), Stats., or a commonly controlled group under s. 71.255 (2m), Stats., shall be treated as if it were a single corporation.

Note: See s. Tax 2.66 for rules relating to the payment of estimated taxes by combined groups.

Note: Section Tax 2.89 interprets ss. 71.09 (9), 71.255 (7), and 71.29 (5), Stats.

History: Cr. Register, December, 1995, No. 480, eff. 1−1−96; CR 10−095: am. (4) (intro.), cr. (9) Register November 2010 No. 659, eff. 12−1−10.

Cross References: See s. Tax 2.60 for combined reporting definitions relating to this section. See s. Tax 2.63 for rules relating to the controlled group election under s. 71.255 (2m), Stats. See s. Tax 2.65 for rules relating to the designated agent. See s. Tax 2.66 for rules relating to the payment of estimated taxes by combined groups.

Tax 2.90 Withholding; wages. (1) The term "wages" means all remuneration for services performed by an employee for an employer unless specifically excepted under s. 71.63, Stats.

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

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

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. However, s. 71.63 (6) (i), Stats., excludes from wages remuneration paid in any medium other than cash for services not in the course of the employer's trade or business. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to

its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

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

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

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

(9) Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitutes wages regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments.

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

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

(12) The value of any meals or lodging furnished to an employee by an employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee under the provisions of the Internal Revenue Code, as defined in s. 71.01 (6), Stats.

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

(14) Tips or gratuities paid directly to an employee by a customer of an employer, are excepted from withholding only if the tips are non−cash tips or if the cash tips received during the course of a month are less than $20.

(15) Withholding is not required:

(a) Upon amounts paid to an employee by the employee's employer under a wage continuation plan for a period during which the employee is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the Internal Revenue Code, as defined in s. 71.01 (6), Stats.

(b) When, as provided by s. 71.66 (3), Stats., an employee certifies to an employer that the employee incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

Note: Section Tax 2.90 interprets ss. 71.63 and 71.66 (3), Stats.

History: Cr. Register, January 1963, No. 85, eff. 2−1−63; r. and recr. (12), cr. (15), Register, March, 1966, No. 123 eff. 4−1−66; am. (2), (14) and (15), Register, July, 1978, No. 271, eff. 8−1−78; am. (1), (4), (5), (8), (12), (13) and (15), Register, July, 1989, No. 403, eff. 8−1−89; CR 13−012: r. (6) Register August 2013 No. 692, eff. 9−1−13.

Tax 2.91 Withholding; fiscal year taxpayers. (1) Except as provided in sub. (2), amounts withheld pursuant to ss. 71.64 and 71.67, Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in the calendar year. If more than one taxable year begins in a calendar year, the amount shall be allowed as a credit for the last taxable year beginning in that calendar year.

(2) Any employee who reports income for taxation to the state of Wisconsin on a taxable year other than the calendar year shall be allowed as a credit for the fiscal year amounts withheld by his or her employer in the fiscal year, provided the employer, on or before the end of the first month following the close of the fiscal year, shall voluntarily furnish the employee with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to the fiscal year, but otherwise consistent with the written statement referred to in ss. 71.65 (1) and 71.71 (1), Stats., and the employee files a copy of the statement along with the fiscal year return.

Note: Section Tax 2.91 interprets ss. 71.64, 71.65 (1), 71.67 and 71.71 (1), Stats.

History: Cr. Register, March, 1963, No. 87, eff. 4−1−66; am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, July, 1989, No. 403, eff. 8−1−89.

Tax 2.92 Withholding tax exemptions. (1) An employee may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. The maximum number of federal exemptions allowable is computed by completing a federal form W−4, "Employee's Withholding Allowance Certificate." An employee claiming the same number of exemptions for both state and federal purposes is not required to complete a form WT−4, "Employee's Wisconsin Withholding Exemption Certificate." An employee who claims a different number of withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed form WT−4.

(2) An employee who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employee provides his or her employer with a completed form WT−4, "Employee's Wisconsin Withholding Exemption Certificate" which shows a claim for total exemption. For this purpose, a tax liability is "incurred" if the employee had for the preceding year, or anticipates for the current year, a net Wisconsin income tax due, i.e., gross tax less personal exemptions on a Wisconsin return. If an employee is married, the Wisconsin marital property laws for tax computation shall be considered in determining if the employee may claim this exemption.

(3) (a) Effective April 1, 1979, an employee may enter into a written agreement with his or her employer to withhold a lesser amount of tax than indicated in the withholding tax tables, if the employee determines the lesser amount approximates the employee's anticipated income tax liability for the year. Form WT−4A, "Wisconsin Employee Withholding Agreement", shall be used for this purpose and a completed copy of the form shall be sent by the employee to the department within 10 days after it is filed with the employer. If the employee fails to notify the department within the required 10 days, he or she shall be subject to a penalty of $10, as provided by s. 71.83 (1) (a) 5., Stats.

(b) The agreement between the employee and employer shall be renewed each year. For calendar year taxpayers, the agreement expires on April 30 of the year immediately following the year in which it was entered into. For fiscal year taxpayers, the agreement expires 4 months following the close of the fiscal year in which entered into. To renew the agreement, an employee shall provide a new form WT−4A to his or her employer and submit a copy of the completed form to the department as provided in par. (a). If a new form WT−4A is executed before the expiration dates described in this paragraph, it shall supersede the previous agreement.

(c) If the department determines that an agreement is incomplete, incorrect, or would result in an insufficient amount of tax being withheld, the department may void the agreement by notification to the employer and employee.

(d) Section 71.83 (1) (b) 4., Stats., provides that any employee who enters into an agreement with the intent to defeat or evade the proper withholding of tax, shall be subject to a penalty equal to the difference between the amount required to be withheld and the amount actually withheld for the period that the incorrect agreement was in effect.

(e) Under s. 71.83 (2) (a) 5., Stats., any employee who willfully supplies an employer with false or fraudulent information regarding an agreement with the intent to defeat or evade the proper withholding of tax may be imprisoned not more than 6 months or fined not more than $500, plus the costs of prosecution, or both.

Note: Forms WT−4 and WT−4A may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

Note: Section Tax 2.92 interprets ss. 71.66 and 71.83 (1) (a) 5. and (b) 4. and (2) (a) 5., Stats.

History: Cr. Register, November, 1977, No. 263, eff. 12−1−77; am. (1) and (2), cr. (3), Register, September, 1983, No. 333, eff. 10−1−83; am. (1), (2) and (3) (c), Register, July, 1989, No. 403, eff. 8−1−89; correction in (3) (a), (d), (e) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

Tax 2.93 Withholding from wages of a deceased employee and from death benefit payments. (1) GENERAL. Section 71.64 (1) (a), Stats., requires employers to withhold Wisconsin income tax from payments of wages "to an employee". Various types of payments are made to the estate or to beneficiaries of a deceased employee which resulted from the deceased person's employment. The department shall follow the federal internal revenue service's policy in determining whether withholding of income tax is required from these payments.

(2) PAYMENTS SUBJECT TO WITHHOLDING. An uncashed check originally received by a decedent prior to the date of death and reissued subsequently to the decedent's personal representative shall be subject to withholding of Wisconsin income tax.

(3) PAYMENTS NOT SUBJECT TO WITHHOLDING. The following types of payments to a decedent's personal representative or heir shall not be subject to withholding of Wisconsin income tax:

(a) Payments representing wages accrued to the date of death but not paid until after death.

(b) Accrued vacation and sick pay.

(c) Termination and severance pay.

(d) Death benefits such as pensions, annuities and distributions from a decedent's interest in an employer's qualified stock bonus plan or profit sharing plan, as provided in s. 71.63 (6) (j), Stats.

Note: Section Tax 2.93 interprets ss. 71.63 (6) (j) and 71.64 (1) (a), Stats.

History: Cr. Register, February, 1978, No. 266, eff. 3−1−78; am. (1) and (3) (d), Register, July, 1989, No. 403, eff. 8−1−89.

Tax 2.935 Reduction of delinquent interest rate under s. 71.82 (2) (d), Stats. (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, WI 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the withholding taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) FACTORS FOR SECRETARY'S CONSIDERATION. In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

Note: Section Tax 2.935 interprets s. 71.82 (2) (d), Stats.

History: Cr. Register, February, 1979, No. 278, eff. 3−1−79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10−1−83.

Tax 2.94 Tax−sheltered annuities. (1) GENERAL. (a) Payments for a tax−sheltered annuity purchased for an employee by a public school system or by an exempt educational, charitable or religious organization, which are excludable from the employee's gross income in the year of payment under section 403 (b) of the Internal Revenue Code, are also excludable in the year of payment for Wisconsin income tax purposes.

Note: The exclusion from gross income as provided in sub. (1) (a) is effective January 1, 1965, when Wisconsin adopted the Internal Revenue Code as the basis for computing Wisconsin taxable income. Payments prior to January 1, 1965, were taxable for Wisconsin income tax purposes.

(b) All benefits paid under tax sheltered annuity contracts, including withdrawals, death benefits or annuities, are included in federal taxable income when received. The Wisconsin treatment is described in subs. (2) and (3).

(2) MILWAUKEE CITY AND COUNTY EMPLOYEE AND STATE TEACHERS RETIREMENT SYSTEMS. Normal retirement benefits received from systems enumerated in s. 71.05 (1) (a), Stats., are exempt as provided by that section. The exemption is limited to payments from the accounts of those persons who were members of any of the systems on December 31, 1963, or who were retired from any of the systems on or before December 31, 1963. However, benefits received from tax−sheltered annuity deposits described in sub. (1) administered by these systems do not qualify for the exclusion from Wisconsin taxable income provided by s. 71.05 (1) (a), Stats. Tax−sheltered annuity benefits shall be included in gross income for Wisconsin income tax purposes as they are for federal income tax purposes, except as provided in sub. (3).

(3) STATE TEACHERS RETIREMENT SYSTEM. (a) Tax−sheltered annuity benefits received by retired teachers on and after January 1, 1974, shall be included in taxable income. No subtraction modification from federal adjusted gross income may be allowed, except as provided in par. (b).

(b) If a school system purchased a tax−sheltered annuity for an employee prior to January 1, 1965, and the employee paid a Wisconsin income tax on the tax−sheltered annuity deposit which was used to pay the 1964 annuity premium, a subtraction modification under s. 71.05 (6) (b) 3., Stats., shall be allowed for the tax−sheltered annuity benefits received on or after January 1, 1974, which are included in federal adjusted gross income and upon which the employee previously paid a Wisconsin income tax. The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax−sheltered annuity benefits excludable from Wisconsin taxable income because of receipt prior to January 1, 1974.

Examples: In each example below, assume the employee is a taxpayer who files tax returns on a calendar year basis.

1) An employee made a deposit of $200 for the purchase of a tax−sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employee retires after December 31, 1973, a subtraction modification under s. 71.05 (6) (b) 3., Stats., is permitted for the first $200 of tax−sheltered annuity benefits

received. All subsequent benefits are taxable with no subtraction modification allowed.

2) An employee made a deposit of $300 for the purchase of a tax−sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employee retired prior to January 1, 1974, and $120 of the benefits received were not included in Wisconsin taxable income. A subtraction modification under s. 71.05 (6) (b) 3., Stats., is permitted for the next $180 ($300 − $120) received after December 31, 1973. All subsequent benefits are taxable with no subtraction modification allowed.

3) An employee made a deposit of $160 for the purchase of a tax−sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employee retired prior to January 1, 1974, and treated $200 of the benefits as nontaxable for Wisconsin income tax purposes. All the benefits received after December 31, 1973, are taxable with no subtraction modification allowed.

Note: Section Tax 2.94 interprets s. 71.05 (1) (a), Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5−1−78; r. (1) (a) and (3) (b), renum. (1) (b), (c) and (3) (c) to be (1) (a), (b) and (3) (b) and am. (a) and (3) (b), am. (2) and (3) (a), Register, June, 1991, No. 426, eff. 7−1−91.

Tax 2.95 Reporting of installment sales by natural persons and fiduciaries. (1) GENERAL. The Wisconsin tax treatment of installment sales by natural persons and fiduciaries is determined under the Internal Revenue Code in effect under s. 71.01 (6), Stats. Installment sales may be made of either real or personal property. Because for Wisconsin purposes, at the time of the sale, the seller may be either a resident or nonresident, and the property may be realty or personalty, tangible or intangible, and may be located within or without Wisconsin, special situations that are not addressed in the Internal Revenue Code may arise which affect the reporting of the sale.

(2) SITUS OF INCOME. Under s. 71.04 (1) (a), Stats., all income or loss of resident individuals shall follow the residence of the individual. A nonresident's income or loss derived from the sale of real property or tangible personal property follows the situs of the property. Interest income of a nonresident and income from the sale of intangible personal property follows the individual's residence.

(3) TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF INTANGIBLE PERSONAL PROPERTY. (a) *Resident seller.* If the seller is a Wisconsin resident, the portions of each installment payment that represent gain and interest income from the sale which are received while the seller is a resident of this state are taxable by Wisconsin. If the resident seller abandons Wisconsin domicile and establishes residence in another state, neither the gain nor interest payments received while a nonresident is taxable by Wisconsin.

(b) *Nonresident seller.* If the seller is not a Wisconsin resident, the portions of each installment payment that represent gain and interest income from the sale are not taxable by Wisconsin. If the seller subsequently becomes a Wisconsin resident after the sale, the portion of each installment payment received after becoming a Wisconsin resident representing gain is not taxable by Wisconsin, but the portion representing interest on the installment note is taxable by Wisconsin.

(4) TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY. Upon the sale of real property or tangible personal property reported under the installment method:

(a) *Wisconsin property.* 1. If the property is located in Wisconsin and the seller is a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale is taxable by Wisconsin.

2. If the property is located in Wisconsin and the seller is not a Wisconsin resident, the portion of each installment payment that represents gain is taxable by Wisconsin. Interest income of a nonresident is *not* taxable by Wisconsin.

(b) *Out−of−state property.* For property located outside Wisconsin which is sold in taxable year 1975 or thereafter:

1. If the sale occurs while the seller is a Wisconsin resident and the seller is a Wisconsin resident at the time installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are taxable by Wisconsin. However, if the seller no longer is a Wisconsin resident when installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are not taxable by Wisconsin.

2. If the sale occurs while the seller is not a Wisconsin resident and the seller is a Wisconsin resident at the time installment payments are received, the portion of each of the installment payments that represents gain is not taxable by Wisconsin, but interest income from the sale is taxable. However, if the seller is not a Wisconsin resident at the time installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are not taxable by Wisconsin.

Note: For taxable years prior to 1975, s. 71.07 (1), Stats., provided that for Wisconsin income taxation purposes, income or loss derived from the sale of real property or tangible personal property followed the situs of the property. Interest income and income or loss from the sale of intangible personal property followed the individual's residence. Therefore, if real property or tangible personal property which was located outside Wisconsin was sold on the installment method prior to taxable year 1975:

1) The portion of each installment payment that represents gain is not taxable by Wisconsin regardless of whether the seller is a resident or nonresident of Wisconsin at the time payments are received, regardless of whether the payments are received in 1975 or in any subsequent year.

2) The portion of each installment payment that represents interest income is taxable by Wisconsin if the seller is a Wisconsin resident at the time payments are received. If the seller is a nonresident of Wisconsin at the time payments are received, the interest portion is not taxable by Wisconsin.

(5) TAXATION OF PROCEEDS FROM SALE OF INSTALLMENT OBLIGATION. If the sale of an installment obligation, i.e., an individual's right to unpaid installments from the sale of property, occurs while the seller is a Wisconsin resident, gain or loss on the sale is taxable by Wisconsin. Internal Revenue Code section 453B provides that any gain or loss resulting from the disposition of an installment obligation shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. Therefore, if the sale of an installment obligation occurs while the seller is not a Wisconsin resident, gain or loss on the sale is taxable by Wisconsin where the installment obligation resulted from the sale of real property or tangible personal property located in Wisconsin.

Example: In 1990 an Illinois resident sells Wisconsin real estate for $140,000. The adjusted basis of the property is $70,000 which results in a gross profit percentage of 50%. The seller receives a down payment of $40,000 and an installment note of $100,000 for the balance. In 1991, after receiving a $60,000 payment on the principal plus interest of $4,000, the installment obligation is sold for $45,000. The seller's Wisconsin taxable income from these transactions is as follows:

			Wisconsin Income
1990−	Selling price	$140,000	
	Wisconsin adjusted basis	70,000	
	Gross profit	$70,000	
	Gross profit percent	50%	
	Down payment received	$40,000	
	Profit reportable (50% x $40,000)	20,000	$20,000
	Total Wisconsin Income		$20,000
1991−	Payment on principal received	$60,000	
	Profit reportable (50% x $60,000)	30,000	$30,000
	Interest received	4,000	−0−
	Sale of installment obligation:		
	Selling price	45,000	
	Less basis − unpaid balance of $40,000 less unpaid profit due of $20,000 ($40,000 x 50%)	20,000	
	Gain on sale of installment obligation ($45,000 − $20,000)	25,000	25,000
Total Wisconsin Income			$55,000

Note: Section Tax 2.95 interprets ss. 71.01 (6) and 71.04 (1) (a), Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; r. and recr. (2) and (5) (b) 2.a. and b., am. (4) (a) and (b), (5) (b) 1.a., Register, September, 1983, No. 333, eff. 10−1−83; r. and recr. (1), r. (2), (3) (a), 5. (b) 1. (intro.), a. and b., renum. (3) (b) to be (2) and am., renum. (4) to be (3) and am., renum. (5) (intro.) (a) to be (4) (intro.)

(a.), renum. (5) (b) 2. (intro.) a. and b. to be (4) (b) (intro.) 1. and 2. and am., renum. (6) to be (5) and am., Register, March, 1991, No. 423, eff. 4−1−91.

Tax 2.955 Credit for taxes paid to other states. **(1)** DEFINITION. In this section, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) CREDITS ALLOWABLE. (a) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate, or trust for any net minimum tax or income tax paid to another state upon income of the individual, estate or trust taxable by that state.

(b) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident shareholder in a tax−option (S) corporation for any net minimum tax, income tax, or franchise tax paid by that shareholder to another state on or measured by income of the tax−option (S) corporation.

(3) CREDITS NOT ALLOWED. An income tax credit may not be allowed for:

(a) Income tax paid to Illinois, Indiana, Kentucky, Michigan or Minnesota on personal service income earned in these states included under a reciprocity agreement.

Note: Refer to s. Tax 2.02 for information concerning reciprocity.

(b) Minimum tax or income tax paid to another state on income considered neither taxable income for Wisconsin tax purposes nor a tax preference item in the computation of the Wisconsin minimum tax.

(c) Minimum tax paid to a state which does not classify the minimum tax as an income tax.

(d) Income tax paid to a county, city, village, town or foreign country.

(4) HOW TO CLAIM A CREDIT. The amount of income tax credit claimed shall be entered on the line provided for net income tax paid to other states on Wisconsin income tax return form 1 or form 1NPR. The credit may not exceed the Wisconsin net tax. To support the credit claimed, the following information shall be attached to form 1 or form 1NPR:

(a) For a Wisconsin resident individual, estate, or trust, attach copies of the other state's income tax return and the wage statements, if any, to the Wisconsin income tax return.

(b) For a Wisconsin resident shareholder in a tax−option (S) corporation, the federal subchapter S status of which is recognized by the other state:

1. If a Wisconsin resident shareholder files an individual income tax return with that state, attach a copy of the other state's income tax return to the Wisconsin income tax return.

2. If the corporation files a combined or composite return with that state on behalf of its shareholders who are nonresidents of that state and pays the tax on their proportionate share of the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin schedule 5K−1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

3. If the corporation files a corporate income or franchise tax return with that state and pays tax on or measured by income earned there that is attributable to its shareholders who are nonresidents of that state, attach to the Wisconsin income tax return either a copy of the Wisconsin schedule 5K−1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

(c) For a Wisconsin resident shareholder in a tax−option (S) corporation, the federal subchapter S status of which is not recognized by the other state, if the corporation pays an income or franchise tax on or measured by the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin schedule 5K−1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

(d) If the tax−option (S) corporation is not subject to Wisconsin's income or franchise tax, a Wisconsin resident shareholder shall attach to the Wisconsin income tax return a letter provided by the corporation in lieu of Wisconsin schedule 5K−1 as required in pars. (b) 2. and 3. and (c). The letter shall include a schedule showing the shareholder's proportionate share of the items of income taxable by that state, the adjusted gross income, and the net tax paid.

(5) YEAR IN WHICH TO CLAIM INCOME TAX CREDIT. The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out−of−state income is considered taxable Wisconsin income.

Example: A Wisconsin resident receives income of $4,000 in 1992 from rental property located in Iowa. The person files a 1992 declaration of estimated tax of $200 with Iowa, with $150 of estimated tax payments being made in 1992 and the fourth quarter payment of $50 being made in January 1993. The Iowa income of $4,000 is reported as income on the 1992 Iowa and Wisconsin returns. The 1992 Iowa income tax return shows the following:

1992 Iowa Return	
Iowa Rental Income	$4,000
Iowa Net Tax	$ 185
Estimated Tax Payments	200
Refund	$ 15

The taxpayer may claim a credit for net income tax paid to other states of $185 on the 1992 Wisconsin return, even though a part of the tax was paid in 1993.

Note: Section Tax 2.955 interprets s. 71.07 (7), Stats.

History: Cr. Register, December, 1978, No. 276, eff. 1−1−79; am. (4) (b), Register, January, 1981, No. 301, eff. 2−1−81; r. (2) (a) and (b), (3) (b), am. (2) (c), (3) (d) and (4), renum. (3) (c) to be (3) (b), r. and recr. (5), Register, September, 1983, No. 333, eff. 10−1−83; am. (1), (2), (3) (a) and (b), (4) (intro.), renum. (3) (cv) to be (3) (d), cr. (2) (b), (3) (c), (4) (c) and (d), r. and recr. (4) (a) and (b), Register, June, 1990, No. 414, eff. 7−1−90; am. (3) (intro.), (a), (4) (b) 2., 3., (c) and (d), Register, April, 1993, No. 448, eff. 5−1−93.

Tax 2.956 Historic structure and rehabilitation of nondepreciable historic property credits. **(1)** PURPOSE. This section clarifies the phrase *"first applies . . . for projects begun after December 31, 1988"* as used in the initial applicability of s. 71.07 (9m) and (9r), Stats., as created by 1987 Wis. Acts 395 and 399, respectively. The initial applicability is provided in section 71 of 1987 Wis. Act 395 and in section 3203 (47) (mp) of 1987 Wis. Act 399.

(2) DEFINITION OF "BEGUN". In the initial applicability of s. 71.07 (9m) and (9r), Stats., the date a project is "begun" means the date on which the physical work of rehabilitation commences. The physical work of rehabilitation commences when actual construction, or destruction in preparation for construction, commences. The term "physical work of rehabilitation," however, does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration, such as placing boards over broken windows.

Note: Section Tax 2.956 interprets ss. 71.07 (9m) and (9r), 71.28 (6) and 71.47 (5) and (6), Stats.

History: Emerg. cr. 12−28−88; cr. Register, June, 1989, No. 402, eff. 7−26−89; corrections in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register October 2002 No. 562; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register August 2013 No. 692.

Tax 2.957 Relocated business credit or deduction. **(1)** PURPOSE. The purpose of this section is to prescribe the method by which the percentage of the workforce payroll of a business and the dollar amount of wages paid to such workforce moved to this state during a taxable year shall be determined for purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats.; provide examples of actions that may indicate a business has relocated to this state from another state or country; and limit the deduction provided for in s. 71.05 (6) (b) 47. am., b., and c., Stats.

(2) DEFINITIONS. In this section:

(a) "Business" means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association.

(b) "Doing business in this state" has the meaning given in s. 71.22 (1r), Stats.

(c) "Employee" has the meaning given in section 3121 (d) of the Internal Revenue Code.

(d) "Taxable year" has the meaning given in ss. 71.01 (12), 71.22 (10), and 71.42 (5), Stats.

(e) "Wages" has the meaning given in section 3121 (a) of the Internal Revenue Code.

(3) RELOCATION TO THIS STATE. For purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., actions that may indicate a business has relocated to this state from another state or country include the following:

(a) Registering with the department, as provided in s. 73.03 (50), Stats.

(b) Registering to do business in Wisconsin with the department of financial institutions.

(4) DOING BUSINESS IN THIS STATE. For purposes of ss. 71.05 (6) (b) 47., 71.28 (9s), and 71.47 (9s), Stats., doing business in this state for any portion of a taxable year means doing business in this state for the entire taxable year, as provided in s. 71.22 (1r), Stats.

(5) WORKFORCE PAYROLL. For purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., the determination as to whether 51% or more of the workforce payroll of a business has moved to this state during a taxable year shall be made using a fraction, the numerator of which is the total amount of wages paid by the business during the taxable year to employees of the business who are residents of this state, and the denominator of which is the total amount of wages paid by the business during the taxable year to all employees of the business.

Example: During the taxable year in which Business A begins doing business in Wisconsin, Business A pays $6,000,000 of wages to employees of Business A who are residents of Wisconsin and $10,000,000 of total wages to all employees of Business A. Sixty (60) percent of the workforce payroll of Business A moved to Wisconsin during the taxable year (6,000,000/10,000,000).

(6) WORKFORCE WAGES. For purposes of ss. 71.05 (6) (b) 47. a., 71.28 (9s) (a) 2., and 71.47 (9s) (a) 2., Stats., the determination as to whether at least $200,000 of wages paid to the workforce of a business has moved to this state during a taxable year shall be made using the total amount of wages paid by the business during the taxable year to employees of the business who are residents of this state.

Example: During the taxable year in which Business B begins doing business in Wisconsin, Business B pays $250,000 of wages to employees of Business B who are residents of Wisconsin. Wages of $250,000 paid to the workforce of Business B moved to Wisconsin during the taxable year.

(7) LIMITATIONS ON CREDIT AND DEDUCTION. (a) No modification may be made under s. 71.05 (6) (b) 47. am., b., or c., Stats., if the amount otherwise eligible for the modification is less than zero.

(b) The credit or deduction under this section may not be claimed by a business that relocates to Wisconsin in a taxable year beginning after December 31, 2013.

Example: Partner B determines the amount otherwise eligible for the modification under s. 71.05 (6) (b) 47. b., Stats., is a loss of $5,000. Partner B may not make a modification under s. 71.05 (6) (b) 47. b., Stats.

History: EmR1104: emerg. cr. eff. 4−7−11; CR 11−023: cr. Register November 2011 No. 671, eff. 12−1−11; CR 14−005: am. (7) (title), renum. (7) to (7) (a), cr. (7) (b) Register August 2014 No. 704, eff. 9−1−14.

Tax 2.96 Extensions of time to file corporation franchise or income tax returns. (1) DUE DATES. (a) *General.* Except as provided in pars. (am) and (b), corporation franchise or income tax returns are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year unless an extension of time for filing has been granted.

(am) For tax exempt corporations with unrelated business taxable income, the franchise or income tax return is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted.

(b) *Short−period returns.* Corporation franchise or income tax returns for periods of less than 12 months are due on or before the federal due date.

(2) EXTENSIONS. (a) *Automatic extension.* For corporation franchise or income tax returns, an automatic extension is allowed for a period of 7 months or until the original due date of the corporation's corresponding federal return, whichever is later. If any extension is obtained for federal purposes, that extension also applies for Wisconsin purposes and is further extended for another 30 days after the federal due date. A copy of federal extension form 7004, or other federal extension form, if applicable, shall be attached to any Wisconsin franchise or income tax return filed under extension, even if the extension was not requested for federal purposes.

(b) *Combined returns.* For corporations required to use combined reporting under s. 71.255, Stats., any extension granted to the designated agent of the combined group is considered granted to each corporation in the combined group.

(c) *Estimated tax payment.* A taxpayer who desires to minimize interest charges during the extension period may pay the estimated tax liability on or before the original due date of the franchise or income tax return. The estimated tax liability includes the economic development surcharge imposed under s. 77.93, Stats.

Note: See s. Tax 2.66 for rules relating to the payment of estimated taxes by combined groups.

(3) INTEREST CHARGES AND LATE FILING FEES. (a) *Regular interest.* Except as provided in par. (b), additional tax due with the complete return and the economic development surcharge imposed under s. 77.93, Stats., which are not paid by the original due date are subject to interest at 12% per year during the extension period and 1 1/2% per month from the end of the extension period until the date of payment.

(b) *Delinquent interest.* If 90% of the tax shown on the return is not paid by the unextended due date of the return, the difference between that amount and the estimated taxes paid along with any interest due is subject to interest at 1 1/2% per month until paid regardless of any extension granted for filing the return. The tax shown on the return includes the economic development surcharge imposed under s. 77.93, Stats.

(c) *Late filing fee.* A corporation return filed after the extension period is subject to a $150 late filing fee.

Note: Section Tax 2.96 interprets ss. 71.24 (7), 71.255 (7), and 71.44 (3), Stats.

History: Cr. Register, February, 1978, No. 266, eff. 3−1−78; am. (1), (2) (a) and (c), (3) (a) and (c), (4) and (5), Register, September, 1983, No. 333, eff. 10−1−83; am. (1), (2) (a) and (b), (4) and (5), r. (2) (c), renum. (2) (d) to be (2) (c), Register, February, 1990, No. 410, eff. 3−1−90; r. and recr. Register, December, 1995, No. 480, eff. 1−1−96;CR 10−095: am. (1) (a), (3) (a), (b), cr. (1) (am), r. and recr. (2), r. (4) Register November 2010 No. 659, eff. 12−1−10; CR 12−011: am. (2) (c), (3) (a) to (c) Register July 2012 No. 679, eff. 8−1−12.

Cross Reference: See s. Tax 2.60 for combined reporting definitions relating to this section. See s. Tax 2.65 for rules relating to the designated agent. See s. Tax 2.66 for rules relating to the payment of estimated taxes by combined groups. See s. Tax 2.67 for rules relating to the filing of a combined return.

Tax 2.98 Disaster area losses. (1) (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used in a trade or business or for income−producing purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

(b) If a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, section 165 (i) of the Internal Revenue Code gives taxpayers the election to deduct the loss on the return for the current tax year or on the return for the immediately preceding tax year.

(2) (a) The Wisconsin income tax treatment is determined under the federal Internal Revenue Code in effect under s. 71.22 (4), Stats., for corporations and s. 71.01 (6), Stats., for individuals.

(b) If a corporation, designated agent of a combined group, or an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year.

Note: For taxable years prior to 1987, the Wisconsin corporation tax law was contained in ch. 71, Stats., and was not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the Internal Revenue Code were not available to corporations for Wisconsin franchise and income tax purposes for those years. The amendment allowing disaster losses for corporations was enacted by 1987 Wis. Act 27.

Note: The treatment described in this section became effective with 1986 individual income tax returns filed in taxable year 1987. Section 71.02 (2) (me), 1985 Stats., was again renumbered, s. 71.01 (16), Stats., by 1987 Wis. Act 312. For 1985 and prior year income tax returns filed in 1986 and prior taxable years, disaster area losses from damage to property used for personal purposes were also allowed, as an itemized deduction.

Note: As an example of Note 2) on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

Calumet	Iowa	Rock
Columbia	Jefferson	Sauk
Crawford	LaFayette	Sheboygan
Dane	Manitowoc	Vernon
Dodge	Milwaukee	Walworth
Fond du Lac	Ozaukee	Washington
Grant	Richland	Waukesha
Green		

An individual who sustained a casualty loss from this disaster in any of these 22 counties, regardless of where that individual resided, could have elected to deduct the loss on the individual's 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers, assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977. If the election was not made, the loss was deductible on the taxpayer's 1976 return.

Note: Tax 2.98 explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law, however, it does not explain all the details regarding casualty losses. Internal Revenue Service Publication 547, entitled *Casualties, Disasters, and Thefts* may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources, and related casualty loss problems.

Note: Section Tax 2.98 interprets ss. 71.01 (6), 71.22 (4), and 71.255 (7) (b) Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5−1−78; r. (2), renum. (3) to be (2) and am. (2) (a) 1. and (b), Register, September, 1983, No. 333, eff. 10−1−83; am. (1) (a), r. (2) (b), renum. (2) (a) 1. and 2. to be (2) (a) and (b) and am., Register, February, 1990, No. 410, eff. 3−1−90; CR 10−095: am. (2) (b) Register November 2010 No. 659, eff. 12−1−10; CR 13−012: am. (1) (b) Register August 2013 No. 692, eff. 9−1−13.

Tax 2.986 Registration of a business under s. 73.03 (69), Stats. (1) PURPOSE. This section establishes the method of valuing property and the registration deadline for purposes of s. 73.03 (69), Stats.

(2) DEFINITION. In this section, "doing business in this state" has the meaning given in s. 71.22 (1r), Stats.

(3) METHOD OF VALUING PROPERTY. For purposes of s. 73.03 (69) (b) 2., Stats., real and tangible personal property owned by the business shall be valued at its original cost and real and tangible personal property rented by the business shall be valued at an amount equal to the annual rental paid by the business, less any annual rental received by the business from sub−rentals, multiplied by 8.

(4) REGISTRATION DEADLINE. (a) Except as provided in par. (b), a business shall register with the department under s. 73.03 (69), Stats., on or before the close of the calendar year for which the business desires registration. A business may not be registered for a calendar year if the registration is not within the time provided in this subsection.

(b) A business that desires registration for the calendar year in which it begins doing business in this state shall register with the department during the following calendar year.

Example: Business A begins doing business in Wisconsin on March 8, 2014. Business A must register with the department for calendar year 2014 between January 1, 2015, and December 31, 2015.

History: CR 14−005: cr. Register August 2014 No. 704, eff. 9−1−14.

Tax 2.99 Dairy and livestock farm investment credit. (1) PURPOSE. This section clarifies certain terms as they apply to the dairy and livestock farm investment credit under ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

Note: Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were revised by 2013 Wis. Act 20 to provide the credit under this section may not be claimed for taxable years beginning on or after January 1, 2014.

Note: 2005 Wis. Act 25 renamed the "dairy investment credit" the "dairy and livestock farm investment credit," effective for taxable years beginning on or after January 1, 2006. The term "dairy and livestock farm investment credit" as used in this section refers to the "dairy investment credit" for taxable years prior to January 1, 2006.

(2) DEFINITIONS. In this section and in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.:

(a) "Amount the claimant paid in the taxable year" means the purchase price of facilities or equipment acquired and first placed in service in this state during taxable years that begin after December 31, 2003, and before January 1, 2017.

(b) "Dairy farm modernization or expansion" has the meaning as given in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats. "Dairy farm modernization or expansion" refers only to those facilities or equipment in this state used exclusively on the claimant's dairy farm related to the dairy animals located on the claimant's dairy farm. "Dairy farm modernization or expansion" does not include the purchase of:

1. Equipment used for raising crops for sale.

2. Vehicles licensed for highway use, snowmobiles, and all−terrain vehicles.

(c) "First placed in service" has the meaning as given under Treas. Reg. section 1.167 (a)−11 (e) (1) (i) for purposes of computing depreciation.

Note: Treas. Reg. s. 1.167 (a)−11 (e) (1) (i) provides, in part, that property is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function.

(d) "Milk production" means the activity of producing and handling milk on the claimant's dairy farm in this state for human consumption, but does not include activities such as transporting, pasteurizing, or homogenizing milk or making butter, cheese, ice cream or other dairy products.

(e) "Used exclusively related to dairy animals" means used in this state on the claimant's dairy farm to the exclusion of all other uses except for other uses not exceeding 5% of total use.

Note: Section Tax 2.99 interprets ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

Note: Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were created by 2003 Wis. Act 135, effective for taxable years that begin after December 31, 2003, and before January 1, 2010.

History: Emerg. cr. eff. 9−17−04; CR 04−115: cr. Register March 2005 No. 591, eff. 4−1−05; CR 12−011: am. (title), (1), (2) (a) Register July 2012 No. 679, eff. 1−8−12.