

to an individual and in addition thereto a fixed per diem allowance in lieu of actual traveling expenses, the taxpayer must include the salary and per diem allowances in his income, and may deduct therefrom the actual traveling expenses incurred, including transportation, meals and lodging.

**Tax 3.52 Automobile expenses.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) If an automobile is used exclusively for business purposes, the actual expenses of operation, including gasoline, oil, license fees, insurance premiums and depreciation, are deductible from gross income. If the automobile is used partly for business and partly for personal purposes, the expenses of operation, including gasoline, oil, license fees, insurance premiums, depreciation, chauffeur's salary, etc., may be apportioned on the basis of the mileage devoted to business and personal uses, and the amount allocated to business purposes will constitute an allowable deduction from the taxable income derived therefrom.

**Tax 3.53 Miscellaneous expenses deductible.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Expenditures for the purchase and maintenance of uniforms are deductible if (1) the uniforms are specifically required as a condition of employment, and (2) are not of a type adaptable to general or continued usage to the extent that they take the place of ordinary clothing. Other expenditures which are ordinary and necessary in carrying on a profession, trade, or business from which income is derived, may be deducted.

**Tax 3.54 Miscellaneous expenses not deductible.** (Sections 71.04 (2) and 71.05 (2), Wis. Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following: Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employes, unless reported as compensation paid on form WT-9 or form 9b; rent of living quarters or residence; repairs to a residence; insurance premiums on residence or household goods; expense of transportation from residence to place of employment; living and traveling expenses of teachers and others employed at a distance from their homes at a fixed place where their vocation or occupation is exercised; expenses of teachers in attending summer schools; election and campaign expenses of candidates for office; dues to fraternal orders, social clubs and luncheon clubs.

**History:** 1-2-56; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 3.55 Donations and contributions.** (Sections 71.04 (5) and 71.05 (6), Wis. Stats.) (1) Contributions by persons other than corporations to corporations and associations organized and operated exclusively for religious purposes may be deducted regardless of whether the recipient is operating within Wisconsin, but such contributions by corporations may be deducted only if the recipient is operating within Wisconsin.

(2) No deductions for contributions, donations or gifts is allowable if the income tax return of the taxpayer before deducting such contributions, donations or gifts shows a loss.

*Reprinted Dec. 1964 - to  
correct clerical errors*

(3) Deductions for contributions, donations or gifts are not allowable unless the name and address of each recipient and the amount given each recipient is listed in the income tax return of the taxpayer.

**EXCLUSIONS AND EXEMPTIONS**

**Tax 3.61 Exempt income.** (Section 71.03 (2), Wis. Stats.) (1) Payments made to workmen under the workmen's compensation act of Wisconsin are not taxable income to the recipients. Benefits received as compensation from insurance companies on health and accident policies are not taxable income except as provided in Tax 2.75.

(2) Pensions received by retired teachers from the Wisconsin teachers' retirement fund, by veterans of the Civil, Spanish and World Wars, and from the United States government are not taxable income.

**Tax 3.62 Inheritances, devises, bequests and gifts.** (Section 71.03 (2), Wis. Stats.) (1) Money or property which is acquired by inheritance, bequest, devise or gift is not taxable income, but any income which may be subsequently derived from, or through the sale of, such property is taxable income. The profit or loss resulting from the subsequent sale of property acquired by gift or inheritance is determined in accordance with section 71.03 (1) (g), Wis. Stats.

(2) Bequests to executors in lieu of commissions are not taxable income in all cases where the probate court administering the estate has subjected such bequests to the inheritance tax. Therefore, if such bequests have not been taxed for inheritance tax purposes, the executor receiving the bequests must include them as taxable income in his return.

**Tax 3.63 Pension and profit-sharing trusts.** (Section 71.01 (3) (e), Wis. Stats.) (1) On or before the first day of the sixth month following the close of its calendar or fiscal year, every trust claiming exemption under section 71.01 (3) (e), Wis. Stats., must file with the Fiduciary and Gift Section of the Wisconsin Department of Taxation, P. O. Box 80, Madison, Wisconsin 53701 (Room 112 City-County Bldg.):

(a) A copy of the trust instrument and of the employer's plan.

(b) Certification that the plan has qualified for exemption under section 401 of the federal code.

(c) Financial and operating statements showing the assets, liabilities, receipts and disbursements of the trust.

(The information required by (a) and (b) need be filed only for the first taxable year, except when necessary to show changes occurring since the last filing.)

(2) Every such trust shall file with the aforesaid section ~~on or~~ before January 31 of each year on forms prescribed by the department of taxation, statements of payments made within the preceding calendar year to beneficiaries of said trust.

(2) Every such trust shall file with the aforesaid assessor of incomes before March 15 of each year, on forms 9 as prescribed by the commissioner of taxation, statements of payments made within the preceding calendar year to beneficiaries of said trust.

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(3) There shall also be filed in the same manner and at the same time prescribed in the preceding paragraph, statements of the amount of premiums paid out of said trust funds and allocable to life insurance purchased for each employe. If, under the plan, the trust purchases retirement income insurance with life insurance protection, then so much of the premiums as was paid from the employer's contributions, or earnings thereon, constitutes income for the employe in the year in which those contributions were applied toward the purchase of life insurance. If the amount payable upon death at any time during the year exceeds the cash value (or if no cash value, then the reserve) of the insurance policy at the end of the year, the entire amount of such excess will be considered current life insurance protection. The cost of such insurance will be considered to be the one-year term premium for such amount based upon the rates of the company issuing the annuity contract (or if no one-year term policy is issued, the cost of such one-year term computed by using the same mortality table and rate of interest and rate of loading as was used in determining the rates for the annuity contract).

**History:** 1-2-56; a.m. (1) and (2), Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 3.64 History:** 1-2-56; r. Register, September, 1964, No. 105, eff. 10-1-64.

### ESTATES AND FIDUCIARIES

**Tax 3.71 Income of estate of decedent.** (Section 71.08 (1) and (3), Wis. Stats.) (1) If a decedent computed his income on an accrual basis of accounting, any income accrued, but not collected during the period from January 1 of the year of death to the date of death must be included in the return of the fiduciary for the year of decedent's death. If the decedent computed his income on a cash basis of accounting, income accrued but uncollected as of the date of death which has been inventoried as part of the estate for inheritance tax purposes, then becomes part of the corpus of the estate and is not taxable as income when collected.

(2) If the decedent was reporting income from the sale of real estate upon the deferred basis, the executor or administrator of the estate shall account for all income arising from instalments collected prior to the date of death in the same manner as the income would have been accounted for had the decedent lived. The present value of the instalment sale contract as of the date of death is inventoried as part of the estate for inheritance tax purposes. No portion of the instalments collected subsequent to the date of death shall be included in taxable income until the cumulative total of such instalments equals the appraised value of the contract for inheritance tax purposes. All instalments collected after that time are taxable in their entirety in the year received in the same manner that liquidating distributions are taxed after the taxpayer has had his capital returned to him. (See *Norris v. Wisconsin Tax Commission*, 205 W 626; *Smart v. Wisconsin Tax Commission*, 205 W 632; *Herzberg v. Wisconsin Tax Commission*, 194 W 126.)

(3) If the decedent was a member of a partnership his distributive share of the partnership profits for the period from the beginning of the partnership's fiscal year to the date of death, whether

distributed or not, must be included as income in the return of the fiduciary for the year of death.

**Tax 3.72 Executors and administrators, income received after final account.** (Section 71.08, Wis. Stats.) When an executor or administrator receives income after he has filed his final account but before the court has accepted such report and the estate has been distributed, the executor or administrator will be treated as agent for the persons entitled to receive the income and such persons will include the income in their personal income tax returns.

**Tax 3.73 Trustees, when taxable period covered by a trust differs from distributee's taxable period.** (Section 71.08 (8), Wis. Stats.) If the taxable year of a beneficiary is different from the taxable year of the trust, the amount which the distributee shall include in computing his net income shall be based upon the net income of the trust for its taxable year ending within the taxable year of the beneficiary.

**Tax 3.74 Trustees, separate trusts, each taxed as an entity.** (Section 71.08 (8), Wis. Stats.) When the same trustee is designated in a will to administer several trusts, the accumulated income of each trust is taxable as a separate entity and the income of the several trusts is not to be combined.

### MISCELLANEOUS

**Tax 3.81 Offset of occupational taxes paid against normal income taxes.** (Sections 70.41 (1), (3) and 70.42 (1), (3), Wis. Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The taxpayer may present his receipt showing payment of such tax to the department of taxation as so much cash in payment of normal income tax assessed against him in the following year on the tax roll for the same district. If the normal income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.

(2) If the taxpayer neglects to present his occupational tax receipt at the proper time and pays his entire normal income tax in cash, he cannot present the receipt at a later date and secure a refund of the normal income tax paid. A taxpayer cannot tender in payment of an additional normal income tax assessed at a later date an occupational tax receipt that might have been used had the proper income tax assessment been made in the first place. If the occupational tax receipt tendered in payment of a normal income tax exceeds the normal income tax, such excess cannot be applied in payment of additional normal income tax for the same year assessed at a later date. Occupational tax receipts issued in one taxing district cannot be offset against normal income tax appearing on the roll for another district.

**History:** 1-2-56; am. (1), Register, September, 1964, No. 105, eff. 10-1-64.

Register, September, 1964, No. 105