

*Filed Jan 12, 1965
1:30 P.M.*


TAX 2

ORDER OF THE
WISCONSIN DEPARTMENT OF TAXATION
ADOPTING RULE CHANGES

Pursuant to the authority vested in the Wisconsin Department of Taxation by Section 71.11(24) of the statutes, the said department hereby creates and adopts Rule TAX 2.74 as worded in the attached memorandum.

This rule shall take effect on the first day of the month following its publication in the Wisconsin Administrative Register, pursuant to Section 227.026 of the statutes.

WISCONSIN DEPARTMENT OF TAXATION



James R. Morgan
Commissioner of Taxation

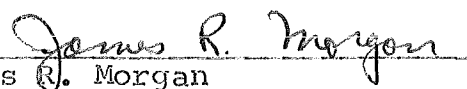
(SEAL)

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, JAMES R. MORGAN, Commissioner of Taxation and custodian of the official records of the Wisconsin Department of Taxation, do hereby certify that the annexed new rule TAX 2.74 has been approved by me and has been compared by me with the original on file in the department and is a true and correct copy of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the State Office Building, 1 West Wilson Street in the City of Madison, Wisconsin this 7 day of January, A. D. 1965.


James R. Morgan
Commissioner of Taxation

TAX 2.74 GAIN OR LOSS ON DISPOSITION OF PROPERTY -
ADJUSTMENTS TO BASIS (Section 71.03(1)(g)).

(1) In determining gain or loss disposition of property on or after August 1, 1963 the cost or other basis shall be decreased for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion by the greater of the following two amounts:

(a) the amount allowed as deductions in computing taxable income, to the extent resulting in a reduction of the taxpayer's income taxes, or (b) the amount allowable for the years involved.

(2) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion shall be made on the basis of the facts reasonably known to exist at the end of the taxable year. A taxpayer is not permitted to take advantage in a later year of his prior failure to take any such allowance or his taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the taxpayer has consistently taken proper deductions under one method, the amount allowable for such prior years shall not be increased even though a greater amount would have been allowable under another proper method.

(3) If the taxpayer has not taken a depreciation deduction either in ^{the} taxable year or for any prior taxable year, adjustments to basis of the property for depreciation allowable

shall be determined by using the straight line method of depreciation.

(4) With respect to the calendar year 1964 and corresponding fiscal years and thereafter, if the taxpayer with respect to any property has taken a deduction for depreciation properly under one of the methods provided in section 71.04(13)(b) or 71.05(16)(b) for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable in such case will be the deduction under the method which was used by the taxpayer with respect to that property.

(5) The amount allowed which resulted in a reduction of the taxpayer's taxes is hereinafter referred to as the "tax-benefit amount allowed." For the purpose of determining whether the tax-benefit amount allowed exceeded the amount allowable, a determination must be made of that portion of the excess of the amount allowed over the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such case the reduction in basis required would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent

of the remainder of such excess. In such a case the reduction in basis required would be the amount of the tax-benefit amount allowed.

(6) For the purpose of determining the tax-benefit amount allowed, the only adjustments made in determining whether there would be an increase in tax shall be those resulting from the disallowance of the amount allowed. The taxable years for which the determination is made shall be the taxable year for which the deduction was allowed and any other taxable year which would be affected by the disallowance of such deduction. Examples of such other taxable years are taxable years to which there was a carry-over of a net business loss for the taxable year for which the deduction was allowed. In determining whether the disallowance of any part of the deduction would not have resulted in an increase in any tax previously determined, proper adjustment must be made for previous determinations under Chapter 71.

(7) If a determination must be made with respect to several properties for each of which the amount allowed for the taxable year exceeded the amount allowable, the tax benefit amount allowed with respect to each of such properties shall be an allocated portion of the tax-benefit amount allowed determined by reference to the sum of the amounts allowed and the sum of the amounts allowable with respect to such several properties.

(8) In the case of property held by a partnership or trust the computation of the tax-benefit amount allowed shall take into account the tax benefit of the partners or beneficiaries, as the case may be, from the deduction by the partnership or trust of the amount allowed to the partnership or the trust. For this purpose, the determination of the amount allowed which resulted in a tax benefit to the partners or beneficiaries shall be made in the same manner as that provided above with respect to the taxes of the person holding the property.

(9) A taxpayer seeking to limit the adjustment to basis to the tax benefit amount allowed for any period, in lieu of the amount allowed, must establish the tax benefit amount allowed. A failure of adequate proof as to the tax benefit amount allowed with respect to one period does not preclude the taxpayer from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

(10) The amount allowable for prior periods is determined under the law applicable to such prior periods.

(11) Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization and depletion to the extent actually sustained in respect of (a) any period during which the taxpayer was engaged in business entirely outside of Wisconsin, or (b) any period during which the property was held by a person or organization not subject to income taxation under Chapter 71 of the statutes.

The amount actually sustained is that amount charged off on the books of the taxpayer where such amount is considered by the commissioner to be reasonable. Otherwise the amount actually sustained will be the amount that would have been allowed as a deduction had the taxpayer been subject to income tax during those periods, determined by the straight line method.