

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

Tax 2.01	Residence	Tax 2.46	Apportionment of business income of interstate air carriers
Tax 2.03	Corporation returns	Tax 2.51	Rent received by corporations from Wisconsin real estate
Tax 2.04	Information returns; forms WT-9, 9b and 9x for corporations	Tax 2.53	Stock dividends and stock rights received by corporations
Tax 2.05	Information returns; forms 8 for corporations	Tax 2.56	Insurance proceeds received by corporations
Tax 2.06	Information returns required of partnerships and persons other than corporations	Tax 2.57	Annuity payments received by corporations
Tax 2.07	Income tax returns of dissolved corporations	Tax 2.60	Dividends on stock sold "short" by corporations
Tax 2.08	Returns of persons other than corporations	Tax 2.61	Building and loan dividends on instalment shares received by corporations
Tax 2.09	Reproduction of forms	Tax 2.63	Dividends accrued on stock
Tax 2.10	Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns	Tax 2.65	Interest received by corporations
Tax 2.11	Tax table	Tax 2.69	Income from Wisconsin business
Tax 2.14	Aggregate personal exemption of husband and wife	Tax 2.70	Gain or loss on capital assets of corporations; basis of determining
Tax 2.15	Methods of accounting for corporations	Tax 2.71	Sales of capital assets by corporations on deferred payments
Tax 2.16	Changes in method of accounting for corporations	Tax 2.72	Exchanges of property by corporations generally
Tax 2.17	Cash method of accounting for corporations	Tax 2.721	Exchanges of property held for productive use or investment by corporations
Tax 2.18	Accrual method of accounting for corporations	Tax 2.73	Involuntary conversion by corporations
Tax 2.19	Instalment method of accounting for corporations	Tax 2.74	Gain or loss on disposition of property by corporations; adjustments to basis
Tax 2.20	Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies	Tax 2.75	Recoveries by corporations
Tax 2.21	Accounting for incorporated contractors	Tax 2.76	Refunds of taxes to corporations
Tax 2.22	Accounting for incorporated dealers in securities	Tax 2.80	Improvements on leased real estate, income to corporate lessor
Tax 2.24	Accounting for incorporated retail merchants	Tax 2.81	Damages received by corporations
Tax 2.25	Corporation accounting generally	Tax 2.86	Income to corporations from cancellation of government contracts
Tax 2.26	"Last in, first out" method of inventorying for corporations	Tax 2.87	Contributions for line extension
Tax 2.41	Separate accounting method	Tax 2.90	Withholding; wages
Tax 2.42	Apportionment method	Tax 2.91	Withholding; fiscal year taxpayers
Tax 2.43	Nonapportionable income		
Tax 2.44	Permission to change basis of allocation		
Tax 2.45	Apportionment in special cases		

Tax 2.01 Residence. (Section 71.01, Wis. Stats.) (1) The residence of a wife is that of her husband unless there is affirmative evidence to the contrary or unless the husband and wife are permanently separated. The residence of a minor child, unless emancipated, is that of its father, or of the mother, if the father is deceased.

(2) Individuals claiming a change of residence (domicile) from Wisconsin to another state shall file a "declaration of residence" with the Central Audit section of the Department of Taxation by delivery to 315 West Gorham Street, Madison, Wisconsin, or by mailing to Post Office Box 80, Madison, Wisconsin 53701, and shall furnish such other information as the department may require.

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.

Tax 2.02 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.021 History: Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. Register, September, 1964, No. 105, eff. 10-1-64.

Tax 2.03 Corporation returns. For the purpose of filing franchise or income tax returns, the tax commissioner has designated the following forms for the use of corporations:

Form 4. Return of income for the calendar or fiscal year.

Form 4A. Balance sheets as of beginning and end of taxable year; analysis of surplus account; reconciliation of book income with net income reported.

Form 4B. Apportionment data (when applicable to the corporation).

Form 4C. Separate accounting data (when applicable to the corporation).

All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivered to the Corporation Section at 317 West Gorham Street, Madison, Wisconsin.

Note: Blank forms may be obtained from the department at the Processing Center, 149 East Wilson Street, Madison, or by mail request to P. O. Box 98, Madison, Wisconsin 53701.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.04 Information returns; forms WT-9, 9b and 9X for corporations. (Sections 71.04 (1) and (2), 71.10 (1), (8m) and (8n) Wis. Stats.). All corporations carrying on activities within this state, whether taxable or not under this chapter, shall file with the department of taxation, on or before January 31 of each year on forms WT-9 or 9b statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, provided that salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in section 71.19 (1) Wis. Stats. Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9. Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments to residents and non-residents of Wisconsin of

rents and royalties on property in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b. The forms herein referred to must be filed on the date indicated regardless of the fact that the corporation keeps its records on a fiscal year other than the calendar year. No one of interest, dividends, rents or royalties needs to be reported if it is less than \$100.00. Each corporation must file with forms 8 or 9b, forms 9X showing the number of reports made on forms 8 or 9b. (See also Wis. Adm. Code section Tax 2.05). Items required to be reported on forms WT-9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin 53701.

(Corporations failing to file forms WT-9 or 9b as prescribed by law shall be subject to fine of not less than \$50.00 nor more than \$500.00. See section 71.11 (45), Wis. Stats.)

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64.

Tax 2.05 Information returns, forms 8 for corporations. (Section 71.10 (1), Wis. Stats.) All corporations doing business within this state, whether subject to the franchise or income tax or not, are required to file with the department of taxation by mailing to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivery to the Corporation Section at 317 West Gorham Street, Madison, Wisconsin on or before March 15 of each year on forms 8 as prescribed by the tax commissioner, statements of such transfers of capital stock as have been made by residents of Wisconsin during the preceding calendar year.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin, 53701.

(Corporations failing to file such statements shall be subject to a fine of not less than \$50 or more than \$500. See section 71.11 (45), Wis. 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.

Tax 2.06 Information returns required of partnerships and persons other than corporations. (Sections 71.10 (8m) and 71.10 (8n), 71.10 (15) and 71.11 (25), Wis. Stats.) Informational returns reporting remuneration paid for services, whether or not within the definition of "wages" in section 71.19 (1), must be filed on or before January 31 of each year on forms WT-9 or 9b. Form WT-7 (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages) should accompany forms WT-9. Informational returns reporting other items such as interest paid or rent paid must be filed on or before April 15 of each year on forms 9b. Items required to be reported on informational returns will be disallowed as deductions from gross income if not properly reported. Such returns should be mailed to the Department of Taxation, P. O. Box 59, Madison, Wisconsin 53701 or delivered at 149 E. Wilson Street, Madison.

Note: Blank forms may be obtained by writing the Department of Taxation, Central Processing Center, P. O. Box 58, Madison, Wisconsin 53701 (149 E. Wilson Street).

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.07 Income tax returns of dissolved corporations. (Section 71.10 (1), Wis. Stats.) The officers of a corporation which has been dissolved during the income year must file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The final return must indicate the disposition of all corporate assets.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.08 Returns of persons other than corporations. (1) For the purpose of filing income tax returns, the commissioner of taxation has designated the following forms for the use of persons other than corporations:

Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.

Form 1A. (Short form).

Form 2. For trustees, executors, administrators, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on form 1).

Form 3. For partnerships and joint ventures.

(2) Information returns required of persons other than corporations are specified in Wis. Adm. Code sections Tax 2.06 and Tax 3.63. See also Tax 3.07.

(3) Returns required to be filed by persons other than corporations shall be filed by mailing to P. O. Box 59, Madison, Wisconsin 53701, or delivery to Processing Center, Department of Taxation, Madison.

Note: Blank forms may be obtained by mail request to Wisconsin Department of Taxation, Processing Center, P. O. Box 58, Madison, Wisconsin 53701.

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.

Tax 2.09 Reproduction of forms. Subject to the conditions set forth under this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions filed with the department in lieu of the corresponding official forms:

(1) The reproductions must be made by photo-offset, photo-engraving or by some similar photographic process. They may be reproduced on one side or both sides of the paper.

(2) The reproductions must be on paper of substantially the same color, weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may not, therefore, be reproduced on white paper.

(3) Since all of the official forms are printed in black ink, such printing must be reproduced in black.

(4) The size of the reproductions, both as to dimensions of the paper and image reproduced thereon, must be the same as that of the official form.

(5) All signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

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.

Register, March, 1966, No. 123

Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (Section 71.10 (6), Wis. Stats.) It is deemed necessary for the administration of the tax imposed by chapter 71, Wis. Stats., that at the time of filing Wisconsin income tax returns for the taxable year 1965 and for taxable years thereafter by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year (including all schedules, statements, documents and computations) should be included and filed with the Wisconsin return. Accordingly, such complete copies of federal income tax returns are directed to be so filed except copies of the short form federal return which, at the time of adoption of this rule is designated as federal form 1040A.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Tax 2.11 Tax table (Section 71.09 (3), Wis. Stats., applicable to the calendar year 1963 and corresponding fiscal years, and subsequent years).

To find your gross normal tax read down income columns until you find the line covering the net taxable income:

If Net Taxable Income Is		Gross Normal Tax Is	If Net Taxable Income Is		Gross Normal Tax Is	If Net Taxable Income Is		Gross Normal Tax Is	If Net Taxable Income Is		Gross Normal Tax Is
At Least	But Less Than										
0	50	.60	3,720	3,760	112.10	6,270	6,300	233.20	8,325	8,350	361.10
50	100	1.90	3,760	3,800	113.70	6,300	6,330	234.80	8,350	8,375	362.90
100	150	3.10	3,800	3,840	115.30	6,330	6,360	236.50	8,375	8,400	364.60
150	200	4.40	3,840	3,880	116.90	6,360	6,390	238.10	8,400	8,425	366.40
200	250	5.60	3,880	3,920	118.50	6,390	6,420	239.80	8,425	8,450	368.10
250	300	6.90	3,920	3,960	120.10	6,420	6,450	241.40	8,450	8,475	369.90
300	350	8.10	3,960	4,000	121.70	6,450	6,480	243.10	8,475	8,500	371.60
350	400	9.40	4,000	4,035	123.30	6,480	6,510	244.70	8,500	8,525	373.40
400	450	10.60	4,035	4,070	124.90	6,510	6,540	246.40	8,525	8,550	375.10
450	500	11.90	4,070	4,105	126.40	6,540	6,570	248.00	8,550	8,575	376.90
500	550	13.10	4,105	4,140	128.00	6,570	6,600	249.70	8,575	8,600	378.60
550	600	14.40	4,140	4,175	129.60	6,600	6,630	251.30	8,600	8,625	380.40
600	650	15.60	4,175	4,210	131.20	6,630	6,660	253.00	8,625	8,650	382.10
650	700	16.90	4,210	4,245	132.70	6,660	6,690	254.60	8,650	8,675	383.90
700	750	18.10	4,245	4,280	134.30	6,690	6,720	256.30	8,675	8,700	385.60
750	800	19.40	4,280	4,315	135.90	6,720	6,750	257.90	8,700	8,725	387.40
800	850	20.60	4,315	4,350	137.50	6,750	6,780	259.60	8,725	8,750	389.10
850	900	21.90	4,350	4,385	139.00	6,780	6,810	261.20	8,750	8,775	390.90
900	950	23.10	4,385	4,420	140.60	6,810	6,840	262.90	8,775	8,800	392.60
950	1,000	24.40	4,420	4,455	142.20	6,840	6,870	264.50	8,800	8,825	394.40
1,000	1,050	25.70	4,455	4,490	143.80	6,870	6,900	266.20	8,825	8,850	396.10
1,050	1,100	27.10	4,490	4,525	145.30	6,900	6,930	267.80	8,850	8,875	397.90
1,100	1,150	28.40	4,525	4,560	146.90	6,930	6,960	269.50	8,875	8,900	399.60
1,150	1,200	29.80	4,560	4,595	148.50	6,960	6,990	271.00	8,900	8,925	401.40
1,200	1,250	31.20	4,595	4,630	150.10	6,990	7,000	272.00	8,925	8,950	403.10
1,250	1,300	32.60	4,630	4,665	151.60	7,000	7,025	273.30	8,950	8,975	404.90
1,300	1,350	33.90	4,665	4,700	153.20	7,025	7,050	274.90	8,975	9,000	406.60
1,350	1,400	35.30	4,700	4,735	154.80	7,050	7,075	276.60	9,000	9,025	408.30
1,400	1,450	36.70	4,735	4,770	156.40	7,075	7,100	278.20	9,025	9,040	409.80
1,450	1,500	38.10	4,770	4,805	157.90	7,100	7,125	279.80	9,040	9,060	411.30
1,500	1,550	39.40	4,805	4,840	159.50	7,125	7,150	281.40	9,060	9,080	412.80
1,550	1,600	40.80	4,840	4,875	161.10	7,150	7,175	283.10	9,080	9,100	414.30
1,600	1,650	42.20	4,875	4,910	162.70	7,175	7,200	284.70	9,100	9,120	415.80
1,650	1,700	43.60	4,910	4,945	164.20	7,200	7,225	286.30	9,120	9,140	417.30
1,700	1,750	44.90	4,945	4,980	165.80	7,225	7,250	287.90	9,140	9,160	418.80
1,750	1,800	46.30	4,980	5,010	167.30	7,250	7,275	289.60	9,160	9,180	420.30
1,800	1,850	47.70	5,010	5,040	168.80	7,275	7,300	291.20	9,180	9,200	421.80
1,850	1,900	49.10	5,040	5,070	170.30	7,300	7,325	292.80	9,200	9,220	423.30
1,900	1,950	50.40	5,070	5,100	171.80	7,325	7,350	294.40	9,220	9,240	424.80
1,950	2,000	51.80	5,100	5,130	173.30	7,350	7,375	296.10	9,240	9,260	426.30
2,000	2,050	53.30	5,130	5,160	174.80	7,375	7,400	297.70	9,260	9,280	427.80
2,050	2,100	54.80	5,160	5,190	176.30	7,400	7,425	299.30	9,280	9,300	429.30
2,100	2,150	56.30	5,190	5,220	177.80	7,425	7,450	300.90	9,300	9,320	430.80
2,150	2,200	57.80	5,220	5,250	179.30	7,450	7,475	302.60	9,320	9,340	432.30
2,200	2,250	59.30	5,250	5,280	180.80	7,475	7,500	304.20	9,340	9,360	433.80
2,250	2,300	60.80	5,280	5,310	182.30	7,500	7,525	305.80	9,360	9,380	435.30
2,300	2,350	62.30	5,310	5,340	183.80	7,525	7,550	307.40	9,380	9,400	436.80
2,350	2,400	63.80	5,340	5,370	185.30	7,550	7,575	309.10	9,400	9,420	438.30
2,400	2,450	65.30	5,370	5,400	186.80	7,575	7,600	310.70	9,420	9,440	439.80
2,450	2,500	66.80	5,400	5,430	188.30	7,600	7,625	312.30	9,440	9,460	441.30
2,500	2,550	68.30	5,430	5,460	189.80	7,625	7,650	313.90	9,460	9,480	442.80
2,550	2,600	69.80	5,460	5,490	191.30	7,650	7,675	315.60	9,480	9,500	444.30
2,600	2,650	71.30	5,490	5,520	192.80	7,675	7,700	317.20	9,500	9,520	445.80
2,650	2,700	72.80	5,520	5,550	194.30	7,700	7,725	318.80	9,520	9,540	447.30
2,700	2,750	74.30	5,550	5,580	195.80	7,725	7,750	320.40	9,540	9,560	448.80
2,750	2,800	75.80	5,580	5,610	197.30	7,750	7,775	322.10	9,560	9,580	450.30
2,800	2,850	77.30	5,610	5,640	198.80	7,775	7,800	323.70	9,580	9,600	451.80
2,850	2,900	78.80	5,640	5,670	200.30	7,800	7,825	325.30	9,600	9,620	453.30
2,900	2,950	80.30	5,670	5,700	201.80	7,825	7,850	326.90	9,620	9,640	454.80
2,950	3,000	81.80	5,700	5,730	203.30	7,850	7,875	328.60	9,640	9,660	456.30
3,000	3,040	83.30	5,730	5,760	204.80	7,875	7,900	330.20	9,660	9,680	457.80
3,040	3,080	84.90	5,760	5,790	206.30	7,900	7,925	331.80	9,680	9,700	459.30
3,080	3,120	86.50	5,790	5,820	207.80	7,925	7,950	333.40	9,700	9,720	460.80
3,120	3,160	88.10	5,820	5,850	209.30	7,950	7,975	335.10	9,720	9,740	462.30
3,160	3,200	89.70	5,850	5,880	210.80	7,975	8,000	336.70	9,740	9,760	463.80
3,200	3,240	91.30	5,880	5,910	212.30	8,000	8,025	338.40	9,760	9,780	465.30
3,240	3,280	92.90	5,910	5,940	213.80	8,025	8,050	340.10	9,780	9,800	466.80
3,280	3,320	94.50	5,940	5,970	215.30	8,050	8,075	341.90	9,800	9,820	468.30
3,320	3,360	96.10	5,970	6,000	216.80	8,075	8,100	343.60	9,820	9,840	469.80
3,360	3,400	97.70	6,000	6,030	218.30	8,100	8,125	345.40	9,840	9,860	471.30
3,400	3,440	99.30	6,030	6,060	220.00	8,125	8,150	347.10	9,860	9,880	472.80
3,440	3,480	100.90	6,060	6,090	221.60	8,150	8,175	348.90	9,880	9,900	474.30
3,480	3,520	102.50	6,090	6,120	223.30	8,175	8,200	350.60	9,900	9,920	475.80
3,520	3,560	104.10	6,120	6,150	224.90	8,200	8,225	352.40	9,920	9,940	477.30

DEPARTMENT OF TAXATION

TAX ON INCOMES OF \$10,000 AND OVER

IF TAXABLE INCOME IS		GROSS NORMAL TAX IS	
At least	But less than	This amt. + this % on excess over	
\$10,000 —	\$11,000.....	\$482.50 plus	8.0% — \$10,000
11,000 —	12,000.....	562.50 plus	8.5% — 11,000
12,000 —	13,000.....	647.50 plus	9.0% — 12,000
13,000 —	14,000.....	737.50 plus	9.5% — 13,000
14,000 —	832.50 plus	10.0% — 14,000

History: Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. and recr. Register, May, 1964, No. 101; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.14 Aggregate personal exemption of husband and wife. The aggregate personal exemption allowable to a husband and wife pursuant to section 71.09 (6) (a), Wis. Stats., when each files a return, may be divided between them according to their choice.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.15 Methods of accounting for corporations. (Section 71.11 (8), Wis. Stats.) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may return its income in accordance with the method of accounting regularly employed in keeping its books. If no method of accounting is regularly employed or if the method employed does not clearly reflect the income, the department of taxation may prescribe the method to be used. A method of accounting will not be regarded as clearly reflecting the income unless all items of gross income and all deductions are treated with reasonable consistency.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.16 Changes in method of accounting for corporations. (Section 71.11 (8), Wis. Stats.) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department of taxation. Applications for such change must set forth clearly the nature of the business, the method of accounting used in keeping the books, and the reasons for changing the method of reporting. In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

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

Tax 2.17 Cash method of accounting for corporations. (Section 71.11 (8), Wis. Stats.) The use of the cash method of accounting and reporting does not properly reflect taxable income in cases where, at the end of the taxable year, the records reflect accounts receivable, accounts payable, or inventories.

Tax 2.18 Accrual method of accounting for corporations. (Section 71.11 (8), Wis. Stats.) In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor, inventories are necessary, and no accounting method in regard to purchases and sales will correctly reflect the income except the accrual

method. Special methods of accounting employed in special trades or businesses may, with the written approval of the department of taxation, be used in reporting income.

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

Tax 2.19 Instalment method of accounting for corporations. (Section 71.11 (8), Wis. Stats.) (1) The instalment method of reporting income may be used only in the case of sales of real estate and infrequent, isolated sales of personal property, and then only subject to the provisions of section 71.03 (1) (g), Wis. Stats. (See also Wis. Adm. Code section Tax 2.71).

(2) Corporations regularly engaged in the business of selling personal property and keeping records on the instalment basis will be required to report for franchise or income tax purposes on the accrual basis.

History: 1-2-56; am. (2), Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies. (Section 71.11 (8), Wis. Stats.) (1) Except as otherwise provided in subsection (3) hereof, acceptance corporations and dealers in commercial paper must report the discount on the purchase of paper as income in the year of such purchase.

(2) Where the records of such acceptance corporations and dealers in commercial paper are kept upon the deferred profit basis, schedules should be attached to the tax returns clearly setting forth the unrealized profit accounts and reconciling the income and surplus per books with the taxable net income.

(3) Acceptance corporations and dealers in commercial paper may elect to report their taxable income on the deferred profit basis, provided that their books and records are kept on that basis and provided further that both the deferment of income and the expenses incurred in producing said income is made in accordance with accepted accounting principles and practice. The election to so report must be made before the close of the year for which the return is made, and after having made such election the deferred profit basis of reporting must be adhered to in all subsequent periods.

Tax 2.21 Accounting for incorporated contractors. (Section 71.11 (8), Wis. Stats.) (1) The general rules for reporting income on the accrual basis apply to incorporated contractors except that, in the case of contracts upon which work is performed in 2 or more consecutive income years, the percentage of completion basis may be used provided such basis clearly reflects the income taxable under chapter 71, Wis. Stats.

(a) Under this method of accounting at the close of the taxable year, a portion of the total contract price is treated as sales for the current period, such portion being based upon the percentage of completion, as determined by an engineer's or an architect's estimate or such other records as will most clearly reflect the income realized to date. By this method the difference between the sales thus determined and the total cost applicable to the sales is treated as taxable income.

(2) The profit on jobs taken on a cost plus basis and uncompleted at the close of a taxable year should be computed in accordance with

the terms of the contract and reported at that time, and cannot be deferred until the year in which the contract is completed.

(3) The income derived from construction contracts performed in Wisconsin is taxable. Records must be kept which will permit of a proper distribution of the tax paid on such income between taxation districts. Data must be submitted with the tax return indicating the basis for the distribution of the tax between taxation districts.

History: 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.22 Accounting for incorporated dealers in securities. (Section 71.11 (8), Wis. Stats.) The income of dealers in securities can be properly reflected for income tax purposes only by use of the accrual method of accounting. As securities constitute the stock in trade, the inventories thereof must be taken consistently on a uniform basis conforming to that used in the trade or business.

Tax 2.23 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.24 Accounting for incorporated retail merchants. (Section 71.11 (8), Wis. Stats.) The "retail method" of treating inventories properly reflects the taxable income and will be acceptable when it is consistently followed and adequate records are kept. The difference between the inventory taken on the old basis and the inventory taken on the basis of the "retail method" will constitute taxable income or deductible expense for the year in which the change is made. Retail merchants should report all other items of income and expense upon the ordinary accrual method.

Tax 2.25 Corporation accounting generally. (Sections 71.11 (8) and 71.11 (9), Wis. Stats.) (1) In a business requiring the use of inventories, the income therefrom generally can be properly reflected by use of the accrual method of accounting, and inventories taken in accordance with the best accounting practice in the trade or business and used by the taxpayer to show his financial position can be accepted.

(a) Except as other methods of inventorying are recognized in these rules, the two most commonly used bases in valuing inventories are 1. cost and 2. cost or market, whichever is lower.

(b) Whether the cost or the lower of cost or market basis of valuing inventories is used, the basis adopted must be applied with reasonable consistency to the entire inventory, and no change from one basis to the other will be permitted without written permission from the department of taxation.

(2) Inventories and inventory records must be preserved as a part of the accounting records of the taxpayer and available for examination and verification.

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

Tax 2.26 "Last in, first out" method of inventorying for corporations. (Section 71.11 (9), Wis. Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of section 71.11 (9), Wis. Stats., may elect with respect to those goods specified in its application and properly subject to inventory to compute its inventory

in accordance with the method provided by section 472 of the United States internal revenue code, provided that:

(1) The first inventory which may be computed on said basis is the closing inventory for the taxable year 1940.

(2) The same basis of inventorying is used in reporting income for taxation to the United States bureau of internal revenue, and that the inventories used in reporting income to the United States bureau of internal revenue and to the Wisconsin department of taxation agree both as to computation and amounts except as provided in subsection (7).

(3) Except as herein otherwise provided, the change to and the use of such method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect thereto by the United States bureau of internal revenue.

(4) An application to use such method must be filed with the Wisconsin department of taxation in substantially the same form as required by the bureau of internal revenue, and the same shall be filed with the return for the taxable year in which the change is to be made effective. The opening inventory for the period in which the election to change is exercised shall be taken on the basis previously accepted and approved.

(5) There shall be applicable for Wisconsin income tax purposes, in addition to those regulations of the United States bureau of internal revenue made generally applicable by subsection (3) hereof, that regulation, authorized by section 1321 of the internal revenue code, concerning involuntary liquidation and replacement of inventories, except, however, that income adjustments for the difference between the replacement cost and the original inventory cost of the base stock inventory liquidated shall be made to the net income of the year in which the replacement is made instead of to the net income for the year of liquidation. ((5) effective June 5, 1946).

(6) Except as provided in subsection (7), any corporation which has been computing its inventory for Wisconsin income tax purposes in accordance with section 472 of the United States internal revenue code and which has been authorized or directed by the United States commissioner of internal revenue to change its method of inventory valuation for federal income tax purposes shall also change its method of inventory valuation for Wisconsin income tax purposes. To correlate its Wisconsin basis with the federal basis, the opening inventory for the income year in which the change is made shall be reported on the basis previously accepted and approved whereas the closing inventory shall be on the new method of valuation. No adjustment is to be made to the closing inventory of the preceding taxable year. Notice of the change in method shall be filed with the return on which it is effective and shall be supported by a copy of the authorization or order to change inventory method for federal income tax purposes.

(7) Any corporation which has been authorized or directed by the United States Commissioner of Internal Revenue to treat the cutting of timber as a sale or exchange of timber for purposes of computing its federal income tax liability and has included in its inventory for federal income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, may exclude from its

inventory, for Wisconsin income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of taxation, include such excess in its inventory for Wisconsin income tax purposes subject to such conditions as said department may prescribe.

History: 1-2-56; am. (2) and (6), and cr. (7), Register, March, 1960, No. 51, eff. 4-1-60; am. intro. par., (6) and (7), Register, March, 1966, No. 123, eff. 4-1-66.

DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS

Tax 2.41 Separate accounting method. (Section 71.07 (2), Wis. Stats.) (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. 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 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.

(a) 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. Such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation. All expenses connected with the interest, dividends and rentals realized from investments such as the above are not subject to allocation but must be applied against the investment income. The taxability of the net investment income depends upon the situs of the investment property or the residence of the recipient.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58.

Tax 2.42 Apportionment method. (Section 71.07 (2), Wis. Stats.) Any person engaged in business within and without the state must report by the statutory apportionment method when the business of such person within the state is an integral part of a unitary business, unless the department of taxation expressly permits reporting on a different basis. The factors used in the apportionment method are as follows:

(1) Tangible property includes land, buildings, machinery and equipment, inventories and other tangible personal property actually owned and used in producing apportionable income. Tangible property

which is used in producing nonapportionable or nontaxable income cannot be included in the property factor. The value at which tangible property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

(2) The cost of manufacturing, collecting, assembling or processing within Wisconsin must be determined in all cases in the same manner and under the same rules as the cost for the entire business within and without Wisconsin is determined. When a product is partially completed outside of the state and then shipped into the state for further processing or completion, only the labor and manufacturing expense incurred from the time that the product is brought into the state becomes a part of the cost within Wisconsin, and the total material used in manufacturing both within and without the state shall be allocated on some equitable basis such as the ratio of direct labor and manufacturing expense within Wisconsin to the total thereof.

(3) Sales are made in Wisconsin if made through or by offices, agencies or branches located within the state, regardless of the location of the purchaser. Sales made by a foreign corporation to customers in Wisconsin through the medium of solicitors or traveling salesmen are not Wisconsin sales unless such salesmen are identified with offices, agencies or branches located within Wisconsin. Sales made by a sales office in Wisconsin to customers located outside of Wisconsin are Wisconsin sales for purposes of apportionment. Goods sold through a sales office in Wisconsin may be shipped direct from a factory located outside the state to a customer located outside the state and still be Wisconsin sales. Goods sold through a sales office located outside of the state without the intervention of any Wisconsin office, branch or agency but shipped from a factory located in Wisconsin to a Wisconsin customer are not Wisconsin sales.

Tax 2.43 Nonapportionable income. (Section 71.07 (2), Wis. Stats.)

(1) The expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. In the case of dividends and interest received which follows the residence of the recipient, only the excess of the amounts received over the sum of interest paid and dividends deducted plus other related expenses can be considered as nonapportionable income. If the interest paid, deductible dividends received and related expenses exceed the total interest and dividends received, no deduction from total net income can be made for nonapportionable interest and dividends. All of the nonapportionable income must be deducted from the total net income of the business to determine the apportionable income to which the apportionment percentage is applied. Any nonapportionable income attributable to Wisconsin must be added to the apportionable income allocated to Wisconsin to determine the total Wisconsin net income.

History: 1-2-56; r. (1) (a), Register, August, 1960, No. 56, eff. 8-1-60.

Tax 2.44 Permission to change basis of allocation. (Section 71.07

(2) Wis. Stats.) Except when income must be reported on the apportionment basis, permission to make a change either from separate

accounting to apportionment, or vice versa, must be obtained in writing from the commissioner of taxation upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application must be filed before the end of the income year for which the change is desired.

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

Tax 2.45 Apportionment in special cases. (Section 71.07 (5), Wis. Stats.) When the business of any person 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 such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in section 71.07 (2), Wis. 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 such other factor or 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. The business income of interstate air carriers shall be apportioned as provided in Wis. Adm. Code section Tax 2.46.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57.

Tax 2.46 Apportionment of business income of interstate air carriers. (Section 71.07 (5), Wis. Stats.) The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios: (1) 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; (2) 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; (3) 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.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57.

GROSS INCOME

Tax 2.51 Rent received by corporations from Wisconsin real estate. (Section 71.03 (1) (b), Wis. Stats.) Rentals must be included in the gross income when they accrue or are actually received by the taxpayer, depending upon the method of accounting used in reporting income. Rentals which have not actually been received in cash will be treated as received if available to or subject to the disposal of the landlord.

Tax 2.53 Stock dividends and stock rights received by corporations.

(1) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305, Wis. Stats., such distribution is not includable in gross income then, except as provided in section 71.307 (2), Wis. Stats., the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305 (1), Wis. Stats., a part of the distribution is not includable in gross income (except as provided in 71.307 (2), (Wis. Stats.)), the basis of the stock with respect to which the distribution is made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution without regard to the fair market value of any part of such distribution which is includable in gross income pursuant to section 71.305 (2), Wis. Stats. The date of distribution in each case shall be the date the stock or the rights are actually distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

(a) *Exception.* The basis of rights to buy stock which are excluded from gross income under section 71.305 (1) Wis. Stats., shall be zero if the fair market value of such rights on the date of distribution is less than 15% of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights. The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. Such statement shall disclose the number of shares of the old stock by the shareholder on the date of distribution, the basis of such shares, and the fair market value of the old shares and of the rights on the date of distribution. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

Tax 2.56. Insurance proceeds received by corporations. (Section 71.03 (1) (d), Wis. Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is taxable income.

(a) Under an interest option clause under which all the principal proceeds are retained and interest paid thereon periodically, the interest is taxable income.

(b) Under an income option under which the principal proceeds and interest thereon are paid in periodical instalments to the policy owner, the interest so paid is taxable income.

(c) When, under the same option, payments are made to the beneficiary (the option having been selected by the beneficiary), the interest so paid is taxable income.

(d) When, under the same option, payments are made to the beneficiary (the option having been designated by the insured), the

instalment payments are made under the insurance contract, and no part of the payment is taxable income.

History: 1-2-56, r. (1), (3) (b), (3) (c) and (3) (d) and renun. (2) to be (1) and (3) (a) to be (1) (d), Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.57 Annuity payments received by corporations. Annuity payments under an endowment or annuity contract are income to the extent of any payment after the income tax cost (aggregate premiums or consideration) has been recovered. However, when the contract provides for the separation of the periodic payments into principal and interest, the interest so received is taxable when received.

Tax 2.60 Dividends on stock sold "short" by corporations. (Section 71.03 (1) (d), Wis. Stats.) When stock is sold "short" for later delivery, the purchaser receives the dividend, since he is the owner of the borrowed stock, and the amount credited to the lender of the stock and charged to the "short" seller is income upon which the lender is subject to tax. The amount charged to the "short" seller becomes part of the cost of the stock sold.

Tax 2.61 Building and loan dividends on instalment shares received by corporations. (1) An amount (dividend) credited to shareholders of a building and loan association has a taxable status as income for the year of the credit to the extent of the amount available to the shareholder.

(2) An amount (dividend) received by such shareholder at maturity of his share in excess of the accumulated amounts so reported as income shall be treated as income in the year of such receipt.

Tax 2.63 Dividends accrued on stock. (Section 71.03 (1) (d), Wis. Stats.) In the case of stock purchased by a corporation between dividend dates, the entire amount of the dividend is income to the vendee and must be included in its income when received. The amount advanced by the vendee to the vendor in contemplation of the next dividend payment is an investment of capital.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.65 Interest received by corporations. (Section 71.03 (1) (c), Wis. Stats.) (1) In general, all interest is includable in the income by which the franchise tax is measured, including interest received on monies invested in obligations of the United States government and its instrumentalities and agencies. If a corporation is not subject to the franchise tax, but subject to net income taxation, interest on federal obligations is not taxable, but interest on postal savings and federal tax refunds is taxable to corporations subject to net income taxation. Profit or loss on the sale or other disposition of federal obligations is a taxable gain or deductible loss for purposes of both the franchise tax measured by net income and the net income tax. (See Section 71.07 (1) Wis. Stats. for situs of interest income).

(2) Interest is deemed to be received when accrued or received in cash, depending upon the method of accounting used by the taxpayer corporation. Interest becomes taxable to a corporation reporting on a cash basis when it is made available to it. Coupons on bonds which are due but have not been cashed are considered as received provided that the cash for payment of the coupons is available. Accrued inter-

est paid on bonds purchased between interest payment dates shall be treated as a deduction from the interest thereon received.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.67 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.69 Income from Wisconsin business. (Sections 71.01 and 71.07, Wis. Stats.) All of the income realized from business carried on in Wisconsin is taxable. The fact that a person or corporation is licensed to do business in Wisconsin is evidence that it is doing business in the state, within the meaning of this chapter. However, a person or corporation may be doing business in this state within the meaning of this chapter even though not licensed. In all cases of doubt the complete facts should be reported to the commissioner of taxation for determination.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.70 Gain or loss on capital assets of corporations; basis of determining. (Section 71.03 (1) (g), Wis. Stats.) (1) Profits or losses resulting from the sale or other disposition of capital assets are ordinarily taxable income or deductible losses for the year in which the sale or other disposition takes place. In certain cases of real estate sales involving deferred payments, the profit may be treated as not wholly realized in the year of sale and may be deferred in accordance with the terms of payment. (See Wis. Adm. Code section Tax 2.71)

(a) The fair market value at January 1, 1911 must be determined in the light of the facts and circumstances known as of that date. In the absence of competent evidence to the contrary, cost less depreciation sustained to January 1, 1911 will be considered the fair market value as of that date. The method of arriving at the January 1, 1911 value must be clearly set forth in the income tax returns.

(b) Stocks, bonds and other securities are considered as capital assets when held by a person other than a dealer in securities. The profit or loss on sale or other disposition of securities is, therefore, determined in the same manner and on the same basis as that used for other capital assets.

(c) In determining the profit or loss on the sale of stock received as a stock dividend subsequent to January 1, 1926, the total income tax cost of the original shares on which the dividend was declared is allocated to the new and old shares with due regard to the fair market value of the new and old shares at the date of the dividend.

Tax 2.71 Sales of capital assets by corporations on deferred payments. (Section 71.03 (1) (g), Wis. Stats.) (1) Subject to the approval of the department of taxation, corporations may elect to defer profits on real estate sales and report them on the instalment basis. The election with respect to any sale will be approved by the department only if the amount received during the first contract year is not substantial (usually 30% or less of the sale price, or, in the case of mortgages assumed by the purchaser, 30% of the net equity) and provided the department is satisfied that the method of accounting will correctly reflect the income. The expenses incident to each sale must be deferred on the same basis that the profit arising from the sale is deferred.

(a) When the contract year does not correspond with the corporation's income year and the amount receivable during the first con-

tract year is substantial, but a relatively small amount is received in the first income year, the sale may be reported for the first income year on the instalment basis. In such case, however, the total profit less the amount of the profit reported in the first income year must be reported as income in the second income year.

(2) Losses sustained on sales of real estate cannot, under any condition, be deferred beyond the income year of sale.

History: 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.72 Exchanges of property by corporations generally. (Section 71.03 (1) (g), Wis. Stats.) (1) Except where otherwise specifically provided by chapter 71, where property is exchanged for other property which has a fair market value, a taxable gain or deductible loss may result, and such fair market value must be treated as the price realized for the property exchanged and the cost price of the property received, for purposes of future sale. When the property received in exchange has no determinable market value, the property received takes the place of the property exchanged, and no profit or loss is recognized. In the event of future sale in such case, the income tax cost of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except where otherwise specifically provided by chapter 71, where property of two different kinds is received in exchange for property, one kind having a determinable fair market value and the other no determinable fair market value, the gain is measured by the excess of the fair market value of the property received over the income tax cost of the property exchanged. The property received which has no determinable fair market value is considered as having no cost in case of future sale, the entire proceeds of such sale being taxable income. If the income tax cost of the property exchanged is in excess of the fair market value of the property received in exchange, such excess shall be taken as the income tax cost of the property received which has no determinable fair market value, no loss being recognized in such cases.

(3) Taxable gain or deductible loss must be computed when used working assets such as automobiles and machinery were traded in on the purchase price of new assets of a like kind in all cases in which the exchange occurred in a taxable year ending prior to December 31, 1957. The only exception to this rule occurs in the case of a taxpayer who has been permitted or required to use a composite rate of depreciation. (For the handling of such exchanges occurring in taxable years ending on and after December 31, 1957, when both the property exchanged and the property received have a situs in Wisconsin, see section 71.03 (6) Wis. Stats.)

(4) In general there are 4 types of exchanges upon which exemption from tax may be claimed:

- (a) Exchanges made pursuant to a plan of reorganization.
- (b) Exchanges in which the property received in trade has no determinable market value.

(c) Exchanges of property held for productive use or investment pursuant to section 71.03 (5) when the exchange occurred in a taxable year ended on or after December 31, 1957.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. (4) (c) and renun. (4) (d) to be (4) (c) and am., Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.721 Exchanges of property held for productive use or investment by corporations. (Section 71.03 (5), Wis. Stats.)

(1) Property held for productive use in trade or business may be exchanged tax free for property of a like kind held for investment as well as for property of a like kind held for productive use in trade or business, and, similarly, property held for investment may be exchanged tax free for property of a like kind held for productive use in trade or business as well as for property of a like kind held for investment.

(2) The phrase "of a like kind" has reference to the nature or character of the property and not its grade or quality. One kind or class of property may not be exchanged tax free for property of a different kind or class.

(3) A leasehold interest in land cannot be exchanged tax free for a fee title unless the lease has 30 years or more to run.

(4) Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

History: Cr. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.73 Involuntary conversion by corporations. (Section 71.03 (1) (g), Wis. Stats.) (1) In all cases of gain on involuntary conversion where such gain is not recognized for franchise or income tax purposes, the property acquired in the replacement is deemed to take the place of the property destroyed for purposes of depreciation, depletion and profit or loss on subsequent sale or other disposition.

(2) In all cases of involuntary conversion which result in losses, such losses are allowable in the year in which the conversion takes place.

(3) This section does not apply when insurance money received on the conversion of Wisconsin assets is used in replacement outside of Wisconsin. In such case, the gain or loss must be reported in the year of conversion.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.74 Gain or loss on disposition of property by corporations; adjustments to basis. (Section 71.03 (1) (g), Wis. Stats.) (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 2 amounts:

(a) The amount allowed as deductions in computing taxable income, to the extent resulting in a reduction of the corporation'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 corporation is not permitted to take advantage in a later year of its prior failure to take any such allowance or its taking an allowance plainly inadequate under

the known facts in prior years. In the case of depreciation, if in prior years the corporation 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 corporation 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 corporation with respect to any property has taken a deduction for depreciation properly under one of the methods provided in section 71.04 (13) (b), Wis. Stats., 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 corporation with respect to that property.

(5) The amount allowed which resulted in a reduction of the corporation'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, Wis. Stats.

(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) A corporation 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 corporation from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

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

(10) 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 corporation 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, Wis. Stats. The amount actually sustained is that amount charged off on the books of the corporation 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 corporation been subject to income tax during those periods, determined by the straight line method.

History: Cr. Register, February, 1965, No. 110, eff. 3-1-65; am. (1) (a), (2), (3), (4), (5), and r. (8), renum. (9) to be (8) and am., renum. (10) to be (9) and (11) to be (10) and am., Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.75 Recoveries by corporations. (Section 71.03 (1) (k), Wis. Stats.) Recoveries of items previously charged off as loss or as expense are taxable income in the year of recovery.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.76 Refunds of taxes to corporations. (Section 71.03 (1) (k), Wis. Stats.) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are taxable income.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.77 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.78 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.79 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.80 Improvements on leased real estate, income to corporate lessor. (Section 71.03 (1) (k), Wis. Stats.) If improvements are made on leased property and the life of such improvements extends beyond the terms of the lease, the lessor derives taxable income at the expiration of the lease, the amount of which is represented by the fair market value of the improvements at the time.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.81 Damages received by corporations. (Section 71.03 (1) (k), Wis. Stats.) Damages may result in taxable income when recovered on account of injury to property, interference with property rights or breach of contract, when the amounts received as damages are in excess of the income tax cost of the property destroyed. Damages recovered for libel of business reputation are taxable income.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.82 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.83 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.84 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.85 History: 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.86 Income to corporations from cancellation of government contracts. (Section 71.03 (1) (k), Wis. Stats.) Amounts claimed under cancelled government contracts not reported in the return for the year in which claim therefor was filed must be included as income in the year in which such claim is allowed.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.87 Contributions for line extension. (Section 71.03 (1) (k), Wis. Stats.) Amounts received by a public utility corporation from its customers in consideration of the extension of its service lines are taxable income. If and when such amounts are subsequently refunded, they are valid deductions in the year of refund.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

Tax 2.90 Withholding; wages. (Section 71.19 Wis. Stats.) (1) The term "wages" means all remuneration for services performed by an employe for his employer unless specifically excepted under section 71.19, Wis. 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 retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employe for his 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. (See however section 71.19 (1) (i), Wis. Stats., relating to the exclusion from wages of 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 employes its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe no longer exists between the person in whose employ the services were performed and the individual who performed them.

(6) In general, pensions and retired pay are wages subject to withholding. So called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

(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 employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding his absence from work, constitutes wages.

(9) Any payments made by an employer to an employe 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 employe is considered to be a part of the employe's remuneration and is considered to be paid to the employe 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 employe, without deduction from the remuneration of or other reimbursement from the employe, on account of any tax imposed upon the employe by any taxing authority.

(12) The value of any meals or lodging furnished to an employe by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employe under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. 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 his employes generally, are not considered as wages subject to withholding, if such 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 his employes.

(14) Tips or gratuities paid directly to an employe by a customer of an employer, and not accounted for by the employe to the employer, are not subject to withholding.

(15) Withholding is not required upon amounts paid to an employe by his employer under a wage continuation plan for a period during which the employe is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. 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.

Tax 2.91 Withholding; fiscal year taxpayers. (1) Except as provided in paragraph (2) hereof, amounts withheld pursuant to section 71.20, Wis. Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(2) Any employe who reports his income for taxation to the state of Wisconsin on an income year other than the calendar year shall be allowed as a credit for any such fiscal year amounts withheld by

his employer in such fiscal year provided his employer, on or before the end of the first month following the close of such fiscal year, shall voluntarily furnish such employe with 2 legible copies and the department of taxation with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in section 71.10 (8) (a), Wis. Stats., and the employe files a copy of such statement along with his fiscal year return.

History: Cr. Register, March, 1963, No. 87, eff. 4-1-63.

