

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND
GROSS INCOME

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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.

Notes: 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

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.

Tax 2.47 Apportionment of net business income of interstate motor carriers of property. (1) (Section 71.07 (5) Wis. Stats.) The apportionable income of an interstate motor carrier of property, doing business in Wisconsin, shall be apportioned to Wisconsin, on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere;

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

(2) Whenever gross receipts' data is not available, the department may authorize or direct substitution of a similar factor (e.g. gross tonnage) and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor (e.g. revenue miles).

(3) For purposes of this regulation a "ton mile" reflects the movement of one ton of freight for the distance of one mile.

(4) This regulation shall not apply to mercantile or manufacturing businesses which engage in some interstate hauling as an incident of such mercantile or manufacturing businesses.

(5) This regulation shall apply with respect to the determination of income tax or franchise tax liability for any income year open to assessment or refund on the effective date hereof.

History: Cr. Register, April, 1966, No. 124, eff. 5-1-66.

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 par-

ticular 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

