

## Chapter Tax 3

## INCOME TAXATION, DEDUCTIONS FROM GROSS INCOME, EXCLUSIONS AND EXEMPTIONS, ETC.

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**Tax 3.01 Rents paid by corporations.** (section 71.04 (2), Wis. Stats.) Rents paid on property used in producing taxable income are deductible from gross income. The cost of leaseholds, acquired for cash or property, represents rent paid in advance and as such is deductible from gross income in equal amounts over the life of the leaseholds. Taxes paid by the lessee for the lessor are to be treated as additional rent paid and are a deductible expense.

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

**Tax 3.03 Dividends received, deductibility of.** (section 71.04 (4), Wis. Stats.) (1) In determining whether 50% or more of the net income or loss for the preceding year of the corporation paying the dividend was used in computing taxable income, if the corporation paying the dividend was subject to the franchise tax measured by net income, interest income from the federal government and its instru-

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mentalities must be included but deductible dividends must be disregarded. If the corporation paying the dividend was subject to the net income tax, non-taxable interest from the federal government or its instrumentalities and deductible dividends must both be disregarded.

(2) When a corporation keeps its records on the basis of a fiscal year ending not later than June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending within the calendar year when such dividends are paid. When a corporation keeps its records on the basis of a fiscal year ending subsequent to June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending in the year prior to the calendar year when such dividends are paid.

(3) All dividends must be reported in full on the income tax return of the person receiving them, regardless of the deductibility of certain dividends received by corporations. Corporate taxpayers should deduct such dividends as they believe to be deductible. Whether or not the dividends are deductible will be determined in accordance with the records on file with the department of revenue and proper adjustment will be made.

(4) All corporations doing business within Wisconsin must report the dividends paid to residents of Wisconsin on forms 9b. (See Wis. Adm. Code section Tax 2.04).

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1976, No. 230, eff. 3-1-75.

**Tax 3.05 Profit-sharing distributions by corporations.** (section 71.04 (1), Wis. Stats.) (1) Payments made to officers and employes for services rendered under the terms of a profit-sharing agreement, in lieu of or in addition to fixed salaries or other compensation, are proper deductions from gross income. Payments made to the stockholders of a corporation who are not actively engaged in the business are not allowable deductions. If profit-sharing distributions are based on stock holdings, they will be treated as dividends and, therefore, are not allowable deductions.

(a) The form or method of fixing compensation is not decisive as to the deductibility thereof. If payments are made pursuant to a profit-sharing agreement entered into between employer and employe before services are rendered, which is not influenced by any consideration on the part of the employer other than that of securing the services of the employe on fair and advantageous terms, they will be allowable as deductions from gross income even though in the actual working out of the contract such payments may prove to be greater than the amounts which would ordinarily be paid.

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

**Tax 3.06 Compensation paid by corporations in capital stock.** (section 71.04 (1), Wis. Stats.) Payments of salaries, wages and other compensation in the capital stock of a corporation for services actually rendered are deductible to the extent of the fair market value of such stock.

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

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(2) When on termination of the lease the lessor has reported the fair market value of the improvements made by the lessee as taxable income as required by Wis. Adm. Code section Tax 2.80, the lessor is entitled to deduct, beginning with the date of acquisition of title to the improvements, a pro rata amount of depreciation based upon the estimated remaining life of the depreciable property.

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

**Tax 3.31 Depreciation of personal property of corporations.** (section 71.04 (2), Wis. Stats.) The depreciation of personal property that is used partly for business and partly for personal purposes, such as automobiles, will be allowed only to the extent that such property is used directly in the production of taxable income.

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

**Tax 3.32 Depreciation rates for corporations.** (section 71.04 (2), Wis. Stats.) (1) Fixed rates of depreciation that may be used for tax purposes are not prescribed by the secretary of revenue. The rates used by taxpayers should be based on their own experience or the experience of the industry or trade in which they are engaged, as modified by circumstances peculiar to the taxpayer.

(2) Rates of depreciation once established must be adhered to unless conditions warrant a change. If changes in rates are deemed necessary, such changes must be fully explained in the returns in which the changes first appear.

History: 1-2-66; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1976, No. 230, eff. 3-1-76.

**Tax 3.35 Depletion, basis for allowance to corporations.** (section 71.04 (2), Wis. Stats.) The capital sum recoverable through depletion allowances is the tax cost of the depletable property. In the absence of competent evidence to the contrary, it will be assumed that the fair market value at January 1, 1911, is represented by the actual cost less depletion sustained to that date. No depletion is deductible on property acquired subsequent to January 1, 1911, the cost of which was deducted as current expense at the time of purchase and allowed for income tax purposes. After depletion of the tax cost to the extent of 100% has been allowed, no further deduction is permissible.

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

**Tax 3.36 Depletion of timber by corporations.** (section 71.04 (2), Wis. Stats.) The computation of the allowance for depletion of timber for a given year shall be based upon the number of units of timber cut during that year and the tax cost of each unit. The unit cost is determined by dividing the sum of the tax cost at the beginning of the taxable period and the additions at cost during the period by the sum of the units on hand at the beginning of the taxable period and the number of units acquired during such period.

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

**Tax 3.37 Depletion of mineral deposits by corporations.** (section 71.04 (2), Wis. Stats.) The computation of the allowance for depletion of mineral deposits for a given year shall be based upon the number of units of ore or other deposits extracted during the year and the income tax cost per unit.

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

**Tax 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron.** (section 71.046) Section 71.046 created by chapter 370, Laws of 1947 and amended by chapter 438, Laws of 1953, provides for a deduction of prescribed percentages of gross income from sales of the ore or ore products of lead, zinc, copper or other mines, (except iron mines) and of mills finishing the products of such mines for the smelter.

(1) This depletion deduction may be taken only if the saving in tax due to such deduction is used by the taxpayer in prospecting for ore and duly verified proof thereof is furnished the department of revenue.

(2) Only expenditures in prospecting for ore made during or within 12 months after the close of the year for which the depletion deduction is taken will serve to fulfill the requirement that the tax savings be so used. Unless proof of expenditure is furnished within 24 months after the close of the income year for which the deduction for depletion was made, the taxpayer will be subject to an additional assessment based on the disallowance of the deduction taken.

**History:** 1-2-56; am. (1); Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 3.42 Amortization of defense facilities—corporations.** (section 71.04 (2a), Wis. Stats.) (1) Any person who, in lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1949, elects to take amortization of any emergency facility as provided in section 71.04 (2a), Wis. Stats., must file written notice of such election with the corporation section of the Department of Revenue, P.O. Box 80, Madison, Wisconsin 53701, within the time provided by law, and with such notice, must file a copy of the certificate of necessity for such emergency facility issued by the appropriate federal certifying authority, together with a copy of the "Appendix A—Summary Sheet" filed by such person in support of his or its application for said certificate of necessity. Additional data need not be submitted except upon specific request of the department.

(2) Once a taxpayer has fulfilled the conditions for an election to deduct amortization of an emergency facility, such election shall be deemed in effect in subsequent income years or parts thereof, consistent with the applicable statutes, unless or until terminated by operation of law or by prior written notice by the taxpayer to the department.

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

**Tax 3.43 Amortization of trademark or trade name expenditures—corporations.** (Section 71.04 (2e), Wis. Stats.) (1) **ELECTION.** If a corporation elects to amortize a trademark or trade name expenditure under s. 71.04 (2e), Wis. Stats.:

(a) The election for a particular trademark or trade name expenditure is irrevocable.

(b) Each trademark or trade name expenditure may be treated differently by the taxpayer (for example, a taxpayer may elect to

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amortize one trademark but not another, and the length of amortization periods for 2 trade names may vary).

(c) The corporation shall attach to its tax return a statement similar to that required by para. 1.177-1(c) of the Internal Revenue Code regulations.

(2) **RECORD KEEPING.** Trademark and trade name expenditures amortized under s. 71.04(2e), Wis. Stats., shall be kept in a separate account on a taxpayer's books and records.

(3) **EFFECT OF ELECTION ON BASIS.** Upon sale or other disposition of a trademark or trade name amortized under s. 71.04(2e), Wis. Stats., in which gain or loss is recognized, an adjustment to basis shall be made in computing gain or loss for any such amortization allowed or allowable.

*History:* Cr. Register, July, 1977, No. 259, eff. 8-1-77.

**Tax 3.44 Organization and financing expenses—corporations.** (section 71.04 (7), Wis. Stats.) (1) Expenses in connection with the organization or reorganization of a business enterprise, such as fees for incorporating, attorneys', accountants' and appraisers' charges, and commissions and other expenses in the issuance or sale of capital stock, are properly capitalized when incurred or paid. Such expenses are not deductible from gross income until the business for which the expenses were incurred is abandoned and the business organization itself, or, in the case of reorganization, the successor to the business organization, has been dissolved, or has completely wound up its affairs, whichever is later.

(2) This rule, insofar as it relates to "organizational expenditures" as defined in section 71.04 (2d) (b) as enacted in chapter 390, laws of 1969, is superseded by section 71.04 (2d) with respect to such expenditures paid or incurred on or after February 19, 1970 and in a taxable year beginning after December 31, 1969.

*History:* 1-2-56 am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, August, 1970, No. 176, eff. 9-1-70.

**Tax 3.45 Bond premium, discount and expense—corporations.** (section 71.04 (2), Wis. Stats.) If bonds are issued at a discount or premium, the net amount of such discount or premium should be amortized over the life of the bonds. If bonds are retired at a price in excess of or less than the issuing price, the profit or loss resulting is taxable income or deductible expense in the year in which such bonds are retired, provided proper adjustment is made for the discount or premium previously reflected in income and in all cases bond expense should be amortized over the life of the bonds. If a bond issue is refunded with another bond issue before the first issue matures, any unamortized discount or expense that is applicable to the first issue must be deducted as current expense in the year that the refinancing takes place and any unamortized premium must be taken up as income in such year.

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

**Tax 3.47 Legal expenses and fines—corporations.** (section 71.04 (2), Wis. Stats.) Legal expenses incurred in connection with the

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operation of a taxpayer's business are proper deductions, unless such business is conducted in violation of law. Fines are not deductible.

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

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

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

**Tax 3.54 Miscellaneous expenses not deductible—corporations.** (section 71.04 (2), Wis. Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following: Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employes, unless reported as compensation paid on form WT-9 or form 9b; dues to fraternal orders, social clubs and luncheon clubs.

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

**Tax 3.55 Donations and contributions—corporations.** (section 71.04 (5), Wis. Stats.) (1) Contributions by corporations may be deducted only if the recipient is operating within Wisconsin.

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

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

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

#### MISCELLANEOUS

**Tax 3.61 Mobile home monthly parking permit fees.** (section 71.02 (2) (f), Wis. Stats.) Mobile home monthly parking permit fees imposed under section 66.058 (3) (c), Wis. Stats., shall be deductible by individuals as an itemized deduction in computing the Wisconsin income tax.

Note: The mobile home monthly parking permit fee is an itemized deduction to individuals for the federal income tax under s. 164 (a) (2) of the Internal Revenue Code.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Tax 3.81 Offset of occupational taxes paid against normal franchise or income taxes.** (sections 70.41 (1), (3) and 70.42 (1), (3), Wis. Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The

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taxpayer may present his receipt showing payment of such tax to the department of revenue as so much cash in payment of normal franchise or income tax assessed against him in the following year on the tax roll for the same district. If the normal franchise or income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.

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

**History:** 1-2-66; am. (1), Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 3.82 Evasion of tax through affiliated interests.** (section 71.11 (7) (a) and (b), Wis. Stats.) In administering this section the department of revenue will apply the statute as interpreted by the following cases:

- (1) Cliffs Chemical Co. v. Tax Commission, 193 W 295
- (2) Buick Motor Co. v. Milwaukee, 43 F (2d) 385
- (3) Curtis Companies v. Tax Commission, 314 W 85
- (4) Palmolive Co. v. Conway, 37 F (2d) 114; 43 F (2d) 226; 56 F (2d) 83
- (5) Burroughs Adding Machine Co. v. Tax Commission, 237 W 423
- (6) Northern States Power Co. v. Tax Commission, 237 W 423

#### **ASSESSMENT, ABATEMENT AND REFUND PROCEDURE**

**Tax 3.91 Application for abatement.** (sections 71.10 (13) and 71.12 (1), Wis. Stats.) (1) The application for abatement specified in section 71.12 (1), Wis. Stats., must be written, preferably on typewriter, on only one side of plain white paper not more than 8 1/2 inches wide by 11 inches long and must be filed in duplicate. It must set forth clearly and concisely the specific grievances to the additional assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every application must be signed by the taxpayer or by his duly authorized representative.

(2) An application for abatement is not "filed" within the proper time to meet the requirements of section 71.12 (1), Wis. Stats., unless it is actually received within the 30-day period, or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the thirtieth day of the

period provided in section 71.12 (1), Wis. Stats., and actually received by the department of revenue within 5 days of such 30-day period.

**History:** 1-2-56; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 3.92 Informal conference.** The taxpayer may request in said application, or at any time before the department of revenue has acted thereon, an informal conference at which the facts and issues involved in the assessment may be discussed. Any such conference will be held at a time and place determined by the department.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 3.93 Closing stipulations.** If the informal conference results in an agreement as to facts and issues and the law applicable thereto the taxpayer and the department of revenue may enter into a closing stipulation.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 3.94 Claims for refund.** (1) Claims for refund may be filed as provided in section 71.10 (10), Wis. Stats., and shall be in the same form as applications for abatement under Wis. Adm. Code section Tax 3.91. A claim for refund is not "filed" within the proper time to meet the requirements of section 71.10 (10), Wis. Stats., unless it is actually in the possession of the department of revenue prior to the expiration of the limitation period provided in section 71.10 (10), Wis. Stats., or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day of said limitation period, and actually received by the department of revenue within 5 days of said limitation period.

(2) Under section 71.10 (11), Wis. Stats., the reduction of income resulting from renegotiation or price redetermination of any defense contract or subcontract is allowable as a deduction from income of the year in which such income was reported for taxation. A claim for refund filed under this subsection must be accompanied by a verified or photographed copy of the renegotiation agreement or price redetermination. No interest is payable on such refund.

(3) When by reason of the allowance of amortization of war facilities over a period shorter than computed in arriving at the original renegotiation adjustment, or for any other reason, a portion of the profits originally determined to be excessive are rebated to the taxpayer by the federal government, such rebate is to be treated as a further renegotiation adjustment, and should be allocated back to the year of the income which was adjusted. Where a refund of Wisconsin income taxes (due to renegotiation) has previously been made, the additional taxes payable by reason of a renegotiation rebate are to be assessed without interest for the reason that such taxes constitute a return to the state of a portion of the previous refund.

**History:** 1-2-56; am. (1) and (2), Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, May, 1966, No. 125, eff. 6-1-66.