

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

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**Tax 2.01 Residence.** (s. 71.01, 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 Revenue by delivery to 4638 University Avenue, Madison, Wisconsin, or by mailing to P. O. Box 8906, Madison, Wisconsin 53708, 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. am. Register, February, 1976, No. 230, eff. 3-1-76.

**Tax 2.02 Reciprocity.** (s. 71.03 (2) (c), Stats.) (1) **GENERAL.** (a) In this rule, "residence" and "resident" are synonymous with "domicile" and "domiciliary", respectively, except when referring to the reciprocity agreement with Illinois. A person may be a resident of Illinois while domiciled in Wisconsin or a person may be domiciled in Illinois but not be a resident of Illinois. The Illinois Income Tax Act defines a resident as "an individual (i) who is in this state for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year".

(b) Income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on such personal service income if that state allows:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; or

2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on such income.

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(c) A Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement need not withhold Wisconsin income tax from personal service income earned in Wisconsin by such nonresidents.

(2) **PERSONAL SERVICE INCOME DEFINED.** Income from personal services includes all salaries, wages, commissions and fees earned by an employe

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(1) A Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocal agreement shall not be liable for the Wisconsin personal income tax on the amount of the compensation paid to the individual.

(2) Personal services performed by a nonresident individual in Wisconsin shall be taxable, except as provided by any other law.

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 ch. 71, Stats. The amount actually sustained is that amount charged off on the books of the corporation where such amount is considered by the secretary of revenue 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; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (4), Register, July, 1978, No. 271, eff. 8-1-78.

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

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

**Tax 2.76 Refunds of taxes to corporations.** (s. 71.03 (1) (k), 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:** 1-2-66; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.80 Improvements on leased real estate, income to corporate lessor.** (s. 71.03 (1) (k), 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:** 1-2-66; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.81 Damages received by corporations.** (s. 71.03 (1) (k), 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

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income tax cost of the property destroyed. Damages recovered for libel of business reputation are taxable income.

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

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

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

**Tax 2.89 Penalty for underpayment of estimated tax.** (ss. 71.21 (11) and 71.22 (8), Stats.) (1) PERIODS BEGINNING ON OR AFTER NOVEMBER 1, 1975. Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax attributable to periods beginning on or after November 1, 1975 shall be at the rate of 9% per year on the amount of underpayment for the period of underpayment.

(2) PERIODS BEGINNING PRIOR TO NOVEMBER 1, 1975. Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax attributable to periods prior to November 1, 1975 shall be at the rate of 6% per year for the period of underpayment prior to November 1, 1975, and at the rate of 9% per year beginning November 1, 1975, on the amount of underpayment for any remaining period of underpayment.

*Note:* This rule reflects the interpretation of the applicable statutes consistent with the November 30, 1977 decision of the Wisconsin Tax Appeals Commission in *Alan Marcovitz et al. vs. Department of Revenue*.

*Example:* Taxpayer is subject to the addition to the tax for the taxable year 1976. For the period of underpayment beginning April 15, 1975, a rate of 6% per year is used from April 15, 1975 to November 1, 1975, and 9% thereafter. For the period of underpayment beginning June 15, 1975, a rate of 6% per year is used from June 15, 1975 to November 1, 1975 and at 9% thereafter. For the period of underpayment beginning September 15, 1975, a rate of 6% per year is used from September 15, 1975 to November 1, 1975 and at 9% thereafter. A rate of 9% per year is used for the fourth period of underpayment beginning January 15, 1976.

*History:* Cr. Register, December, 1978, No. 276, eff. 1-1-79.

**Tax 2.90 Withholding; wages.** (s. 71.19 Stats.) (1) The term "wages" means all remuneration for services performed by an employe for his employer unless specifically excepted under s. 71.19, 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 retirement pay, and supplemental unemployment benefits are wages within the meaning of the statute if paid as compensation for services performed by the employe for the employe's 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, s. 71.19 (1) (i), 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

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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 s. 71.02 (2) (b), 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, are excepted from withholding only if the tips are non-cash tips or if the cash tips received during the course of a month are less than \$20.

(15) Withholding is not required: (a) Upon amounts paid to an employe by the employe's 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 internal revenue code, as defined in s. 71.02 (2) (b), Stats.

(b) When an employe certifies to an employer that the employe incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

*History:* Cr. Register, January 1963, No. 85, eff. 2-1-63; r. and rec. (12), cr. (15), Register, March, 1966, No. 123 eff. 4-1-66; am. (2), (14) and (15), Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in subsection (2) hereof, amounts withheld pursuant to s. 71.20, 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 revenue with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in s. 71.10 (8) (a), Stats., and the employe files a copy of such statement along with his fiscal year return.

*History:* Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 290, eff. 3-1-75.

**Tax 2.92 Withholding tax exemptions.** (ss. 71.20 (9) (e) and (14), Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as claimed for federal withholding purposes. An employe who elects to have federal withholding exemptions apply for Wisconsin withholding purposes shall notify his or her employer of this election. An employe making this election is not required to complete a Wisconsin withholding exemption certificate, Form WT-4. An employe who claims fewer withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed Wisconsin withholding exemption certificate, Form WT-4.

(2) An employe who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employe provides his or her employer with a completed Form WT-4E ("Exemption from Withholding of Wisconsin Income Tax"). For this purpose, a tax liability is "incurred" if the employe had for the preceding year or anticipates for the current year a net Wisconsin income tax due (gross tax less personal exemptions on a Wisconsin return). If an employe is married, the

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net tax of the employee's spouse shall not be considered in determining if the employe may claim this exemption.

Note: Forms WT-4 and WT-4E may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 58, Madison, Wisconsin 53701.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 2.93 Withholding from wages of a deceased employe and from death benefit payments.** (ss. 71.19(1) (j) and 71.20(1), Stats.) (1) GENERAL. Section 71.20(1), Stats., requires employers to withhold Wisconsin income tax from payments of wages "to an employe". Various types of payments are made to the estate or to beneficiaries of a deceased employe which resulted from the deceased person's employment. The department shall follow the federal internal revenue service's policy in determining whether withholding of income tax is required from such payments.

(2) PAYMENTS SUBJECT TO WITHHOLDING. An uncashed check originally received by a decedent prior to the date of death and reissued subsequently to the decedent's personal representative shall be subject to withholding of Wisconsin income tax.

(3) PAYMENTS NOT SUBJECT TO WITHHOLDING. The following types of payments to a decedent's personal representative or heir shall not be subject to withholding of Wisconsin income tax: (a) Payments representing wages accrued to the date of death but not paid until after death.

(b) Accrued vacation and sick pay.

(c) Termination and severance pay.

(d) Death benefits such as pensions, annuities and distributions from a decedent's interest in an employer's qualified stock bonus plan or profit sharing plan (s. 71.19(1) (j), Stats.).

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78.

**Tax 2.94 Tax sheltered annuities.** (s. 71.03(2) (d), Stats.) (1) GENERAL. (a) For many years members of the state teachers' retirement system have had the privilege of paying in voluntary additional deposits, to provide additional retirement income to supplement normal retirement benefits. In January of 1964 it became possible for such members to pay in additional deposits under a new program known as the Tax Sheltered Annuity Plan.

(b) When a tax sheltered annuity is purchased for an employe by a public school system or by an exempt educational, charitable or religious organization, the deposit used to acquire this annuity may be excluded from the employe's gross income in the year of payment under section 403(b) of the internal revenue code. Accordingly, since January 1, 1965, when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income, these payments also have been excluded from employes' taxable income for Wisconsin income tax purposes. Prior to that date, such payments were taxable for Wisconsin income tax purposes.

(c) All benefits paid under tax sheltered annuity contracts, including withdrawals, death benefits or annuities, are included in federal taxable income when received. The Wisconsin treatment is described in subs. (2) and (3).

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(2) SECTION 71.03 (2) (d) EXEMPTION. Normal retirement benefits received from systems enumerated in s. 71.03 (2) (d), Stats., are exempt as provided by that section. However, benefits received from tax sheltered annuity deposits administered by such systems do not qualify for the exclusion from Wisconsin taxable income provided by that statute. Tax sheltered annuity benefits shall be treated the same for Wisconsin income tax purposes as for federal income tax purposes; that is, they shall be included in gross income.

(3) STATE TEACHERS RETIREMENT SYSTEM ANNUITY BENEFITS. (a) Tax sheltered annuity benefits received by retired teachers on and after January 1, 1974 shall be included in income. No subtraction modification from federal adjusted gross income shall be allowed, except as provided in par. (c).

(b) Tax sheltered annuity benefits received on or before December 31, 1973 shall be considered nontaxable. A subtraction modification under s. 71.05 (1) (b) 4, Stats., shall be permitted for such benefits as were included in federal gross income.

(c) If a school system purchased a tax sheltered annuity for an employee prior to January 1, 1965, and the employee paid a Wisconsin income tax on the tax sheltered annuity deposit which was used to pay the 1964 annuity premium, a subtraction modification under s. 71.05 (1) (b) 4, Stats., shall be allowed for the tax sheltered annuity benefits received on or after January 1, 1974 which are included in federal income and upon which the employee previously paid a Wisconsin income tax.

The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax sheltered annuity benefits excludable from Wisconsin income because of receipt prior to January 1, 1974, as illustrated in the following examples which assume that the taxpayer files its tax return on a calendar year basis:

*Example 1:* An employe made a deposit of \$200 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employe retires after January 1, 1974, a subtraction modification under section 71.05 (1) (b) 4 is permitted for the first \$200 of tax sheltered annuity benefits received. All subsequent benefits are taxable with no subtraction modification allowed.

*Example 2:* An employe made a deposit of \$300 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and \$120 of such benefits received were not included in Wisconsin taxable income. A subtraction modification under section 71.05 (1) (b) 4 is permitted for the next \$180 (\$300 - \$120) received after January 1, 1974. All subsequent benefits are taxable with no subtraction modification allowed.

*Example 3:* An employe made a deposit of \$160 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and treated \$200 of such benefits as nontaxable for Wisconsin income tax purposes. All such benefits received after January 1, 1974 are taxable with no subtraction modification allowed.

*History:* Cr. Register, April, 1978, No. 268, eff. 5-1-78.

**Tax 2.955 Credit for income taxes paid to other states.** (s. 71.09(8), Stats.) (1) DEFINITION. In this rule, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) CREDITS ALLOWABLE. (a) For taxable years 1961 through 1974, except as provided in sub. (3), an income tax credit may be claimed by a  
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Wisconsin resident individual for income tax paid to another state on income of the individual from personal services performed outside Wisconsin.

(b) For taxable years 1975 through 1977, except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate or trust for tax paid to another state on income of the individual, estate or trust from:

1. Personal services performed outside Wisconsin.
2. Business conducted in another state.
3. Rentals and royalties from real property or tangible personal property located in another state.
4. The operation of any farm, mine or quarry located in another state.
5. The sale of real property or tangible personal property located in another state.

(c) For taxable years 1978 and thereafter, except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate or trust for any net income tax paid to another state in the preceding taxable year upon income of the individual, estate or trust taxable by such state.

(3) CREDITS NOT ALLOWED. An income tax credit shall not be allowed for: (a) Income tax paid to Illinois, Indiana, Kentucky, Maryland, Michigan or Minnesota on personal service income earned in these states included under a reciprocity agreement (see Wis. Adm. Code section Tax 2.02).

(b) For taxable years prior to 1978, income tax paid to another state on income from intangibles as determined under Wisconsin law, such as income from interest, dividends, gambling or a limited partnership interest (*Sweitzer vs. Wisconsin Department of Revenue*, (1974) 65 Wis. (2d) 235, states that income from a limited partnership interest is considered income from an intangible for Wisconsin tax purposes.).

(c) Income tax paid to another state on income not considered taxable income for Wisconsin tax purposes.

(d) Income tax paid to a city, village, town or foreign country.

(4) HOW TO CLAIM A CREDIT. The amount of income tax credit claimed shall be entered on the line entitled "Net income tax paid to other states" on side one of Wisconsin income tax returns Forms 1 and 1A. The credit shall not exceed the Wisconsin net tax. To verify the credit claimed, the following information shall be attached to Form 1 or 1A in the following situations: (a) If the credit is based entirely on tax withheld and a refund is due from the other state, attach a copy of the wage statement and that state's income tax return.

(b) If there is a tax due on the other state's return or if estimated tax payments were made to that state, attach proof of payment of such amounts along with a copy of the wage statement and that state's income tax return. Proof of payment is not required if either the tax due or estimated tax payments do not exceed \$10.

(5) **YEAR IN WHICH TO CLAIM INCOME TAX CREDIT.** The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out-of-state income is considered taxable Wisconsin income. For example, a Wisconsin resident receives income of \$4,000 in 1975 from rental property located in Iowa. Such person files a 1975 declaration of estimated tax of \$200 with Iowa, with \$150 of declaration payments being made in 1975 and the fourth quarter payment of \$60 being made in January 1976. The Iowa income of \$4,000 is reported as income on the 1975 Iowa and Wisconsin returns. The 1975 Iowa income tax return shows the following:

|  | <u>1975</u><br><u>Iowa Return</u> |
|--|-----------------------------------|
| Iowa Rental Income   | \$ <u>4,000</u>                   |
| Iowa Net Tax (amount to be claimed as a credit on 1975 Wisconsin return) | \$ 185                            |
| Declaration Payments   | \$ <u>200</u>                     |
| Refund   | \$ <u>15</u>                      |

The taxpayer may claim a "Credit for net income tax paid to other states" of \$185 on the 1975 Wisconsin return, even though a part of such tax was paid in 1976.

**History:** Cr. Register, December, 1978, No. 278, eff. 1-1-79.

**Tax 2.96 Extension of time to file corporation franchise or income tax returns.** (section 71.10(5)(a), Wis. Stats.) (1) **GENERAL.** Corporation franchise or income tax returns (Forms 4 and 5) are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year unless an extension of time for filing has been granted. Such returns and inventory reports (Form 10) due on and after April 24, 1978 may be filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, for such returns, a corporation may obtain an extension from the department for a period not to exceed 30 days, if the extension is requested prior to the original due date of the return.

(2) **PROCEDURE.** (a) *The 30 day extension from department.* A request for a 30 day extension (Form IC-830) from the department shall be filed in duplicate by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged on the copy of the extension request which is returned to the taxpayer.

(b) *The 3-month federal extension.* 1. A copy of federal extension Form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 3-month extension provision for the Wisconsin return to be considered timely filed.

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay any estimated tax liability on or before the 15th day of the 3rd month following the taxable year. This may be done by attaching a remittance either to an amended

**Tax 2.992 Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976.** (s. 71.02 (2) (b), Stats.) (1) **LAW CHANGE FOR TAXABLE YEAR 1977.** Chapter 29, Laws of 1977, amended s. 71.02 (2) (b), Stats., so that for purposes of determining Wisconsin income and deduction amounts for the taxable year 1977, an individual, partnership, estate or trust shall use the internal revenue code enacted as of December 31, 1976.

(2) **EFFECTS OF NEW LAW FOR TAXABLE YEAR 1977.** (a) *Amendments to the internal revenue code enacted on or before December 31, 1976.* Amendments enacted on or before December 31, 1976 shall be considered a part of the internal revenue code in effect on December 31, 1976, and therefore recognized for Wisconsin income tax purposes for the taxable year 1977, even though such amendments may not become operative until after December 31, 1976.

(b) *Amendments to the internal revenue code enacted after December 31, 1976.* Amendments enacted after December 31, 1976 shall not be considered a part of the internal revenue code in effect on December 31, 1976, regardless of whether such amendments become operative before or after December 31, 1976. Such amendments will not be recognized for Wisconsin income tax purposes for the taxable year 1977.

(3) **REPORTING DIFFERENCES RESULTING FROM AMENDMENTS TO THE INTERNAL REVENUE CODE ENACTED AFTER DECEMBER 31, 1976.** (a) *Individuals.* 1. In computing taxable income for *federal purposes* for 1977, an individual must consider amendments to the internal revenue code enacted after December 31, 1976 (e.g., the provisions of the federal "Tax Reduction and Simplification Act of 1977"). The federal income tax return attached to the Wisconsin income tax return, Form 1, may reflect such amendments. However, since Wisconsin does *not* recognize amendments to the internal revenue code enacted after December 31, 1976, there may be differences between the amounts of "federal adjusted gross income" and "itemized deductions" shown on the federal income tax return and such amounts reportable for Wisconsin purposes.

2. Wisconsin Schedule I shall be used to report differences resulting from amendments to the internal revenue code enacted after December 31, 1976.

3. The amount of an individual's standard deduction or low-income allowance will also be different for federal than for Wisconsin purposes. However, such differences shall *not* be reported on Schedule I. The amount of standard deduction or low-income allowance permitted for Wisconsin shall be entered on line 6 of the Wisconsin income tax return, Form 1 or Form 1A.

(b) *Partnerships, Estates and Trusts.* The federal returns required to be attached to the Wisconsin Form 2 (estates and trusts) and Form 3 (partnerships) may reflect amendments enacted to the internal revenue code after December 31, 1976. Therefore, differences may exist between the amounts of certain income and deduction items as shown for federal purposes and those reportable for Wisconsin purposes. The differences resulting from amendments enacted after December 31, 1976 shall be identified on the Wisconsin Form 2 or Form 3. If the differences affect the amount of distributable income reportable by a partner or beneficiary for Wisconsin purposes, the partner or beneficiary shall report such differences on Wisconsin Schedule I.

(4) **INCOME AND DEDUCTION ITEMS WHICH DIFFER FOR WISCONSIN-FEDERAL PURPOSES FOR 1977.** Descriptions of some amendments to the internal revenue code enacted after December 31, 1976 and their treatment for Wisconsin purposes follows:

(a) *Amendments affecting federal adjusted gross income.* 1. *Partial use of personal residence as day care facility.* a. Federal: The exclusive use requirement for deducting business expenses attributable to the business use of a personal residence does not apply if the residence is used to provide day care services to children, handicapped individuals and the elderly.

b. Wisconsin: Such expenses are only deductible if the portion of the residence used as a day care facility is used exclusively and on a regular basis for that purpose.

2. *Child care facility.* a. Federal: Capital expenditures for a child care facility placed in use in 1977 may be amortized over a 5-year period.

b. Wisconsin: Such expenditures must be depreciated over the useful life of the facility.

3. *Pollution control facilities.* a. Federal: The cost of certain pollution control facilities may be amortized over a 5-year period.

b. Wisconsin: Such expenditures must be depreciated over the useful life of the facility. (However, it should be noted that special write-off provisions may be available for such facilities under s. 71.05 (1) (h) or (i) of the Wisconsin Statutes.)

(b) *Amendments affecting itemized deductions.* 1. *Child and dependent care expenses.* a. Federal: Child care expenses are no longer allowable as an itemized deduction. Rather, a portion of such expenses is allowed as a credit which is applied directly to the taxpayer's federal income tax liability. In addition, certain eligibility requirements have been changed and the adjusted gross income limitation has been removed.

b. Wisconsin: An itemized deduction will continue to be allowed for employment related child and dependent care expenses. However, 1975 eligibility requirements will apply and the amount of any deduction will be reduced when adjusted gross income exceeds \$35,000. (Wisconsin Schedule 2441W should be completed to determine the amount of child and dependent care expenses allowable as an itemized deduction.)

2. *Contribution of partial interests in real property.* a. Federal: A deduction is allowed for a contribution made any time during 1977, exclusively for conservation purposes, of a partial interest in real estate.

b. Wisconsin: Such contributions made after June 13, 1977 will not be deductible.

(c) *Wisconsin's standard deduction or low-income allowance.* The amount of an individual's Wisconsin standard deduction or low-income allowance will also be different from the standard deduction ("zero bracket amount") allowable for federal purposes. However, such differences should not be reported on Schedule I. The amount of standard deduction or low-income allowance permitted for Wisconsin should be

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entered on line 6 of the Wisconsin income tax return, Form 1 or Form 1A.

**Note:** Schedule I and its instructions may be obtained from any department of revenue office or by writing to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

**History:** Cr. Register, December, 1978, No. 276, eff. 1-1-79.