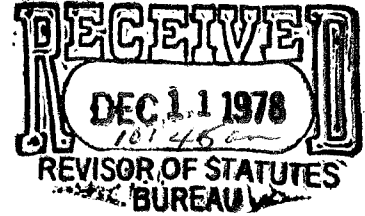


Tax 1, 2, 11

CERTIFICATE OF RULE ADOPTION



STATE OF WISCONSIN)
DEPARTMENT OF REVENUE)

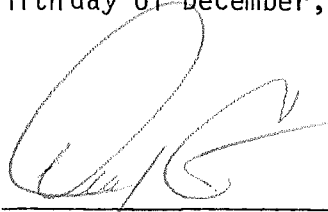
TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Dennis J. Conta, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on December 11, 1978. These rules relate to the following:

- 1) Requirements for examination of returns.
- 2) Notice by taxpayer of federal audit adjustments and amended returns.
- 3) Nexus.
- 4) Requirements for written elections as to recognition of gain in certain corporation liquidations.
- 5) Reporting of installment sales.
- 6) Constructing buildings for exempt entities.
- 7) Public utilities.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 201 East Washington Avenue in the city of Madison, this 11th day of December, 1978.



Dennis J. Conta

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

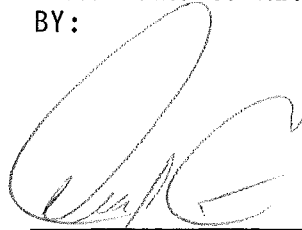
Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a) and 227.014(2), Wis. Stats., the Department hereby adopts the following 7 rules as shown on the attached copy:

- 1) Section Tax 1.11, "Requirements for examination of returns".
- 2) Section Tax 2.105, "Notice by taxpayer of federal audit adjustments and amended returns".
- 3) Section Tax 2.82, "Nexus".
- 4) Section Tax 2.83, "Requirements for written elections as to recognition of gain in certain corporation liquidations".
- 5) Section Tax 2.95, "Reporting of installment sales".
- 6) Section Tax 11.04, "Constructing buildings for exempt entities".
- 7) Section Tax 11.57, "Public utilities".

The rules contained herein shall take effect on February 1, 1979.

Dated this 11th day of December, 1978.

DEPARTMENT OF REVENUE
BY:



Dennis J. Conta
Secretary of Revenue

REQUIREMENTS FOR EXAMINATION OF TAX RETURNS

SECTION 1. Section Tax 1.11(1)(intro.) and (a) of the Wis. Admin. Code are amended to read:

Tax 1.11 Requirements for examination of returns. (sections 71.11(44), 77.61(5), 78.80(3) and 139.38(6), Wis. Stats.) (1) No information may be divulged to public officers of the federal government or other state governments or the authorized agents of such officers under section 71.11(44)(c)2-~~or~~ 4, or 77.61(5)(b)2-~~or~~ 4 unless the information requested is necessary in the administration of the law of such governments; such governments accord similar rights of examination or information to the Wisconsin department of revenue; and the following requirements are first complied with:

(a) The public officer must specify in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office, and the relation of such purpose to the duties of the office, and the name, address and title of the agent authorized to examine tax returns. Further, each person making a request must provide evidence that he or she is a "public officer". ~~under the constitution and the statutes.~~

SECTION 2. Section Tax 1.11(1)(b) of the Wis. Admin. Code is repealed.

SECTION 3. Section Tax 1.11(1)(c) of the Wis. Admin. Code is renumbered 1.11(1)(b) and as renumbered is amended to read:

Tax 1.11(1)(b) With each requested examination under paragraphs paragraph (a) and (b) there must also be submitted in writing the following: name and address of each taxpayer whose return is requested; type of tax return, such as income, franchise, gift or sales and use tax; the taxable period(s); the taxpayer's social security number, if available, in the case of returns relating to individuals; and a statement indicating that the ~~person~~ public officer requesting such examination and his or her authorized agent understands the provisions of sections 71.11(44) and, 77.61(5), 78.80(3) and 139.38(6) that any persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office shall be deemed in violation of said subsections.

SECTION 4. Section Tax 1.11(2) of the Wis. Admin. Code is amended to read:

(2) ~~No information may be divulged to the legislature, to either house of the legislature, to any legislative committee, members of the Joint Committee on Legislative Organization, Senate Committee on Organization or Assembly Committee on Organization, or to any agent of the foregoing, or to any legislator~~ under section 71.11(44)(c)3, or to members of the Senate Committee on Organization or Assembly Committee on Organization or to any agent of the foregoing under section 77.61(5)(b)3 unless the following requirements are first complied with:

(a) Specification in writing of the purpose for each requested examination, and the relation of such purpose to the official duties or functions of the ~~body or person~~ committee requesting such examination of tax returns, and the name, address and title of the committee member or agent authorized to examine tax returns.

(b) Certification by the ~~president-pro-tempore-of-the-senate, the speaker of the assembly, or the chairman~~ chairperson of the pertinent legislative committee that said committee ~~or either house of the legislature~~ by a majority vote of a quorum of its members has ~~approved~~ voted to authorize the requested examination of tax returns by the committee member or agent specified under paragraph (a).

(c) With each requested examination under paragraphs (a) and (b) there must also be submitted in writing the following: name and address of each taxpayer whose return is requested; type of tax return, such as income, franchise, gift or sales and use tax; the taxable period(s); the taxpayer's social security number, if available, in the case of returns relating to individuals; and a statement indicating that the ~~person~~ chairperson requesting such examination and the committee member or authorized agent who will examine tax returns understands the provisions of sections 71.11(44) and 77.61(5) that any persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office shall be deemed in violation of said subsections.

SECTION 5. Section Tax 1.11(3) of the Wis. Admin. Code is renumbered 1.11(6).

SECTION 6. Sections Tax 1.11(4) and (5) are renumbered 1.11(7) and (8), respectively, and as renumbered are amended to read:

Tax 1.11(7) The information required to be submitted to the department under subsections (1), and (2), (3), (4) and (5) shall be submitted on forms provided by the department and shall be open to inspection by the public for a period of 2 years from the date such information is filed with the department. If a public ~~official~~ officer, the attorney general, or a district attorney responsible for enforcement of the criminal laws, in the statement required under subsection (1)(a), 3(a), 4(b) or 5(a) declares that a return is being examined for the purpose of a criminal investigation, the department shall accept that declaration as prima facie evidence of the fact that making such knowledge public would result in harm to the public interest which outweighs any benefit that would result from making it public, and the department shall not make such knowledge public for a period of 30 days from date of filing the statement.

(8) A public officer, for purposes of this rule, is any person appointed or elected according to law, who has continuous duties, has taken an oath of office and who is responsible for the exercise of some portion of the sovereign power of this state, ~~or its subordinate government units,~~ or of the sovereign power of another state or of the United States, in which the public has a concern. One, but not the sole, indicium of responsibility for exercising the sovereign power is the authority to make final policy with regard to those duties of a public officer requiring access to tax files under this rule.

SECTION 7. Sections Tax 1.11(3), (4) and (5) of the Wis. Admin. Code are adopted to read:

Tax 1.11(3) No information may be divulged to the attorney general or department of justice employees under sections 71.11(44)(c)? or 77.61(5)(b)? unless the following requirements are first complied with:

(a) The attorney general must specify in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office, and the relation of such purpose to the duties of the office.

(b) Each requested examination by a department of justice employe must include the above data and an authorization identifying the employe by name, address and title, which authorization shall be signed and approved by the attorney general on whose behalf the department of justice employe is acting:

(c) With each requested examination under paragraphs (a) and (b) there must also be submitted in writing the following: name and address of each taxpayer whose return is requested; type of tax return, such as income, franchise, gift or sales and use tax; the taxable period(s); the taxpayer's social security number, if available, in the case of returns relating to individuals; and a statement indicating that the attorney general requesting such examination and the department of justice employe authorized by the attorney general to examine returns understand the provisions of sections 71.11(44) and 77.61(5) that any persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office shall be deemed in violation of said subsections.

(4) No information may be divulged to district attorneys under sections 71.11(44)(g)2b or 77.61(5)(f)2b unless the following requirements are first complied with:

(a) The tax information to be examined by the district attorney is for use in preparation for a judicial proceeding or an investigation which may result in a judicial proceeding involving income tax, gift tax, sales and use tax, motor fuel tax, special fuel tax, or cigarette tax and:

1. The taxpayer is or may be a party to such proceeding;
2. The treatment of an item reflected in such tax information is or may be related to the resolution of an issue in the proceeding or investigation; or
3. The tax information relates or may relate to a transactional relationship between the taxpayer and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in such proceeding or investigation.

(b) The district attorney must specify in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office, and the relation of such purpose to the duties of the office.

(c) With each requested examination under paragraphs (a) and (b) there must also be submitted in writing the following: name and address of each taxpayer whose return is requested; type of tax return, such as income, franchise, gift or sales and use tax; the taxable period(s); the taxpayer's social security number, if available, in the case of returns relating to individuals; and a statement indicating that the district attorney requesting such examination understands the provisions of sections 71.11(44) and 77.61(5) that any persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office shall be deemed in violation of said subsections.

(5) No information may be divulged to employes of this state under sections 71.11(44)(c)7, or 77.61(5)(b)8 unless the following requirements are first complied with:

(a) The public officer of the department, division, bureau, board or commission of this state must specify in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office,

the relation of such purpose to the duties of the office, and the name, address and title of the employe of this state authorized to examine returns. Further, such person must provide evidence that he or she is a "public officer" under the constitution and the statutes.

(b) With each requested examination under paragraph (a) there must also be submitted in writing the following: name and address of each taxpayer whose return is requested; type of tax return, such as income, franchise, gift or sales and use tax; the taxable period(s); the taxpayer's social security number, if available, in the case of returns relating to individuals; and a statement indicating that the public officer and employe of this state authorized to examine returns understand the provisions of sections 71.11(44) and 77.61(5) that any persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office shall be deemed in violation of said subsections.

(c) In addition to the requirements of paragraphs (a) and (b), the department of revenue must deem the examination necessary for the employe to perform his or her duties under contracts or agreements between the department of revenue and the department, division, bureau, board or commission of this state relating to the administration of tax laws or child support enforcement under s. 46.25.

NOTICE BY TAXPAYER OF FEDERAL AUDIT ADJUSTMENTS
AND AMENDED RETURNS

Section Tax 2.105 of the Wis. Adm. Code is adopted to read:

Tax 2.105 Notice by taxpayer of federal audit adjustments and amended returns. (Sections 71.10(10)(bn) and 71.11(21)(bm) and (g) and (21m), Wis. Stats.) (1) DEFINITION. In this rule, "taxpayer" includes individuals, estates, trusts and corporations.

(2) THE STATUTES. (a) Section 71.11(21m), Wis. Stats., (effective May 5, 1976), provides that a taxpayer shall in certain instances as described in sub. (3) report to the department changes made to a tax return by the internal revenue service or file with the department amended Wisconsin returns reporting any information contained in amended returns filed with the internal revenue service or with another state.

(b) Section 71.11(21)(g)2, Wis. Stats., (effective May 5, 1976), provides that regardless of any other limitations in Chapter 71, Wis. Stats., the department may issue an assessment or refund if it gives notice thereof to the taxpayer "within 90 days of the date on which the department receives a report from the taxpayer under sub. (21m) or within such other period specified in a written agreement entered into prior to the expiration of such 90 days by the taxpayer and the department. If the taxpayer does not report to the department as required under sub. (21m), the department may make an assessment against the taxpayer after discovery by the department of the requirement of such reports within 10 years after the date on which the tax return is filed. This 10-year time limitation shall not apply to assessments made under par. (c)."

(3) TAXPAYER REQUIRED TO REPORT. (a) Federal adjustments. If a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin income or franchise tax payable, the taxpayer shall report such adjustments to the department within 90 days after they become final. 1. Finality of federal adjustments. For the purpose of determining when federal adjustments to taxable income reported become final, the following shall be deemed a final determination:

- a. Payment of any additional tax, not the subject of any other final determination described in b, c, d or e of this subdivision.
- b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment (ordinarily federal Form 870 or 870-AD, both entitled "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", is used for this purpose).
- c. Expiration of the 90-day time period (150-day period in the case of a notice addressed to a person outside the United States) within which a petition for redetermination may be filed with the United States Tax Court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within such time.

- d. A closing agreement entered into with the internal revenue service under section 7121 of the internal revenue code.
- e. A decision by the United States Tax Court or a judgment, decree or other order by a court of competent jurisdiction (e.g., a United States District Court, Court of Appeals, Court of Claims or the United States Supreme Court) which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. See the note following this rule for the time when such actions ordinarily become final.

2. Information to report to department. A copy of the final federal audit report issued by the internal revenue service shall be submitted to the department together with any other documents or schedules necessary to inform the department of the adjustments to taxable income as finally determined.

3. Agreement with adjustments. A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin income or franchise tax purposes unless a statement is included with the report to the department stating why the taxpayer believes that the adjustments are incorrect.

(b) Amended returns. If a taxpayer files an amended federal tax return and the changes therein affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, an amended Wisconsin return reflecting the same changes shall be filed with the department. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

(c) Where and how to submit report or amended return. A taxpayer's report of federal adjustments or amended Wisconsin return shall be submitted to the department by mailing it to the Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, Wisconsin 53708. The report of federal adjustments or amended Wisconsin return shall be clearly identified and it shall not be made a part of or attached to any other Wisconsin tax return.

(4) TAXPAYER'S FAILURE TO REPORT OR FILE AMENDED WISCONSIN RETURN.

(a) If a taxpayer fails to report federal adjustments or the filing of an amended other state or federal return within the required 90-day period, the department may assess additional Wisconsin income or franchise tax relating to such adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed. (A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar year basis, is considered as filed on such last day. Section 71.11(21)(h), Wis. Stats.)

(b) Example. Assume that an individual taxpayer filed a 1974 Wisconsin income tax return by April 15, 1975; that adjustments were made by the internal revenue service to the individual's 1974 federal income tax return; that the adjustments became final on July 1, 1976; and that the taxpayer either failed to notify the department of such adjustments or notified the department more

than 90 days after they became final. The department of revenue may issue an assessment for such adjustments any time on or before April 15, 1985 (i.e., within 10 years of the due date of the 1974 Wisconsin return).

(5) ASSESSMENTS AND REFUNDS BY DEPARTMENT. If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after the federal adjustments became final or within 90 days after an amended return is filed with the internal revenue service or another state, the department may make an assessment or refund relating to such report or amended return as follows: (a) Assessments. An assessment may be made within 4 years from the date the original Wisconsin income or franchise tax return was filed. (Section 71.11(21)(bm), Wis. Stats.) However, if the taxpayer reported less than 75% of the correct income and the additional tax for such year exceeds \$100, an assessment may be made within 6 years after the return was filed. (Section 71.11(21)(g)1, Wis. Stats.)

(b) Refunds. A refund may be made if claims are filed within 4 years of the date the original Wisconsin income or franchise tax return was filed. (Section 71.10(10)(bn), Wis. Stats.)

(c) Exceptions. 1. An assessment may be made later than the 4 and 6 year periods mentioned in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report from the taxpayer of federal adjustments or an amended Wisconsin return. However, such an assessment made after the expiration of the 4 and 6 year periods may only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department or files with the department an amended Wisconsin return after the expiration of the 4-year period for filing claims for refund as described in par. (b), a refund may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustment or an amended Wisconsin return from the taxpayer.

3. The 90-day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of such 90 days.

(d) Examples. 1. Assume that federal adjustments were made to an individual's 1971 federal income tax return; that the adjustments became final on June 1, 1976; and that on August 15, 1976 (within 90 days after such adjustments became final) the department received the taxpayer's report of the adjustments. Although the 4-year period provided by section 71.11(21)(bm), Wis. Stats., for making adjustments to the 1971 Wisconsin return expired on April 15, 1976, the department had until November 13, 1976 to give notice of an assessment to the taxpayer (November 13 was 90 days after the date the department received a report of the adjustments).

2. Assume that a taxpayer filed an amended 1975 New York return on June 1, 1976; and that an amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 1, 1976. Under the 4-year assessment period in section 71.11(21)(bm), Wis. Stats., the department has 4 years from April 15, 1976 (due date of 1975 return) in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(6) PRIOR FIELD AUDIT BY DEPARTMENT. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and such field audit has been finalized, an assessment or refund nevertheless may be made. However, such an assessment or refund may only relate to those federal adjustments or the changes on such amended return. Notice of the assessment or refund must be given to the taxpayer within 90 days of the date the department received the report of federal adjustment or an amended Wisconsin return from the taxpayer.

NOTE: Decisions of the United States Tax Court and other courts ordinarily become final as follows:

1. If no appeal is made of a United States Tax Court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable small cases involving deficiencies of \$1,500 or less heard by the United States Tax Court under section 7463 of the Internal Revenue Code become final 90 days after they are entered.
2. Appealed decisions of the United States Tax Court become final as set forth in section 7481 of the Internal Revenue Code.
3. A decision of a United States District Court normally becomes final if not appealed to the United States Court of Appeals within 60 days of the judgment, decree or order.
4. A decision of the United States Court of Claims or the United States Court of Appeals normally becomes final unless an appeal or a petition for certiorari is filed with the United States Supreme Court within 90 days of the judgment or decree.
5. A decision of the United States Supreme Court is normally final upon the expiration of a period of 25 days from the date such decision is rendered, if a motion for reconsideration or rehearing is not filed within such time.

NEXUS AND WISCONSIN FRANCHISE/INCOME TAXES

Section Tax 2.82 of the Wis. Adm. Code is adopted to read:

Tax 2.82 Nexus. (sections 71.01(1) and (2) and 71.10(1), Wis. Stats.)
(1) DEFINITIONS. In this rule:

(a) "Representative" does not include an independent contractor. A person may be considered a representative even though he or she may not be considered an employe for other purposes such as the withholding of income tax from commissions. If a person is subject to the direct control of the foreign corporation, he or she may not qualify as an independent contractor under P.L. 86-272. (Herff Jones Company v. State Tax Commission, Oregon Supreme Court, August 23, 1967, 430 P. 2d 998.)

(b) "Business location" includes a repair shop, parts department, purchasing office, employment office, warehouse, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employes or customers. A residence of an employe or representative is not ordinarily considered a business location of the employer unless the facts indicate otherwise. It could be considered a business location under one or more of the following conditions: a portion of the residence is used exclusively for the business of the employer, the employe is reimbursed or paid a flat fee for the use of this space by the employer; the employe's phone is listed in the yellow pages under the name of the employer; the employe uses supplies, equipment or samples furnished by the employer; or the space is used by the employe to interview prospective employes, hold sales meetings, or discuss business with customers.

(2) BACKGROUND. (a) Every domestic corporation (one incorporated under Wisconsin's laws), except those exempt under s. 71.01(3), Wis. Stats., and every "licensed" foreign corporation (one not incorporated in Wisconsin) is required to file a complete corporation franchise/income tax return (Form 4 or 5) regardless of whether or not business was transacted.

(b) A foreign corporation is "licensed" if it has obtained a Certificate of Authority from the Wisconsin Secretary of State to transact business in this state pursuant to s. 180.801, Wis. Stats. A "licensed" foreign corporation is presumed to be subject to Wisconsin franchise/income taxes.

(c) An unlicensed foreign corporation is subject to Wisconsin franchise/income taxes if it has "nexus" with Wisconsin. The purpose of this rule is to provide guidelines for determining what constitutes "nexus", that is, what business activities are needed for a foreign corporation to be subject to Wisconsin franchise/income taxes.

(3) FEDERAL LIMITATIONS ON TAXATION OF FOREIGN CORPORATIONS.

(a) Federal constitutional provisions. 1. Article I, Section 8 of the U.S. Constitution grants Congress the power to regulate commerce with foreign nations and among the several states. States are prohibited from levying a tax which imposes a burden on interstate or foreign commerce. However, this does not mean states may not impose any tax on interstate commerce. A state tax on net income from interstate commerce which is fairly attributal to the state is constitutional. (Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc., 358 U.S. 450, 79 S. Ct. 357.)

2. Section I of the 14th Amendment protects taxpayers within any class against discrimination and guarantees a remedy against illegal taxation.

(b) Federal Public Law 86-272. 1. Under Public Law 86-272, a state may not impose its franchise/income tax on a business selling tangible personal property, if the only activity of that business is the solicitation of orders by its salesman or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be limited to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation under Public Law 86-272 is lost.

2. This law, enacted by Congress in 1959, does not extend to:

a. those businesses which sell services, real estate or intangibles in more than one state;

b. domestic corporations; or

c. foreign nation corporations, i.e., those not incorporated in the United States.

3. If the only activities in Wisconsin of a foreign corporation selling tangible personal property are those described below (a and b) such corporation is not subject to Wisconsin franchise/income taxes under P.L. 86-272:

a. Usual or frequent activity in Wisconsin by employes or representatives soliciting orders for tangible personal property which orders are sent outside this state for approval or rejection.

b. Solicitation activity by non-employe independent contractors, conducted through their own office or business location in Wisconsin.

(4) WHAT CONSTITUTES "NEXUS". (a) Factors. If a foreign corporation has one or more of the following activities in Wisconsin, it is considered to have "nexus" and shall be subject to Wisconsin franchise/income taxes:

1. Maintenance of any business location in Wisconsin, including any kind of office.

2. Ownership of real estate in Wisconsin.

3. Ownership of a stock of goods in a public warehouse or on consignment in Wisconsin.

4. Ownership of a stock of goods in the hands of a distributor or other non-employe representative in Wisconsin, if used to fill orders for the owner's account.

5. Usual or frequent activity in Wisconsin by employes or representatives soliciting orders with authority to accept them.

6. Usual or frequent activity in Wisconsin by employes or representatives engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, repair of equipment).

7. Operation of mobile stores in Wisconsin (such as trucks with driver-salespersons), regardless of frequency.

8. Miscellaneous other activities by employees or representatives in Wisconsin such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for customer personnel in the operation, repair and maintenance of the taxpayer's products.

9. Leasing of tangible property and licensing of intangible rights for use in Wisconsin.

10. The sale of other than tangible personal property such as real estate, services and intangibles in Wisconsin.

11. The performance of construction contracts and personal services contracts in Wisconsin.

(b) How to obtain ruling. The guidelines in par. (a) as to what activities constitute "nexus" should not be considered all-inclusive. A ruling may be requested about a particular foreign corporation as to whether it is subject to Wisconsin franchise/income taxes by writing to the Wisconsin Department of Revenue, Audit Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708.

SHAREHOLDERS' WRITTEN ELECTIONS IN
CERTAIN CORPORATE LIQUIDATIONS

Tax 2.83 of the Wis. Adm. Code is adopted to read:

Tax 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations. (Sections 71.02(2)(a) and (b), 71.317(3) and 71.333, Wis. Stats.) (1) To qualify for the benefits of section 333 of the Internal Revenue Code in computing Wisconsin taxable income, a qualified electing shareholder, other than a corporate shareholder must file with the department federal Form 964 in accordance with the instructions contained thereon within 30 days of the adoption of the plan of liquidation or furnish proof to the department that Form 964 was filed with the Internal Revenue Service within such 30 day period.

(2) To qualify for the benefits of section 71.333, Wis. Stats., a corporation, other than an excluded corporation, which is a qualified electing shareholder, must file with the department federal Form 964 in accordance with the instructions contained thereon within 30 days of the adoption of the plan of liquidation.

(3) Another copy of the Form 964 shall be attached to and made a part of the shareholder's income or franchise tax return for the taxable year in which the transfer of all the property under the liquidation occurs.

(4) Once made, an election cannot subsequently be changed.

(5) Written elections shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

INCOME TAX REPORTING OF INSTALLMENT SALES

Section Tax 2.95 of the Wis. Adm. Code is adopted to read:

Tax 2.95 Reporting of installment sales. (Sections 71.02(2)(b) and 71.07(1), Wis. Stats.) (1) GENERAL PRINCIPLES. (a) Installment sales. Sales of real or personal property may be made under installment arrangements which provide for part or all of the sales price to be paid after the close of the tax year in which the sales are made. Under the installment method of reporting income, the gross profit from these sales may be prorated over the period in which payments under the installment arrangement are received. Losses may not be reported under the installment method.

(b) Sale of installment obligation. If a taxpayer reports a sale on the installment method and later sells or disposes of the installment obligation (i.e., the taxpayer's right to the unpaid installments), a gain or loss from the transaction is usually recognized in the year of disposition of the installment obligation.

(2) FEDERAL LAW. (a) Installment sales. 1. Internal revenue code section 453 provides that a taxpayer may elect to use the installment method of reporting income for the following 3 types of installment sales: a. personal property regularly sold on the installment plan by dealers in personal property; b. casual or incidental sales of personal property not includable in inventory for a price more than \$1,000, if the payments received in the year of sale do not exceed 30% of the selling price; and c. sales of real estate if the payments received in the year of sale do not exceed 30% of the selling price. For purposes of the 30% limit, payments received in the year of sale include those made in cash and property, but generally do not include the purchaser's evidence of debt nor a mortgage already on the property except to the extent that the mortgage exceeds the seller's basis of the property.

2. Selling price includes the cash, promissory notes and fair market value of any property conveyed to the seller, and any debt or liability assumed or paid by the buyer.

(b) Installment method. 1. Taxable income from installment sales is determined by using a gross profit percentage. "Gross profit percentage" is the gross profit to be realized divided by the contract price.

2. Contract price is generally the amount the seller will receive, not reduced by selling expenses. If the property is not mortgaged, the contract price ordinarily equals the selling price. If the buyer assumes a mortgage, or takes the property subject to a mortgage that does not exceed the seller's basis of the property, the contract price equals the selling price less the amount of the mortgage. If the buyer assumes a mortgage, or takes the property subject to a mortgage that exceeds the seller's basis of the property, the excess of the mortgage over the basis must be included in the contract price; the seller has, in effect, recovered the entire basis plus an additional amount.

EXAMPLE: In the current tax year, a taxpayer sold real property for \$10,000 (exclusive of interest). The selling expenses were \$200. In an earlier tax year, the seller had purchased the property for \$5,000. There was an existing mortgage on the property of \$6,000 which the buyer assumed. In addition, the buyer paid the seller a down payment of

\$1,000 in the year of sale, and agreed to make installment payments over the following 2 years for the remainder of the contract price. Under the installment method of reporting income, the seller's taxable income in the year of sale is as follows:

Selling price of property	\$10,000
Selling expenses	(200)
Net selling price	9,800
Cost of property (seller's basis)	(5,000)
Gross profit	<u>\$ 4,800</u>

Contract price:

Selling price of property	\$10,000
Mortgage assumed by buyer	(6,000)
Excess of mortgage over seller's basis (\$6,000 - \$5,000)	1,000
Contract price	<u>\$ 5,000</u>

Gross profit percentage
($\$4,800 \div \$5,000$) 96%

Payments received in year of sale
($\$1,000$ cash + $\$1,000$ excess of mortgage over seller's basis) \$ 2,000

Taxable income in year of sale
($\$2,000 \times 96\%$) \$ 1,920

NOTE: The payments received in year of sale (\$2,000) were less than 30% of the selling price (\$3,000).

(c) Disposition of obligation. 1. Internal revenue code section 453(d) provides that a gain or loss on the sale or disposition of an installment obligation generally must be reported in the year of disposition.

2. If the installment obligation is sold or exchanged, the gain or loss is the difference between the basis of the obligation and the amount realized by the seller. The basis of an installment obligation is the unpaid balance of the obligation less the income that would be reportable on the unpaid balance if the obligation were paid in full. If the installment obligation is disposed of otherwise than by a sale or exchange, the gain or loss is the difference between the basis of the obligation and its fair market value at the time of disposition.

3. If the property sold was a capital asset, the gain or loss from the disposition of the installment obligation is a capital gain or loss.

4. When real estate is sold on land contract, the seller's right to the unpaid installments becomes intangible personal property.

EXAMPLE: A taxpayer sold real estate, acquired in an earlier year for \$600, on a land contract for \$1,000 (exclusive of interest) and elected to report the sale on the installment method. In the year of sale the seller received a \$100 down payment. In the following tax year, before the purchaser made any further payments, the seller sold the land contract ("LC") obligation for \$700. The seller's gain from the sale of the land contract obligation is computed as follows:

Selling price of land (also contract price)	\$1,000
Cost of land (seller's basis)	(600)
Gross profit	<u>\$ 400</u>
Gross profit percentage (\$400 ÷ \$1,000)	40%
Amount realized from sale of LC obligation	<u>\$ 700</u>
<u>Adjusted basis of LC obligation:</u>	
Unpaid balance of the LC obligation	\$ 900
Amount of income reportable if the balance were paid in full (40% of \$900)	<u>(360)</u>
Adjusted basis of LC obligation	<u>(540)</u>
Gain from sale of LC obligation	<u>\$ 160</u>

In the above example, if the land contract obligation had been sold for \$500, a loss would result computed as follows:

Amount realized from sale of LC obligation	\$ 500
Adjusted basis of LC obligation	(540)
Loss from sale of LC obligation	<u>\$ (40)</u>

(3) SITUS OF INCOME. (a) Prior to 1975. For taxable years prior to 1975, s. 71.07(1), Wis. Stats., provided that for Wisconsin income taxation purposes, income or loss derived from the sale of real property or tangible personal property followed the situs of the property. Interest income and income or loss from the sale of intangible personal property followed the situs of the residence of the recipient.

(b) 1975 and thereafter. Beginning with the 1975 taxable year and thereafter, s. 71.07(1), Wis. Stats., provides that all income or loss of resident individuals shall follow the residence of the individual. A nonresident's income or loss derived from the sale of real property or tangible personal property follows the situs of the property. Interest income of a nonresident and income from the sale of intangible personal property follows the situs of the individual's residence.

(4) TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF INTANGIBLE PERSONAL PROPERTY. Upon the sale of intangible personal property reported under the installment method: (a) Resident seller. If the seller is a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are taxable by Wisconsin.

(b) Nonresident seller. If the seller is not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are not taxable by Wisconsin.

(5) TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY. Upon the sale of real property or tangible personal property reported under the installment method: (a) Wisconsin property. 1. If the property is located in Wisconsin and the seller is a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale is taxable by Wisconsin.

2. If the property is located in Wisconsin and the seller is not a Wisconsin resident, the portion of each installment payment that represents gain is taxable by Wisconsin. Interest income of a nonresident is not taxable by Wisconsin.

(b) Out-of-state property. 1. If the property is located outside of Wisconsin and the sale occurred prior to 1975: a. If the seller is a Wisconsin resident, the portion of each installment payment that represents gain is not taxable by Wisconsin regardless of the year in which received (see rule Tax 2.30). Interest income from the sale is taxable by Wisconsin.

b. If the seller is not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are not taxable by Wisconsin.

2. If the property is located outside of Wisconsin and the sale occurred in taxable year 1975 or thereafter: a. If the sale occurred while the seller was a Wisconsin resident: (i) If the seller is currently a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are taxable by Wisconsin (see rule Tax 2.97 for computation of the gain or loss).

(ii) If the seller is currently not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are not taxable by Wisconsin.

b. If the sale occurred while the seller was not a Wisconsin resident: (i) If the seller is currently a resident, the portion of each installment payment that represents gain is not taxable by Wisconsin (see rule Tax 2.30). Interest income from the sale is taxable by Wisconsin.

(ii) If the seller is currently not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are not taxable by Wisconsin.

(6) TAXATION OF PROCEEDS FROM SALE OF INSTALLMENT OBLIGATION. An installment obligation (i.e., an individual's right to unpaid installments from the sale of property) is intangible personal property. Any gain or loss from the sale of an installment obligation follows the residence of the seller. Therefore, any gain or loss of a Wisconsin resident must be included in, or subtracted from, Wisconsin taxable income.

EXAMPLE: In 1975, while an Iowa resident, a taxpayer sold Wisconsin real estate on a land contract and elected to report the sale on the installment method. The selling price of the land was \$2,000. In an earlier year the seller acquired the land for \$1,500. In the year of the sale the seller received a down payment of \$400. On January 1, 1976, the seller became a Wisconsin resident, and on June 30, 1976, the seller received an installment payment of \$400 and interest of \$100. On July 1, 1976, the seller sold the land contract ("LC") obligation for \$1,000. The seller's Wisconsin taxable income from these transactions is as follows:

1975:

Selling price of land (also contract price)		\$ 2,000
Cost of land (seller's basis)		<u>(1,500)</u>
Gross profit		<u>\$ 500</u>
Gross profit percentage ($\$500 \div \$2,000$)	25%	
Payment received in 1975		\$ 400
Wisconsin taxable income ($25\% \times \$400$)		<u>\$ 100</u>

1976:

Amount of installment payment reportable as Wisconsin income ($25\% \times \$400$)		\$ 100
Interest income received		100
Amount realized from sale of LC obligation	<u>\$ 1,000</u>	
Unpaid balance of the LC obligation	1,200	
Amount of income reportable if the balance was paid in full ($25\% \times \$1,200$)	<u>(300)</u>	
Adjusted basis of LC obligation	<u>(900)</u>	
Gain from sale of LC obligation		<u>100</u>
Wisconsin taxable income		<u>\$ 300</u>

CONSTRUCTING BUILDINGS FOR EXEMPT ENTITIES

SECTION 1. Section Tax 11.04 of the Wis. Adm. Code is adopted to read:

Tax 11.04 Constructing buildings for exempt entities. (Sections 77.51 (4) and (18), 77.54(9a) and 77.55(1), Wis. Stats.) (1) DEFINITION. In this rule, "exempt entity" means a person qualifying for an exempt under ss. 77.54(9a) or 77.55(1), Wis. Stats. Section 77.54(9a) provides an exemption for sales to this state or any agency thereof, or any county, municipality as defined in s. 41.02(4), school district or other political subdivision; any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals. Section 77.55(1) provides an exemption for sales to the United States, its unincorporated agencies and instrumentalities, and any unincorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(2) TAXABLE GROSS RECEIPTS. Sales of building materials to contractors or subcontractors used in the construction of buildings or structures, or the alteration, repair or improvement of real property for exempt entities, are subject to the tax.

(3) PURCHASES PRESUMED TAXABLE. When a contractor and an exempt entity enter into a construction contract to improve real property, which provides that the contractor is to furnish the building materials, it is presumed until the contrary is established, that deliveries of building materials to the contractor are made pursuant to purchases made by the contractor.

(4) SUPPLIER IS CONTRACTOR. A supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair or improvement of real property for an exempt entity, is the consumer of such building materials, not the seller of personal property to the exempt entity. The sale of building materials to the consumer is subject to the tax.

(5) EXEMPT GROSS RECEIPTS. A supplier's sales of building materials made directly to an exempt entity are not taxable, even though such tangible personal property is used by the contractor in the erection of a building or structure, or in the alteration, repair or improvement of real property for the exempt entity. Suppliers of building materials may presume that a sale is made directly to an exempt entity if the supplier receives a purchase order from the exempt entity, and payment for such building materials is received from the exempt entity.

SECTION 2. APPLICABILITY. The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969. This rule supersedes the policies contained in Technical Information Memorandum S-53, entitled "Constructing Buildings for Exempt Entities", dated November 1, 1972. The policies in this rule apply to periods open to adjustment under the statute of limitations (s. 77.59, Wis. Stats.).

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969. This rule supersedes the policies contained in Technical Information Memorandum S-53, entitled "Constructing Buildings for Exempt Entities", dated November 1, 1972. The policies in this rule apply to periods open to adjustment under the statute of limitations (s. 77.59, Wis. Stats.).

ELECTRIC OR GAS PUBLIC UTILITIES

SECTION 1. Section Tax 11.57 of the Wis. Adm. Code is adopted to read:

Tax 11.57 Public utilities. (Section 77.54(3), (6)(a) and (c), and (17), Wis. Stats.) (1) TAXABLE SALES. The gross receipts from the sale of the following tangible personal property and services provided by utilities are taxable: (a) Utility services billed to household, industrial or commercial customers, with any adjustments for discounts taken by customers (e.g., early payment discount) in the utility's next reporting period.

(b) Excess use charges and minimum or idle service charges.

(c) The gross amounts received for contacts on poles and excess pole height contributions.

(d) Parking space rentals.

(e) Rentals of transformers located on a customer's property.

(f) Labor and materials to install or repair conversion burners.

(g) The rental of water heaters.

(h) Sales of scrap, gravel or timber sold for removal.

(i) Sales of tools, used equipment and other tangible personal property to employes.

(j) Pilot relights for furnaces ("no heat" calls), or replacing appliance fuses.

(k) Sale of a utility overhead transmission or distribution line in place, if installed under easement or license on land owned by others. (See rule Tax 11.86.)

(1) Charges to builders to put in "temporary services".

(2) NONTAXABLE SALES. Gross receipts from the following charges to customers are not subject to the tax: (a) Connection or reconnection charges.

(b) Utility services delivered to Indians living on an Indian reservation, or services delivered on the reservation to an Indian tribal governing board.

(c) Billings for repairs to persons who damaged utility property.

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

(f) Contributions in aid of construction (i.e., payments by a customer to have a line extended to the customer's property).

(g) The installation charge for a pole sold to customer, which is installed on land owned by the customer.

Rev

(h) "Wheeling" energy for another utility.

(i) Sales of gas or other fuel (electricity is not a fuel) to farmers if the fuel is used to heat farm buildings, including greenhouses.

(j) Labor charged a customer for the installation of a complete furnace or built-in appliance.

(k) Water delivered to customers through mains.

(3) TAXABLE PURCHASES. (a) Persons engaged in the business of providing electrical or gas public utility service are consumers of the tangible personal property or taxable services used to provide such services. The tax applies to the sales of such items to them, except where a specific exemption applies, such as the exemptions shown in subsection (4).

(b) Examples of gross receipts from the sale, lease or rental of items to a public utility which are subject to the tax are: 1. Transformers, substation equipment and other tangible personal property purchased by a utility and use to construct, improve or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others. (See Rule Tax 11.86.)

3. Charges for coating pipe or creosoting poles.

4. Charges for X-rays of welding joints.

5. Gas or electricity purchased for resale but used by a utility, but not gas used as a fuel in producing electricity or steam.

6. Charges for aerial photographs and maps.

(4) NONTAXABLE PURCHASES. The following sales to public utilities are not subject to the tax: (a) Coal, oil, gas and nuclear material converted to electrical energy, gas or steam by utilities (s. 77.54(6)(c), Wis. Stats.).

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufacturing process begins when the coal starts moving by conveyor directly to the boiler bunker, and it ends at the generator bus duct. An overhead crane used for the installation and repair of a turbine, and a fuel storage tank are not directly used in manufacturing.

SECTION 2. APPLICABILITY. The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except for subsection (1)(e) and (1) which becomes effective on the effective date of this rule.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except for subsection (1)(e) and (1) which becomes effective on the effective date of this rule.