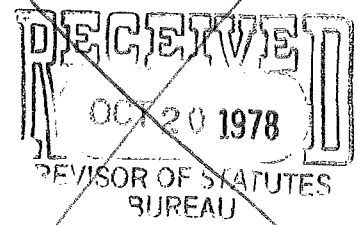


Tax 2, 11

CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN)
)
DEPARTMENT OF REVENUE)



TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

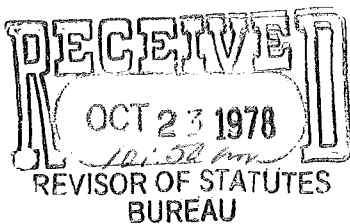
I, Dennis J. Conta, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on October 23, 1978.

These rules relate to the following:

- 1) Penalty for underpayment of estimated tax (income and franchise taxes).
- 2) Credit for income taxes paid to other states (individual income tax).
- 3) Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976 (individual income tax).
- 4) Mailing lists (sales and use tax).
- 5) Boats, vessels and barges (sales and use tax).
- 6) Successor's liability (sales and use tax).
- 7) Medical appliances, prosthetic devices and aids (sales and use tax).

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 23rd day of October, 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 2.89, "Penalty for underpayment of estimated tax".
- 2) Section Tax 2.955, "Credit for income taxes paid to other states".
- 3) Section Tax 2.992, "Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976".
- 4) Section Tax 11.82(1)(b), relating to mailing lists.
- 5) Section Tax 11.85, "Boats, vessels and barges".
- 6) Section Tax 11.91(1)(d), (f) and (g) and 11.91(2)(b)2, relating to successor's liability.
- 7) Section Tax 11.08(1) and (4), relating to medical appliances, prosthetic devices and aids.

The rules contained herein shall take effect on December 1, 1978.

Dated this 23rd day of October, 1978.

DEPARTMENT OF REVENUE
BY:



Dennis J. Conta
Secretary of Revenue

PENALTY FOR UNDERPAYMENT OF ESTIMATED TAX

Section Tax 2.89 of the Wis. Adm. Code is adopted to read:

Tax 2.89 Penalty for underpayment of estimated tax. (Sections 71.21(11) and 71.22(8), Wis. 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 Marcuvitz et al. vs. Department of Revenue.

Example: Taxpayer is subject to the addition to the tax for the taxable year 1975. 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.

CREDIT FOR INCOME TAXES PAID TO OTHER STATES

Section Tax 2.955 of the Wis. Adm. Code is adopted to read:

Tax 2.955 Credit for income taxes paid to other states. (Section 71.09(8), Wis. 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 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 \$50 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:

	1975 <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.

COMPUTING 1976 WISCONSIN NET TAXABLE INCOME WITH REFERENCE
TO THE INTERNAL REVENUE CODE IN EFFECT ON DECEMBER 31, 1976

Section Tax 2.992 of the Wis. Adm. Code is adopted to read:

Tax 2.992 Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976. (Section 71.02(2)(b), Wis. Stats.) (1) LAW CHANGE FOR TAXABLE YEAR 1977. Chapter 29, Laws of 1977, amended section 71.02(2)(b), Wis. 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 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.

MAILING LISTS

Section Tax 11.82(1)(b) of the Wis. Adm. Code is amended to read:

Tax 11.82(1)(b) A mailing list is tangible personal property, except for written or typed lists of names and addresses, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use such lists. Examples of taxable mailing lists include, but are not limited to magnetic tapes and mailing lists which are physically attached to the envelopes, such as Chesire tapes, gummed labels and heat transfers.

NOTE: This amendment to section Tax 11.82(1)(b) codifies the Department of Revenue's policy and conforms the rule to the Minnesota Supreme Court's decision in Fingerhut Products Company et al, vs. Commissioner of Revenue, Docket No. 96-906, September 27, 1977, that typed lists of names and addresses are not tangible personal property subject to the sales and use tax, but are rather nontaxable transfers of information.

BOATS, VESSELS AND BARGES

Section Tax 11.85 of the Wis. Adm. Code is adopted to read:

Tax 11.85 Boats, vessels and barges. (Sections 77.51(7)(am), 77.52(2)(a)9 and 10, 77.53(17) and (18), 77.54(7) and (13) and 77.61(1), Wis. Stats.) (1) TAXABLE SALES. Taxable gross receipts involving boats include the following: (a) Gross receipts from the sale, lease or rental of boats and boat accessories, and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats, except where such services are provided by a governmental unit. The tax applies to boat storage in public storage warehouses.

(e) The use tax does not apply to household goods for personal use purchased outside Wisconsin 90 days or more before being brought into this state by a person becoming domiciled in this state. A boat is not household goods for this exemption.

(2) EXEMPT SALES. (a) A boat not required to be registered in Wisconsin with the Wisconsin Department of Natural Resources may be sold at retail as an exempt occasional sale if the transferor does not hold a seller's permit.

(b) Sales of boats to the spouse, parent or child of the transferor shall be exempt if the boat was previously registered in Wisconsin in the transferor's name and if the transferor does not hold and is not required to hold a seller's permit.

(c) Commercial vessels and barges of 50-ton burden and over primarily engaged in interstate or foreign commerce or commercial fishing shall be exempt from the tax. Accessories, attachments, parts and fuel for such vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(e) A boat purchased by a governmental unit and by certain non-profit organizations shall be exempt from the tax, regardless of the boat's size or kind (see s. 77.54(9)(a) and s. 77.55(1)).

(3) PAYMENT OF TAX. (a) No boat shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax at the time the boat is registered with the Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, Wisconsin 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin.

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

SUCCESSOR'S LIABILITY

SECTION 1. Section Tax 11.91(1)(d) of the Wis. Adm. Code is amended to read:

Tax 11.91(1)(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

SECTION 2. Sections Tax 11.91(1)(f) and (g) of the Wis. Adm. Code are created to read:

Tax 11.91(1)(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a financial institution or other creditor actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered if it never operates the business and if its sole purpose is to sell the business in its entirety at whatever price it can obtain to recover its investment.

SECTION 3. Section Tax 11.91(2)(b)2 of the Wis. Adm. Code is amended to read:

Tax 11.91(2)(b)2 Debts assumed by the purchaser, or canceled by a creditor.

NOTE: These amendments to s. 11.91 codify long-standing policies of the Department of Revenue and are effective September 1, 1969.

MEDICAL APPLIANCES, PROSTHETIC DEVICES AND AIDS
(To Reflect Statute Language Changes Only)

Section Tax 11.08(1) and (4) of the Wis. Adm. Code are amended to read:

Tax 11.08(1) DEVICES FOR HANDICAPPED PERSONS. Section 77.54(22)(a), Wis. Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular ~~crippled~~ physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays.

(4) CRUTCHES AND WHEELCHAIRS. Section 77.54(22)(e), Wis. Stats., exempts gross receipts from the sale of "Crutches and wheelchairs for the use of ~~invalids-and-crippled~~ persons who are ill or disabled." This exemption includes open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.