

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, 1975, No. 230, eff. 3-1-75.

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. Register, December, 1980, No. 300

come 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.

(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

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Original Cost	Fair Market Value At Time Wisc. Residency Estab.	Federal Adjusted Basis At Time Residency Estab.	Depreciation Allowed Or Allowable While A Wisconsin Resident	Federal Adjusted Basis At Time Of Sale	Selling Price	Federal Gain or Loss	Wisconsin Gain or Loss
\$ 10,000	\$ 15,000	\$ 5,000	\$ 700	\$ 4,300	\$ 20,000	\$ 15,700	\$ 5,700 a
10,000	4,000	5,000	700	4,300	20,000	15,700	15,700 b
10,000	25,000	5,000	700	4,300	20,000	15,700	-0- c
10,000	4,000	5,000	700	4,300	1,000	(3,300)	(2,300) d
10,000	15,000	5,000	700	4,300	4,000	(300)	(300) e
10,000	4,000	5,000	700	4,300	3,500	(800)	-0- f

a \$20,000 (col. 6) less 14,300 (col. 2 less col. 4) = \$5,700 gain.

b \$20,000 (col. 6) less 4,300 (col. 5) = \$15,700 gain.

c \$20,000 (col. 6) less 4,300 (col. 5) = \$15,700 gain; \$20,000 (col. 6) less 24,300 (col. 2 less col. 4) = \$4,300 loss; therefore, no gain or loss is reportable for Wisconsin purposes.

d \$1,000 (col. 6) less 3,300 (col. 2 less col. 4) = \$2,300 loss.

e \$4,000 (col. 6) less 4,300 (col. 5) = \$300 loss.

f \$3,500 (col. 6) less 4,300 (col. 5) = \$800 loss; \$3,500 (col. 6) less 3,300 (col. 2 less col. 4) = \$200 gain; therefore, no gain or loss is reportable for Wisconsin purposes.

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

Tax 2.31 Taxation of personal service income of nonresident professional athletes. (ss. 71.01 (1) and 71.07 (1), (2) and (5), Stats.). (1) DEFINITIONS. (a) In subs. (2), (3) and (4) (a) "duty days" means days during the regular playing season within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days. In sub. (4) (b) "duty days" means days during the postseason within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days.

(b) "Travel days" means days spent in the state (or other governmental jurisdiction) of destination; except that when the team performs on a travel day, the day shall be considered spent where the performance occurs.

(2) GENERAL. Wisconsin individual income tax is imposed on nonresident natural persons upon such income as is derived from the performance of personal services within Wisconsin. When a specific amount is received for personal services performed in Wisconsin, that amount shall be included in Wisconsin income. When compensation is received for personal services performed partly within and partly outside Wisconsin, the amount to be included in Wisconsin income shall be determined by an allocation of personal services performed in Wisconsin to total personal services on the basis that most correctly reflects the proper apportionment under the facts and circumstances of the particular case. In the absence of clear evidence to the contrary, allocations shall be made on the basis of time; that is, the compensation allocated to Wisconsin shall bear the same relation to total compensation as the number of days of performance of personal service within Wisconsin bears to the total number of days of performance of personal service for which compensation is received.

(3) METHOD OF ALLOCATION. (a) The allocation to Wisconsin of income earned from the performance of personal services by a nonresident professional athlete under a playing contract shall, as a general rule, be made on the basis of time according to a fraction, the denominator of which is the total number of duty days covered by the

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contract and the numerator of which is the number of those duty days spent in Wisconsin. For players not under contract, the denominator shall include the total number of duty days and the numerator shall include the number of those duty days spent in Wisconsin.

(b) Amounts paid for participation in training or exhibition games and any per diem payments made in connection therewith are earned at the location of the participation and are considered separately.

(4) **TAXATION OF EARNINGS.** (a) The fraction determined in sub. (3) (a) shall be applied to the total compensation received within a taxable year for the regular playing season, as well as to bonuses or other compensation received for that season without regard to when paid. The fraction shall also be applied to a bonus received for signing a contract. If bonuses are received prior to or following a year to which the playing contract pertained, the fraction determined for the year covered by the contract will control.

(b) If postseason games are played, the total number of duty days shall be the denominator and the number of those duty days spent in Wisconsin shall be the numerator of the fraction, and this fraction shall be applied to the compensation received within a taxable year for the postseason games.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS

Tax 2.39 Apportionment method. (s. 71.07 (2), Stats.) Any person doing business both in and outside this state shall report by the statutory apportionment method when the person's business in this state is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

(1) For the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, the factors used in the apportionment method for all businesses except "financial organizations" and "public utilities" as defined in s. 71.07 (2) (d), Stats., are the property factor, the payroll factor and the sales factor. Property, payroll or sales related to the production of nonapportionable income under s. 71.07 (1), Stats., shall not be included in either the numerator or the denominator of any of the apportionment factors.

(1m) Beginning with calendar year 1974, or corresponding fiscal year, and thereafter, in lieu of the equally weighted 3-factor apportionment fraction based on property, payroll and sales, there shall be used an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. If one of these factors is omitted pursuant to s. 71.07 (3), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

(a) If either the property factor or payroll factor is omitted, the other of such factors shall represent 33 1/3% of the fraction and the sales factor shall represent 66 2/3% of the fraction.

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(b) If the sales factor is omitted, the property factor and the payroll factor shall each represent 50% of the fraction.

(2) In order to use the apportionment method the taxpayer must have income from business activity subject to taxation by this state and at least one other state or foreign country. Income from business activity includes only business (apportionable) income. As used in this rule a taxpayer is subject to taxation or taxable in a state or foreign country if the state or foreign country has jurisdiction to impose an income tax or a franchise tax measured by net income.

(3) (a) *Property factor; numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer in this state and used by the taxpayer in the production of business (apportionable) income during the tax period. The denominator shall include the average value of all of such property located everywhere. Property in transit on the date or dates for determining the average value shall be considered to be at the destination for purposes of the property factor. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which is located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of a ratio of time used within the state to total time used during the tax period. However, an automobile assigned to a traveling employe shall be included in the numerator of the factor if the employe's compensation is assigned to this state under the payroll factor.

(b) *Property factor; owned property.* Property owned by the taxpayer is valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes.

(c) *Property factor; rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined as at arm's length. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this may result in a negative value or clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the taxpayer, but in no case shall the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the value of the part of the property used by the taxpayer bears to the total value of the same rental property. The "annual rental" is the amount paid as rental for the property for a 12 month period. Where property is rented for less than a 12 month period, the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of

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less than 12 months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall be adjusted accordingly. Annual rent is the actual sum of money or other

value of property or services received by the tenant under the lease agreement for the period of the lease. The value of property or services received by the tenant under the lease agreement shall be determined by the fair market value of the property or services received by the tenant under the lease agreement.

When the net rent paid for the short tax period is annualized, the net rent shall be multiplied by the number of months in the short tax period and divided by 12. The net rent shall be adjusted accordingly. Annual rent is the actual sum of money or other value of property or services received by the tenant under the lease agreement for the period of the lease. The value of property or services received by the tenant under the lease agreement shall be determined by the fair market value of the property or services received by the tenant under the lease agreement.

When the net rent paid for the short tax period is annualized, the net rent shall be multiplied by the number of months in the short tax period and divided by 12. The net rent shall be adjusted accordingly. Annual rent is the actual sum of money or other value of property or services received by the tenant under the lease agreement for the period of the lease. The value of property or services received by the tenant under the lease agreement shall be determined by the fair market value of the property or services received by the tenant under the lease agreement.

When the net rent paid for the short tax period is annualized, the net rent shall be multiplied by the number of months in the short tax period and divided by 12. The net rent shall be adjusted accordingly. Annual rent is the actual sum of money or other value of property or services received by the tenant under the lease agreement for the period of the lease. The value of property or services received by the tenant under the lease agreement shall be determined by the fair market value of the property or services received by the tenant under the lease agreement.

(2) If the leasing of tangible personal property represents a substantial source of business (apportionable) income, in addition to the "gross receipts" described in sub. (1) (a), the department may authorize or direct the use of any other method to effect an equitable apportionment of the taxpayer's income.

(3) The term "finance company" means any "financial organization" defined in s. 71.07 (2) (d), Stats., except any type of insurance company.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; am. (1) (b), Register, July, 1978, No. 271, eff. 8-1-78.

Tax 2.50 Apportionment of net business income of interstate public utilities. (s. 71.07 (2) (e), Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except as provided in sub. (2) below, the business income of "public utilities", as defined in s. 71.07 (2) (d) 2, Stats., operating within and without Wisconsin, shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the 3 ratios provided in s. 71.07 (2) (a), (b) and (c), Stats., and Wis. Adm. Code section Tax 2.39.

(2) The apportionable income of interstate air carriers, interstate motor carriers and interstate pipeline companies shall be apportioned to Wisconsin as provided in Wis. Adm. Code ss. Tax 2.46, Tax 2.47 and Tax 2.48, respectively.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.505 Apportionment of net business income of interstate professional sports clubs. (s. 71.07 (2), Stats.) The apportionable income of professional sports clubs engaged in income producing activities both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using an apportionment fraction composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined as follows:

(1) **PROPERTY FACTOR.** The property factor is a fraction as defined in s. 71.02 (2) (a), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.07 (2) (a), Stats., and section Tax 2.39 (3). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) **PAYROLL FACTOR.** The payroll factor is a fraction as defined in s. 71.07 (2) (b), Stats. Compensation shall be reported as provided in s. 71.07 (2) (b), Stats., and section Tax 2.39 (4). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) **SALES FACTOR.** The sales factor is a fraction as defined in s. 71.07 (2) (c), Stats. Sales shall be included in the factor in accordance with s. 71.07 (2) (c), Stats., section Tax 2.39 and the following rules:

(a) **Gate receipts.** Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numera-

tor of the sales fraction for taxpayers whose home facility is in Wisconsin shall include all gate receipts from games played in its home facility. The numerator of the sales fraction for taxpayers whose home facility is outside Wisconsin shall include the percentage of gate receipts received from games played in Wisconsin.

(b) *Radio and television receipts.* Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in Wisconsin in proportion to the number of games played in Wisconsin to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in Wisconsin if the games are played in Wisconsin.

(c) *Concession income and miscellaneous income.* Concession income is assigned to the state in which the concession is operated. Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the state in which the activity is conducted.

(d) *Player contracts, franchises, etc.* Income from player contract transactions, franchise fees, and other similar sources is regarded as intangible business income and shall be excluded from the numerator and the denominator of the sales fraction.

Note: This rule clarifies the department of revenue's policy and applies to all taxable years open to audit under s. 71.10 (10), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

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Tax 2.51 Rent received by corporations from Wisconsin real estate. (s. 71.03 (1) (b), Stats.) Rentals must be included in the gross income when they accrue or are actually received by the taxpayer, depending upon the method of accounting used in reporting income. Rentals which have not actually been received in cash will be treated as received if available to or subject to the disposal of the landlord.

Tax 2.53 Stock dividends and stock rights received by corporations. (1) If a shareholder receives stock or stock rights as a distribution on stock previously held and under s. 71.305, Stats., such distribution is not includable in gross income then, except as provided in s. 71.307 (2), Stats., the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and under s. 71.305 (1), Stats., a part of the distribution is not includable in gross income (except as provided in s. 71.307 (2), Stats.), the basis of the stock with respect to which the distribution is made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution without regard to the fair market value of any part of such distribution which is includable in gross income pursuant to s. 71.305 (2), Stats. The date of distribution in each case shall be the date the stock or the rights are actually distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

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(a) *Exception.* The basis of rights to buy stock which are excluded from gross income under s. 71.305 (1), Stats., shall be zero if the fair market value of such rights on the date of distribution is less than 15% of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights. The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. Such statement shall disclose the number of shares of the old stock by the shareholder on the date of distribution, the basis of such shares, and the fair market value of the old shares and of the rights on the date of distribution. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

Tax 2.56 Insurance proceeds received by corporations. (s. 71.03 (1) (d), Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is taxable income.

(a) Under an interest option clause under which all the principal proceeds are retained and interest paid thereon periodically, the interest is taxable income.

(b) Under an income option under which the principal proceeds and interest thereon are paid in periodical instalments to the policy owner, the interest so paid is taxable income.

(c) When, under the same option, payments are made to the beneficiary (the option having been selected by the beneficiary), the interest so paid is taxable income.

(d) When, under the same option, payments are made to the beneficiary (the option having been designated by the insured), the instalment payments are made under the insurance contract, and no part of the payment is taxable income.

History: 1-2-56, r. (1), (3) (b), (3) (c) and (3) (d) and renum. (2) to be (1) and (3) (a) to be (1) (d), Register, March, 1968, No. 123, eff. 4-1-66.

Tax 2.57 Annuity payments received by corporations. Annuity payments under an endowment or annuity contract are income to the extent of any payment after the income tax cost (aggregate premiums or consideration) has been recovered. However, when the contract provides for the separation of the periodic payments into principal and interest, the interest so received is taxable when received.

Tax 2.60 Dividends on stock sold "short" by corporations. (s. 71.03 (1) (d), Stats.) When stock is sold "short" for later delivery, the purchaser receives the dividend, since he is the owner of the borrowed stock, and the amount credited to the lender of the stock and charged to the "short" seller is income upon which the lender is subject to tax. The amount charged to the "short" seller becomes part of the cost of the stock sold.