# Chapter Tax 1

# GENERAL ADMINISTRATION



**Tax 1.001 Definition.** In chs. Tax 1 to 12 and 14, unless otherwise specified:

(1) "Department" means the Wisconsin department of revenue.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 1.01 Assessment districts.** (s. 73.05, Stats.) The secretary of revenue has divided the state into the following income tax assessment districts:

(1) APPLETON DISTRICT. (a) *Headquarters.* Appleton.

(b) *Counties served*

1. Brown
2. Calumet
3. Door
4. Florence
5. Fond du Lac
6. Forest
7. Green Lake
8. Kewaunee
9. Langlade
10. Manitowoc
11. Marinette
12. Marquette
13. Menominee
14. Oconto
15. Outagamie
16. Shawano
17. Sheboygan
18. Waupaca
19. Waushara
20. Winnebago

(2) EAU CLAIRE DISTRICT. (a) *Headquarters.* Eau Claire.

(b) *Counties served*

1. Adams
2. Ashland
3. Barron
4. Bayfield
5. Buffalo
6. Burnett
7. Chippewa
8. Clark
9. Douglas
10. Dunn
11. Eau Claire
12. Iron
13. Jackson
14. Juneau
15. LaCrosse
16. Lincoln
17. Marathon
18. Monroe
19. Oneida
20. Pepin
21. Pierce
22. Polk
23. Portage
24. Price
25. Rusk
26. St. Croix
27. Sawyer
28. Taylor
29. Trempealeau
30. Vilas
31. Washburn
32. Wood

(3) MADISON DISTRICT. (a) *Headquarters.* Madison.

(b) *Counties served*

1. Columbia
2. Crawford
3. Dane
4. Dodge
5. Grant
6. Green
7. Iowa
8. Jefferson
9. LaFayette
10. Richland
11. Rock
12. Sauk
13. Vernon

(4) MILWAUKEE DISTRICT. (a) *Headquarters.* Milwaukee.

(b) *Counties served*

1. Kenosha
2. Milwaukee
3. Ozaukee
4. Racine
5. Walworth
6. Washington
7. Waukesha

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 1.06 Application of federal income tax regulations for persons other than corporations.** To the extent that any provision of the internal revenue code has application in the determination of Wisconsin taxable income of persons other than corporations, any United States treasury regulation interpreting such provision shall be deemed a tax rule of the Wisconsin administrative code.

History: Cr. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 1.10 Depository bank requirements for withholding, motor fuel, general aviation fuel and special fuel tax deposit reports.** (ss. 71.20 (4) and 78.84, Stats.) (1) DEPOSIT REPORTS RECEIVED WITH PROPER PAYMENT. (a) The depository bank shall inscribe the date received, amount of payment and a consecutively assigned validation number upon each deposit report received which is accompanied by payment in the amount of the stated tax liability. The deposits received and validated for each day shall be combined into a single deposit to the account of the state treasurer. The processed deposit reports shall be kept in sequence within batches for each business day. The batches for each business day shall be sent daily by special courier to the department's collection section in Madison. A validation tape and batch card shall accompany each batch, and each day's transmittal shall include one recapitulation sheet and a copy of the daily deposit slip.

(b) In addition the depository bank shall use the following procedures:

1. Validation tapes shall bear the validation number and the amount processed for each entry as well as the validation date and tape total.

2. Batch cards shall bear the first and last validation numbers in the batch and the total dollar amount validated in the batch. The validation number of any document rejected from the batch shall be noted on the batch card and the validation amount subtracted from the batch total.

3. Recapitulation sheets shall bear the date, deposit number, deposit amount, batch I.D. number and batch total for each batch included in the deposit, and the total amount validated.

4. A completed deposit slip that includes the document count shall be sent to the state treasurer for each day's deposit with a copy to be sent to the department. Deposit totals shall be reported to the state treasurer daily in accordance with procedures provided to the depository bank by the state treasurer's office.

5. When correspondence is received with a valid deposit report and remittance, the deposit report and remittance shall be processed in the usual manner, and the correspondence shall be detached and sent to the department's collection section.

(2) EXCEPTIONS. Non-processible documents or remittances, or both, as described in writing to the depository bank by the department's collection section, shall be exceptions to the treatment provided in sub. (1) and shall not be validated. Instead, they shall be sent to the department's collection section with the envelopes in which they were received.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. (1) (a) and (b) 4. and (2), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 1.11 Requirements for examination of returns.** (ss. 70.375 (2) (b), 71.11 (44), 72.06, 77.61 (5), 78.80 (3) and 139.38 (6), Stats.) (1) No information may be divulged to public officers of the federal government or other state governmentsor the authorized agents of such officers under s. 71.11 (44) (c)4, or 77.61 (5) (b)4 unless the information requested is necessary in the administration of the tax laws 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".

(b) With each requested examination under par. (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 mining net proceeds, 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 requesting such examination and his or her authorized agent understands the provisions of ss. 70.375 (2) (b), 71.11 (44), 72.06, 77.61 (5), 78.80 (3) and 139.38 (6), Stats., 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.

(2) No information may be divulged to members of the joint committee on legislative organization, senate committee on organization or assembly committee on organization, or to any agent of the foregoing, under s. 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 s. 77.61 (5) (b) 3 unless the following requirements are first complied with:

(a) Specification in writing of the purpose for each requested examination, the relation of such purpose to the official duties or functions of the 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 chairperson of the committee that said committee by a majority vote of a quorum of its members has approved the requested examination of tax returns by the committee member or agent specified under par. (a).

(c) With each requested examination under pars. (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 mining net proceeds, 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 chairperson requesting such examination and the committee member or authorized agent who will examine tax returns understands the provisions of ss. 70.375 (2) (b), 71.11 (44) and 77.61 (5), Stats., 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.

(3) No information may be divulged to the attorney general or department of justice employes under s. 71.11 (44) (c)2 or 77.61 (5) (b)2 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 pars. (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 mining net proceeds, 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 ss. 70.375 (2) (b), 71.11 (44) and 77.61 (5), Stats., 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 s. 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 any of the taxes or tax credits referred to in ss. 70.375 (2) (b), 71.11 (44), 72.06, 77.61 (5), 78.80 (3) and 139.38 (6), Stats., 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 pars. (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 mining net proceeds, 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 ss. 70.375 (2) (b), 71.11 (44) and 77.61 (5), Stats., 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) Except as provided in par. (d), no information may be divulged to employes of this state under s. 71.11 (44) (c)7, or 77.61 (5) (b)8, Stats., 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 par. (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 mining net proceeds, 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 ss. 70.375 (2) (b), 71.11 (44) and 77.61 (5), Stats., 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 pars. (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.

(d) Under s. 71.11 (44) (gm), Stats., the department may supply the address of a debtor to an agency certifying a debt of the debtor under the refund set-off provisions of s. 71.105, Stats.

(6) The department may, when satisfied that the restrictions imposed by ss. 71.11 (44) and 77.61 (5) will be adequately safeguarded and a beneficial tax purpose is demonstrated, enter into agreements with governmental officials whereby information is disclosed or exchanged. In such instances the requirements of this rule may be modified in the discretion of the department.

(7) The information required to be submitted to the department under subs. (1), (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 officer, the attorney general, or a district attorney responsible for enforcement of the criminal laws, in the statement required under subs. (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 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.

History: Cr. Register, August, 1975, No. 236, eff. 9-1-75; am. (4) and cr. (5), Register, January, 1976, No. 241, eff. 2-1-76; emerg. cr. (9), eff. 12-31-78; am. (1) (intro.) and (a) and (2), r. (1) (b), renum. (1) (c) to be (1) (b) and am., renum. (3) to (5) to be (6) to (8) and am. (7) and (8), cr. (3) to (5), Register, January, 1979, No. 277, eff. 2-1-79; cr. (9), Register, March, 1979, No. 279, eff. 4-1-79; am. (1) (intro.) and (b), (4) (a), r. (9), Register, July, 1981, No. 307, eff. 8-1-81; am. (1) (b), (2) (c), (3) (c), (4) (a) and (c) and (5) (b), Register, June, 1983, No. 330, eff. 7-1-83; am. (5) (intro.) and (d), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 1.13 Power of attorney.** (ss. 71.11 (44)(c)5 and 71.61 (5) (b)5a, 78.80 (3) and 139.38 (6), Stats.) (1) POWER OF ATTORNEY.(a) A power of attorney or other written authorization executed by the taxpayer shall be required by the Wisconsin department of revenue for the taxpayer's representative, on behalf of the taxpayer, to:

1. Inspect confidential information (e.g., tax returns and audit reports).

2. Receive notices, communications and correspondence containing confidential information.

3. Represent the taxpayer at conferences.

4. Execute a waiver to extend the statutory period for assessment or collection of a tax.

5. Execute any other waivers or agreements in behalf of the taxpayer.

(b) The power of attorney requirement applies to income, franchise, withholding, gift, sales and use, motor fuel, general aviation fuel, special fuel and cigarette tax matters of individuals, partnerships and corporations and homestead credit matters.

(2) EXCEPTIONS. (a) A power of attorney is not required for a taxpayer's representative to inspect confidential information or to represent the taxpayer at conferences, if the representative is accompanied by the taxpayer or, if a corporation, by an officer or authorized employe of the corporation.

(b) Generally a power of attorney is not required in the case of a trustee, receiver, guardian, personal representative or special administrator of an estate, or a representative appointed by a court.

(3) FILING OF POWER OF ATTORNEY. (a) One power of attorney form shall be filed with the Wisconsin department of revenue, with one additional copy for each additional tax matter. For example, if a power of attorney covers 2 tax matters, (e.g., income tax and sales tax), 2 power of attorney forms shall be filed.

(b) One power of attorney form shall be filed in each office of the department in which the taxpayer's representative, in connection with the matter under consideration, intends performing one or more of the acts enumerated in sub. (1).

(4) FORM OF POWER OF ATTORNEY. (a) Power of attorney forms are available from any Wisconsin department of revenue office. The Wisconsin form (Form A-222) is similar to the federal power of attorney form (Form 2848).

(b) Use of the Wisconsin power of attorney form is not mandatory. However, the department prefers that this form or another similar form be used. The form shall clearly express the scope of the authority granted the taxpayer's representative, the Wisconsin tax matters (e.g., income, sales, or gift tax) covered and the tax year or period to which it relates.

Note: A supply of forms may be obtained from the department at 4638 University Avenue, Madison, Wisconsin 53708 or by mail request to P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (b), Register, September, 1983, No. 333, eff. 10-1-83.

# Chapter Tax 2

# INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

**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 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 and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Income from personal services does not include income derived from activities involving the substantial use of capital or labor of others.

(3) CURRENT RECIPROCITY. (a) Wisconsin currently practices some form of income tax reciprocity with Illinois, Indiana, Kentucky, Maryland, Michigan and Minnesota. Formal agreements have been signed with Illinois, Kentucky, Michigan and Minnesota. Reciprocity with Indiana and Maryland is based on informal agreements and acquiescence by both states.

(b) Wisconsin's formal reciprocity agreements are effective for the following years:

1. Kentucky: for the years beginning on and after January 1, 1961.

2. Illinois: for the years beginning on and after January 1, 1971.

3. Michigan: for income earned after October 1, 1967 and years beginning on or after January 1, 1968.

4. Minnesota: for the years beginning on and after January 1, 1968.

(e) The informal agreements with Indiana and Maryland have been in effect since prior to 1960.

(4) EFFECT OF RECIPROCITY. (a) Personal service income included under reciprocity agreements shall be taxed by an employe's state of residence rather than by an employe's state of employment. Wisconsin shall not tax personal service income earned in Wisconsin by a resident of states with which Wisconsin has reciprocity and such states shall not tax personal service income which a Wisconsin resident earns in their states, except as described in subs. (5) and (6).

(b) An employer need only withhold income tax for the state of residence of an employe. However, federal law regulates withholding on wages earned by employes engaged in interstate transportation activities. (Additional information may be obtained by contacting the Wisconsin department of revenue, compliance section, P.O. Box 8902, Madison, Wisconsin 53708.

(5) PROVISIONS OF AGREEMENT WITH ILLINOIS. (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to *employes* for personal services" (emphasis added). The agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income.

(b) The agreement does not apply to compensation paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of such a person is taxable by Wisconsin. However, a credit may be

claimed for income tax paid to Illinois on personal service income earned outside Wisconsin.

(c) An individual who is domiciled in Illinois but is not a resident of Illinois is subject to the Wisconsin income tax on income earned in Wisconsin.

(6) PROVISIONS OF AGREEMENT WITH MICHIGAN. The reciprocity agreement with Michigan is limited to income from "personal services, including salaries, wages or commissions". The agreement does not include income which Michigan considers to be "business income", such as fees of self-employed persons such as professionals.

(7) PROCEDURE FOR NONRESIDENTS. Nonresident persons employed in Wisconsin and residing in a state with which Wisconsin has reciprocity may file Form W-220 ("Nonresident Employe's Withholding Reciprocity Declaration") with their Wisconsin employers. Upon receipt of this form, Wisconsin employers shall not withhold Wisconsin income tax from Wisconsin personal service income of such employes.

(8) PROCEDURE FOR WISCONSIN RESIDENTS. (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity (as well as those employed in other states) shall file Form 1-ES ("Wisconsin Declaration of Estimated Tax") with the Wisconsin department of revenue if their out-of-state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to file a declaration.

(b) Such Wisconsin residents may have their employers cease withholding the other state's income tax from their personal service income and may claim a refund from such state if income taxes are withheld from such income after the effective date of a reciprocity agreement.

(c) Wisconsin residents earning personal service income in states where it is taxable by the other state may claim a credit on their Wisconsin tax returns for net income taxes paid to such states.

(9) DELINQUENT TAXES. Reciprocal agreements shall not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.135, Stats.

Note: Forms 1-ES and W-220 and their instructions may be obtained by writing the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from such employe's incomes may contact the department's compliance bureau, P.O. Box 8902, Madison, Wisconsin 53708.

The term "temporary or transitory" as used in the definition of an Illinois resident set forth in subsection (1) is not defined in either Illinois law or regulations. Therefore, whether or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

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

**Tax 2.03 Corporation returns.** (s. 71.10 (1), Stats.) (1) For the purpose of filing franchise or income tax returns, the secretary of revenue has designated the following forms for the use of corporations:

(a) Form 4. Return of income for the calendar or fiscal year.

(b) Form 4A. Balance sheets as of beginning and end of taxable year; analysis of surplus account; reconciliation of book income with net income reported.

(c) Form 4B. Apportionment data (when applicable to the corporation).

(d) Form 4C. Separate accounting data (when applicable to the corporation).

(e) Form 4-ES. Declaration of estimated tax by corporations.

(f) Form 4I. Return of income for insurance company.

(g) Form 4S. Shareholders' tax-option (subchapter S) corporation modifications or share of income (loss).

(h) Form 4U. Underpayment of estimated tax by corporations.

(i) Form 4X. Amended corporation franchise or income tax return.

(j) Form 5. Optional return of income for the calendar or fiscal year. This return is to be used only by corporations whose entire net income is taxable in Wisconsin or by those reporting on the apportionment method.

(2) All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708 or delivered to the department's Audit Bureau at 4638 University Avenue, Madison, Wisconsin.

Note: Blank forms may be obtained from the department at 4638 University Avenue, Madison, or by mail request to P. O. Box 8903, Madison, Wisconsin 53708.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. Register, September, 1983, No. 333, eff. 10-1-82.

**Tax 2.04 Information returns and wage statements.** (ss. 71.04 (1) and 71.10 (1), (8m) and (8n), Stats.) (1) All corporations carrying on activities within this state, whether taxable or not under ch. 71, Stats., shall file with the department of revenue, on or before January 31 of each year on federal form W-2 or Wisconsin form 9b or on other forms approved by the department, statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not. A copy of federal form 1087 or 1099, as appropriate, may be filed in lieu of Wisconsin form 9b.

(2) Salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than $500 need not be so reported if no part thereof was within the definition of wages in s. 71.19 (1), Stats.

(3) Form WT-7, Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages, shall accompany the wage statements submitted.

(4) Except as provided in sub. (7), statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments of all rents and royalties on property regardless of location, and payments to residents and non-residents of Wisconsin of rents and royalties on property located in Wisconsin shall be filed on or before March 15 of each year on forms 9b or other approved forms. The forms must be filed on the date indicated even if the corporation keeps its records on a fiscal year other than a calendar year.

(5) Payments of interest, dividends, rents or royalties of less than $100 to any one individual need not be reported.

(6) Items required to be reported on wage statements or forms 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

(7) Corporations which elect to file a combined federal and state information return with the internal revenue service reporting items enumerated in sub. (4) will not be required to file a separate information return with the Wisconsin department of revenue. Under the combined federal and state reporting system, the internal revenue service will forward this information to the department of revenue.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. (1), (3), (4) and (6), cr. (7), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.045 Information returns; form 9c for employers of nonresident entertainers, entertainment corporations or athletes.** History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. Register, September, 1983, No. 333, eff. 10-1-83; r. Register, December, 1985, No. 360, eff. 1-1-86.

**Tax 2.05 Information returns, forms 8 for corporations.** (s. 71.10 (1), Stats.) All corporations doing business within this state, whether subject to the franchise or income tax or not, are required to file with the department of revenue by mailing to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708 or delivery to the Audit Bureau, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8, or other approved forms, as prescribed by the

secretary of revenue, statements of transfers of capital stock made by residents of Wisconsin during the preceding calendar year.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, P. O. Box 8903, Madison, Wisconsin, 53708.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.06 Information returns required of partnerships and persons other than corporations.** (ss. 71.10 (8m), (8n) and (15) and 71.11 (25), Stats.) (1) COMPENSATION FOR SERVICES. Information returns reporting remuneration paid for services, whether or not within the definition of "wages" in s. 71.19 (1), Stats., shall be filed on or before January 31 of each year on federal form W-2 or Wisconsin form 9b or on such other form as may be approved by the department. Form WT-7, "Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages", shall accompany wage statements submitted. These forms shall be mailed to the Wisconsin Department of Revenue, P.O. Box 34, Madison, Wisconsin 53786 or delivered to the department at 4638 University Avenue, Madison.

(2) OTHER INCOME. Informational returns reporting other items, including interest paid or rent paid, shall be filed on or before April 15 of each year on Wisconsin forms 9b or on other forms approved by the department. Items required to be reported on informational returns shall be disallowed as deductions from gross income if not properly reported. These returns shall be mailed to the Wisconsin Department of Revenue, P.O. Box 59, Madison, Wisconsin 53785 or delivered to the department at 4638 University Avenue, Madison.

(3) EXCEPTION. Payors who elect to file a combined federal and state information return with the internal revenue service reporting items enumerated in sub. (2) are not required to file a separate Wisconsin form 9b with the department, as described in s. Tax 2.04 (7).

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr. Register, September, 1964, No. 105, 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.07 Income tax returns of liquidated or dissolved corporations.** (s. 71.10 (1), Stats.) The officers of a corporation which has been liquidated or dissolved during the income year shall file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The franchise tax applies only to those corporations that are actually doing business in Wisconsin after the close of the period covered by the franchise tax return. Corporations which cease to do business in the income year covered by the return must file an income tax return to account for their final operation. A corporation which has liquidated or dissolved during the income year shall include the following information in its final return:

(1) A copy of its plan of liquidation or reorganization.

(2) The section of ch. 71, Stats., under which it liquidated or reorganized.

(3) The disposition of the assets. If the assets were sold, indicate the selling price, adjusted cost basis at the time of sale, gain or loss realized on the sale and the date of the sale.

(4) A list of the shareholders, their addresses and the amount received by each shareholder from the distribution or distributions. (The list should be submitted in addition to the required Forms 9b).

(5) The date of the final distribution.

Note: The information specified in this rule is necessary for the audit of the final return of a corporation.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 2.08 Returns of persons other than corporations.** (1) For the purpose of filing income tax returns, the secretary of revenue has designated the following forms for the use of persons other than corporations:

(a) Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.

(b) Form 1A. (Short form).

(c) Form 2. For trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on Form 1).

(d) Form 3. For partnerships and joint ventures.

(2) Information returns required of persons other than corporations are specified in s. Tax 2.06. See also Tax 3.07.

(3) Returns required to be filed by persons other than corporations shall be filed by mailing them to P.O. Box 268, Madison, Wisconsin 53790 if a tax is due. If a refund is payable or if no amount is due, the return shall be filed by mailing it to P.O. Box 59, Madison, Wisconsin 53785. Returns required to be filed by fiduciaries shall be filed by mailing them to P.O. Box 8904, Madison, Wisconsin 53708.

Note: Blank forms may be obtained by mail request to Wisconsin Department of Revenue, P. O. Box 8903, Madison, Wisconsin 53708.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1), Register, November, 1977, No. 263, eff. 12-1-77; am. (3), Register, February, 1978, No. 266, eff. 3-1-78.

**Tax 2.081 Indexed income tax rate schedule.** (s. 71.09 (1b) and (2), Stats.) (1) THE LAW. (a) Section 71.09 (1b), Stats., prescribes the tax rates to be applied to taxable income in determining the tax to be assessed, levied and collected upon the taxable incomes of all persons other than corporations for the taxable year 1979.

(b) Section 71.09 (2), Stats., provides that "Commencing with calendar year 1980 and corresponding fiscal years and thereafter, the dollar amounts in sub. (1b) shall be changed to reflect the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the current year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the previous year, as determined by the U.S. department of la-

bor, but in no case shall the amounts be increased by more than 10%. The revised amounts shall be rounded to the nearest whole number divisible by 100, and in no case shall be reduced below the amount appearing in sub. (1b) on February 28, 1979. The department of revenue shall annually adopt by rule any changes in dollar amounts required under this subsection, and incorporate them in the income tax forms and instructions."

(2) INDEXED INCOME TAX RATE SCHEDULE FOR THE 1980 TAXABLE YEAR. (a) The consumer price index, all urban consumers, U.S. city average increased from 216.6 for June 1979 to 247.6 for June 1980, a 14.3% increase Therefore, the dollar amounts set forth in s. 71.09 (1b), Stats., shall be increased by 10%, the maximum increase allowable under s. 71.09 (2), Stats., for the 1980 taxable year.

(b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the 1980 taxable year shall be computed at the following rates:

WISCONSIN NET TAXABLE INCOME

| Exceeding | Not Exceeding | Tax Rate |
|---|---|---|
| $ 0 | $ 3,300 | 3.4% |
| $ 3,300 | $ 6,600 | 5.2% |
| $ 6,600 | $ 9,900 | 7.0% |
| $ 9,900 | $13,200 | 8.2% |
| $13,200 | $16,500 | 8.7% |
| $16,500 | $22,000 | 9.1% |
| $22,000 | $44,000 | 9.5% |
| Over $44,000 | | 10.0% |

(3) INDEXED INCOME TAX RATE SCHEDULE FOR THE 1981 TAXABLE YEAR. (a) The consumer price index, all urban consumers, U.S. city average increased from 247.6 for June 1980 to 271.3 for June 1981, a 9.6% increase. Therefore, the dollar amounts set forth in sub. (2), shall be increased by 9.6% as required by s. 71.09 (2), Stats., for the 1981 taxable year.

(b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the 1981 taxable year shall be computed at the following rates:

WISCONSIN NET TAXABLE INCOME

| Exceeding | Not Exceeding | Tax Rate |
|---|---|---|
| $ 0 | $ 3,600 | 3.4% |
| $ 3,600 | $ 7,200 | 5.2% |
| $ 7,200 | $10,900 | 7.0% |
| $10,900 | $14,500 | 8.2% |
| $14,500 | $18,100 | 8.7% |
| $18,100 | $24,100 | 9.1% |
| $24,100 | $48,200 | 9.5% |
| Over $48,200 | | 10.0% |

(4) INDEXED INCOME TAX RATE SCHEDULE FOR THE 1982 TAXABLE YEAR. (a) The consumer price index, all urban consumers, U.S. city average increased from 271.3 for June 1981 to 290.6 for June 1982, a 7.1% increase. Therefore, the dollar amounts set forth in sub. (3), shall be in-

creased by 7.1% as required by s. 71.09 (2), Stats., for the 1982 taxable year.

(b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the 1982 taxable year shall be computed at the following rates:

WISCONSIN NET TAXABLE INCOME

| Exceeding | Not Exceeding | Tax Rate |
|---|---|---|
| $ 0 | $ 3,900 | 3.4% |
| $ 3,900 | $ 7,700 | 5.2% |
| $ 7,700 | $11,700 | 7.0% |
| $11,700 | $15,500 | 8.2% |
| $15,500 | $19,400 | 8.7% |
| $19,400 | $25,800 | 9.1% |
| $25,800 | $51,600 | 9.5% |
| Over $51,600 | | 10.0% |

History: Emerg. cr. eff. 10-16-80; cr. Register, April, 1981, No. 304, eff. 5-1-81; cr. (3), Register, December, 1981, No. 312, eff. 1-1-82; cr. (4), Register, December, 1982, No. 324, eff. 1-1-83.

**Tax 2.085 Claim for refund on behalf of a deceased taxpayer.** (s. 71.10 (10), Stats.) (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the refund exceeds $100, the claimant shall file, with the income tax return, a completed form I-804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) Forms required to be filed under sub. (1) shall be mailed to the Wisconsin Department of Revenue, P.O. Box 59, Madison, Wisconsin 53785.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1), Register, November, 1978, No. 275, eff. 12-1-78; am. (2), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.09 Reproduction of income tax forms.** (s. 71.10 (1) (intro.), (2) (b) and (3) (a), Stats.) Subject to this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions may be filed with the department in lieu of the corresponding official forms. The department may reject any form which is in whole or in part illegible.

(1) The reproductions must be made by photo-offset, photo-engraving or by some similar photographic process. They may be reproduced on one side or both sides of the paper.

(2) The reproductions must be on paper of substantially the same weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may be reproduced on white paper.

(3) In the reproduction of tax forms, black ink may be substituted for colored ink.

(4) The size of the reproductions, both as to dimensions of the paper and image reproduced thereon, must be the same as that of the official form.

(5) Except for returns executed by fiduciaries as provided in (6) below, all signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

(6) A fiduciary or the fiduciary's agent may use a facsimile signature in filing a tax return on form 2, subject to the following conditions:

(a) Each group of returns forwarded to the department shall be accompanied by a letter signed by the person authorized to sign such returns declaring, under penalities of perjury, that the facsimile signature appearing on the returns is the signature adopted by the person to sign the returns filed and that such signature was affixed to the returns by the person or at the person's direction. The letter shall also list each return by name and identifying number.

(b) A signed copy of the letter must be retained by the person filing the returns and must be available for inspection by the department.

(c) Where the returns are reproduced by photocopying or similar reproductive methods, the facsimile signature must be affixed subsequent to the reproduction process.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9-1-74; am. (intro.), (2), (6) (intro.) and (a), Register, November, 1977, No. 263, eff. 12-1-77; am. (3), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns.** (s. 71.10 (6), Stats.) It is deemed necessary for the administration of the tax imposed by ch. 71, Stats., that at the time of filing Wisconsin income tax returns for the taxable year 1965 and for taxable years thereafter by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year (including all schedules, statements, documents and computations) should be included and filed with the Wisconsin return. Accordingly, such complete copies of federal income tax returns are directed to be so filed except copies of the short form federal return which, at the time of adoption of this rule is designated as federal form 1040A.

History: Register, December, 1965, No. 120, eff. 1-1-66.

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

(2) STATUTES. (a) Section 71.11 (21m), 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, Stats., (effective May 5, 1976), provides that regardless of any other limitations in ch. 71, 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), 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 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. (s. 71.11 (21) (bm), 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. (s. 71.11 (21) (g)1, 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. (s. 71.10 (10) (bn), 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 s. 71.11 (21) (bm), 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 s. 71.11 (21) (bm), 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.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 2.11 Credit for sales and use tax paid on fuel and electricity.** (ss. 71.04 (3) and 71.043, Stats.) (1) DEFINITIONS. In this rule:

(a) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. 71.043 (4) (a), Stats.

(b) "Manufacturing" has the meaning designated in s. 77.51(27), Stats., by virtue of s. 71.043 (4) (b), Stats.

(c) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising and administrative department activities. If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(2) CREDIT ALLOWABLE. Section 71.043 (2), Stats., provides that "The tax imposed upon or measured by corporation net income of the taxable year 1973 and subsequent taxable years pursuant to s. 71.01 (1) or (2), Stats., may be reduced by an amount equal to the sales and use tax under ch. 77, Stats., paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. . . ."

(3) CARRY FORWARD OF UNUSED CREDIT. (a) If a corporation is entitled to a sales and use tax credit for 1973 and subsequent tax years under s. 71.043 (2), Stats., such credit, to the extent not offset by the tax liability of the same year, may be offset against the tax liability of the subsequent year and each succeeding year up to a total of 5 years or when the credit has been completely offset, whichever occurs first.

(b) The sales tax credit computed for 1973 and subsequent tax years shall first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied.

(4) SALES AND USE TAXES NOT DEDUCTIBLE. Under s. 71.04 (3), Stats., sales and use taxes paid during the taxable year 1980 and thereafter are not deductible from gross income if the taxes may be used as provided in s. 71.043 (2) and (3) to reduce a corporation's income or franchise tax.

Note: An example of the computation and application of the credit follows:

Tax 2

**Computation of Income or Franchise Tax Payable After Sales Tax Credit**

| | 1980 | 1981 |
|---|---|---|
| a. Income (franchise) tax payable before sales tax credit | $ 1,000.00 | $10,000.00 |
| b. Sales tax credit of current year available (schedule below) | $ 3,846.15 | $ 3,846.15 |
| c. Current year's credit allowable | $ 1,000.00 | $ 3,846.15 |
| d. Carry forward of unused 1980 credit | $(2,846.15) | $ 2,846.15 |
| e. Total credit allowable in 1981 (c + d) | | $ 6,692.30 |
| f. Income (franchise) tax payable after sales tax credit | $ -0- | $ 3,307.70 |

**Computation of Sales Tax Credit Available**

| | Annual Total 1980 & 1981 |
|---|---|
| Cost of fuel and electricity directly consumed in manufacturing in Wisconsin (including tax) | $100,000.00 |
| Sales tax credit available in 1980 & 1981: $100,000 ÷ 1.04 = $96,153.85 × 4% = | $ 3,846.15 (1) |

(1) An alternative method of computation, which produces the same result, is to divide $100,000 by 26.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (2) (a) r. (1) (d), (2) (b) and (3) (a), renum. (3) (b) and (c) to be (3) (a) and (b), cr. (4), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.12 Amended income and franchise tax returns.** (1) GENERAL. (a) The department shall accept amended returns to correct Wisconsin income tax returns previously filed. Amended Wisconsin returns also shall be filed with the department if either amended federal returns are filed and the changes therein affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, or amended returns are filed with another state and a credit has been allowed against Wisconsin taxes for taxes paid to the state and the changes affect the amount of income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin returns shall be filed within 90 days after the date the amended federal returns or amended returns of other states are filed with those agencies.

Note: Refer to s. Tax 2.105 for additional information.

(b) Because an amended return is not the original return, it shall not begin or extend the statute of limitation periods for the assessment of additional tax or the claim of a refund.

(c) If an amended return shows a refund, it shall be filed within 4 years of the due date of the original return. However, a claim for a refund of the tax assessed by an office audit shall be filed within 2 years of the date assessed if no petition for redetermination was filed and if the year is not closed by field audit.

(2) FORMS. (a) The following forms may be used for filing an amended return:

1. Form 1X for individuals.

2. Form 4X for corporations.

(b) If forms other than those specified in par. (a) are used to amend a tax return, such forms shall be clearly marked across the top of the first page "AMENDED RETURN."

Note: The department accepts amended individual income tax, corporate income tax, and franchise tax returns to allow taxpayers to correct overstatements or understatements of net income and computations of tax contained on their original return.

Forms 1X and 4X are similar in format and use to Forms 1040X and 1120X, the amended U.S. individual and corporate returns. Although the use of these 2 state forms is not mandatory, the department prefers that they be used. They are designed to simplify the filing and expedite the processing of the information. Copies may be obtained from any Wisconsin department of revenue office.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (1) (a), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.13 Moving expenses.** (s. 71.05 (1) (a)7 and (b)4, Stats.) (1) GENERAL. Certain moving expenses qualify for a deduction in arriving at federal adjusted gross income. When a person *moves into* Wisconsin, such expenses are allowed as a deduction in computing Wisconsin adjusted gross income. The deductibility of moving expenses incurred in *moving from* Wisconsin was changed for 1975 and subsequent taxable years by the enactment of s. 71.05 (1) (a)7, Stats., which provides for an add modification for "Moving expenses incurred to move from this state".

(2) TREATMENT OF MOVING EXPENSES INCURRED IN MOVING FROM WISCONSIN. Moving expenses may be deducted in arriving at federal adjusted gross income for federal income tax purposes. Under s. 71.05 (1) (a)7, Stats., in determining Wisconsin adjusted gross income an add modification shall be made for "moving expenses incurred to move from this state". This add modification applies when the taxpayer becomes domiciled in another state, i.e., becomes a nonresident for Wisconsin tax purposes, either on the day he or she moves to the other state or prior to the move. However, the add modification is not required if the taxpayer retains his or her Wisconsin domicile after moving to another state and continues to be subject to Wisconsin's taxing jurisdiction.

Note: The following example illustrates the add modification for moving expenses for a taxpayer moving from Wisconsin to New York when the taxpayer's Wisconsin domicile is not retained:

| | |
|---|---|
| Wisconsin Gross Income | $18,000 |
| New York Gross Income | 600 |
| Moving Expenses to New York | (4,000) |
| Federal Adjusted Gross Income | $14,600 |
| *Add Modification for Moving Expenses to New York | 4,000 |
| Subtract Modification: New York Gross Income | (600) |
| Wisconsin Adjusted Gross Income | $18,000 |

*The $4,000 of moving expenses to New York is entered as an add modification on the Wisconsin income tax return, Form 1.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. (2), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.14 Aggregate personal exemptions.** The aggregate personal exemptions allowable under s. 71.09 (6p) (a) and (b), Stats., when each files a return, may be divided between husband and wife according to their choice.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 2.15 Methods of accounting for corporations.** (s. 71.11 (8), Stats.) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may return its income in accordance with the method of accounting regularly employed in keeping its books. If no method of accounting is regularly employed or if the method employed does not clearly reflect the income, the department of revenue may prescribe the method to be used. A method of accounting will not be regarded as clearly reflecting the income unless all items of gross income and all deductions are treated with reasonable consistency.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.16 Change in method of accounting for corporations.** (s. 71.11 (8) (b), Stats.) (1) GENERAL. (a) A change in the method of accounting by corporations shall be made under s. 71.11 (8) (b), Stats., which reads as follows: "In computing a corporation's taxable income for any taxable year, commencing after December 31, 1953, if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply."

(b) A change in a corporation's method of accounting may involve an overall change of the entire accounting system or it may involve only a single item.

(c) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department. Applications for such change shall be made in the manner described in sub. (5).

(d) In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

(2) CHANGE IN METHOD OF ACCOUNTING FOR SINGLE ITEMS. Any change in the accounting treatment of a single item, if "material", is deemed a change in the method of accounting under s. 71.11 (8) (b), Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin franchise/income tax purposes.

(3) 1953 ACCOUNT BALANCES. (a) *Taxpayer-initiated change.* On a taxpayer-initiated change, the net 1953 account balances shall not be allowed as an offset in the year of change.

(b) *Department-initiated change.* 1. On a department-initiated change, the net 1953 balances shall be allowed as an offset in the year of change in accordance with the internal revenue code and federal regulations.

2. Net 1953 account balances shall be computed by the taxpayer and adequately supported by its accounting records in order for them to be allowed as offsets in the year of change.

3. No offset is available for taxpayers incorporated after December 31, 1953 or in connection with changes involving LIFO inventories.

(c) Paragraphs (a) and (b) shall apply to all tax years open to assessment or refund.

(4) TRANSITIONAL ADJUSTMENTS. The entire impact of a change in method of accounting shall be reflected in net income of the year of change for Wisconsin franchise/income tax purposes, thereby resulting in a doubling up of income and/or deductions in that year. (This represents a significant difference from the federal treatment which, in general, permits a 10-year amortization of the net transitional adjustment at the beginning of the year of change.)

(5) APPLICATION FOR CHANGE IN METHOD OF ACCOUNTING. (a) Applications to use the LIFO inventory method and subsequent changes in inventory accounting method shall be filed with the department pursuant to rule Tax 2.26. All other applications shall contain the following:

1. Nature of the taxpayer's business;

2. The method of accounting used in keeping its books;

3. The reason(s) for requesting the change;

4. A legible copy of federal Form 3115, "Application for Change in Accounting Method";

5. Legible copies of *all* subsequent correspondence with the internal revenue service pertaining to such application;

6. A statement, and whenever possible a schedule, which clearly indicate the manner in which it proposes to affect the change for Wisconsin franchise/income tax purposes;

7. A copy of the entry, its date and explanation, made on the books to accomplish the change. (When no book entry is made, the reason for its absence shall be stated.); and

8. Any other pertinent information.

(b) 1. Applications shall be filed before the end of the taxable year for which the change is to be effective. Such applications shall be in letter form with supporting schedules and data and mailed to: Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708.

2. The department has no form comparable to federal Form 3115.

Note: See Ladish Co. v. Dept. of Revenue (1975), 69 Wis. 2d 723, concerning a change in method of accounting for a single item.

Rules Tax 2.25, "Corporation accounting generally" and 2.26, " 'Last in, first out' method of inventorying for corporations" describe department interpretations with respect to methods of accounting for inventories.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, November, 1977, No. 263, eff. 12-1-77; r. and recr. Register, May, 1978, No. 269, eff. 6-1-78; am. (1) (a), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.165 Change in taxable year.** (ss. 71.02 (1) (d) and (2) (k), and 71.10 (3m) and (16), Stats.). (1) DEFINITIONS. In this rule:

(a) "Calendar year" means a 12 month period ending on December 31.

(b) "Fiscal year" means a 12 month period ending on the last day of any month other than December 31.

(c) "Taxable year" or "income year" means a calendar year, a fiscal year or a short period of less than 12 months resulting from a change in reporting from a calendar to a fiscal, a fiscal to a calendar, or a fiscal to a different fiscal year and is the period for which the taxable income is reported.

(2) CORPORATIONS. (a) *General.* A new corporation may elect the taxable year on which it will report. A taxable year must end on the last day of a month and, if accounting records are kept on a 52-53 week period, the taxable year shall be considered to end on the last day of the month closest to the end of the 52-53 week period.

(b) *Change in taxable year.* A corporation may not change its taxable year without first obtaining approval from the department. The request to change shall be made in writing to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708 prior to the close of the proposed new taxable year. The request shall contain the following information:

1. Name and address of corporation.

2. Taxable year presently used.

3. Proposed taxable year.

4. Effective date of change.

5. Reason for requesting the change.

(c) *Computation of tax.* The income for the short taxable year shall be computed on an annual basis and the tax for the short taxable year shall be a fractional portion of the tax computed on such annual income. As an example, in changing from a calendar year to a fiscal year ending September 30, with net income for the 9 month period of $18,000, the tax on the income of the short taxable year may be computed as follows:

1. Multiply short period income by 12. $18,000 x 12 = $216,000

2. Divide by number of months in the short period to obtain annualized income. $216,000 ÷ 9 = $24,000

3. Compute the tax on the annualized income. Tax on $24,000 equals $1,676 (1977 rates).

4. Prorate this tax to obtain the tax for the short period. $1,676 x 9/12 = $1,257.

(3) PERSONS OTHER THAN CORPORATIONS. (a) *General.* A person other than a corporation is required to adopt the same taxable year for Wisconsin as for federal income tax purposes. The taxable year is established with the filing of the first income tax return.

(b) *Change in taxable year.* For federal purposes, approval is requested by filing federal Form 1128 on or before the 15th day of the second calendar month following the close of the short taxable year for which the return is required. The change is effected for Wisconsin purposes by attaching a copy of Form 1128 and the federal approval to the Wisconsin

tax return for the short taxable year, which return is due on or before the 15th day of the 4th month after the end of the short taxable year.

(c) *Computation of tax.* The Wisconsin taxable income for the short taxable year shall be computed on an annual basis. For natural persons, the tax computed on the annualized income, reduced by the amount for personal exemptions, is multiplied by the number of months in the short taxable year and divided by 12. As an example, in changing from a calendar year to a fiscal year ending June 30, with Wisconsin taxable income for the 6 months of $14,000, and claiming 4 exemptions as of June 30, the tax on the income of the short taxable year may be computed as follows:

1. Multiply short period income by 12. $14,000 x 12 = $168,000

2. Divide by number of months in the short period to obtain annualized income. $168,000 ÷ 6 = $28,000

3. Compute the tax on the annualized income. Tax on $28,000 equals $2,577 (1977 tax rates).

4. Subtract personal exemptions. $2,577 - $80 = $2,497

5. Prorate this tax to obtain tax for the short period. $2,497 x 6/12 = $1,248.50.

For estates and trusts, the computation is the same except that step 4 ("Subtract personal exemptions") is omitted; in the example, the tax equals $1,288.50 ($2,577 x 6/12).

(4) PARTNERSHIPS. (a) *General.* A partnership is required to adopt the same taxable year for Wisconsin as for federal income tax purposes. If federal approval of the taxable year adopted for the first return is required, a copy of federal Form 1128 and approval shall be attached to the first Wisconsin return filed.

(b) *Change in taxable year.* If federal approval is required for a change in taxable year, a copy of the federal Form 1128 and the federal approval shall be attached to the Wisconsin partnership return for the short taxable year.

(c) *Computation of income.* Partnership income for the short taxable year shall be determined under the internal revenue code as defined under s. 71.02 (2) (b), Stats.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

**Tax 2.17 Cash method of accounting for corporations.** (s. 71.11 (8), Stats.) The use of the cash method of accounting and reporting does not properly reflect taxable income in cases where, at the end of the taxable year, the records reflect accounts receivable, accounts payable, or inventories.

**Tax 2.18 Accrual method of accounting for corporations.** (s. 71.11 (8), Stats.) In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor, inventories are necessary, and no accounting method in regard to purchases and sales will correctly reflect the income except the accrual method. Special methods of ac-

counting employed in special trades or businesses may, with the written approval of the department of revenue, be used in reporting income.

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

**Tax 2.19 Instalment method of accounting for corporations.** (s. 71.11 (8), Stats.). (1) Subject to the approval of the department of revenue, a sale or other disposition by a corporation of real property, or a casual sale or other casual disposition of personal property, other than personal property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year, for a price exceeding $1000, may be reported on the instalment basis in the case of a sale or other disposition in an income year, beginning on or after January 1, 1967, provided that in the income year of the sale or other disposition there are no payments or the payments, exclusive of evidences of indebtedness of the purchaser, do not exceed 30% of the selling price. On the instalment basis there shall be reported as income from the instalment sale in any income year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(2) Use of the instalment method, in each instance, shall be conditional upon the implied agreement of the corporation to take into income in any year in which it distributes the instalment obligation, the unreported balance of gain on the instalment sale or exchange.

(3) The instalment method shall not be permitted with respect to any instalment sale or exchange made subsequent to adoption of a plan of liquidation to which s. 71.337, Stats., applies.

(4) Corporations regularly engaged in the business of selling personal property and keeping records on the instalment basis will be required to report for franchise or income tax purposes on the accrual basis.

(5) The expenses incident to each instalment sale or exchange must be deferred on the same basis that the profit arising from the sale or exchange is deferred.

(6) When property is sold or exchanged on the instalment basis at a loss, the loss may not be deferred beyond the income year in which the sale or exchange takes place.

History: 1-2-56; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies.** (s. 71.11 (8), Stats.) (1) Except as otherwise provided in subsection (3) hereof, acceptance corporations and dealers in commercial paper must report the discount on the purchase of paper as income in the year of such purchase.

(2) Where the records of such acceptance corporations and dealers in commercial paper are kept upon the deferred profit basis, schedules should be attached to the tax returns clearly setting forth the unrealized profit accounts and reconciling the income and surplus per books with the taxable net income.

(3) Acceptance corporations and dealers in commercial paper may elect to report their taxable income on the deferred profit basis, provided that their books and records are kept on that basis and provided further that both the deferment of income, and the expenses incurred in producing said income is made in accordance with accepted accounting principles and practice. The election to so report must be made before the close of the year for which the return is made, and after having made such election the deferred profit basis of reporting must be adhered to in all subsequent periods.

**Tax 2.21 Accounting for incorporated contractors.** (s. 71.11 (8), Stats.) (1) The general rules for reporting income on the accrual basis apply to incorporated contractors except that, in the case of contracts upon which work is performed in 2 or more consecutive income years, the percentage of completion basis may be used provided such basis clearly reflects the income taxable under ch. 71, Stats.

(a) Under this method of accounting at the close of the taxable year, a portion of the total contract price is treated as sales for the current period, such portion being based upon the percentage of completion, as determined by an engineer's or an architect's estimate or such other records as will most clearly reflect the income realized to date. By this method the difference between the sales thus determined and the total cost applicable to the sales is treated as taxable income.

(2) The profit on jobs taken on a cost plus basis and uncompleted at the close of a taxable year should be computed in accordance with the terms of the contract and reported at that time, and cannot be deferred until the year in which the contract is completed.

(3) The income derived from construction contracts performed in Wisconsin is taxable.

History: 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.22 Accounting for incorporated dealers in securities.** (s. 71.11 (8), Stats.) The income of dealers in securities can be properly reflected for income tax purposes only by use of the accrual method of accounting. As securities constitute the stock in trade, the inventories thereof must be taken consistently on a uniform basis conforming to that used in the trade or business.

**Tax 2.24 Accounting for incorporated retail merchants.** (s. 71.11 (8), Stats.) The "retail method" of treating inventories properly reflects the taxable income and will be acceptable when it is consistently followed and adequate records are kept. The difference between the inventory taken on the old basis and the inventory taken on the basis of the "retail method" will constitute taxable income or deductible expense for the year in which the change is made. Retail merchants should report all other items of income and expense upon the ordinary accrual method.

**Tax 2.25 Corporation accounting generally.** (ss. 71.11 (8) and 71.11 (9), Stats.) (1) In a business requiring the use of inventories, the income therefrom generally can be properly reflected by use of the accrual method of accounting, and inventories taken in accordance with the best accounting practice in the trade or business and used by the taxpayer to show his financial position can be accepted.

(a) Except as other methods of inventorying are recognized in these rules, the 2 most commonly used bases in valuing inventories are 1. cost and 2. cost or market, whichever is lower.

(b) Whether the cost or the lower of cost or market basis of valuing inventories is used, the basis adopted must be applied with reasonable consistency to the entire inventory, and no change from one basis to the other will be permitted without written permission from the department of revenue.

(2) Inventories and inventory records must be preserved as a part of the accounting records of the taxpayer and available for examination and verification.

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

**Tax 2.26 "Last in, first out" method of inventorying for corporations.** (s. 71.11 (9), Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of s. 71.11 (9), Stats., may elect with respect to those goods specified in its application and properly subject to inventory to compute its inventory in accordance with the method provided by section 472 of the United States internal revenue code, provided that:

(1) The first inventory which may be computed on said basis is the closing inventory for the taxable year 1940.

(2) The same basis of inventorying is used in reporting income for taxation to the United States internal revenue service, and that the inventories used in reporting income to the United States internal revenue service and to the Wisconsin department of revenue agree both as to computation and amounts except as provided in sub. (7).

(3) Except as herein otherwise provided, the change to and the use of such method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect thereto by the United States internal revenue service.

(4) An application to use such method must be filed with the Wisconsin department of revenue in substantially the same form as required by the internal revenue service, and the same shall be filed with the return for the taxable year in which the change is to be made effective. The opening inventory for the period in which the election to change is exercised shall be taken on the basis previously accepted and approved.

(5) There shall be applicable for Wisconsin franchise or income tax purposes, in addition to those regulations of the United States internal revenue service made generally applicable by sub. (3), that regulation, authorized by section 1321 of the internal revenue code, concerning involuntary liquidation and replacement of inventories, except, however, that income adjustments for the difference between the replacement cost and the original inventory cost of the base stock inventory liquidated shall be made to the net income of the year in which the replacement is made instead of to the net income for the year of liquidation.

(6) Except as provided in sub. (7), any corporation which has been computing its inventory for Wisconsin franchise or income tax purposes in accordance with section 472 of the United States internal revenue code

and which has been authorized or directed by the United States internal revenue service to change its method of inventory valuation for federal income tax purposes shall also change its method of inventory valuation for Wisconsin franchise or income tax purposes. To correlate its Wisconsin basis with the federal basis, the opening inventory for the income year in which the change is made shall be reported on the basis previously accepted and approved whereas the closing inventory shall be on the new method of valuation. No adjustment is to be made to the closing inventory of the preceding taxable year. Notice of the change in method shall be filed with the return on which it is effective and shall be supported by a copy of the authorization or order to change inventory method for federal income tax purposes.

(7) Any corporation which has been authorized or directed by the United States internal revenue service to treat the cutting of timber as a sale or exchange of timber for purposes of computing its federal income tax liability and has included in its inventory for federal income tax purposes, the excess of the fair market value of the timber over the adjusted basis thereof, may exclude from its inventory, for Wisconsin franchise or income tax purposes, the excess of the fair market value of the timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of revenue, include the excess in its inventory for Wisconsin franchise or income tax purposes subject to the conditions the department may prescribe.

History: 1-2-56; am. (2) and (6), and cr. (7), Register, March, 1960, No. 51, eff. 4-1-60; am. intro. par., (6) and (7), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (5), (6) and (7), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.30 Property located outside Wisconsin—depreciation and sale.** (s. 71.07 (1), Stats.) (1) DEFINITIONS. In this rule, "internal revenue code" means the internal code in effect for the taxable year specified by s. 71.02(2)(b), Stats., and "federal adjusted basis" means those amounts determined under such code. For example, for the taxable year 1976 "internal revenue code" means the federal internal revenue code in effect on December 31, 1975.

(2) GENERAL. (a) Prior to tax year 1975, income or loss derived from real property or tangible personal property followed the situs of the property from which derived.

(b) In 1975, s. 71.07 (1), Stats., was amended, effective with the 1975 tax year, to read in part:

"All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust. Income or loss of nonresident individuals and nonresident estates and trusts from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived. Income or loss of nonresident individuals and nonresident estates and trusts derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived."

(3) TREATMENT IN 1975 AND SUBSEQUENT YEARS FOR RESIDENT INDIVIDUALS, ESTATES AND TRUSTS. For tax year 1975 and thereafter, income or loss from property and business located outside Wisconsin, received

by resident individuals, estates and trusts, is taxable. The basis for depreciation and for determining gain or loss on dispostion of property for such taxpayers is the same as the basis determined under the internal revenue code, whether the property was acquired before becoming or while a resident of this state.

Note: In the case of *Wisconsin Department of Revenue vs. Romain A. Howick*, 100 Wis. 2d 274 (1981), the Wisconsin supreme court held that for the purpose of determining a loss on sale the basis of property located outside Wisconsin acquired before the owner became a Wisconsin resident is the basis determined under the internal revenue code. In this rule, the same principle is applied to gains realized upon the disposition of such property.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. and recr. (3), Register, July, 1982, No. 319, eff. 8-1-82.

**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 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.

(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 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 consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property, and includes: 1. Any amount payable for the use of real or tangible personal property, or any part thereof, whether desig-

nated as a fixed sum of money or as a percentage of sales, profits or otherwise;

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items. "Annual rental" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(d) *Property factor; leasehold improvements.* Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of leasehold improvements shall be included in the factor.

(e) *Property factor; construction in progress.* Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used by the taxpayer in the regular course of his trade or business. If the property is partially used by the taxpayer in the regular course of his trade or business while under construction, the value of the property to the extent used shall be included in the property factor.

(f) *Property factor; averaging property values.* As a general rule the "average value" of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department of revenue may require or allow the averaging of monthly values during the tax period if reasonably required to properly reflect the average value of the taxpayer's property. Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period, or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(4) PAYROLL FACTOR; WHAT IS COMPENSATION. The term "compensation" includes wages, salaries, commissions and any other form of remuneration paid to employes for personal services. Compensation includes the value of board, rent, housing, lodging, and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal internal revenue code. In the case of employes not subject to the federal internal revenue code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employes shall be made as though such employes were subject to the federal internal revenue code. Compensation includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor. Except for such management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employe are excluded.

(5) (a) *Sales factor; sales made in general business operations.* 1. For the purposes of the sales factor, the term "sales" means generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations which produce business (apportionable) income.

2. In the case of a taxpayer whose business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) *Sales factor; sales made in other types of business activity.* As applied to a taxpayer engaged in business activity other than or in addition to the manufacturing and selling or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity.

1. If the business activity consists of providing services, such as the operation of an advertising agency or the performance of equipment service contracts or the performance of research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

2. If the business activity consists of performing cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts includes the taxpayer's reimbursed cost plus the fee.

3. If the business activity is the renting of real or tangible personal property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

4. If the business activity is the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(c) *Sales factor; what sales of tangible personal property are in this state.* 1. Gross receipts from the sales of tangible personal property (except sales to the United States government: see Tax 2.39 (5) (d)) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale, or if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of destination.

2. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is in this state, even though the property is ordered from outside this state.

3. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

4. The term "purchaser within this state" shall include a recipient other than the purchaser if the taxpayer, at the designation of the purchaser, delivers to or has the property shipped to such a recipient within this state.

5. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, or the designee of a purchaser who is in this state, the sale is in this state.

6. If the taxpayer is not taxable in the state of destination for lack of sufficient nexus or by operation of Public Law 86-272, 15 U.S.C.A., Section 381-385, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

7. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchasers, the following rules apply:

a. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

b. If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

(d) *Sales factor; sales to the U.S. government.* Gross receipts from the sales of tangible personal property to the United States government, including its agencies and instrumentalities, are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(e) *Sales factor; numerator.* The numerator of the sales factor will include the gross receipts from sales which are attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(f) *Sales factor; numerator; sales other than sales of tangible personal property.* 1. In General: Section 71.07 (2) (c) 3, Stats., contains provisions for including gross receipts from transactions other than sales of tangible personal property in the numerator of the sales factor.

2. Under this section gross receipts are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. If the income producing activity is performed within and without this state such receipts are attributed to this state in accordance with subd. 5 of this paragraph.

3. Income producing activity; defined. The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not

include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes but is not limited to the following:

a. The rendering of personal services by employes or the utilization of tangible and intangible property by the taxpayer in performing a service.

b. The sale, rental, leasing, or licensing the use of or other use of real property.

c. The rental, leasing, licensing the use of or other use of tangible personal property.

d. The sale, licensing the use of or other use of intangible personal property such as patents, copyrights, trademarks, trade names, etc.

4. Costs of performance; defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

5. Application. a. Receipts from sales, other than sales of tangible personal property, are in this state if the income producing activity is performed wholly within this state. If the income producing activity is performed partly within and partly without this state, receipts shall be assigned to this state based upon the ratio of direct costs of performing such services in this state to the direct costs of performing such services in all states having jurisdiction to tax such business.

b. The following are special rules for determining when receipts from the income producing activities described below are in this state during the taxable year:

(i) Gross receipts from the sale, lease, rental or other use of real property are in this state if the real property is located in this state.

(ii) Gross receipts from the rental, lease, licensing the use or other use of tangible personal property shall be assigned to this state if the property is within this state during the entire period of rental, lease, license or other use. If the property is within and without this state during such year, gross receipts attributable to this state shall be based upon the ratio which the time the property was used in this state bears to the total time the property was used in all states having jurisdiction to tax such business during such year.

(iii) Gross receipts from the performance of personal services are attributable to this state if the services are performed entirely in this state. If the services are performed partly within and partly without this state, gross receipts shall be attributable to this state based upon the ratio which compensation and other direct costs of performing such services in this state bear to total compensation and other direct costs of performing such services in all states having jurisdiction to tax such business. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to this state if the compensation related to performing such services is allocated to this state by s. 71.07 (2) (b) 4, Stats.

c. The provisions of pars. (b) 2 and (f) shall also apply to sales, other than sales of tangible personal property, to the United States government.

(6) "BUSINESS (APPORTIONABLE) INCOME" DEFINED. "Business (apportionable) income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(7) "STATE" DEFINED. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12-1-73; cr. (intro.), Register, January, 1978, No. 265, eff. 2-1-78.

**Tax 2.40 Nonapportionable income.** (s. 71.07 (1) and (2), Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. Directly related expenses must be deducted in full, whereas expenses related to both business income and nonapportionable income shall be prorated in a manner which fairly distributes the deduction between such incomes.

(2) For all businesses which apportion their income to Wisconsin, other than "financial organizations" and "public utilities" as defined in s. 71.07 (2) (d), Stats., nonapportionable dividends and interest received which follow the residence of the recipient shall first be reduced by deductible dividends received, and the balance shall be limited to the amount by which total apportionable and nonapportionable interest and non-deductible dividends received exceeds the sum of the expenses related thereto and deductible interest paid. If the latter sum exceeds such total interest and non-deductible dividends received, no deduction from total net income can be made for nonapportionable interest and dividends received. In no event can dividends and interest received which follow the residence of the recipient exceed the total amount of such nonapportionable interest and dividends received.

(3) For "financial organizations" (except insurance companies) and "public utilities" as defined in s. 71.07 (2) (d), Stats., dividends and interest received which follow the residence of the recipient must be reduced by related expenses and deductible dividends received. Interest paid and deductible is deemed to be related expense in an amount determined by multiplying the total of such interest paid by a fraction, the numerator of which is the average tax basis of the intangible property producing, or capable of producing, such income and the denominator of which is the depreciated average tax basis of the total property owned and used in the production of all income during the year. This paragraph shall also apply to all other businesses not covered by (2) above.

(3m) Subsections (2) and (3) apply for only the calendar years 1973 and 1974 or corresponding fiscal years.

(4) Total nonapportionable income or loss and Wisconsin nonapportionable income or loss must be adjusted for federal income taxes if fed-

eral income taxes are deductible in determining total company net income.

(5) The total net income or loss of the business must be adjusted to eliminate all of the net nonapportionable income or loss to determine the apportionable income or loss to which the apportionment percentage is applied. The resulting income or loss apportioned to Wisconsin must then be adjusted to include the Wisconsin net nonapportionable income or loss.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (3m), Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 2.41 Separate accounting method.** (s. 71.07 (2), Stats.) (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: the ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business.

(a) Federal income taxes are based upon income and should, therefore, be allocated to Wisconsin business on the basis of income. Federal income taxes are deductible for income years through 1974 only on the cash basis, and the allocation to Wisconsin business for any year, therefore, must be based upon the ratio of income within Wisconsin to the total income of the year on which the federal income taxes are assessed, even though that ratio differs from the ratio of the year in which the taxes are actually paid. Federal income taxes are not deductible for income years 1975 and thereafter.

(b) The relationship of the general overhead items to Wisconsin operations will determine whether the home office income and expense should be allocated to the Wisconsin business. Miscellaneous income, such as income from intangibles and income from tangible property used in the business, and such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Net rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation but are taxable in full if the property is located in Wisconsin. Gross rentals must be reduced by all expenses related to such investment property.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 2.42 Apportionment method.** History: 1-2-56; am. (2) and (3), Register, January, 1968, No. 145, eff. 2-1-68; cr. (4), Register, August, 1973, No. 212, eff. 9-1-73; r. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax. 2.43 Nonapportionable income.** History: 1-2-56; r. (1) (a), Register, August, 1960, No. 56, eff. 8-1-60; cr. (2), Register, August, 1973, No. 212, eff. 9-1-73; r. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.44 Permission to change basis of allocation.** (s. 71.07 (2), Stats.) Except when income must be reported on the apportionment basis, per-

mission to make a change either from separate accounting to apportionment, or vice versa shall be obtained in writing from the department of revenue upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708 before the end of the tax year for which the change is desired.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.45 Apportionment in special cases.** (s. 7.07 (5), Stats.) When the business of any person, other than an interstate professional sports club or "financial organization" or "public utility," as defined in s. 71.07 (2) (d), Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in s. 71.07 (2), Stats., or by separate accounting in view of the unitary nature of the business, the department will substitute in the place of some or all of the statutory apportionment factors such other factor or factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation the taxpayer, at the time of the assessment, will be apprised of the factors used in the formula adopted.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, August, 1973, No. 212, eff. 9-1-73; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.46 Apportionment of business income of interstate air carriers.** (Section 71.07 (2) (e), Wis. Stats.) The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

(1) The ratio which the aircraft arrivals and departures within this state scheduled by such carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period; provided that in the case of nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures;

(2) The ratio which the revenue tons handled by such carrier at airports within this state during the calendar or fiscal year bears to the total revenue tons handled at airports within and without this state during the same period;

(3) The ratio which such air carrier's originating revenue within this state for the calendar or fiscal year bears to the total originating revenue within and without this state for the same period.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. (intro.). Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.47 Apportionment of net business income of interstate motor carriers of property.** (1) (s. 71.07 (2) (e), Stats.) The apportionable income of an interstate motor carrier of property, doing business in Wisconsin,

shall be apportioned to Wisconsin, on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere;

(b) The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

(2) Whenever gross receipts' data is not available, the department may authorize or direct substitution of a similar factor (e.g. gross tonnage) and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor (e.g. revenue miles).

(3) For purposes of this regulation a "ton mile" reflects the movement of one ton of freight for the distance of one mile.

(4) This regulation shall not apply to mercantile or manufacturing businesses which engage in some interstate hauling as an incident of such mercantile or manufacturing businesses.

(5) This regulation shall apply with respect to the determination of income tax or franchise tax liability for any income year open to assessment or refund on the effective date hereof.

History: Cr. Register, April, 1966, No. 124, eff. 5-1-66; am. (intro.). Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.48 Apportionment of net business incomes of interstate pipeline companies.** (s. 71.07 (2) (e), Stats.) (1) With respect to the imposition of the Wisconsin income or franchise tax on or measured by income of the calendar year 1969, or corresponding fiscal year, and thereafter, the apportionable income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 3 ratios:

(a) The ratio of tangible property owned, and used by the taxpayer in Wisconsin to produce apportionable income, to the total of such property owned and used by him to produce apportionable income everywhere. The amount of such property for purposes of both the numerator and denominator shall be Wisconsin income tax net cost. In any case in which the property factor is distorted by reason of the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, or in any case in which Wisconsin income tax net cost cannot be ascertained, the department may authorize or direct such other method of determining the property fraction as will produce an equitable result.

(b) The ratio of traffic units (e.g. barrel miles, cubic foot miles or other appropriate measure of product movement) in Wisconsin to the total of such units everywhere.

(c) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere. An employe shall be deemed located in Wisconsin if his services are performed entirely within Wisconsin, or if services performed without the state are incidental to services within Wisconsin, or if some of the service is performed in Wisconsin and the base of operations is in Wisconsin, or if there is no base of operations and the place from which the ser-

vice is directed and controlled is in Wisconsin, or if the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. Compensation paid to retired employes shall be excluded from both the numerator and the denominator.

(2) In any case in which the company has no employes or in which the department determines that employes are not a substantial income producing factor, it may order or permit the elimination of the compensation factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.49 Apportionment of net business incomes of interstate finance companies.** (s. 71.07 (2) (e), Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and thereafter, the business (apportionable) income of a finance company engaged in business within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of gross receipts in Wisconsin to the total gross receipts everywhere. "Gross receipts" includes all business income associated with the lending of money in the normal course of business such as interest, discounts, finance charges or fees and service charges or fees. Gains from sales of assets, charges to a related corporation for personal services of employes and miscellaneous income are not includable in "gross receipts" for the purpose of computing this factor. "Gross receipts" will be assigned as income to this state if the transaction producing the income was principally negotiated in this state.

(b) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere, determined in accordance with the provisions of s. 71.07 (2) (b), Stats., and s. Tax 2.39 (4). "Compensation paid to employes" includes deductible management or service fees paid to a related corporation directly or indirectly for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor.

(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 Wiscon-

sin, 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 s. 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 ss. Tax 2.46, 2.47 and 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 s. 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 s. 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., s. 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 numerator 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.

## GROSS INCOME

**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.

(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, 1966, 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.

**Tax 2.61 Building and loan dividends on instalment shares received by corporations.** (1) An amount (dividend) credited to shareholders of a building and loan association has a taxable status as income for the year of the credit to the extent of the amount available to the shareholder.

(2) An amount (dividend) received by such shareholder at maturity of his share in excess of the accumulated amounts so reported as income shall be treated as income in the year of such receipt.

**Tax 2.63 Dividends accrued on stock.** (s. 71.03 (1) (d), Stats.) In the case of stock purchased by a corporation between dividend dates, the entire amount of the dividend is income to the vendee and must be included in its income when received. The amount advanced by the vendee to the vendor in contemplation of the next dividend payment is an investment of capital.

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

**Tax 2.65 Interest received by corporations.** (s. 71.03 (1) (c), Stats.) (1) In general, all interest is includable in the income by which the franchise tax is measured, including interest received on monies invested in obligations of the United States government and its instrumentalities and

agencies. If a corporation is not subject to the franchise tax, but subject to net income taxation, interest on federal obligations is not taxable, but interest on postal savings and federal tax refunds is taxable to corporations subject to net income taxation. Profit or loss on the sale or other disposition of federal obligations is a taxable gain or deductible loss for purposes of both the franchise tax measured by net income and the net income tax. (See s. 71.07 (1), Stats., for situs of interest income).

(2) Interest is deemed to be received when accrued or received in cash, depending upon the method of accounting used by the taxpayer corporation. Interest becomes taxable to a corporation reporting on a cash basis when it is made available to it. Coupons on bonds which are due but have not been cashed are considered as received provided that the cash for payment of the coupons is available. Accrued interest paid on bonds purchased between interest payment dates shall be treated as a deduction from the interest thereon received.

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

**Tax 2.69 Income from Wisconsin business.** (ss. 71.01 and 71.07, Stats.) All of the income realized from business carried on in Wisconsin is taxable. The fact that a person or corporation is licensed to do business in Wisconsin is evidence that it is doing business in the state, within the meaning of this chapter. However, a person or corporation may be doing business in this state within the meaning of this chapter even though not licensed. In all cases of doubt the complete facts should be reported to the department of revenue for determination.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.70 Gain or loss on capital assets of corporations; basis of determining.** (s. 71.03 (1) (g), Stats.) (1) Profits or losses resulting from the sale or other disposition of capital assets are ordinarily taxable income or deductible losses for the year in which the sale or other disposition takes place. In certain cases of real estate sales involving deferred payments, the profit may be treated as not wholly realized in the year of sale and may be deferred in accordance with the terms of payment. (See s. Tax 2.19)

(a) The fair market value at January 1, 1911 must be determined in the light of the facts and circumstances known as of that date. In the absence of competent evidence to the contrary, cost less depreciation sustained to January 1, 1911 will be considered the fair market value as of that date. The method of arriving at the January 1, 1911 value must be clearly set forth in the income tax returns.

(b) Stocks, bonds and other securities are considered as capital assets when held by a person other than a dealer in securities. The profit or loss on sale or other disposition of securities is, therefore, determined in the same manner and on the same basis as that used for other capital assets.

(c) In determining the profit or loss on the sale of stock received as a stock dividend subsequent to January 1, 1926, the total income tax cost of the original shares on which the dividend was declared is allocated to the new and old shares with due regard to the fair market value of the new and old shares at the date of the dividend.

**Tax 2.72 Exchanges of property by corporations generally.** (s. 71.03 (1) (g), Stats.) (1) Except where otherwise specifically provided by ch. 71,

Stats., where property is exchanged for other property which has a fair market value, a taxable gain or deductible loss may result, and such fair market value must be treated as the price realized for the property exchanged and the cost price of the property received, for purposes of future sale. When the property received in exchange has no determinable market value, the property received takes the place of the property exchanged, and no profit or loss is recognized. In the event of future sale in such case, the income tax cost of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except where otherwise specifically provided by ch. 71, Stats., where property of 2 different kinds is received in exchange for property, one kind having a determinable fair market value and the other no determinable fair market value, the gain is measured by the excess of the fair market value of the property received over the income tax cost of the property exchanged. The property received which has no determinable fair market value is considered as having no cost in case of future sale, the entire proceeds of such sale being taxable income. If the income tax cost of the property exchanged is in excess of the fair market value of the property received in exchange, such excess shall be taken as the income tax cost of the property received which has no determinable fair market value, no loss being recognized in such cases.

(3) In general there are 3 types of exchanges upon which exemption from tax may be claimed:

(a) Exchanges made pursuant to a plan of reorganization.

(b) Exchanges in which the property received in trade has no determinable market value.

(c) Exchanges of property held for productive use or investment pursuant to s. 71.03 (5), Stats., when the exchange occurred in a taxable year ended on or after December 31, 1957.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. (4) (c) and renum. (4) (d) to be (4) (c) and am., Register, March, 1966, No. 123, eff. 4-1-66; r. (3) and renum. (4) to be (3), Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.721 Exchanges of property held for productive use or investment by corporations.** (s. 71.03 (5), Stats.) (1) Property held for productive use in trade or business may be exchanged tax free for property of a like kind held for investment as well as for property of a like kind held for productive use in trade or business, and, similarly, property held for investment may be exchanged tax free for property of a like kind held for productive use in trade or business as well as for property of a like kind held for investment.

(2) The phrase "of a like kind" has reference to the nature or character of the property and not its grade or quality. One kind or class of property may not be exchanged tax free for property of a different kind or class.

(3) A leasehold interest in land cannot be exchanged tax free for a fee title unless the lease has 30 years or more to run.

(4) Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition

(in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

History: Cr. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.73 Involuntary conversion by corporations.** (s. 71.03 (1) (g) 3, Stats.) (1) In all cases of gain on involuntary conversion where such gain is not recognized for franchise or income tax purposes, the property acquired in the replacement is deemed to take the place of the property destroyed for purposes of depreciation, depletion and profit or loss on subsequent sale or other disposition.

(2) In all cases of involuntary conversion which result in losses, such losses are allowable in the year in which the conversion takes place.

(3) (a) For 1980 and preceding taxable years, this section does not apply when insurance money received on the conversion of Wisconsin assets is used in replacement outside of Wisconsin. In this case, the gain or loss shall be reported in the year of conversion.

(b) For 1981 and subsequent taxable years, this section does not apply when insurance money received on the conversion of nonbusiness assets located in Wisconsin is used in replacement with similar property outside of Wisconsin. Also, this section does not apply when insurance money received on the conversion of business assets located in Wisconsin is used in replacement with similar property outside of Wisconsin, and at the time of replacement, the taxpayer is not subject to taxation under ch. 71, Stats. In these cases the gain or loss shall be reported in the year of conversion.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (3), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.74 Gain or loss on disposition of property by corporations; adjustments to basis.** (s. 71.03 (1) (g), Stats.) (1) In determining gain or loss disposition of property on or after August 1, 1963 the cost or other basis shall be decreased for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion by the greater of the following 2 amounts:

(a) The amount allowed as deductions in computing taxable income, to the extent resulting in a reduction of the corporation's income taxes, or

(b) The amount allowable for the years involved.

(2) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion shall be made on the basis of the facts reasonably known to exist at the end of the taxable year. A corporation is not permitted to take advantage in a later year of its prior failure to take any such allowance or its taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the corporation has consistently taken proper deductions under one method, the amount allowable for such prior years shall not be increased even though a greater amount would have been allowable under another proper method.

(3) If the corporation has not taken a depreciation deduction either in the taxable year or for any prior taxable year, adjustments to basis of the

property for depreciation allowable shall be determined by using the straight line method of depreciation.

(4) For the calendar year 1964 and corresponding fiscal years and thereafter, if the corporation with respect to any property has taken a deduction for depreciation properly under one of the methods permitted for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable will be the deduction under the method which was used by the corporation with respect to that property.

(5) The amount allowed which resulted in a reduction of the corporation's taxes is hereinafter referred to as the "tax-benefit amount allowed." For the purpose of determining whether the tax-benefit amount allowed exceeded the amount allowable, a determination must be made of that portion of the excess of the amount allowedover the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such case the reduction in basis required would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent of the remainder of such excess. In such a case the reduction in basis required would be the amount of the tax-benefit amount allowed.

(6) For the purpose of determining the tax-benefit amount allowed, the only adjustments made in determining whether there would be an increase in tax shall be those resulting from the disallowance of the amount allowed. The taxable years for which the determination is made shall be the taxable year for which the deduction was allowed and any other taxable year which would be affected by the disallowance of such deduction. Examples of such other taxable years are taxable years to which there was a carry-over of a net business loss for the taxable year for which the deduction was allowed. In determining whether the disallowance of any part of the deduction would not have resulted in an increase in any tax previously determined, proper adjustment must be made for previous determinations under chapter 71, Wis. Stats.

(7) If a determination must be made with respect to several properties for each of which the amount allowed for the taxable year exceeded the amount allowable, the tax benefit amount allowed with respect to each of such properties shall be an allocated portion of the tax-benefit amount allowed determined by reference to the sum of the amounts allowed and the sum of the amounts allowable with respect to such several properties.

(8) A corporation seeking to limit the adjustment to basis to the tax-benefit amount allowed for any period, in lieu of the amount allowed, must establish the tax benefit amount allowed. A failure of adequate proof as to the tax benefit amount allowed with respect to one period does not preclude the corporation from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

(9) The amount allowable for prior periods is determined under the law applicable to such prior periods.

(10) Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization and depletion to the extent actually sustained in respect of a) any period during which the corporation was engaged in business entirely outside of Wisconsin, or b) any period during which the property was held by a person or organization not subject to income taxation under ch. 71, Stats. The amount actually sustained is that amount charged off on the books of the corporation where such amount is considered by the secretary of revenue to be reasonable. Otherwise the amount actually sustained will be the amount that would have been allowed as a deduction had the corporation been subject to income tax during those periods, determined by the straight line method.

History: Cr. Register, February, 1965, No. 110 eff. 3-1-65; am. (1) (a), (2), (3), (4), (5), and r. (8), renum. (9) to be (8) and am., renum. (10) to be (9) and (11) to be (10) and am., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (4), Register, July, 1978, No. 271, eff. 8-1-78.

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

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

**Tax 2.76 Refunds of taxes to corporations.** (s. 71.03 (1) (k), Stats.) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are taxable income.

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

**Tax 2.80 Improvements on leased real estate, income to corporate lessor.** (s. 71.03 (1) (k), Stats.) If improvements are made on leased property and the life of such improvements extends beyond the terms of the lease, the lessor derives taxable income at the expiration of the lease, the amount of which is represented by the fair market value of the improvements at the time.

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

**Tax 2.81 Damages received by corporations.** (s. 71.03 (1) (k), Stats.) Damages may result in taxable income when recovered on account of injury to property, interference with property rights or breach of contract, when the amounts received as damages are in excess of the income tax cost of the property destroyed. Damages recovered for libel of business reputation are taxable income.

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

**Tax 2.82 Nexus.** (ss. 71.01 (1) and (2) and 71.10 (1), 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) 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, 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 attributable 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 employes 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.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations.** (ss. 71.02 (2) (a) and (b), 71.317 (3) and 71.333, 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 shall 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.

(2) To qualify for the benefits of s. 71.333, 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.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. (1), Register, September, 1983, No. 333, eff. 10-1-83.

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

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

**Tax 2.87 Reduction of delinquent interest rate under s. 71.13 (1) (b), Stats.** ( s. 71.13 (1) (b), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) FACTORS FOR SECRETARY'S CONSIDERATION. In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) Any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.88 Interest rates.** (ss. 71.09 (5), 71.10 (5) and 71.13 (1) (a), Stats.) (1) INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT. Unpaid individual income or corporate franchise or income taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(2) INTEREST ON REFUNDS. (a) Any refund of individual income or corporate franchise or income taxes shall include interest as follows:

1. If the tax being refunded is from a return which has a filing due date on or after November 1, 1975 interest shall be computed at the rate of 9% per year from the due date of the return to the date paid by the department.

2. If the tax being refunded is from a return which has a filing due date prior to November 1, 1975 interest shall be computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid by the department.

(b) However, for income and franchise taxes no interest shall be allowed if the refund is paid within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This shall apply to a refund of taxes resulting from an overpayment by declaration of estimated tax as well as from withheld taxes.

(3) DELINQUENT TAXES. Any individual income or corporate franchise or income tax delinquencies shall include interest at the rate of 1.5% per month from the date on which the taxes became delinquent until the taxes are paid.

(4) EXTENSION PERIODS. If an extension of time is granted for filing an individual income or a corporate franchise or income tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 12% per year. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent and shall be subject to delin-

quent interest under sub. (3) from the end of the extension period until paid.

Note 1: For unpaid non-delinquent taxes due prior to November 1, 1975, interest was computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

2. For unpaid non-delinquent taxes due on or after November 1, 1975 and assessed by the Department of Revenue before August 1, 1981, interest was computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

3. Any individual income or corporate franchise or income taxes which were delinquent before November 1, 1975 were subject to delinquent interest at the rate of 1% per month from the date the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until paid.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1), (3) and (4), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.89 Penalty for underpayment of estimated tax.** (ss. 71.21 (11) and 71.22 (8), Stats.) Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax shall be at the rate of 12% per year on the amount of underpayment for the period of underpayment.

Note: This rate was changed from 9% to 12% for penalties assessed on or after August 1, 1981.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; r. and recr. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.90 Withholding; wages.** (s. 71.19 Stats.) (1) The term "wages" means remuneration for services performed by an employe for his employer unless specifically excepted under s. 71.19, Stats.

(2) The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales, commissions on insurance premiums, pensions and retirement pay, and supplemental unemployment benefits are wages within the meaning of the statute if paid as compensation for services performed by the employe for the employe's employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may be paid on the basis of piecework, or a percentage of the profits, and may be paid hourly, daily, weekly, monthly or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. (See, however, s. 71.19 (1) (i), Stats., relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business). If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employes its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe no longer exists between the

person in whose employ the services were performed and the individual who performed them.

(6) In general, pensions and retired pay are wages subject to withholding. So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

(7) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(8) Amounts of so-called "vacation allowances" paid to an employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding his absence from work, constitutes wages.

(9) Any payments made by an employer to an employe on account of dismissal, that is, involuntary separation from the service of the employer, constitutes wages regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments.

(10) Any amount deducted by an employer from the remuneration of an employe is considered to be a part of the employe's remuneration and is considered to be paid to the employe as remuneration at the time the deduction is made. It is immaterial that any act or law requires or permits such deductions.

(11) The term "wages" includes the amount paid by an employer on behalf of an employe, without deduction from the remuneration of or other reimbursement from the employe, on account of any tax imposed upon the employe by any taxing authority.

(12) The value of any meals or lodging furnished to an employe by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employe under the provisions of the internal revenue code, as defined in s. 71.02 (2) (b), Stats.

(13) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases) furnished or offered by an employer to his employes generally, are not considered as wages subject to withholding, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment or efficiency of his employes.

(14) Tips or gratuities paid directly to an employe by a customer of an employer, are excepted from withholding only if the tips are non-cash tips or if the cash tips received during the course of a month are less than $20.

(15) Withholding is not required:

(a) Upon amounts paid to an employe by the employe's employer under a wage continuation plan for a period during which the employe is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the internal revenue code, as defined in s. 71.02 (2) (b), Stats.

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

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

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in sub. (2) hereof, amounts withheld pursuant to s. 71.20, Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(2) Any employe who reports his income for taxation to the state of Wisconsin on an income year other than the calendar year shall be allowed as a credit for any such fiscal year amounts withheld by his employer in such fiscal year provided his employer, on or before the end of the first month following the close of such fiscal year, shall voluntarily furnish such employe with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in s. 71.10 (8) (a), Stats., and the employe files a copy of such statement along with his fiscal year return.

History: Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.92 Withholding tax exemptions.** (ss. 71.20 (9) (e), (14), (16) and (22), Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. An employe who elects to have the same number of Wisconsin withholding exemptions as are allowable for federal purposes shall notify his or her employer of this election. An employe making this election is not required to complete a Wisconsin withholding exemption certificate, form WT-4. An employe who claims a different number of withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed Wisconsin withholding exemption certificate, form WT-4.

(2) An employe who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employe provides his or her employer with a completed form WT-4, "Employe's Wisconsin Withholding Exemption Certificate". For this purpose, a tax liability is "incurred" if the employe had for the preceding year, or anticipates for the current year, a net Wisconsin income tax due, i.e., gross tax less personal exemptions on a Wisconsin return. If an employe is married, the net tax of the employe's spouse shall not be considered in determining if the employe may claim this exemption.

(3) (a) Effective April 1, 1979, an employe may enter into a written agreement with his or her employer to withhold a lesser amount of tax than indicated in the withholding tax tables, if the employe determines the lesser amount approximates the employe's anticipated income tax liability for the year. Form WT-4A, "Wisconsin Employe Withholding Agreement", shall be used for this purpose and a completed copy of the form shall be sent by the employe to the department within 10 days after

it is filed with the employer. If the employe fails to notify the department within the required 10 days, he or she shall be subject to a penalty of $10, as provided by s. 71.20 (22) (c), Stats.

(b) The agreement between the employe and employer shall be renewed each year. For calendar year taxpayers, the agreement expires on April 30 of the year immediately following the year in which it was entered into. For fiscal year taxpayers, the agreement expires 4 months following the close of the fiscal year in which entered into. To renew the agreement, an employe shall provide a new form WT-4A to his or her employer and submit a copy of the completed form to the department as provided in par. (a). If a new form WT-4A is executed before the expiration dates described in this paragraph, it shall supersede the previous agreement.

(c) If the department determines that an agreement would result in an insufficient amount of tax being withheld, the department may void the agreement by notification to the employer and employe.

(d) Section 71.20 (16), Stats., provides that any employe who enters into an agreement with the intent to defeat or evade the proper withholding of tax, shall be subject to a penalty equal to the difference between the amount required to be withheld and the amount actually withheld for the period that the incorrect agreement was in effect.

(e) Under s. 71.20 (22) (e), Stats., any employe who willfully supplies an employer with false or fraudulent information regarding an agreement with the intent to defeat or evade the proper withholding of tax may be imprisoned not more than 6 months or fined not more than $500, plus the costs of prosecution, or both.

Note: Forms WT-4 and WT-4A may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) and (2), cr. (3), Register, September, 1983, No. 333, eff. 10-1-83.

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

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

(3) PAYMENTS NOT SUBJECT TO WITHHOLDING. The following types of payments to a decedent's personal representative or heir shall not be subject to withholding of Wisconsin income tax:

(a) Payments representing wages accrued to the date of death but not paid until after death.

(b) Accrued vacation and sick pay.

(c) Termination and severance pay.

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

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

**Tax 2.935 Reduction of delinquent interest rate under s. 71.20 (5) (c), Stats.** (s. 71.20 (5) (c), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the withholding taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) FACTORS FOR SECRETARY'S CONSIDERATION. In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

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

(b) When a tax sheltered annuity is purchased for an employe by a public school system or by an exempt educational, charitable or religious

organization, the deposit used to acquire this annuity may be excluded from the employe's gross income in the year of payment under section 403(b) of the internal revenue code. Accordingly, since January 1, 1965, when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income, these payments also have been excluded from employes' taxable income for Wisconsin income tax purposes. Prior to that date, such payments were taxable for Wisconsin income tax purposes.

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

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

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

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

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

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

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

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

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

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

**Tax 2.945 Spousal individual retirement contributions.** (s. 71.02 (2) (b) 8, (d) and (e), Stats.) (1) PURPOSE. The purpose of this rule is to define the Wisconsin income tax treatment of a spousal individual retirement contribution.

(2) DEFINITIONS. In this rule

(a) "Qualifying individual" means an individual to whom a deduction is allowable under section 219 (a) of the internal revenue code.

(b) "Qualifying individual retirement contribution" means contributions which are deductible under section 219 of the internal revenue code.

(c) "Spousal individual retirement contribution" means the amount allowable as a deduction under section 219 (c) of the internal revenue code.

(3) FEDERAL LAW. Under section 219 (c) of the internal revenue code, a qualifying individual may deduct, in addition to the amount allowable under section 219 (a) of the internal revenue code, an additional amount not exceeding $2,000 for contributions by or on behalf of the individual to an individual retirement plan established for the benefit of the individual's nonworking spouse, if the qualifying individual files a joint federal income tax return for the taxable year to which the contribution applies and the nonworking spouse has no compensation for the year. The total amount deductible on a joint return is limited to the lesser of $2,250 or the qualifying individual's earned income for the year. Under s. 71.02 (2) (b) 8, Stats., the amount of contributions to an individual retirement plan deductible by an individual on a Wisconsin income tax return is determined under the internal revenue code.

(4) DEDUCTION ALLOWABLE. (a) Spousal individual retirement contributions shall be deductible from gross income in determining Wisconsin adjusted gross income on an individual's Wisconsin income tax return.

(b) The Wisconsin statutes require each spouse to file a return and compute his or her Wisconsin taxable income or loss separately. Under this principle of separate determinations of taxable income, each spouse shall be allowed to deduct only the qualifying individual retirement contributions made to his or her individual retirement plan.

Note: The following examples illustrate the Wisconsin tax treatment of contributions to individual retirement plans for an individual and a nonworking spouse:

*Example 1:* Mr. X has earned income of $20,000 in 1982 and establishes individual retirement accounts for himself and his nonworking spouse, who received $500 of taxable interest income during 1982. Timely contributions totalling $2,000 were made to his account and $250 was contributed to his spouse's account for 1982. Mr. X may deduct a maximum of $2,000 on his 1982 Wisconsin income tax return and his wife may deduct the $250 contributed to her plan.

*Example 2:* Same facts as example 1 except $1,000 is contributed to Mr. X's retirement plan and $1,250 to his wife's plan. In this situation, Mr. X may deduct a maximum of $1,000 while $1,250 is deductible by his wife. Since Mrs. X received only $500 of taxable income (interest)

in 1982, she does not receive a Wisconsin tax benefit for $750, the excess of the $1,250 retirement contribution to her plan over her taxable income.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 2.95 Reporting of installment sales by natural persons and fiduciaries.** (s. 71.02 (2) (b) and 71.07 (1), 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) LAW. (a) The Wisconsin tax treatment of installment sales by natural persons and fiduciaries is determined under the internal revenue code in effect under s. 71.02 (2) (b), Stats.

(3) SITUS OF INCOME. (a) *Prior to 1975.* For taxable years prior to 1975, s. 71.07 (1), 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), 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 portions of each installment payment that represent gain and interest income from the sale which are received while the seller is a Wisconsin resident are taxable by Wisconsin.

(b) *Nonresident seller.* If the seller is not a Wisconsin resident, the portions of each installment payment that represent 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 pay-

ment 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. 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 and the seller is a Wisconsin resident at the time installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are taxable by Wisconsin. However, if the seller no longer is a Wisconsin resident when installment payments are received, the portions of each of these installment payments that represent 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 and the seller is a Wisconsin resident at the time installment payments are received, the portion of each of the installment payments that represents gain is not taxable by Wisconsin, but interest income from the sale is taxable. However, if the seller is not a Wisconsin resident at the time installment payments are received, the portions of each of these installment payments that represent 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 substracted 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:

| | | Tax 2 |
|---|---|---|
| *1975:* | | |
| Selling price of land (also contract price) | | $ 2,000 |
| Cost of land (seller's basis) | | (1,500) |
| Gross profit | | $ 500 |
| Gross profit percentage ($500 ÷ $2,000) | 25% | |
| Payment received in 1975 | | $ 400 |
| Wisconsin taxable income (25% x $400) | | $ 100 |
| *1976:* | | |
| Amount of installment payment reportable as Wisconsin income (25% x $400) | | $ 100 |
| Interest income received | | 100 |
| Amount realized from sale of LC obligation | $ 1,000 | |
| Unpaid balance of the LC obligation | 1,200 | |
| Amount of income reportable if the balance was paid in full (25% x $1,200) | (300) | |
| Adjusted basis of LC obligation | (900) | |
| Gain from sale of LC obligation | | 100 |
| Wisconsin taxable income | | $ 300 |

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (2) and (5) (b) 2.a. and b., am. (4) (a) and (b), (5) (b) 1.a., Register, September, 1983, No. 333, eff. 10-1-83.

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

(2) CREDITS ALLOWABLE. 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 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 s. Tax 2.02).

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

(c) Income tax paid to a county, 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 Wisconsin income tax return form 1. 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 to be attached to Form 1 or 1A if either the tax due or estimated tax payments do not exceed $50.

(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.

Note: An example of the time for claiming the credit referred to in sub. (5) of s. Tax 2.955 follows:

A Wisconsin resident receives income of $4,000 in 1980 from rental property located in Iowa. The person files a 1980 declaration of estimated tax of $200 with Iowa, with $150 of declaration payments being made in 1980 and the fourth quarter payment of $50 being made in January 1981. The Iowa income of $4,000 is reported as income on the 1980 Iowa and Wisconsin returns. The 1980 Iowa income tax return shows the following:

| | 1980 Iowa Return |
|---|---|
| Iowa Rental Income | $ 4,000 |
| Iowa Net Tax (amount to be claimed as a credit on 1975 Wisconsin return) | $ 185 |
| Declaration Payments | $ 200 |
| Refund | $ 15 |

The taxpayer may claim a "Credit for net income tax paid to other states" of $185 on the 1980 Wisconsin return, even though a part of such tax was paid in 1981.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (4) (b), Register, January, 1981, No. 301, eff. 2-1-81; r. (2) (a) and (b), (3) (b), am. (2) (c), (3) (d) and (4), renum. (3) (c) to be (3) (b), r. and recr. (5), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.96 Extension of time to file corporation franchise or income tax returns.** (s. 71.10 (5) (a), Stats.) (1) GENERAL. Corporation franchise or income tax returns, forms 4 and 5, are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year unless an extension of time for filing has been granted. The returns may be filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return.

(2) PROCEDURE. (a) *The 30-day or 6-month extension from department.* A request for a 30-day or 6-month extension, Form IC-830, from the department shall be filed in duplicate by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged on the copy of the extension request which is returned to the taxpayer.

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

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay any estimated tax liabil-

ity on or before the 15th day of the 3rd month following the taxable year. This may be done by attaching a remittance either to an amended "Wisconsin Declaration of Estimated Corporation Franchise or Income Tax" form or to a copy of the federal extension (Form 7004) and mailing them to the department of revenue.

(c) *Additional federal extensions.* If an additional extension of time has been granted by the internal revenue service, a copy of both sides of the extension, Form 7005, showing the action and signature of the district director, shall be attached to the Wisconsin franchise or income tax return for that return to be considered timely filed.

(d) *Federal termination or refusal to grant extension.* If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before the date of termination fixed by the internal revenue service.

(3) INTEREST CHARGES AND LATE FILING FEES. (a) Any additional tax due with the complete return which is not paid by the original due date is subject to interest at 12% per year during the extension period and 1½% per month from the end of the extension period until the date of payment.

(b) Any required installments of estimated tax unpaid as of the original due date of the return are subject to interest at 1½% per month until paid regardless of any extensions granted for filing the return.

(c) A corporation return filed after the extension period is subject to a $10 late filing fee.

(4) CONSOLIDATED RETURNS. Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, and any additional federal extension, form 7005, shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

(5) DOMESTIC INTERNATIONAL SALES CORPORATIONS. Since a Domestic International Sales Corporation's (DISC's) federal annual information return, Form 1120 DISC, is not due for federal purposes until the 15th day of the 9th month following the end of the taxable year and the DISC's Wisconsin return, Form 4 or 5, is due on or before the 15th day of the 3rd month following the end of the taxable year, a federal extension for a DISC cannot apply to the Wisconsin return. If a complete Wisconsin return cannot be filed by the due date, the corporation may obtain an extension from the department for a period not to exceed 6 months, if the extension is requested prior to the original due date of the return.

Note: Requests for extensions and related correspondence, documents or remittances shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1), (2) (a) and (c), (3) (a) and (c), (4) and (5), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.98 Disaster area losses.** (s. 71.02 (2) (b), Stats.) (1) GENERAL. (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used for personal or business purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

(b) If a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, section 165(h) of the internal revenue code gives taxpayers the election to deduct the loss on the return for the current tax year or on the return for the immediately preceding tax year.

(2) WISCONSIN TAX TREATMENT OF DISASTER LOSSES. (a) *Individuals.* 1. The Wisconsin income tax treatment for individuals is determined under the federal internal revenue code in effect under s. 71.02 (2) (b), Stats.

2. If an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin Form 1X may be used.

(b) *Corporations.* The Wisconsin corporation tax law is contained in chapter 71, Stats., and is not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the internal revenue code are not available to corporations for Wisconsin franchise and income tax purposes.

Note: (1) As an example of the above, on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

| | | |
|---|---|---|
| Calumet | Iowa | Rock |
| Columbia | Jefferson | Sauk |
| Crawford | LaFayette | Sheboygan |
| Dane | Manitowoc | Vernon |
| Dodge | Milwaukee | Walworth |
| Fond du Lac | Ozaukee | Washington |
| Grant | Richland | Waukesha |
| Green | | |

An individual who sustained a casualty loss from this disaster in any of these 22 counties (regardless of where that individual resided) could have elected to deduct the loss on the individual's 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers (assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977). If the election was not made, the loss was deductible on the taxpayer's 1976 return.

(2) This rule explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law. This rule does not explain all the details regarding casualty losses. However, Internal Revenue Service Publication 547, entitled "Tax Information on Disaster, Casualty Losses, and Thefts", may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources and related casualty loss problems.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. (2), renum. (3) to be (2) and am. (2) (a)1. and (b), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.99 Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974.** History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.991 Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975.** History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.992 Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976.** History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; r. Register, September, 1983, No. 333, eff. 10-1-83.

## Chapter Tax 3

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



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

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

**Tax 3.03 Dividends received, deductibility of.** (s. 71.04 (4), Stats.) (1) In determining whether 50% or more of the net income or loss for the preceding year of the corporation paying the dividend was used in computing taxable income, if the corporation paying the dividend was subject to the franchise tax measured by net income, interest income from the federal government and its instrumentalities must be included but deductible dividends must be disregarded. If the corporation paying the dividend was subject to the net income tax, non-taxable interest from the federal government or its instrumentalities and deductible dividends must both be disregarded.

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

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

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

(5) Distributions received from corporations which may deduct dividends paid from gross income for tax purposes do not qualify as deductible dividends.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; cr. (5), Register, July, 1978, No. 271, eff. 8-1-78.

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

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

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

**Tax 3.07 Bonuses and retroactive wage adjustments paid by corporations.** (s. 71.04 (1), Stats.) Bonuses for services actually rendered but not based upon a prearranged bonus agreement or established policy are allowable when actually paid, provided such payments when added to the stipulated salaries or other compensation do not exceed a reasonable compensation for the services rendered. Bonuses paid to employes and others which do not have in them the element of compensation or are excessive in comparison to the services rendered are not deductible from gross income. Christmas bonuses, if paid as additional compensation, are proper deductions from gross income if included on forms WT-9 or 9b as a part

of the compensation paid. Retroactive wage adjustments, if reasonable in amount, may be taken as a deduction from gross income in the year in which they are finally determined to be payable. Such adjustments are to be reported on forms WT-9 or 9b.

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

**Tax 3.08 Retirement and profit-sharing payments by corporations.** (s. 71.04, Stats.) (1) Retirement payments to retired officers or employes or to their families or dependents, to be deductible from gross income must:

(a) Qualify as ordinary and necessary expense.

(b) Be made pursuant to a retirement plan agreement.

(c) Be reasonable in amount.

(d) Have been reported on informational returns when required by s. Tax 2.04 or 2.06.

Credits to retirement reserves are not deductible, but actual retirement payments made and charged against such reserves may be deductible in the year made.

(2) Payments to an employe retirement or profit-sharing trust are deductible if:

(a) Such payments qualify as ordinary and necessary expense.

(b) The trust is an irrevocable trust and no part of its funds may revert to the employer.

(c) Payments to the trust are made in accordance with an established policy or agreement.

(d) The trust is established for the benefit of officers or employes.

(e) Such payments are reasonable in amount.

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

**Tax 3.085 Retirement plan distributions.** (s. 71.07 (1), Stats.) (1) NONRESIDENTS. Employe annuity, pension, profit-sharing or stock bonus plan distributions (including self-employed retirement plan distributions) received by a person while a nonresident of Wisconsin shall be exempt from the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed in Wisconsin.

(2) RESIDENTS. Employe annuity, pension, profit-sharing or stock bonus plan distributions (including self-employed retirement plan distributions) received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.

**Tax 3.09 Exempt compensation of military personnel.** (s. 71.01 (3) (f), Stats.) For purposes of the income tax exemption of the first $1,000 of compensation received from the United States as a reserve or active member of the armed forces under s. 71.01 (3) (f), Stats.:

(1) Compensation received by members of the Wisconsin national guard from the state for weekend highway patrol duty, civil disturbance or riot duty shall not qualify for this exemption.

(2) Compensation received by retired officers and enlisted personnel of the armed services from the United States shall not qualify for this exemption except as provided under sub. (4).

(3) Compensation received by commissioned officers of the United States, such as public health officers or coast and geodetic survey officers, who are not members of the armed services shall not qualify for this exemption.

(4) Compensation received by retired, enlisted personnel of the armed services who upon retirement are transferred to reserve units until completion of 30 years of service shall qualify for this exemption. This includes compensation received by retired army and air force personnel who are transferred to reserve units and by retired navy and marine personnel who are transferred to fleet reserve and fleet marine corps reserve, respectively.

Note: Under s. 71.01 (3) (f), Stats., the first $1,000 of compensation received from the United States for service as a reserve or active member of the armed forces is exempt from income taxation. This rule clarifies how several types of payments will be treated under this exemption.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

**Tax 3.095 Income tax status of interest and dividends from municipal and federal obligations received by individuals and fiduciaries.** (s. 71.05 (1) (a) 1 and (b) 1, Stats.) (1) Interest and dividends, less related expenses, payable on the following types of federal securities shall be subject to the state income tax on individuals and fiduciaries:

(a) Federal Home Loan Bank dividends.

(b) Federal National Mortgage Association certificates. (In 1968, the Federal National Mortgage Association became 2 separate corporations. One corporation retained the original name and the other is known as the Government National Mortgage Association.)

(c) Federal National Mortgage Association dividends.

(d) Inter-American Development Bank bonds.

(e) Interest paid on deposits in any federal bank or agency.

(f) International Bank for Reconstruction and Development bonds.

(2) Interest and dividends, less related expenses, payable on the following types of federal securities shall be exempt from the state income tax on individuals and fiduciaries:

(a) Bank for Cooperative debentures.

(b) Farmer's Home Administration insured notes.

(c) Federal Home Loan Bank bonds, debentures and notes.

(d) Federal Housing Authority debentures.

(e) Federal Intermediate Credit Bank debentures.

(f) Federal Land Bank bonds.

(g) Federal Reserve Bank dividends.

(h) Government National Mortgage Association bonds, if payment of such obligations, together with interest thereon, is guaranteed by the United States. (In 1968, the Federal National Mortgage Association became 2 separate corporations. One corporation retained the original name and the other is known as the Government National Mortgage Association.)

(i) Production Credit Association debentures.

(j) Small Business Investment Company debentures, if payment of such obligations, together with interest thereon, is guaranteed by the United States.

(k) Tennessee Valley Authority bonds.

(l) Territory of Hawaii bonds.

(m) Territory of Puerto Rico bonds.

(n) United States Postal Service bonds.

(o) United States Savings bonds.

(p) United States Treasury bills and notes.

(3) Interest and dividends, less related expenses, payable on the following types of municipal securities shall be subject to the state income tax on individuals and fiduciaries:

(a) Municipal bonds.

(b) Public housing authority bonds issued by municipalities located outside Wisconsin.

(4) Interest and dividends, less related expenses, payable on public housing authority bonds of Wisconsin municipalities shall be exempt from the state income tax on individuals and fiduciaries.

Note: Section 71.05 (1) (a) 1, Stats., provides for the inclusion in Wisconsin income of natural persons and fiduciaries of any interest, less related expenses, received on state and municipal obligations.

Section 71.05 (1) (b) 1, Stats., provides for the exclusion from Wisconsin income of natural persons and fiduciaries of any interest or dividend income, less related expenses, which is by federal law exempt from taxation by Wisconsin.

This rule sets out examples of interest and dividends payable on municipal and federal obligations which are taxable and tax exempt.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

**Tax 3.096 Interest paid on money borrowed to purchase exempt government securities** (s. 71.05 (1) (b) 1, Stats.). (1) Any amount of interest or dividend income which is by federal law exempt from the Wisconsin income tax shall be reduced by any related expense before it is claimed as a subtraction modification on a Wisconsin income tax return.

(2) Interest expense is a "related expense" if it is incurred to purchase securities producing exempt interest or dividend income and if it is deducted in computing Wisconsin taxable income.

(3) Interest expense is not a "related expense" if it is incurred to purchase securities producing exempt interest or dividend income but is

not deducted in computing Wisconsin taxable income (for example, because the taxpayer elects the standard rather than to itemize deductions).

Note: The following examples illustrate the proper treatment of the interest expense described in this rule:

| | | |
|---|---|---|
| *Example A:* | U.S. bond interest exempt from Wisconsin income tax. | $ 600 |
| | Interest which was paid on funds used to acquire exempt securities and which was claimed as an itemized deduction. | 400 |
| | Subtraction modification. | $ 200 |
| *Example B:* | U.S. bond interest exempt from Wisconsin income tax. | $ 400 |
| | Interest paid to acquire the exempt securities which was claimed as an itemized deduction. | 600 |
| | Subtraction modification. | $ 0 |
| *Example C:* | U.S. bond interest exempt from Wisconsin income tax. | $ 400 |
| | Interest paid to acquire the exempt securities but *not* claimed as an itemized deduction | 600 |
| | Subtraction modification | $ 400 |

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 3.098 Railroad retirement supplemental annuities.** (s. 71.05 (1) (b) 4, Stats.). Railroad retirement supplemental annuities paid under 45 U.S.C.A. s. 228c are exempt from the Wisconsin taxable income of their recipients.

Note: The Railroad Retirement Act (45 U.S.C.A. s. 428L) provides that, "Notwithstanding any other law of the United States, or of any State . . . no annuity or pension payment shall be . . . subject to any tax. . . ."

Another provision of the Act (45 U.S.C.A. s. 228c (j) (3)), however, relates specifically to supplemental Retirement Annuities paid in amounts between $45 and $70 per month, and qualifies the above provision by stating "The provisions of Section 228L of this title shall not operate to exclude the supplemental annuities herein provided for from income taxable pursuant to the Federal income tax provisions of Title 26."

While such supplemental annuities are taxable for federal income tax purposes, 45 U.S.C.A. s. 228 (c) (j) 3 continues to prohibit states from taxing the payments. As the supplemental annuity must be reported for federal income tax purposes, a Wisconsin taxpayer may make a modification to federal adjusted gross income to remove such income from Wisconsin adjusted gross income.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 3.10 Salesmen's and officers' commissions, travel and entertainment expense of corporations.** (s. 71.04 (1) and (2), Stats.) (1) Commissions, lump sum and per diem allowances for travel, entertainment and other expenses, or allowances for use of automobiles, are deductible from gross income, if such items are reported on form WT-9 or 9b. Reimbursement of amounts actually expended by officers, employes or others for ordinary and necessary expenses of a taxpayer are deductible if it is proven that the amounts thus reimbursed were actually so expended.

(2) Effective for the 1976 taxable year and thereafter, money or the value or cost of property given to or spent on behalf of a public official is not deductible. "Public official" includes any elected or appointed offi-

cial, any candidate for public office and any employe of the United States or any state or a political subdivision thereof.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. register, March, 1966, No. 123, eff. 4-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 3.12 Losses on account of wash sales by corporations.** (s. 71.04 (7), Stats.) The provision for the disallowance of losses from so-called "wash sales" is not applicable to dealers in securities or to persons who continually deal in securities on the stock market and who do not retain possession of their securities for any substantial period of time.

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

**Tax 3.14 Losses from bad debts by corporations.** (s. 71.04 (7), Stats.) (1) Where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction.

(2) Bad debts arising from items of income are not deductible unless the items in question have been reported for taxation. For example, bad debts arising from unpaid rents and similar items of taxable income will not be allowed as a deduction unless the income such items represent has been included in the return of income for the year for which the deduction as a bad debt is sought to be made or for a previous year.

(3) Any amount subsequently received on account of a bad debt previously allowed as a deduction for income tax purposes, must be included in gross income for the taxable year in which received.

(4) There should accompany the return a statement of facts substantiating any deduction claimed for bad debts.

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

**Tax 3.17 Corporation losses, miscellaneous.** (s. 71.04 (7), Stats.) (1) Premiums paid on bonds purchased are part of the cost of such bonds, and no portion of such premiums will be allowed as deductions from gross income until the bonds are sold or redeemed.

(2) Losses sustained from illegal transactions are not deductible.

(3) Anticipated losses set up on the books through reserves for contingencies, etc., are not deductible.

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

**Tax 3.22 Real estate and personal property taxes of corporations.** History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. Register, December, 1985, No. 360, eff. 1-1-86.

**Tax 3.24 Corporation taxes, miscellaneous.** (s. 71.04 (3), Stats.) (1) Import or tariff duties and business, license, privilege, excise and stamp taxes, are deductible if incurred in connection with the operation of the taxpayer's trade or business.

(2) Fees or taxes paid in connection with the organization of corporations, or the increase of capital stock after organization, are not deductible in the year of payment. Such fees and taxes are part of the organization expense and must be capitalized. (See Tax 3.44)

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

Tax 3.30 Depreciation and amortization, leasehold improvements: corporations. History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. Register, December, 1985, No. 360, eff. 1-1-86.

Tax 3.31 Depreciation of personal property of corporations. History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. Register, December, 1985, No. 360, eff. 1-1-86.

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

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

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

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

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

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

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

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

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

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

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

amortize a trademark or trade name expenditure under s. 71.04(2e), Stats.:

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

(b) Each trademark or trade name expenditure may be treated differently by the taxpayer (for example, a taxpayer may elect to amortize one trademark but not another, and the length of amortization periods for 2 trade names may vary).

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

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

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

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

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

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

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

**Tax 3.45 Bond premium, discount and expense—corporations.** (s. 71.04 (2), Stats.) If bonds are issued at a discount or premium, the net amount of the discount or premium shall be amortized over the life of the bonds. Except as provided in s. 71.04 (15) (g), Stats., if bonds are retired at a price in excess of or less than the issuing price, the profit or loss resulting is taxable income or deductible expense in the year in which the bonds are retired, if proper adjustment is made for the discount or premium previously reflected in income and in all cases bond expenses shall be amortized over the life of the bonds. If a bond issue is refunded with another bond issue before the first issue matures, any unamortized discount or expense that is applicable to the first issue shall be deducted as current

expense in the year that the refinancing takes place and any unamortized premium shall be taken up as income in such year.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 3.47 Legal expenses and fines—corporations.** (s. 71.04 (2), Stats.) Legal expenses incurred in connection with the operation of a taxpayer's business are proper deductions, unless such business is conducted in violation of law. Fines are not deductible.

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

**Tax 3.48 Research or experimental expenditures.** (s. 71.04(2f), Stats.) (1) DEFINITIONS. In this section:

(a) "Research or experimental expenditures" mean expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term includes generally all such costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention or similar property, and improvements to such already existing property and the cost of obtaining a patent, such as attorney's fees expended in making or perfecting a patent application but not the costs of acquiring another's patent, model, production, or process. The term does not include expenditures such as those for the ordinary testing or inspection of materials or products for quality control, management studies, consumer surveys, adveritisng or promotions or expenditures paid or incurred for research in connection with literary, historical, or similar projects, nor land or depreciable property whether incurred by the taxpayer or by another person or organization on its behalf, to the extent of the cost of the component materials of the depreciable property, the costs of labor or other elements involved in its construction and installation or cost attributable to the acquisition or improvement of the property.

(b) "Paid or incurred" shall be construed according to the method of accounting used by the taxpayer in computing taxable income.

(2) DEDUCTION. Subject to certain limitations, a corporate taxpayer may elect to either deduct research and experimental expenditures paid or incurred during a taxable year beginning after December 31, 1969 in the year paid or incurred, or to defer such expenditures and amortize them over a period of not less than 60 months selected by the taxpayer beginning with the month in which the taxpayer first realizes benefits from the expenditures, or to depreciate the expenditures over the useful life of the property to which they relate.

(a) *Election to treat as expense.* Election to treat research or experimental expenditures as expenses may be made by claiming such expenses as a deduction on the return for the year in which paid or incurred. The election shall apply to all research or experimental expenditures paid or incurred in the taxable year of adoption and all subsequent years unless a different method is authorized by the secretary of revenue or a delegate.

(b) *Election to amortize.* 1. If a taxpayer has not elected to deduct research or experimental expenditures as currently deductible expenses, it may elect to treat as deferred expenses which may be amortized ratably over a period of not less than 60 months as selected by the taxpayer those expenditures which are chargeable to a capital account with no determi-

nable useful life. However, if the property resulting from the expenditures has a determinable useful life, the capitalized expenditures or the unamortized balance thereof shall be amortized or depreciated over the determinable useful life.

2. The election to defer and amortize shall be made by attaching a signed statement to the taxpayer's return for the first taxable year to which the election is applicable and shall set forth the information required under subparagraph 1.174-4(b)(1) of the internal revenue code regulations.

(c) *Change in method or period.* Permission to change to a different method of treating research or experimental expenditures or to a different period of amortization of deferred expenses shall be required from the secretary of revenue in writing. A request for permission shall be addressed to the secretary of revenue, P.O. Box 80, Madison, Wisconsin 53701. The request shall include the name, address and signature of the taxpayer and shall be filed not later than the end of the first taxable year in which the different method is to be used. The request shall set forth the information required under either subparagraph 1.174-3(a)(3) or subparagraph 1.174-4(b)(2) of the internal revenue code regulations.

(3) EFFECT ON BASIS. Research and experimental expenditures not deducted currently are chargeable to a capital account and shall be added to the basis of the property resulting from such expenditures. Upon the sale or other dispostion of such property in which a gain or loss is recognized an adjustment to basis shall be made in computing gain or loss for any amortization allowed or allowable.

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

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

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

**Tax 3.54 Miscellaneous expenses not deductible—corporations.** (s. 71.04 (2), Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following:

(1) Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employes, unless reported as compensation paid on form WT-9 or form 9b.

(2) Dues to fraternal orders, social clubs.

(3) Political contributions.

(4) For the 1976 taxable year and thereafter, any expenses incurred for or on behalf of a public official.

History: 1-2-56; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78.

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

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

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

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

## MISCELLANEOUS

**Tax 3.61 Mobile home monthly parking permit fees.** History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; r. Register, December, 1985, No. 360, eff. 1-1-86.

**Tax 3.81 Offset of occupational taxes paid against normal franchise or income taxes.** (ss. 70.41 (1), (3) and 70.42 (1), (3), Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The taxpayer may present his receipt showing payment of such tax to the department of revenue as so much cash in payment of normal franchise or income tax assessed against him in the following year on the tax roll for the same district. If the normal franchise or income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.

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

History: 1-2-56; am. (1), Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

(1) *Cliffs Chemical Co. v. Tax Commission,* 193 W 295

(2) *Buick Motor Co. v. Milwaukee,* 43 F (2d) 385

(3) *Curtis Companies v. Tax Commission,* 314 W 85

(4) *Palmolive Co. v. Conway, 37 F (2d) 114;* 43 F (2d) 226; 56 F (2d) 83

(5) *Burroughs Adding Machine Co. v. Tax Commission,* 237 W 423

(6) *Northern States Power Co. v. Tax Commission,* 237 W 423

*ASSESSMENT, ABATEMENT AND REFUND PROCEDURE*

**Tax 3.83 Domestic international sales corporations** (DISCs). (ss. 71.04(4), 71.07(2) and (3), 71.10(1) and (5)(a), 71.11(7) and (7m), 71.20 and 71.22, Stats.) (1) RETURNS. (a) *Franchise/income tax returns.* All domestic international sales corporations (DISCs) having operations in Wisconsin, even though they may have no employes or property in Wisconsin or elsewhere, shall file corporation returns and pay franchise or income tax in the same manner as other corporations. DISCs are accorded no special treatment under chapter 71 of the Wisconsin statutes.

(b) *Consolidated returns.* A DISC may not elect, nor may it be required, to file combined or consolidated returns with its parent or any other entity.

(c) *Due date.* The Wisconsin corporation return (Form 4 or 5) of a DISC is due on or before the 15th day of the 3rd month following the close of its taxable year. If a complete return cannot be filed by the due date, a tentative return may be filed by such date or a 30-day extension may be requested from the department under s. 71.10 (5)(a), Stats., and a tentative return filed before the end of the extension period, to avoid the imposition of late filing penalties. Since the federal annual information return of a DISC is not due before the 15th day of the 9th month following the close of the income year, federal extensions do not apply to a DISC's Wisconsin returns.

(d) *Declarations of estimated tax.* DISCs are subject to the declaration provisions of s. 71.22, Stats.

(e) *Withholding tax.* DISCs shall register and withhold income tax from the wages of their employes under s. 71.20, Stats.

(2) PRICING AND ALLOCATION ADJUSTMENTS. The pricing adjustments provided in s. 71.11 (7), Stats., and the allocation adjustments provided in s. 71.11 (7m), Stats., apply in full to the determination of the net income of a DISC.

(3) DISTRIBUTIONS BY DISCs. The net income of a DISC is not taxable to its corporate shareholders by Wisconsin unless actually distributed as dividends. However, such dividends may be deductible under s. 71.04(4), Stats.

(4) COMMISSION DISCs. The income of a Commission DISC is considered to be income from personal services rather than from sales of tangible property.

(5) APPORTIONMENT BY THE DISC. (a) In order for a DISC that has Wisconsin activities to use the apportionment method of filing provided by s. 71.07(2), Stats., it must have net income subject to taxation in at least one other state or foreign country. (See s. Tax 2.39 (2).)

(b) If a DISC qualifies for apportionment, it shall use the statutory 3-factor formula of property, payroll and sales under s. 71.07(2), Stats.,

unless the use of any factor will give an unreasonable or inequitable final average ratio because such factor is not employed to any appreciable extent in producing the income taxed. In such cases, the department may require or permit the omission of that factor under s. 71.07 (3), Stats.

(c) Beginning with the 1973 taxable year, the payroll factor of a DISC includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services. Such fees are includable in the numerator of the payroll factor, if the services are performed in this state. (See Tax 2.39 (4).)

(d) Beginning with the 1973 taxable year: 1. The sales factor of a buy-sell DISC shall be computed under s. 71.07(2)(c)2, Stats.

2. The sales factor of a commission DISC shall be computed under s. 71.07(2)(c)3, Stats. (See Tax 2.39(5).)

(6) PARENT CORPORATION'S SALES FACTOR. When sales are made to a DISC by the DISC's parent corporation, which is permitted to use the apportionment method of computing its Wisconsin net income, and the property sold is shipped from Wisconsin to a customer in a foreign country at the designation of the DISC, such sales are considered to be sales of property shipped to a foreign country which shall not be includible in the numerator of the parent's sales factor. However, if the DISC takes physical possession of the property within Wisconsin and then the property is shipped to a foreign country, the parent shall include such shipments in the numerator of its sales factor.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 3.91 Petition for redetermination.** (ss. 71.10 (13) and 71.12 (1), 71.09(7)(k) and 77.59(6), Stats.) (1) The petition for redetermination specified in ss. 71.12 (1), 71.09 (7) (k) and 77.59 (6), Stats., shall be written, preferably typed, on only one side of plain white paper not more than 8 ½ inches wide by 11 inches long and shall be filed in duplicate. It shall set forth clearly and concisely the specific grievances to the assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative.

(2) A petition for redetermination is not "filed" within the proper statutory 30-day time period unless it is actually received within the 30-day period, or unless it is mailed in a properly addressed envelope, with postage prepaid, which envelope is postmarked before midnight of the thirtieth day of the period provided in ss. 71.12 (1), 71.09 (7) (k) and 77.59 (6), Stats.

History: 1-2-56; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, July, 1978, No. 271, eff. 8-1-78.

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

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 3.93 Closing stipulations.** If the informal conference results in an agreement as to facts and issues and the law applicable thereto the tax-

payer and the department of revenue may enter into a closing stipulation.

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

**Tax 3.94 Claims for refund.** (1) Claims for refund may be filed as provided in s. 71.10 (10) or 77.59 (4), Stats., and shall be in the same form as petitions for redetermination under s. Tax 3.91. A claim for refund is not "filed" within the proper time to meet the requirements of ss. 71.10 (10) and 77.59 (4), Stats., unless it is actually in the possession of the department prior to the expiration of the limitation period provided in s. 71.10 (10) or 77.59 (4), Stats., or unless mailed in a properly addressed envelope, with postage prepaid, which envelope is postmarked before midnight of the last day of the limitation period.

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

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

History: 1-2-56; am. (1) and (2), Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, May, 1966, No. 125, eff. 6-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78.

# Chapter Tax 4

# MOTOR VEHICLE FUEL TAXATION



## *REFUNDS*

**Tax 4.01 Portable motor equipment.** (s. 78.75, Stats.) Portable motor equipment attached to any motor vehicle must have a separate fuel tank, and detailed records must be kept of the gallonage consumed in the motor of portable equipment.

**Tax 4.02 Resellers' personal claims for refund.** (s. 78.75, Stats.) Motor fuel resellers who make personal claims for refund of tax paid on gallonage used for tax exempt purposes shall make out an original invoice to themselves for each sale in the same manner as to any other customer. In addition the claim must be supported by paid invoices from the company from whom the motor fuel was originally purchased.

**Tax 4.03 Public highways closed to public travel.** (s. 78.75, Stats.) Motor fuel used in connection with the construction, repair, and maintenance of the public highways shall not be construed as used on a public highway when it is being used on a highway entirely closed to the public travel.

**Tax 4.04 No printing on back of original invoice.** (s. 78.75, Stats.) The original invoice shall have no printing on the back where the sales record is carboned.

## *MISCELLANEOUS*

**Tax 4.50 Assignment, use and reporting of Wisconsin state tax number.** (s. 78.77, Stats.) Each shipment, transfer, purchase or sale of a petroleum product which is reportable to the Wisconsin department of revenue, in accordance with ch. 78, Stats., shall bear a "Wisconsin state tax number". In this section "Wisconsin state tax number" means the number provided for in subs. (1) through (4).

(1) ASSIGNMENT. The assignment of a "Wisconsin" state tax number" shall in each case originate with the shipper and be assigned by him or her. All subsequent transactions, invoices and reports regarding each respective shipment shall use and make reference to this number.

(2) RAILWAY TANK CAR SHIPMENTS. On all railway tank car shipments the tank car initials and number shall become the "Wisconsin state tax number".

(3) TRUCK TRANSPORT SHIPMENTS. On all truck transport shipments the manifest number shall become the "Wisconsin state tax number".

(4) OTHER SHIPMENTS. On all other types of shipments, which do not involve the use of tank car initials and number or manifest number, the shipper shall assign as the "Wisconsin state tax number" the invoice number. An invoice number shall not be assigned by a shipper as the "Wisconsin state tax number" in any case where tank care initials and number or manifest number is involved.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; renum. to be (intro.) and am., cr. (1), (2), (3) and (4), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 4.51 Measuring withdrawals.** (s. 78.12, Stats.) All withdrawals of motor fuel from Wisconsin refineries, marine terminals, or pipe line terminals shall be measured in liquid gallons by accurate meters; however, it is not necessary to meter withdrawals into railway tank cars.

**Tax 4.52 Separate schedules.** (s. 78.12, Stats.) Separate schedules must be filed for each Wisconsin refinery, marine terminal, or pipe line terminal.

**Tax 4.53 Certificate of authorization.** (ss. 78.40 (1), 78.47 and 78.49 (3), Stats.) (1) THE STATUTES. A special fuel dealer may be authorized by a special fuel user, if the special fuel dealer agrees, to report and pay the tax on special fuel delivered into a bulk storage facility of the user. The user then is not required to obtain a special fuel license from the department.

(2) GENERAL. (a) A certificate of authorization (Form MF-207) may be executed by a purchaser of special fuel to request a supplier of special fuel to bill the purchaser for both the special fuel and the special fuel tax.

(b) A certificate of authorization executed by a supplier of special fuel indicates the supplier's acceptance of the purchaser's request to bill the special fuel tax on bulk deliveries and remit it to the department.

(3) EFFECT OF CERTIFICATES. (a) If a purchaser and seller of special fuel agree that the seller will collect the special fuel tax from the purchaser and remit it to the department, the purchaser is not required to obtain a special fuel license from the department nor to submit monthly reports of tax liability.

(b) The supplier will compute the monthly tax liability by adding the number of gallons of special fuel placed in storage facilities where purchasers have executed certificates of authorization to the number of gallons of special fuel placed in fuel supply tanks of motor vehicles.

Note: The procedure described in this rule became effective on October 1, 1979.

Blank certificates of authorization (Form MF-207) may be obtained by writing to the Wisconsin Department of Revenue, Excise Tax Bureau, P. O. Box 8900, Madison, WI 53708.

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

# Chapter Tax 5

# GIFT TAXATION



**Tax 5.01 Filing reports.** All reports of transfers by gift shall be filed with the Wisconsin Department of Revenue, P. O. Box 8904, Madison, Wisconsin 53708 (4622 University Avenue).

*Note:* Blank gift tax return forms may be obtained from Wisconsin Department of Revenue, P. O. Box 8903, Madison, Wisconsin 53708 (4638 University Avenue).

**History:** 1-2-56; r. and recr. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, July, 1982, No. 319, eff. 8-1-82.

# Chapter Tax 6

## PUBLIC UTILITY TAXATION



**Tax 6.01 Time for filing reports by freight line companies, and by railroad companies and street railway companies using cars of freight line companies.** (s. 76.04, Stats.) Every railroad company or street railway company required to file an annual report pursuant to s. 76.04 (2), Stats., shall file such report in the manner and form prescribed by the department of revenue, on or before April 15 each year. Each freight line company defined in s. 76.39, Stats., shall file supplementary information within 30 days after request therefor by the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 6.02 Returns for public utilities.** Forms listed below are used in the administration of the various taxes levied pursuant to ch. 76, Stats. The department of revenue normally furnishes 2 forms to reporting utilities, one for use in submitting a return and the other for preparing a copy for the taxpayer's file. Only one of the footnoted forms, which are duplicates of other agency forms, is furnished. Inquiries on obtaining extra forms should be addressed to the Department of Revenue, Utilities Section, 201 E. Washington Avenue, Madison, Wisconsin 53702.

See footnote when "Form" is preceded by a number.

*Transportation Utilities*

Form A—Railroad---------- For all class 1 railroads
Form C—Railroad---------- For all small railroads
Form G—Railroad ---------- For electric railroads
(1) Form I—Sleeping Car ---------- For Pullman Company
(1) Form--Express State Com. -------- For Railway Express Company
Form E—Freight Line---------- For private car line companies
Form H—Air Carrier ---------- For all scheduled air lines
(1) Form P—Pipeline---------- For all oil pipe lines
(2) Form 2—Natural Gas Pipeline---------- For all gas pipe line

*Communications Utilities*

Form G—Telephone ---------- For all telephone companies
(3) Form O—Telegraph------ For Western Union Telegraph Company

*Light, Heat and Power Utilities*

(4) Class A—Financial
Electric Operating
Gas Operating
Water Operating
Heating Operating
For all electric, gas, water and heating utilties with gross revenues in excess of $1,000,000.

| | |
|---|---|
| (4) Class B—Financial<br>Electric Operating<br>Gas Operating<br>Water Operating<br>Heating Operating | From $150,000 to to $1,000,000 |
| (4) Class C & D—Financial<br>Electric Operating<br>Gas Operating<br>Water Operating<br>Heating Operating | Less than $150,000 |

Form F—Municipal ---------- For all municipally owned utilities
Form J—R. E. A. ---------- For all rural electric cooperatives
Form D—Conservation and Regulation---------- For all conservation and regulation companies
Form A—Apportionment Sheets ---------- For all light, heat and power utilities

(1) Interstate Commerce Commission form. (Forms C and G are also I. C. C. forms in part)

(2) Federal Power Commission form.

(3) Federal Communications Commission form.

(4) Wisconsin Public Service Commission form.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 6.40 Waste treatment facilities (industrial/utility).** (s. 76.02 (10), Stats.) (1) STATUTE. (a) The exemption for a waste treatment facility otherwise taxable under s. 76.13 is contained in s. 76.02 (10), Stats.

(b) Property purchased or upon which construction began prior to July 31, 1975 shall be subject to s. 70.11 (21) 1973 Stats. Property purchased or upon which construction began on July 31, 1975 or thereafter shall be subject to s. 70.11 (21) 1975 Stats. and must be approved by the department.

(2) APPROVAL. (a) Requests for approval by public utilites subject to taxation under s. 76.13 Stats. for each waste treatment facility shall be made by completing the form entitled "Application for Exemption of Waste Treatment Facility-Utility." All actual costs of purchase or constuction of the facility must be reflected on this form. The completed form is due February 1 of each year and is to be filed annually except in years subsequent to purchase or construction where no capital changes have occurred to the waste treatment facility, in which case a summary sheet may be submitted for these facilities. For good cause shown upon application by the applicant, the department may grant an extension of time not exceeding 120 days in which to file the application form.

(b) The completed form "Application for Exemption of Waste Treatment Facility-Utility" should be sent to the Bureau of Utility and Special Taxes, Division of State/Local Finance, Wisconsin Department of Revenue, 201 East Washington Avenue, Madison, WI 53702.

(3) INDUSTRIAL WASTE TREATMENT FACILITY EXEMPTION. (a) The words "waste," "treatment" and "facility" are deemed to have the following meanings:

1. *Waste;* means that which is left over as superfluous, discarded or fugitive material. In addition, *"industrial waste"* is defined by reference to s. 144.01 (9) as liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. *"Air contaminant"* is defined by reference to s. 144.30 (1) as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

2. *Treatment;* means removing, altering or storing waste.

3. *Facility;* means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

4. *Waste treatment facility;* means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material. Monitoring equipment which is not a component or integral part of a waste treatment facility is not exempt.

(b) The exemption for industrial waste treatment facilities does not extend to "'unnecessary siltation' resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion" (s. 144.01 (10), Stats.).

(c) The exemption also does not apply to conversion of an industrial furnace from one type of fuel to another type of fuel. The exemption does not apply to the increased height of a smoke stack to diffuse emissions over a wide area or increments to property held for the production of income but which may be indirectly related to pollution abatement. However, the installation of a scrubber or electrostatic precipitator in a smoke stack could qualify for exemption.

History: Cr. Register, July, 1979, No. 283, eff. 8-1-79; r. (3)(d), Register, March, 1980, No. 291, eff. 4-1-80.

**Tax 6.50 Full market value.** (s. 76.07(5) Stats.) (1) GENERAL. (a) The entire operating property of any company enumerated in s. 76.02, Stats., shall be valued together as a unit at full market value unless, in the opinion of the department, any of the property is so segregated that a separate assessment is warranted. The department shall apply recognized appraisal methods in determining full market value. The cost, stock and debt, and capitalized income indicators of value and reasonable variations shall be applied by the department in accordance with the general principles set forth in subs. (4) to (6).

(b) Indicators of value other than those enumerated in sub. (2)(g) 1 to 3 of this rule which result from recognized appraisal methods may be used by the department after due promulgation of general principles of application for the indicators of value by amendment to this rule.

(c) In determining the full market value of the operating property of any company enumerated in s. 76.02, Stats., the department shall not be limited to the method of accounting for legitimate business purposes used by the taxpayer but the department shall give due consideration to generally accepted accounting principles and regulated accounting prac-

tices in applying recognized appraisal methods. Whenever accounting principles and practices are not accepted by the department it shall provide an explanation to the company in writing setting forth the reasons for unacceptance and an explanation of any adjustments made.

(2) DEFINITIONS. In this section:

(a) "Discount rate or capitalization rate" is that rate of interest which is the most probable rate of return to be expected to prevail in the industry for companies of comparable risk at the time of assessment. This market rate of capitalization is a composite of rates which the market indicates that investors demand as interest for secured capital, bonds and equipment trust certificates, or other evidences of value, and rates which the market indicates as necessary to attract equity capital, common and preferred stock. The final capitalization rate used may not be lower than the rate or cost of bonded debt nor higher than the cost of raising equity capital. The discount or capitalization rate may be derived by the band of investment method, summation method or the comparative method. Any one of these methods or any combinations of, may be used by the department in deriving the appropriate capitalization rate, provided, however, that the department provides the company with documentation as to the method or combination used and the reasons for use of the method or methods.

(b) "Going concern value" is the enhanced value of assets due to their existence within an operating business that is expected to continue its operation in the foreseeable future with no intention or necessity of liquidation or the material alteration of the scale of operation.

(c) "Method of accounting" is a system of recording and summarizing business and financial transactions in books of account and analyzing, verifying and reporting the results, usually for a period of one year or less. The results of accounting methods which are prescribed by regulatory bodies and generally accepted accounting principles may not be synonymous with the results of valuation methods.

(d) "Operating property" is real and personal property including all rights, franchises and privileges used in and necessary to conduct the business of the enterprise subject to taxation under s. 76.02, Stats.

(e) "Present worth" is the value today of something to be received in the future. It is calculated by a discounting process that takes into consideration the time-interest concept of money by the application of a present worth factor.

Note: An example of par. (e). If a cash benefit of $1,000 is to be received some years hence, the value today of such benefit is equal to $1,000 multiplied by the appropriate present worth factor.

(f) "Present worth factor" is that ratio, expressed as a decimal equivalent, as shown in a compound interest table at a specific interest or discount rate for the appropriate period.

(g) "Recognized appraisal or valuation method" is the mode of inquiry employed in estimating or predicting the price in terms of money a property may bring in a competitive and open market under all conditions requisite to a fair sale and include:

1. The method whereby the investment expenditure required to purchase the land or land rights, materials, labor and services necessary

to bring a new property into existence is estimated and which is commonly referred to in appraisal and valuation literature as the cost method. Indicators of value within the cost method include:

a. Historical cost of the property when first put into use.

b. Original book cost of the property to the present owner.

c. Reproduction cost to currently reproduce the same kind of property.

d. Replacement cost to currently replace the property with its functional equivalent.

2. The method whereby the investment expenditure required to purchase an existing property is estimated and which is commonly referred to in appraisal and valuation literature as the market method. Where there are few unit sales, value under the market method shall be computed by using the stock and debt indicator of value. Indicators of value within the market method include:

a. Sale of the subject or comparable property by acquisition or merger.

b. Sale of the debt and equity interest of the subject or comparable enterprise as a proxy for the market value of the property presented on the balance sheet. This indicator is commonly referred to in appraisal and valuation literature as the stock and debt indicator.

3. The method whereby the investment expenditure required to purchase the anticipated future benefits resulting from the operation of the property is estimated and which is commonly referred to in appraisal and valuation literature as the capitalized income method. Indicators of value within the capitalized income method include:

a. The capitalization of the estimated future income to the present owner or to a prospective purchaser. The estimated future income is that income which remains after book depreciation and federal tax expenses actually paid have been subtracted.

b. The discounted or the present value of the estimated future cash flow to the present owner or to a prospective purchaser. The estimated future cash flow is that cash flow which remains after the asset replacement expenditures and the federal income taxes paid have been subtracted.

(h) "Unit valuation" is the appraisal as a whole of an integrated property operated as a going concern without any reference to the value of its component parts.

(3) DERIVATION OF INDICATORS OF VALUE. In principle each recognized appraisal method shall as near as possible follow a logic which is separate and unique and the department will attempt to apply the various appraisal methods in a manner which maximizes the uniqueness of each method.

(4) COST INDICATORS OF VALUE. (a) In determining cost indicators, the department may consider four kinds of cost described as follows:

1. Historical cost of the property when first put in service;

2. Original cost of the property to the present owner;

3. Reproduction cost to currently reproduce the property; and

4. Replacement cost to currently replace the property with its functional equivalent.

(b) The department shall make adequate and reasonable allowances for loss of value due to all causes including physical depreciation, functional and economic obsolescence, regulatory required write-offs and utility plant acquisition adjustments. The department shall also make required allowances for property which is not taxable under Chapter 76, Stats., which includes but is not limited to, future use property, except when included in the rate base, approved waste treatment facilities, licensed motor vehicles, nonoperating property, property allocable outside the state and property leased to others. The cost indicator for regulated public utilities shall recognize that an asset's value generally is limited by its value for ratemaking purposes. The cost indicator shall include construction work in-progress regardless of the treatment for ratemaking purposes.

(5) STOCK AND DEBT INDICATORS OF VALUE. (a) Stock and debt indicators are determined by the application of the general financial appraisal principle that the market value of the debt and equity interests of the enterprise are equal to the market value of the assets presented on the balance sheet. Stock and debt indicators determine the value of a company's assets by appraising the value of the shareholders' equity and liabilities of the company, such as current liabilities, long-term debt, reserves and deferred credits. Appropriate reductions shall be made for nonoperating property of the company. The department may consider the following ratios to eliminate nonoperating properties:

1. Nonoperating book value to total book value, or

2. Nonoperating income to total income.

3. Nonoperating market value to total market value.

(b) The department shall also make required adjustments for nontaxable properties as set forth in sub. (4).

(6) CAPITALIZED INCOME INDICATORS OF VALUE. Capitalized income indicators are determined by the application of the general appraisal principle that the full market value of operating property is the present worth of anticipated future benefits to be derived from ownership of the property. Future benefits are the summation of the positive and negative cash flows which a fully informed person is warranted in assuming will be produced by operations of the property as a going concern. The department shall reflect earnings limitations imposed upon regulated utilities in this determination.

(7) CORRELATIONS OF INDICATORS OF VALUE. (a) The validity of a determination of value may be measured against the supporting evidence and documented data from which the determination of value was derived. Accordingly the department shall consider and weigh, in its best judgment any or all available indicators of full market value enumerated in sub. (2)(g)1 to 3. In this correlation process it shall consider the following:

1. The speculative nature of estimates used in developing the indicators of value and the degree of reliability of each of the indicators of value.

2. The consistency of weighting indicators of value from year to year.

3. Uniformity of assessments within taxpayer classifications.

4. Buyer's and seller's viewpoints.

5. The reasonableness of the correlated full value market estimate when compared to:

a. Actual sales of comparable properties in an arm's-length transaction between independent parties;

b. Rate base;

c. Other states' correlated estimates of full market value of the same company adjusted for differences in state law;

d. Net salvage value;

e. Additional evidence of full market value submitted by the company or the department;

f. Value asserted in prospectus; and

g. All other facts obtainable bearing on the value of the property collectively.

(b) In the case of regulated utilities, a sale is comparable only if there is the sale of an entire operation capable of functioning independently and the parties thereto are subject to regulatory policies similar to those of Wisconsin.

(8) REQUESTS FOR DOCUMENTATION. Upon written request the department shall provide to the company copies of its computational worksheets used in determining full market value.

(9) CORRECTION OF ERRORS. Errors which are agreed to be palpable or computational and which are discovered after issuance of the assessment shall be adjusted by the department in the next subsequent assessment year and the department shall provide the company with evidence of such adjustment.

History: Cr. Register, November, 1983, No. 335, eff. 12-1-83.

# Chapter Tax 7

## FERMENTED MALT BEVERAGES



**Tax 7.01 Purchases and invoices.** (ss. 139.05 (5) and 139.11 (1), Stats.) (1) Wisconsin wholesalers and bottlers properly registered and licensed may purchase and receive fermented malt beverages only from registered Wisconsin breweries and wholesalers or from out-of-state firms holding a fermented malt beverage permit. Wisconsin breweries, bottlers and wholesalers will upon request be furnished with a list of out-of-state firms having a permit to ship into Wisconsin.

(2) An invoice must be submitted covering each sale, shipment or delivery to a Wisconsin wholesaler or bottler by all breweries, bottlers and permittees shipping within the state or into this state. Such invoice must clearly indicate date, quantities, package size and description and must be retained on the licensed premises of the wholesaler or bottler.

(3) An invoice indicating date, quantity, package size and description must be submitted to the retailer by the brewery, bottler or wholesaler, covering each sale, shipment or delivery of fermented malt beverages made to such a retailer. Breweries, bottlers and wholesalers must keep a copy or a record of such invoices on their licensed premises in convenient form, indicating the date of payment if paid. Such invoices or record must be available for inspection at all reasonable hours by representatives of the department of revenue.

(4) All fermented malt beverage retailers must retain on their licensed premises the invoices covering shipments received by them from breweries, bottlers or wholesalers. Such invoices must be retained for 2 years from date of invoice in groups covering a period of one month each and be available for inspection at all reasonable times by representatives of the department of revenue and the date of payment, if paid, must be recorded on such invoice.

History: 1-2-56; am. Register, January, 1958, No. 25, eff. 2-1-58; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (1) and (2), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 7.11 Refunds on sale of beer to armed forces.** (s. 139.10, Stats.) The state tax paid on fermented malt beverages sold to the armed forces of the United States may be refunded to the licensed Wisconsin brewery, bottler or wholesaler making the sale under the following conditions and provisions:

(1) An invoice covering each sale must be executed in triplicate, the original to be retained at the office of the commanding officer, and the 2 copies to be signed by the commanding officer, or his designated representative and retained by the firm making the sale.

(2) A refund request in affidavit form together with one of the receipted copies of each invoice must be filed with the department of revenue.

(3) If beer which is sold or delivered, under s. 139.10 (1), Stats., and this rule is returned to the brewery, bottler or wholesaler, a notation of such return, signed by the commanding officer or a designated representative, must be recorded on the original invoice clearly indicating quantity and description.

(4) Under no consideration may fermented malt beverages, on which a refund has been paid or applied for, be returned to any wholesaler, bottler or brewery without special permission from the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (3), Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 7.21 Labeling.** (s. 125.32 (7), Stats.) All fermented malt beverages sold in this state shall be labeled in accordance with federal regulation No. 7, now in effect or as subsequently amended, relating to the labeling and advertising of malt beverages, issued under the federal alcohol administration act.

History: 1-2-56; am. Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 7.22 Tied house law; volume and quantity discounts.** History: Cr. Register, January, 1961, No. 61, eff. 2-1-61; r. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 7.23 Activities of brewers, bottlers and wholesalers.** (s. 125.33 (1), Stats.) (1) DEFINITIONS. In this rule:

(a) "Event" means any activity, game, contest, tournament or entertainment (including activities of bowling leagues, bowling tournaments, snowmobile and automobile races, baseball, basketball, football and soccer games, dances, concerts and any other attraction) which is conducted on a premises operated under a retail Class "B" fermented malt beverage license or promoted by a retail Class "B" fermented malt beverage licensee.

(b) "Retail Class 'B' fermented malt beverage license" means all retailers' Class "B" licenses, including a temporary license issued under s. 125.26 (6), Stats., for a fair, meeting, picnic or similar gathering.

(c) "Sign" means a board, banner, placard, poster or other graphic display, containing letters, words, symbols, numerals, shapes, forms or pictures or any combination thereof, including all component parts (such as the frame, nuts and bolts, ballast, internal wiring, electrical and mechanical components and face, and the labor necessary to assemble the unit), which has no value or use except to advertise or identify a manufacturer's product or a retailer's place of business or an event or any combination of these. The value of the sign is determined by the original cost of acquisition if it is purchased by a brewer, bottler or wholesaler.

(d) "Sponsor" means to underwrite in whole or in part the cost of an event by providing signs, advertising in score cards or on scoreboards and fences or by providing equipment, prizes, trophies, entertainment or other things of value.

(2) GENERAL RESTRICTION AND EXCEPTIONS. (a) *Restriction.* No brewer, bottler or wholesaler of fermented malt beverages may sponsor any event conducted on premises operated under a retail Class "B" fer-

mented malt beverage license or promoted by a retail Class "B" fermented malt beverage licensee.

(b) *Exceptions.* However, a brewer, bottler or wholesaler may:

1. Furnish, give, lend, lease or sell outside and inside signs to a Class "B" licensee or the promoter of an event if the value of such signs does not exceed, in the aggregate, $125 exclusive of erection, installation and repair charges.

2. Furnish merchandise, prizes, trophies or other items to a Class "B" licensee, a promoter, entrant or contestant if the value of such prizes, trophies or other items, in the aggregate, does not exceed $25 in any calendar year.

3. Purchase advertising or other services or rights for a fair consideration from any corporate Class "B" retail fermented malt beverage licensee which is a member of a regularly established athletic league if the licensee derives more than 50% of its gross income from the ownership, maintenance and operation of a professional athletic team which plays a regular schedule of games and which derives more than 50% of its income from the sale of admissions to the team's games.

4. Sell dispensing equipment to Class "B" licensees for cash or on credit payable in equal monthly payments within 2 years if evidence of the written contract is filed with and the fee is paid to the county register of deeds within 10 days.

5. Sell consumable merchandise (such as soda water beverages, nuts, chips and other food) to any Class "B" licensee for resale.

6. Enter into contractual agreements or other arrangements directly with non-licensed third party organizations to sponsor an event or sponsor radio or television broadcasts, to make payment for advertising, or to provide other services or things of value if no payments, services or other things of value are made directly or indirectly by the brewer, bottler or wholesaler to a Class "B" licensee or association of Class "B" licensees, if the payments, services or other things of value are not contingent upon the event being held at any premises designated by the brewer, bottler or wholesaler and if the sponsor's products are not required to be sold or served at the premises selected by the non-licensed third party.

7. Permit refrigerated trucks or trailers to remain on Class "B" licensedd premises for the storage of beer during an event. At the conclusion of the event the brewer, bottler or wholesaler may issue one invoice to the Class "B" licensee for the beer actually used at the event.

(3) EXAMPLES OF PROHIBITED ACTIVITIES. Subject to the limitations in sub. (2) (a) and (b), examples of conduct prohibited by s. 125.33 (1), Stats., and this rule include, but are not limited to:

(a) A brewer, bottler or wholesaler may not sponsor a baseball, basketball, bowling, football or soccer team if the team has a Class "B" license.

(b) A brewer, bottler or wholesaler may not sponsor an event conducted by a third party, not a Class "B" licensee, if the third party arranges for the event to be conducted at a Class "B" licensed premises and requires such licensee to purchase the sponsor's product.

(c) A brewer, bottler or wholesaler may not hire musicians to provide a concert or music for a dance at a Class "B" licensed premises.

(d) A brewer, bottler or wholesaler may not purchase advertising space in publications published by a trade association composed of Class "B" licensees or purchase or rent display space from such an association.

(e) A brewer, bottler or wholesaler may not furnish, sell or rent counters, bars, fixtures or trucks or trailers equipped with tapping devices to any Class "B" licensee.

Note: See 68 Atty Gen 395 for a discussion of s. Tax 7.23

History: Cr. Register, March, 1979, No. 279, eff. 4-1-79; am. (1) (b) and (3) (intro.), Register, June, 1983, No. 330, eff. 7-1-83.

# Chapter Tax 8

# INTOXICATING LIQUORS



**Tax 8.02 Revenue stamps—occupational tax.** (s. 139.06 (5) and (8), Stats.) Liquor stamps are provided by the department of revenue in proper denominations and may be purchased by manufacturers, rectifiers, wholesalers and out-of-state permittees holding the proper permits. Stamps may be purchased only from the Wisconsin Department of Revenue, 4638 University Avenue, Madison, Wisconsin. Mail orders addressed to the department, P.O. Box 8905, Madison, Wisconsin 53708, will be accepted when made in the proper form and accompanied by the proper remittance.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; renum. and am. (1), r. (2), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.03 Affixing stamps.** (ss. 139.06 (1) and (3) and 125.57 (9), Stats.) (1) (a) All intoxicating liquor, except wine containing not over 21% of alcohol by volume, shipped into the state of Wisconsin, must have a Wisconsin tax stamp of the correct denomination affixed to each original bottle before it enters the state, with the following exceptions being made:

1. Shipments in bulk to a rectifier.

2. Ethyl alcohol of 190 proof or more.

3. Foreign importations in customs bond purchased directly by and consigned directly to Wisconsin permittees from such foreign countries.

(b) On all intoxicating liquor, except wine containing not over 21% alcohol by volume, rectified or manufactured in Wisconsin, a stamp of the proper denomination shall be affixed to each bottle at the time such merchandise is placed in wholesale stock, except merchandise which is to be shipped outside the state of Wisconsin in interstate commerce.

(c) Stamps shall be affixed to the original bottle between the body and the neck on any smooth area on the label side in such a position that all or at least a substantial part of the stamp is immediately visible from the

trade-label side of the bottle. Pharmacist liquor stamps must be affixed to the face of the bottle immediately above the label.

History: 1-2-56; am. (1) (c), Register, November, 1966, No. 131, eff. 12-1-66; am. (1) (6) and r. (2), Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 8.04 Refunds.** (s. 139.10, Stats.) (1) Intoxicating liquor revenue stamps unfit for use or otherwise unused which are in the possession of a manufacturer, rectifier, wholesaler or out-of-state permittee properly authorized, may be returned to the department and a refund for the tax value of such stamps, less a stamp printing and service charge, will be issued to the manufacturer, rectifier, wholesaler or out-of-state permittee returning such stamps.

(2) A manufacturer, rectifier, wholesaler or out-of-state permittee properly authorized by this state, who possesses intoxicating liquor in sealed containers which is spoiled or has become unfit for beverage purposes may file a request for a tax refund with the department, and a refund for the amount of the tax applying to such merchandise may be made providing the mutilation of stamps affixed to such merchandise is witnessed by a representative of the department, and providing the applicant agrees to assume the expense and service charge of the state's representative.

(3) A manufacturer, rectifier or out-of-state permittee which has qualified for the tax credit under rule Tax 8.06 who possesses intoxicating liquor in sealed containers which is spoiled or has become unfit for beverage purposes may file a request for a tax refund with the department. A refund may be made if the mutilation of stamps affixed to such merchandise is witnessed by a representative of the department, and if the permittee agrees to assume the expense and service charge of the state representative. The refund to such permittee shall be based on the special tax rate of $1 per gallon unless the permittee provides documentation that the merchandise was subject to tax at a higher rate.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (1) and (2) and cr. (3), Register, June, 1979, No. 282, eff. 7-1-79.

**Tax 8.05 Special tax on intoxicating liquor.** (ss. 139.03(2t) and 139.08(4), Stats) (1) Any manufacturer, rectifier or out-of-state permittee which sells intoxicating liquor in this state which qualifies for the special tax rate in s. 139.03(2t), Stats., shall purchase special tax stamps in accordance with rule Tax 8.02 and affix the stamps in accordance with rule Tax 8.03.

(2) Any manufacturer, rectifier or out-of-state permittee which processes intoxicating liquor eligible for the special tax rate in s. 139.03(2t), Stats., shall file a "Bulk Summary Report" with the department each month. Such permittee shall make all premises where such intoxicating liquor is stored or processed and all records pertaining to such intoxicating liquor available for inspection by authorized employes of the department.

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

**Tax 8.06 Mixture of specially taxed and regularly taxed intoxicating liquors.** (s. 139.03(2m) and (2t), Stats.) Any manufacturer, rectifier or out-of-state permittee which sells alcoholic beverages in this state containing both intoxicating liquor subject to the tax rate provided in s. 139.03(2m), Stats., and intoxicating liquor subject to the tax rate pro-

vided in s. 139.03(2t), Stats., shall affix revenue stamps in the proper denominations based on the tax rate in s. 139.03(2m). Credit for the percentage of specially taxed intoxicating liquor included in the product shall be calculated on the monthly intoxicating liquor report filed by the permittee and, after verification by the department, may be applied to future revenue stamp purchases by the permittee. Such credits may be used only by the permittee which claimed it or, in the event of termination of business by that permittee, by a successor permittee.

Note: Examples of how the tax is to be computed are as follows:

*Example #1:* Whiskey is blended containing 70% specially taxed intoxicating liquor and 30% regularly taxed intoxicating liquor.

*Computation:*

| | | |
|---|---|---|
| 70% × $1.00 | = | $ .70 |
| 30% × $3.25 | = | $ .98 |
| Total tax per gallon | | $1.68 |
| Regular tax per gallon | | $3.25 |
| Calculation above | | -$1.68 |
| Credit per gallon | | $1.57 |

*Alternative computation method* (short-cut method):

| % of specially taxed intoxicating liquor | × | $2.25 (difference between regular and special rate) | = credit |
|---|---|---|---|
| 70% | × | $2.25 = $1.57 | |

*Example #2:* Whiskey is blended containing 80% specially taxed intoxicating liquor and 20% regularly taxed intoxicating liquor.

*Computation:*

| | | |
|---|---|---|
| 80% × $1.00 | = | $ .80 |
| 20% × $3.25 | = | +$ .65 |
| Tax per gallon | | $1.45 |
| Regular tax per gallon | | $3.25 |
| Calculation above | | -$1.45 |
| Credit per gallon | | $1.80 |

*Alternative computation:*

| | | |
|---|---|---|
| 80% × $2.25 | = | $1.80 |

History: Cr. Register, June, 1979, No. 282, eff. 7-1-79.

**Tax 8.11 Reports.** (s. 139.11, Stats.) Monthly reports must be filed by all manufacturers, rectifiers, wholesalers, wineries and out-of-state permittees having a permit to ship into or do business within the state of Wisconsin, on forms furnished by the department of revenue. Such reports must be made in duplicate, the original to be mailed to the department on or before the 15th day of each month covering the preceding calendar month, and the duplicate to be retained by the firm submitting the report. Reports must be submitted on the basis of wine gallons, not proof gallons. In the event no transactions occur in any given month the report must be filed with a notation written across the face: "No transactions."

Note: Blank forms may be obtained from the Department of Revenue, Box 8905, Madison, Wisconsin 53708.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.21 Purchases by the retailer.** (ss. 139.11 (1), Stats.) (1) Every retail licensee shall retain invoices covering all purchases of intoxicating liquor for a period of 2 years from the date of the invoice. Such invoices shall be retained on the licensed premises in groups covering one month each and shall be open to inspection at all reasonable times by any representative of the department. The date of payment, if paid, must be recorded on each invoice.

History: 1-2-56; am. (2), Register, January, 1958, No. 25, eff. 2-1-58; am. Register, June, 1975, No. 234, eff. 7-1-75; r. (1), renum. (2) to be (1) and am., Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.22 Purchases made outside of state.** (s. 125.52 (1), 125.54 (1) and 125.53, Stats.) (1) No Wisconsin manufacturer, rectifier, wholesaler or winery shall purchase or receive intoxicating liquor from outside the state except from a person holding an out-of-state permit issued pursuant to s. 125.58, Stats.

(2) Wisconsin manufacturers, rectifiers, wholesalers and wineries will be furnished a list of out-of-state permittees duly licensed to ship intoxicating liquor into the state. Purchases may be made and shipments received only from the permittees included on such lists.

(3) Out-of-state permittees will be furnished a complete list of Wisconsin manufacturers, rectifiers, wholesalers and wineries to whom sales and shipments of intoxicating liquor may be made.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am, (1), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.31 Sales out of Wisconsin.** (s. 139.04 (5), Stats.) (1) The occupational tax imposed upon the sale of intoxicating liquor within the state does not apply to merchandise which is shipped from within the state to a point outside the state. Manufacturers, rectifiers and wholesalers need not affix revenue stamps to the original containers of alcoholic liquors that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Wisconsin manufacturer, rectifier or wholesaler to show that such merchandise actually went into interstate commerce.

(2) Wisconsin manufacturers, rectifiers, wholesalers and wineries claiming exemption from the occupational tax on intoxicating liquor on the ground that shipments or deliveries were made in interstate commerce shall certify, under oath:

(a) That the persons receiving such shipments or deliveries in a foreign state at the address stated are licensed to receive the same or

(b) That they are in possession of bills of lading, way bills, freight bills or other evidence of shipment issued by common carriers operating in this state, that such shipments or deliveries were made to persons having an actual licensed place of business in the foreign state.

(3) No Wisconsin manufacturer, rectifier, wholesaler or winery shall receive an exemption from the tax imposed on the sale of intoxicating liquor where such liquor is sold and shipped into any state or territory where the importation or sale of such liquor is prohibited by state or federal law; nor will an exemption be allowed on liquor sold and shipped

into other states to a purchaser who, under the laws of the state in which such purchaser is located, cannot lawfully receive the same.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 8.35 Interstate shipments.** (s. 125.58 (1) and 125.68 (10), Stats.) (1) Shipments of intoxicating liquor shall be delivered to the consignee by the carrier thereof within a period of 5 days after arrival at point of destination. If such merchandise is not delivered within such 5 day period, the consignor shall be notified by the carrier thereof and the merchandise shall be returned to him.

(2) A common carrier in this state which has in its possession intoxicating liquor which the consignee and consignor refuse to accept shall notify the Wisconsin department of revenue of the possession of such merchandise. Permission for disposal shall be granted upon proper application.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (5), Register, December, 1977, No. 264, eff. 1-1-78; r. (1), (2) and (3), renum. (4) and (5) to be (1) and (2), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.41 Size of containers.** (s. 125.03 (2), Stats.) (1) No manufacturer, rectifier, wholesaler, retailer or other person licensed for the sale of intoxicating liquor shall possess intoxicating liquor, not including wine, in a container of more than 1.75 liter (59.1752 fluid ounce) capacity, except alcohol intended for industrial, medicinal scientific or mechanical purposes.

(2) Manufacturers and rectifiers may have in their possession intoxicating liquor in containers greater than 1.75 liters in size for purposes of manufacturing or rectifying or for sale to other manufacturers or rectifiers in Wisconsin or in interstate commerce.

History: 1-2-56; am. Register, December, 1971, No. 192, eff. 1-1-72; am. Register, June, 1977, No. 258, eff. 7-31-77.

**Tax 8.43 Empty containers.** (s. 176.341, Stats.) (1) Any person possessing a bottle of intoxicating liquor, including wine, shall, as soon as such bottle is emptied, scratch, deface or mutilate any Wisconsin tax stamp and the label attached thereto in such a manner that the stamp and label cannot again be used. The requirement that labels be defaced shall not apply to ceramic commemorative bottles and other uniquely designed decanters but in every instance any Wisconsin liquor tax stamp must be defaced when a container is emptied.

(2) No person shall fill, or cause to be filled, any bottle which has previously been used for intoxicating liquors, not including wine. Such bottles, except ceramic commemorative bottles and other uniquely designed decanters and bottles retained for delivery or collection for recycling through a process which will result in rendering them unusable as bottles, shall be broken and destroyed immediately upon being emptied of their original contents.

(3) Empty liquor bottles retained for recycling purposes shall have all state and federal tax stamps and labels scratched, defaced or mutilated, and shall be stored in containers marked "For recycling only" and shall be removed from the premises within 10 days.

History: 1-2-56; am. (1) and (2), r. (3), Register, October, 1974; No. 226, eff. 11-1-74; cr. (3), am. (1) and (2), Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.51 Labels.** (s. 125.68 (9), Stats.) (1) No person, firm or corporation shall sell within the state, or ship into the state, any intoxicating liquor unless prior to such sale or shipment 2 front and back labels and a chemical analysis or statement of analysis, whichever the case may be, applying to such merchandise, have been submitted to and approved by the department of revenue.

(2) The department of revenue shall review and make a determination on the items submitted for approval described in sub. (1) within 15 business days from the day the items are received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approval is mailed by the department to the applicant, or

(b) The department mails notification that the items submitted are incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; renum. to be (1) and cr. (2), Register, August, 1985, No. 356, eff. 9-1-85.

**Tax 8.52 Label requirements.** (s. 125.68 (9), Stats.) (1) No person, firm or corporation shall sell intoxicating liquor within the state of Wisconsin unless the container thereof shall bear a clear and legible label setting forth the name and address of the manufacturer and the kind of liquor contained therein.

(2) (a) Intoxicating liquor sold within this state shall be labeled in conformance with the labeling requirements under the federal alcohol administration act now in effect or as subsequently amended.

(b) Either the words "Bottled By" and the name of the bottler and the place where bottled or the words "Bottled For" and the name of the wholesaler or retailer for whom such intoxicating liquors or wines were bottled must be stated on the container.

History: 1-2-56; am. (2) (a) and r. (3), Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 8.61 Advertising.** (s. 125.51 (7), and 125.58, Stats.) (1) No person shall send or cause to be sent into this state a letter, post card, circular or pamphlet of any kind containing an advertisement or a solicitation of an order for intoxicating liquors unless such person shall be duly licensed to ship intoxicating liquors into Wisconsin.

(2) No person shall issue or publish or cause to be issued or published in this state a letter, post card, circular or pamphlet of any kind containing an advertisement or a solicitation of an order for intoxicating liquors unless such person shall be duly licensed to traffic in intoxicating liquors.

(3) The department of revenue shall review and make a determination on an application for a license required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved license is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application for a license is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: 1-2-56; cr. (3), Register, August, 1985, No. 356, eff. 9-1-85.

**Tax 8.66 Merchandise on collateral.** (s. 139.06 (1), Stats.) No manufacturer, rectifier or wholesaler shall place unstamped intoxicating liquor except wine containing not over 21% alcohol by volume as collateral or security to a loan unless the unstamped liquor used for this purpose is placed in a licensed public warehouse.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.71 Bitters.** (s. 139.06 (1), Stats.) No person, firm or corporation shall sell or offer for sale in the state bitters bearing a federal strip stamp unless the container thereof bears the proper revenue stamp provided for by law.

**Tax 8.76 Salesperson.** (ss. 139.06 (1) and 125.65 (1) and (7), Stats.) (1) Any salesman soliciting orders or selling for future delivery for a person, firm or corporation licensed to operate in the state of Wisconsin shall have, at all times within his possession, a salesman's permit issued by the secretary of revenue.

(2) No Wisconsin manufacturer, rectifier, wholesaler or winery shall purchase or order intoxicating liquor except from a salesperson who is duly registered by the secretary of revenue.

(3) Samples of intoxicating liquor, except wine containing not over 21% alcohol by volume, carried by salesmen must bear Wisconsin revenue stamps.

(4) The department of revenue shall review and make a determination on an application for a permit or registration required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit or registration is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (2), Register, June, 1983, No. 330, eff. 7-1-83; cr. (4), Register, August, 1985, No. 356, eff. 9-1-85.

**Tax 8.81 Transfer of retail liquor stocks.** (ss. 125.69 (6) and 125.10 (2), Stats.) (1) No licensed retail dealer shall transfer his or her liquor stock, upon selling or liquidating the business, without first filing an inventory of the entire stock with the department of revenue and obtaining approval of the transfer. The inventory must be submitted in triplicate listing quantities, brands, classifications, container sizes and such other information as the department of revenue may require and shall be signed by both the buyer and the seller. Upon approval the original will be sent to the buyer to be retained as an invoice and one copy will be returned to the seller.

(2) A licensed retail dealer may sell his or her entire liquor stock in a liquidating transaction to any other licensed retailer providing the above conditions are complied with.

(3) The department of revenue shall review and make a determination on an application for approval of inventory transfer required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approval is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: 1-2-56; am. Register, June, 1983, No. 330, eff. 7-1-83; cr. (3), Register, August, 1985, No. 356, eff. 9-1-85.

**Tax 8.85 Procedure for apportionment of costs of administration of s. 125.69 (4), Stats.** (s. 125.69 (4) (e), Stats.) (1) All direct and indirect costs of administering s. 125.69 (4), Stats., including costs of supplies, equipment, rent and clerical, investigational, administrative and supervisory help, shall be borne by the intoxicating liquor permittees. The aggregate of such costs shall be determined by the department semi-annually and shall be prorated by it among the permittees at any time licensed in each period covered. Each such permittee shall be billed its share of such aggregate costs, and such bill shall be paid within ten days of the billing date.

(2) The costs of administration for each 6-month period shall be prorated among the permittees licensed in such period on the basis of estimated dollar sales to retailers based upon reported gallons and liters of wine and liquor sold to retailers by each permittee. Whenever the sales of a permittee have not been reported to the department, the department shall estimate such sales for purposes of such proration.

History: Cr. Register, January, 1958, No. 25, eff. 2-1-58; am. Register, June, 1975, No. 234, eff. 7-1-75; am. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 8.87 Intoxicating liquor tied-house prohibitions.** (ss. 125.69 (1), Stats.) (1) PURPOSE. Section 125.69 (1)(a) and (b), Stats., prohibits "any interest directly or indirectly" in a retail establishment by a manufacturer, wholesaler or rectifier of intoxicating liquor or in a wholesaler by a retailer. Section 125.69 (1) (a), Stats., exempts from this prohibition any licenses and permits issued prior to October 3, 1963 and which have been renewed annually since that date. Section 125.69 (1) (b) prohibit a manufacturer, rectifier or wholesaler from holding an interest in any license or premises where intoxicating liquor is sold for consumption on the premises. The purpose of this section is to give examples of some direct and indirect interests prohibited by ch. 125.

(2) DEFINITIONS. In this section:

(a) "Agent" means a person who represents or acts, or who is empowered to represent or act, for another in conducting the other's business.

(b) "Corporation" includes all members of a controlled group of corporations, defined as a "parent-subsidiary controlled group", a "brother-sister controlled group", or a "combined group of controlled corporations".

1. A "parent-subsidiary controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation, if:

a. stock possessing at least 50% of all voting power of each of the corporations, except for the common parent corporation, is owned directly or indirectly by one or more of the other corporations, and

b. The common parent corporation owns directly or indirectly stock possessing 50% of the voting power of at least one of the other corporations, excluding, in computing such voting power, stock owned directly by such corporations other than the common parent corporation.

2. A "brother-sister controlled group" means 2 or more corporations where 10 or fewer persons (other than corporations) own at least 50% of all voting power of each of the corporations taking into account only stock ownership of such person to the extent it is identical with respect to each corporation.

3. A "combined group of controlled corporations" is a group of 3 or more corporations, each of which is a member of a parent-subsidiary group or a brother-sister group and one of which is both a common parent in a parent-subsidiary group as well as a member of the brother-sister group.

(c) "Effective control" means either the power to direct the affairs of the wholesale permittee or the retail licensee or the actual direction of the affairs of the wholesale permittee or the retail licensee.

(d) "Employe" means a natural person who performs services for wages or salary.

(e) "Equity" means the money value of a property or of an interest in a property in excess of the claims or liens against it.

(f) "Immediate family member" means a spouse, a brother or sister (whole- or half-blood relationship) or spouse, ancestor or spouse, or lineal descendant or spouse.

(g) "License or permit" means an intoxicating liquor license or permit issued under ch. 125, Stats.

(h) "Person" means natural person, partnership, association or corporation.

(i) "Premises" means the property described on an application for a license or permit where alcoholic beverages are to be stored, sold or served.

(3) EXAMPLES OF "DIRECT" INTERESTS. Examples of "direct" interests prohibited by ch. 125 include, but are not limited to, the following:

(a) A person who holds both a wholesale permit and retail license.

(b) A person who holds a wholesale permit and owns any equity in a partnership, association or corporation holding a retail license.

(c) A person who holds a retail license and owns any equity in a partnership, association or corporation holding a wholesale permit.

(d) A person who holds a wholesale permit and leases premises to a retail licensee.

(e) A person who holds a retail license and leases premises to a wholesale permittee.

(4) EXAMPLES OF "INDIRECT" INTERESTS. Examples of "indirect" interests prohibited by ch. 125 include, but are not limited to, the following:

(a) A natural person who holds a wholesale permit and is an officer, director, employe or agent of a retail licensee.

(b) A natural person who holds a retail license and is an officer, director, employe or agent of a wholesale permittee.

(c) A natural person who is an officer, director, employe or agent of a wholesale permittee and an officer, director, employe or agent of a retail licensee.

(d) Two corporations, one holding a wholesale permit and the other holding a retail license, in which effective control of both corporations is held by the same person or group of 10 or less persons.

(e) A natural person who has effective control in a partnership, association or corporation which holds a wholesale permit and who leases premises to a retail licensee.

(f) A natural person who has effective control in a partnership, association or corporation holding a retail license and who leases premises to a wholesale permittee.

(g) A natural person who has effective control in a business operated under a wholesale permit and an immediate family member residing in the same household who has effective control in a business operated under a retail license.

(h) A natural person who has effective control in a partnership, association or corporation which holds a wholesale permit and who has effec-

tive control in a partnership, association or corporation which holds a retail license.

Note: The definition of "controlled group of corporations" is illustrated by examples which may be derived from Internal Revenue Code Regulations 1. 1563-1 (a). Some examples follow:

1. P Corporation owns stock possessing 50% of the voting power of S Corporation. S owns stock possessing 50% of the voting power of T Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S and T. The result would be the same if P, rather than S, owned the T stock.

2. The outstanding stock of corporations P, Q, R and S is owned by the following individuals:

| *Individuals* | *Corporations* | | | | *Identical Ownership* |
|---|---|---|---|---|---|
| | P | Q | R | S | |
| A | 50% | 50% | 50% | 100% | 50% |
| B | 25% | | | | |
| C | 25% | 25% | | | |
| D | | 25% | | | |
| E | | | 25% | | |
| F | | | 25% | | |

Corporations P, Q, R and S are members of a brother-sister controlled group.

3. Smith, an individual, owns stock possessing 50% of the voting power of corporations X and Y. Y, in turn, owns stock possessing 50% of the total combined voting power of corporation Z. Since X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations, and Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y, X, Y, and Z are members of the same combined group.

History: Cr. Register, May, 1981, No. 305, eff. 6-1-81; am. (1), (2) (g), (3) (intro.) and (4) (intro), Register, June, 1983, No. 330, eff. 7-1-83.

# Chapter Tax 9

## CIGARETTE TAX



**Tax 9.01 Definitions.** (subch. II, ch. 139, Stats.) In this chapter:

(1) "Indian" means a natural person of Indian descent who is a member of a recognized federal Indian tribe occupying a reservation. Membership in a recognized federal Indian tribe is shown by either a name on the tribal roll or confirmation of such fact by the tribal council.

(2) "Indian corporation" means a corporation in which Indians own at least 51% of the voting stock.

(3) "Indian partnership" means a partnership in which at least 51% of the investment is made by Indians, at least 51% of the equity is owned by Indians and at least 51% of the profits or losses accrue to Indians.

(4) "Indian retailer" means an individual Indian, Indian partnership, Indian corporation or other person authorized to sell cigarettes by the tribal council of the reservation where the retailer's business is located.

(5) "Reservation" means all land within the boundaries of the Bad River, Forest County Potawatomi, Lac Courte Oreilles, Lac du Flambeau, Menominee, Mole lake, Oneida, Red Cliff, St. Croix and Stockbridge-Munsee reservations and the Winnebago Indian Communities.

(6) "Stamped cigarettes" means cigarettes bearing valid Wisconsin tax stamps or meter imprints.

(7) "Untaxed cigarettes" means cigarettes not bearing valid Wisconsin tax stamps or meter imprints.

History: Cr. Register, April, 1984, No. 339, eff. 4-1-84.

**Tax 9.06 Affixing of state revenue stamps.** (s. 139.32, Stats.) (1) Tax stamps of the proper denomination shall be affixed either to the top of each individual package of cigarettes or on the bottom thereof, excepting in the case of flat tins or other odd-sized containers when said tax stamps shall be affixed to some portion of the flat surface thereof.

(2) Tax revenue meter imprints shall be affixed at the bottom of each individual package of cigarettes.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.08 Cigarette tax refunds to Indian tribes.** (ss. 139.323 and 139.325, Stats.) (1) SCOPE. This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who on behalf of their resident enrolled members have entered into agreements under s. 139.325, Stats., with the department for refunds of taxes on stamped cigarettes.

(2) THE LAW. (a) Section 139.323, Stats., directs the department of revenue to refund to Indian tribal councils 70% of the cigarette taxes collected under s. 139.31 (1), Stats., in respect to:

*". . . sales on reservations or trust lands of an Indian tribe to the tribal council of the tribe having jurisdiction over the reservation or trust land on which the sale is made if all the following conditions are fulfilled:*

*(1) The tribal council has filed a claim for the refund with the department.*

*(2) The tribal council has approved the retailer.*

*(3) The land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983.*

*(4) The cigarettes were not delivered by the retailer to the buyer by means of a common carrier, a contract carrier or the U.S. postal service."*

(b) Section 139.325, Stats., allows the department to *"enter into agreements with the Indian tribes to provide for refunding of the cigarette tax imposed under s. 139.31 (1), Stats., on cigarettes sold on reservations to enrolled members of the tribe residing on the tribal reservation."*

(3) SALES TO INDIANS. (a) Except as provided in s. Tax 9.09 (2) and (4), Wisconsin cigarette permittees shall sell only stamped cigarettes to federally recognized Indian tribes within Wisconsin, or to persons authorized by the Indian tribe to purchase and sell cigarettes.

(b) The Indian tribal council may authorize retailers on its reservations or trust land to purchase and sell cigarettes on which the tribal government may be entitled to a tax refund by providing the Wisconsin department of revenue and the cigarette distributor a certified letter stating that the retailer has tribal authorization to purchase and sell cigarettes on the reservation.

(c) The Wisconsin cigarette permittee shall retain, for a period of 2 years from the date of sale, records substantiating sales to federally recognized Indian tribes or their authorized retailers.

(d) The Wisconsin cigarette permittee shall include with its monthly cigarette tax returns a list of all sales of cigarettes to federally recognized Indian tribes or their authorized retailers on a separate form prescribed by the department.

(4) REFUNDS. (a) Upon filing a claim for refund with the department, the department shall reimburse the Indian tribal council 70% of the amount of tax paid under s. 139.31, Stats., on all cigarettes purchased by the Indian tribal council or person authorized to purchase and sell ciga-

rettes by the tribal council of the reservation where the purchaser's business is located.

(b) Claims shall be filed upon forms prescribed and furnished by the department.

(c) Claims may not be filed more than twice a month.

(d) 1. The Wisconsin cigarette permittee upon request, shall furnish each purchaser with the original invoice prepared at the time of delivery, and the purchaser shall send the original invoice to the department when making as claim for a refund. In this paragraph, "original invoice" means the top copy and not a duplicate original or carbon copy of the original invoice.

2. The original invoice shall be printed or rubber stamped with the words "original invoice" and shall in addition contain the following information:

a. Date of sale.

b. Name and address of seller.

c. Name and address of purchaser.

d. Number of cigarettes purchased.

e. Amount of Wisconsin cigarette tax paid as a separate item.

3. Double-faced carbon paper shall be used between the original invoice and the first carbon copy unless the invoice is upon special paper or product approved in advance by the department as affording protection equivalent to double-faced carbon paper.

4. A separate original invoice shall be used for each sale and delivery and shall be legible.

5. If an original invoice has been lost or destroyed, a duplicate original invoice shall be used to support a claim for refund and accompanied by an affidavit by the purchaser that the original invoice has been lost or destroyed. The distributor when issuing the duplicate original invoice, shall indicate on the face of the invoice that it is a duplicate original invoice. The duplicate invoice shall contain the same information as on the original invoice.

(e) On the filing of a claim, the department shall determine the amount of refund due. The department may investigate the correctness of the facts stated in a claim and may require a claimant to submit records to substantiate the claim. When the department has approved a claim, it shall pay the claimant the reimbursement provided in this subsection, out of the monies collected under s. 139.31 (1), Stats.

(f) An Indian tribe that has entered into an agreement with the department under s. 139.325, Stats., shall file its claim for refund of the remaining 30% of the precollected tax on cigarettes sold on the reservation to enrolled members of the tribe residing on the tribal reservation on forms prescribed by the department.

(g) The penalties provided in s. 139.44, Stats., for filing a false or fraudulent claim apply to all refund claimants.

(h) The right of any tribal council to a refund under s. 139.323, Stats., is not assignable, and the application for a refund shall be made by the same tribal council who purchased or authorized the purchase of the cigarettes, and by no other person, and the proceeds or amount of the refund as determined by the department shall be paid to the tribal council whose name appears on the invoice and to no other person.

(i) Refunds under ss. 139.323 and 139.325, Stats., and this section shall be of tax only and shall not include interest.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81; emerg. r. and recr., eff. 10-1-83; r. and recr. Register, March, 1984, No. 339, eff. 4-1-84.

**Tax 9.09 Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department.** (subch. II, ch. 139, Stats.) (1) SCOPE. This section applies to sales of cigarettes to and by Indians and Indian retailers on the reservations of tribes who have not entered into agreements under s. 139.325, Stats., with the department for refunds of precollected taxes on stamped cigarettes.

(2) SALES TO INDIANS FOR SALE TO RESIDENT TRIBAL MEMBERS. (a) A Wisconsin cigarette distributor permittee may sell untaxed cigarettes to an Indian retailer if the untaxed cigarettes are to be sold to resident tribal members on the reservation. If this occurs:

1. The cigarettes shall be delivered by the distributor to the purchaser on the reservation.

2. The Wisconsin cigarette distributor shall retain, for a period of 2 years from the date of sale, proof that all of the sales were to a qualified Indian retailer. Either of the following types of proof shall be retained:

a. A purchase order issued by an Indial tribal council on its letterhead.

b. A photocopy of the written authorization to traffic in cigarettes issued to the Indian retailer by the tribal council of the reservation to which the cigarettes are to be delivered.

3. The Wisconsin cigarette distributor shall list all sales of untaxed cigarettes to Indian purchasers on form CT-103 as "Out-of-State Sales."

(b) The Wisconsin cigarette distributor may not sell untaxed cigarettes to an Indian retailer if the department of revenue has notified the distributor that the untaxed cigarettes are being sold to persons other than resident tribal members.

(3) SALES TO INDIANS FOR SALE TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. A Wisconsin cigarette distributor shall sell only stamped cigarettes to an Indian retailer if the cigarettes are to be sold to persons other than resident tribal members.

(4) SALES BY INDIANS TO RESIDENT TRIBAL MEMBERS. An Indian retailer may sell untaxed cigarettes to resident tribal members on the reservation.

(5) SALES BY INDIANS TO PERSONS OTHER THAN RESIDENT TRIBAL MEMBERS. An Indian retailer shall sell only stamped cigarettes to persons other than resident tribal members.

(6) RECORDS FOR SALES BY INDIANS. The Indian retailer shall keep detailed records of both taxable and nontaxable transactions and shall

record the number and dollar volume of taxable sales to nonmembers of the tribe. With respect to nontaxable sales, and retailer shall record and retain for state inspection the names of all Indian purchasers, their tribal affiliations, the Indian reservation within which sales are made, and the dollar amounts and dates of sales. In addition, unless the Indian purchaser is personally known to the retailer, he or she shall present a tribal identification card.

(7) REFUNDS. If all the statutory requirements of s. 139.323, Stats., are fulfilled in accordance with s. Tax 9.08 (3) and (4), the department will refund 70% of the tax collected under s. 139.31 (1), Stats., to the tribal council.

History: Emerg. cr. eff. 10-1-83; cr. Register, March, 1984, No. 339, eff. 4-1-84.

**Tax 9.11 Refunds.** (s. 139.36, Stats.) (1) A refund shall be granted to any cigarette distributor for stamps which were applied to packages of cigarettes when the distributor supplies documentation to the department that the packages of cigarettes to which stamps have been affixed were damaged or otherwise unsalable and have been returned to the manufacturer thereof. A distributor who has unsalable cigarettes in his possession must file a written notice to the department of intent to return such cigarettes to the manufacturer thereof at least 10 days prior to shipping such cigarettes. If the department, upon receipt of this notice of intent, desires to exercise its right to inspect such cigarettes prior to shipment, it must so notify the distributor prior to the expiration of the 10 day period. If the department does not notify the distributor of its intent to inspect before the end of the 10 day period, the distributor may ship the cigarettes to the manufacturer and make application for refund. The distributor shall make application for such refund on a form to be furnished by the department. The application for refund must be accompanied by a copy of the signed bill of lading for said shipment. A copy of the credit memo for each shipment from the manufacturer must be forwarded to this department prior to processing the refund. The department may also require an affidavit from the manufacturer attesting to the number of cigarettes received in each shipment.

(2) Refund will be granted on all stamps unfit for use or otherwise unused, returned to this department by duly authorized permittees, providing the sale thereof may be verified by the department.

(3) On all refunds granted, the cost of printing and service charges will be deducted therefrom.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

**Tax 9.12 Refunds—military.** (s. 139.31 (3), Stats.) If the state tax has been paid on cigarettes sold to post exchanges of the armed forces of the United States or to federally or state operated veterans hospitals, the tax may be refunded to the distributor or jobber if:

(1) The cigarettes were actually sold and delivered to an exempt organization, and

(2) The distributor or jobber can provide evidence that the cigarette taxes were paid.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; r. and recr. Register, June, 1983, No. 330, eff. 7-1-83.

**Tax 9.16 Meter machines.** (s. 139.32 (4), Stats.) (1) All meters are under the direct control of the department of revenue, and all transfers or anything pertaining thereto must first be authorized by the department.

(2) Any distributor or manufacturer desiring to use a cigarette meter machine in lieu of affixing revenue stamps must apply to the department of revenue for permission to have such machine installed for such purpose.

(3) All repairs to either the machine or the meter are strictly prohibited except by an authorized representative of Pitney-Bowes, Inc. Requests for service should be directed to the branch office of Pitney-Bowes, Inc., for your territory.

(4) Meter machine ink imprints on all packages must be clear and legible. All dies and other equipment must be serviced and cleaned according to the instructions issued by Pitney-Bowes, Inc.; the department of revenue may refuse the continued use of the meter.

(5) All inks used in the stamping of cigarettes must be purchased from Pitney-Bowes, Inc., Stamford, Connecticut, and must be made up from the formula having the approval of the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (4), Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 9.17 Meter machine settings.** (section 139.32 (4), Wis. Stats.) (1) Meters may only be set by authorized representatives of the department of revenue and all individuals doing so should be requested to show their credentials to the permittee requesting the setting.

(2) All requests for meter settings shall be in units of 100 and may not exceed 99,900.

(3) Permittees, if they so desire, may forward their meter direct to the department of revenue, Madison, for setting, accompanied by the proper remittance and the card titled "The Record of Meter Settings," form CT-623. Express charges must be prepaid on meters sent to the department of revenue, Madison, for setting and the machines will be returned by express collect after setting.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.19 Fuson machines and stamps.** (sections 139.32 (2) and (3) and 139.34 (7), Wis. Stats.) (1) The term fuson shall apply to all stamping processes whereby revenue stamps are fused to the outer wrapper of any cigarette package by a heat process.

(2) The use of fuson stamps and any machines or devices for their application by any distributor shall be subject to the approval of the secretary of revenue and such approval may be withdrawn at any time at the discretion of the secretary of revenue.

(3) To be properly stamped the full revenue stamp and at least 50% of the surrounding "field" must be clearly visible in a proper position on the cigarette package.

(4) To be considered properly stamped an indentifying code number must also be clearly affixed to the cigarette package by the distributor in a method approved by the secretary of revenue.

**History:** Cr. Register, February, 1967, No. 134, eff. 3-1-67; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.21 Shipments to retailers.** (sections 139.31, 139.32 (1) and 139.34, Wis. Stats.) (1) Out-of-state permittees shipping cigarettes to Wisconsin retailers shall, prior to the entry of said merchandise into this state, have affixed to the containers thereof the proper Wisconsin revenue stamps.

(2) Wisconsin retailers purchasing cigarettes from without the state must purchase same only from out-of-state manufacturers and distributors who hold permits issued to them by the department of revenue.

(3) All out-of-state manufacturers or distributors may ship cigarettes either stamped or unstamped directly to any Wisconsin manufacturers or distributors who hold the proper permit issued by the department of revenue.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.22 Drop shipments.** (sections 139.32 (1) and 139.38, Wis. Stats.) (1) Drop shipments are strictly prohibited to retailers unless the cigarettes have affixed thereto the proper tax stamp prior to sale and delivery.

(2) All consignors of cigarettes, on drop shipments, must furnish a memo invoice to the distributor or the retailer receiving the merchandise direct, as well as an invoice to the distributor through whom the billing is serviced.

(3) The consignors must list on their regular schedule CT-107 the name of the consignee actually receiving the merchandise, as well as the name of the distributor through whom it is billed.

(4) All distributors servicing drop shipments must declare same on their regular monthly purchase schedule CT-101, showing the name of the original consignor and the account actually receiving the merchandise.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75; am. (3), Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 9.26 Trade or transfer of unstamped cigarettes.** (section 139.32 (1), Wis. Stats.) (1) A licensed Wisconsin distributor may not stamp merchandise for another such distributor unless the merchandise is first shipped, invoiced and billed directly to the distributor who is to stamp same, and is then invoiced, billed, and reshipped by him to the distributor for whom it was stamped.

(2) No manufacturer or distributor shall receive unstamped cigarettes from a retailer for stamping purposes.

(3) No unstamped cigarettes shall be transferred from one permittee to another for any reason whatsoever, except for interstate commerce. All cigarettes sold by one permittee to another for the purpose of interstate commerce shall have a label affixed to each case stating thereon, "For Interstate Commerce Only". The label shall be 2 inches by 5 inches in size. This merchandise shall be used for interstate commerce and must not be diverted in any manner for intrastate sale.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.31 Sales out of Wisconsin.** (section 139.31 (3), Wis. Stats.) (1) The occupational tax imposed upon the sale of cigarettes within the state does not apply to merchandise which is shipped from within the state to a point outside the state. Manufacturers and distributors need not affix revenue stamps to the original containers of cigarettes that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Wisconsin manufacturer or distributor to show that such merchandise actually went into interstate commerce.

(2) Wisconsin manufacturers and distributors claiming exemption from the occupational tax on cigarettes on the grounds that shipments or deliveries were made in interstate commerce shall certify under oath:

(a) Names and addresses of the persons receiving such shipments or deliveries in such foreign state; or

(b) That they are in possession of bills of lading, waybills, or freight bills, or other evidence of shipment issued by common carriers.

**History:** 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.36 Displaying of cigarettes.** (sections 139.32 (1) and 139.39, Wis. Stats.) All cigarette retail outlets in the state of Wisconsin shall display all cigarettes, offered for sale at retail, in such a manner that the tax stamp or meter imprint is clearly and conveniently visible.

**Tax 9.41 Vending machines.** (section 139.39 (1) and (2), Stats.) Each vending machine operator must place on the front of each vending machine operated or controlled by him a sticker with his name and address, and his vending machine operator's permit number as issued by the department of revenue, in such a position that it will not become dislodged or detached. Such sticker may be placed back of the glass, provided that it is completely visible and readable from the front.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.46 Purchases by the retailer.** (sections 139.34 and 139.38 Stats.) (1) No firm, person, or corporation engaged in the retail sale of cigarettes shall purchase same except from a manufacturer, distributor or jobber who holds a permit from the department of revenue.

(2) All retailers selling cigarettes shall retain invoices covering all purchases of cigarettes. Such invoices shall be retained on the licensed premises in groups covering a period of one month each, and shall be available for inspection at all reasonable times by any representative of the department of revenue.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.47 Invoicing of sales, including exchanges of cigarettes.** (section 139.38, Stats.) (1) A true and correct invoice must accompany the cigarettes at the time of any sale, including exchanges, between permittees or between permittees and retailers. Permittees include cigarette salesmen, distributors, jobbers, vending machine operators or multiple retailers. A true and correct invoice must contain the following information:

(a) Names and business addresses of both parties as shown on the permit or license of each.

(b) Date of sale or exchange.

(c) Number of packs or cartons of cigarettes by brand and pack.

(d) Unit price per pack or carton. (The unit price of the cigarettes alone may be shown with the Wisconsin cigarette tax stated as a separate item.)

(e) Signature of the person receiving the cigarettes. (In an exchange, both parties must sign the invoice.)

(2) When a salesman, acting as a representative of a cigarette manufacturer, exchanges fresh cigarettes for dried or damaged cigarettes, he shall accept and receive only dried or damaged cigarettes of the brands manufactured by his employer and he shall prepare and deliver with the fresh cigarettes a true and correct invoice as set forth in (1) above.

(3) When a salesman, acting as a representative of a cigarette manufacturer, or when a permittee exchanges dried or damaged cigarettes to a distributor for return to the manufacturer and receives fresh cigarettes in exchange therefor, he shall prepare a true and correct invoice as set forth in (1) above. Each carton of such dried or damaged cigarettes shall contain only cigarettes of one brand and pack. Such cartons shall be packed so that the tax stamps on the dried or damaged cigarettes are exposed for inspection and the distributor shall refuse to receive or accept any cigarettes not so packed.

(4) A clearly legible copy of all invoices evidencing a sale or exchange of cigarettes must be retained by each of the parties to the transaction for a period of at least 2 years from the date of the invoice, in groups covering a period of one month each.

History: Cr. Register, November, 1971, No. 191, eff. 12-1-71.

**Tax 9.51 Samples.** (sections 139.31 and 139.33, Stats.) (1) Cigarettes shipped into this state by manufacturers to their representatives, including advertising agencies and airlines, for the purpose of free samples must be accompanied by a memo invoice stating brands and number of cigarettes. Such memos must be retained by the representative for the statutory period of 2 years.

(2) Manufacturers may ship free sample cigarettes in quantities of 400 or less to consumers, such as employes or stockholders.

(3) All such sample cigarettes described in (1) and (2) above must bear the legend: "Applicable state tax paid. Not for resale." All such cigarettes are subject to Wisconsin cigarette use tax. Such tax paid by the manufacturer shipping or causing such cigarettes to be shipped into this state shall be remitted no later than the 15th day of the month following such shipment. Along with the applicable tax remitted each manufacturer shall submit a list of persons to whom cigarettes were shipped indicating the amount of cigarettes shipped to each person.

History: 1-2-56; r. cr. Register, November, 1971, No. 191, eff. 12-1-71.

**Tax 9.56 Branch offices.** (section 139.34 (4), Stats.) Separate sets of records are required for each branch or place at which a wholesale cigarette business is operated.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.61 Warehousing of cigarettes.** (section 139.34 (8), Stats.) Out-of-state persons, firms, or corporations having permits to engage in the sale of cigarettes in the state of Wisconsin may warehouse either stamped or unstamped merchandise in properly licensed warehouses located in the state of Wisconsin. No such person, firm, or corporation shall affix stamps to merchandise while it is stored in such licensed warehouse.

History: 1-2-56; am. Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 9.67 Cigarette tax credit.** (section 139.32 (6), Stats.) (1) The term "cigarette tax stamp" shall be construed to mean any of the authorized indicia of cigarette tax payment including water transfer stamps, heat applied stamps and metered impressions. The term "cigarette tax stamp purchase" shall be construed to mean the purchase of any of such authorized indicia of cigarette tax payment, by a distributor, to be affixed or applied to cigarette packages.

(2) Each distributor desiring to make cigarette tax stamp purchases on credit shall file with the department of revenue a bond drawn in favor of the state of Wisconsin in an amount equal to 125% of the gross value of the credit desired. The bond shall be executed by a surety company licensed to do business in this state and shall provide that the liability shall not be affected by the revocation of any license or by partial recovery upon the bond or by the execution of any new bond.

(3) The credit extended for any cigarette tax stamp purchase under a surety bond will become due and payable:

(a) Upon request for another cigarette tax stamp purchase on credit.

(b) Upon formal demand by the department of revenue.

(c) In any event, not later than 30 days from the date on which credit was extended on any such cigarette tax stamp purchase.

(4) The department of revenue reserves the right to investigate the the financial stablity of the applicant and his surety company, and the right to deny credit to any permittee when there is any question of ability to pay as herein required.

(5) The privilege granted to any distributor of making cigarette tax stamp purchases on credit may be cancelled or revoked at any time at the discretion of the department of revenue.

**History:** Cr. Register, November, 1957, No. 23, eff. 12-1-57; am. Register, Februray, 1960, No. 50, eff. 3-1-60; r. and recr., Register, August, 1961, No. 68, eff. 9-1-61; am. Register, June, 1975, No. 234, eff. 7-1-75.

# Chapter Tax 10

# INHERITANCE TAX



**Note:** Chapter Tax 10 Oil inspection was repealed and a new chapter Tax 10 Inheritance tax was created effective July 1, 1975.

**Tax 10.01 Accrual of interest on notes, deposits and securities.** (s. 72.12, Stats.) (1) For inheritance tax purposes the accrued interest on interest bearing property should be separately reported for that period from the date of the last preceding interest payment to the date of death at the rate payable if held to maturity. A reduced rate or penalty provided for withdrawal or surrender prior to the maturity date may not be used.

(2) Amounts forfeited by premature withdrawal or surrender shall be considered as expenses of administration. The amount forfeited may be claimed as a deduction for inheritance tax purposes under s. 72.14 (1) (c), Stats., only:

(a) If the premature withdrawal of the funds is shown to be necessary for the payment of other allowable deductions of the estate under s. 72.14, Stats.; and

(b) To the extent not claimed for income tax purposes.

(3) The above procedures apply to transfers by deaths on and after July 1, 1975.

**History:** Cr. Register, June, 1975, No. 234, eff. 1-1-75.

**Tax 10.05 Taxation of joint tenancy property and establishing contribution for deaths on or after May 14, 1972 and before July 1, 1976.** (s. 72.12 (6), Stats.) (1) THE STATUTE. The full clear market value of property held by 2 or more persons in joint tenancy with a right of survivorship (hereafter "joint property"), upon the death of one of those persons on or after May 14, 1972 and before July 1, 1976 is subject to the inheritance tax regardless of the relationship of the joint tenants to each other. The 2 statutory exceptions are the following:

(a) Property is exempt from taxation if the property or the consideration with which it was acquired, or any part of either, is shown to have originally belonged to the survivor. Such property or consideration must not have been received or acquired by the survivor from the decedent for less than adequate and full consideration in money or money's worth. Any lifetime conveyance into joint tenancy from the decedent to the surviving tenant regardless of whether it results in a taxable transfer does

not consitute contribution by the survivor in the decedent's estate. Any gift tax paid on the lifetime conveyance is returned as provided in s. 72.87, Stats.

(b) Property is exempt if it was acquired by the survivor by gift from someone other than the decedent or if it was inherited.

(2) JOINT PROPERTY OR CONSIDERATION IN MONEY OR MONEY'S WORTH ORIGINATING WITH THE SURVIVOR. (a) If all of the joint property or the consideration used to acquire it originally belonged to the survivor and if the decedent did not furnish any part of it, then no part of the value of the joint property is subject to the inheritance tax.

(b) If only part of the joint property or the consideration used to acquire it originally belonged to the survivor, then the ratio of the contribution provided by each joint tenant to the total contributions provided is applied against the value of the property at death (which include unrealized gain on this property). The value of that part of the property attributable to the survivor is not subject to inheritance tax.

(c) If equal contribution in money or money's worth was made by each joint tenant, the taxable portion is computed by dividing the total value of the property by the number of the joint tenants including the decedent.

(d) Consideration in "money's worth" may include a joint tenant's continuing contribution of services, industry and skills in a jointly-owned business operation (such as retail or manufacturing business or a farming operation) toward the production of income which is used to acquire the joint property. The basis for a claim of consideration in "money's worth" based on the contribution of services shall be set forth in each estate where less than the full clear market value of joint property is included for inheritance tax purposes. The contribution of services must be substantial. In determining the value of these services, the following shall be considered:

1. The length of time during which services were contributed over the period of ownership of the property.

2. The length of the joint tenancy ownership.

3. The length of the marriage, if the survivor is a surviving spouse.

4. The nature and frequency of the survivor's services, industry and skills in the business operation.

(3) REALIZED APPRECIATION, PROFITS AND INCOME FROM JOINT PROPERTY. (a) Wisconsin income tax law controls the allocation between joint tenants of the realized appreciation, income and profits derived from joint property.

(b) If appreciation is realized on the disposition of joint property and the proceeds are reinvested in other joint property, the joint tenants would have equal contribution to the extent of these gains regardless of proportionate contribution to the acquisition of the original joint property.

(c) If the joint property is investment property (from which income shall or is expected to result from mere ownership rather than income resulting from actual operation of a business upon the property), then

income and profits therefrom shall be split for income tax purposes. If the income or profits are then applied to payment of a mortgage on the property or are used to purchase additional joint property, then each joint tenant shall have equal contribution from the income and profits. If income and profits from a business conducted with joint property cannot be split for income tax purposes but substantial services generated income used to pay off a mortgage on the joint property or to purchase additional joint property, contribution on the basis of those services can be established by the other joint tenant.

(4) JOINT PROPERTY OR CONSIDERATION ORIGINATING WITH THE DECEDENT. If the joint property or the consideration used to acquire it, or any part of either, originated with the decedent without adequate consideration being given by the survivor, then the value of the property so originating is subject to the inheritance tax.

(a) If all or part of the joint property or the consideration used to acquire it was originally a gift from the decedent to the survivor, the value of the gift shall not be regarded as contribution.

(b) The income, profits and realized appreciation or gain from property which was given by the decedent to the survivor, when applied to the acquisition of joint property, shall be regarded as contribution although the value of the original gift shall not be. Unrealized appreciation on property given by the decedent to the survivor is not regarded as contribution by the survivor.

(c) Stock dividends accruing from property given by the decedent to the survivor are not attributable to the survivor, thus differing from cash dividends, and are, therefore, includable in the decedent's estate.

(d) When joint property originated with the decedent, it is necessary to determine whether the survivor received from the decedent any part of the property or consideration used to acquire it for less than adequate and full consideration in money or money's worth. The value of property originating with the decedent may be attributed to the survivor if the survivor provided adequate and full consideration for the property.

(e) Property acquired by one spouse prior to a marriage and transferred into joint tenancy with the other spouse without adequate consideration is taxable to the extent of that part not attributable to monetary contribution of the survivor. If both spouses have property in sole names prior to marriage and transfer some or all of the property into joint tenancy after marriage, the taxable or excludable portions will be determined by contribution of property made by each to the joint tenancies.

(f) Joint tenancy property brought into the state is taxable on the basis of contribution by the tenants, with the exception of that property brought in the state from a community property state.

(g) In this section:

1. Relinquishment of marital rights (dower, curtesy or homestead rights) or relinquishment of a right of survivorship does not constitute consideration in money or money's worth for the acquisition of an interest in joint property. But transfers into joint tenancy as consideration for relinquishment of support or property rights in a divorce may be regarded as consideration.

2. Payment of a debt, excluding a debt on joint property, of one joint tenant by the other joint tenant is not consideration for acquisition of an interest in joint property unless there is sufficient evidence of an agreement that it is to be regarded as consideration.

3. To meet the burden of proving a survivor's contribution to a joint bank account, evidence must show both the sources of deposits and the nature of withdrawals. When both joint tenants (including joint tenancies between spouses) have acquired income and deposited it in joint accounts, the proportion of their gross incomes shall be accepted as a measure of the contribution of each to joint accounts, unless adequate proof of a different arrangement is shown. These criteria apply in determining contribution to joint property purchased with the funds from a joint bank account.

4. If joint property is purchased using a mortgage, the deduction allowed on the outstanding balance on the date of death is computed as follows:

$$\frac{\text{portion of fair market value included in estate,}}{\text{fair market value on date of death}} \times \text{mortgage on date of death} = \text{allowable deduction}$$

5. If the surviving joint tenant expended funds for improvements on the joint property, then these expenditures are considered contributions toward the joint property by the survivor.

(5) PROVING CONTRIBUTION. (a) The survivor shall show that he or she contributed to the acquisition of joint property. If the survivor does not so show, the entire value of the joint property shall be taxed.

(b) A surviving joint tenant claiming contribution shall include, with Wisconsin inheritance tax return, an affidavit setting forth sufficient information to show the previous ownership of the property, the dates of acquisition, the services involved, the type of consideration used to acquire it (i.e., cash, joint or individual savings, mortgages or notes), the sources of the consideration and the available documentation of the information. The following types of information may be included in an affidavit:

1. Whether a down payment was made and, if so, its source.

2. Whether there are or were mortgages on the property and, if so, the amount of unpaid balance and whose funds were used to pay off the mortgage.

3. Comparative incomes or services or both of joint tenants prior to and during acquisition, including dates of employment, documentation of incomes, when and where these funds were deposited and withdrawn, and whether any part was retained separately by one joint tenant.

4. Other sources of funds to any joint tenant (e.g., gifts, inheritances, insurance proceeds and judgments), including dates received and what was done with these funds (e.g., placed in joint account).

5. Any separate acquisitions by a joint tenant, with the dates of acquisition and source of funds for acquisition.

6. Whether joint property was purchased with the proceeds from the sale of or from the income derived from other joint property, or whether a mortgage was paid off by income from that or other joint property. If so, income tax returns shall be included to show whether it is investment or business property.

7. Whether the joint property was purchased with funds from joint bank accounts and the sources of funds in those accounts.

8. Whether there were any agreements between the joint tenants which would affect equity in the property (e.g., a partnership agreement or an agreement that one joint tenant pay debts of the other).

9. Whether the joint property was purchased from the sale of assets given to the survivor by the decedent or whether the joint property was purchased from the income derived from assets given to the survivor by the decedent. In either case, whether adequate consideration was given by the survivor for these gifts shall be indicated.

10. Improvements on the property and sources of the funds, materials of labor.

**Note:** Section 72.12 (6), Stats., relating to the inheritance taxation of joint tenancy property, was enacted by the 1971 legislative session and applies to all deaths which occur on and after May 14, 1972 and prior to July 1, 1976. Chapter 310, Laws of 1971, which enacted this statute contains the following note after the joint tenancy provision: "Sub. (6) is patterned after s. 291.01 subdivision 4 (1), Minn. Stats. and I.R.C. s. 2040 to tax the transfer of jointly held property in the same manner as the fereral method."

Under a literal reading of the statute, if property is owned in joint tenancy and one joint tenant dies, the decedent is presumed to have initially acquired the full value of the asset and the survivor or survivors are presumed to inherit and are taxed on the property's full value. A surviving joint tenant will not be subject to the inheritance tax, however, on any portion of the property to which the survivor can show he or she actually contributed.

In *Department of Revenue v. Kersten* (1976), 71 Wis. 2d 757, the court held that contribution is not limited to money or property, but includes the "services, industry and skills" of a joint tenant in the operation of a farm enterprise.

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 10.06 Taxation of joint tenancy property for deaths on or after July 1, 1976.** (ss. 72.01 (12), 72.12 (4) (a) and (6), 72.13 and 72.85 (4), Stats.) Property held by 2 or more persons with the right of survivorship (hereafter "joint property") shall have the value subject to inheritance tax determined as follows:

(1) COMPLETED TRANSFERS. Any joint property requiring the signature of all joint tenants to transfer the entire property which, to the extent of unequal monetary contribution, was deemed a gift at the time of its acquisition or the creation of the joint tenancy and any subsequent increments thereto shall have its taxable value determined by dividing the joint property's date of death clear market value, less any liens against the property, by the number of joint tenants on the date of death including the decedent.

(2) INCOMPLETE TRANSFERS. (a) The full date of death clear market value of any joint property requiring the signature of only one joint tenant to transfer the entire property which, to the extent of unequal monetary contribution, was not deemed to be a gift at the time of its acquisition or the creation of the joint tenancy and any subsequent increments thereto shall be subject to inheritance tax. Any portion contributed in

money or money's worth by the survivor, as described in Tax 10.05, may be excluded.

(b) Unless there is a clear showing to the contrary, the allocation of contribution in money or money's worth shall apply equally to all joint property held by the same joint tenants. The amount is computed as follows:

$$\frac{\text{dollar amount of survivor's contribution to date of death}}{\text{full clear value of all joint property at death}} \times \text{full clear market value of each asset} = \text{survivor's contribution to each asset}$$

(3) TRANSFERS IN CONTEMPLATION OF DEATH. Any joint tenancies created or joint tenants added within 2 years of a decedent's date of death are covered by s. 72.12 (4) (a), Stats.

**Note:** *Example #1:* The following example shows how to compute the taxable and tax exempt portions of joint property under sub. (1). Assume that the full clear market value of a farm owned in joint tenancy by husband, wife and child is $120,000; that a mortgage of $30,000 exists against the farm and that the husband dies:

| | |
|---|---|
| Date of death full clear market value | $ 120,000 |
| Subtract mortgage outstanding on date of death | −30,000 |
| Subtotal | $ 90,000 |
| Divide by number of joint tenants at time of death | ÷ 3 |
| Amount subject to inheritance tax | $ 30,000 |
| Joint tenancy exemption | $ 60,000 |

The fractional share times the number of surviving tenants (2) equals the joint tenancy exemption for deaths prior to January 1, 1978. On or after January 1, 1978, there is no joint tenancy exemption; the survivor's interests are excluded; and, only the decedent's interest is included in the taxable estate ($30,000).

*Example #2:* The following example shows how to compute the survivor's contribution to joint property under sub. (2) (b). Assume that the surviving joint tenant contributed $20,000 to a farm with a $120,000 date of death value and that the survivor also acquired a $20,000 joint savings account from decedent:

*farm:*

$$\frac{\$20,000}{\$140,000} \times \$120,000 = \$17,142.86$$

*savings account:*

$$\frac{\$20,000}{\$140,000} \times \$20,000 = \$2,857.14$$

While the real estate will be included for inheritance tax at fractional share without considering contribution, it will be necessary to allocate a prorata share of monetary contribution to *all* joint assets unless it can be clearly traced to a specific asset. In this example, $2,857.14 is available for contribution to the savings account unless it can be clearly shown otherwise.

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 10.10 Taxation of savings, mortgage and credit life insurance.** (ss. 72.12 (7), 72.13 (2) and 72.14 (1) (a), Stats.) (1) SAVINGS INSURANCE. If, upon the death of a depositor in a financial institution, a life insurance payment is made based on the amount in a savings account of the decedent at the time of death, such payment is taxable as insurance under s. 72.12 (7). If death is on or after July 1, 1979, the full amount is included as a taxable transfer. If death is prior to July 1, 1979,

the following paragraphs identify the extent of the application of the $10,000 insurance exclusion.

(a) If the payment is made to a named beneficiary, it shall be includible with other insurance proceeds paid to distributees other than the decedent's estate and shall qualify for the $10,000 insurance exclusion provided in s. 72.12 (7) (b), Stats.

(b) If the payment is made to the financial institution and is added to the decedent's account, and if the account was held in joint tenancy, the account will then be paid to the surviving joint tenants. The insurance portion of the account qualifies for the $10,000 insurance exclusion.

(c) If the account is solely owned and is paid to the personal representative of the decedent's estate or to the estate itself, the portion of the account representing insurance proceeds shall not qualify for the $10,000 insurance exclusion.

(d) If the solely owned account is paid to a distributee who had been designated by the decedent prior to death, the insurance proceeds qualify for the $10,000 exclusion.

(2) MORTGAGE AND CREDIT INSURANCE. Life insurance payments made to a creditor upon death of a debtor shall reduce the deduction otherwise allowable in s. 72.14 (1) (a), Stats., as follows:

(a) If the debt was secured by the debtor's solely owned property, the insurance shall reduce the deduction otherwise allowable in s. 72.14 (1) (a), Stats., as a debt of the decedent to the extent of the payment. The payment credited to the debt shall not be taxable under s. 72.12 (7), Stats., unless it exceeds the debt.

(b) If the debt is secured by joint tenancy property, the payment of insurance in satisfaction of part or all of the debt shall be considered insurance payable to the surviving joint tenant or tenants in the same manner as to a named beneficiary and shall qualify for the $10,000 insurance exclusion if death is prior to July 1, 1979. There is no insurance exclusion if death is on or after July 1, 1979. This payment shall not reduce the deduction otherwise allowable under s. 72.14 (1) (a), Stats.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (intro.) and (2) (b), Register, July, 1982, No. 319, eff. 8-1-82.

**Tax 10.11 Federal estate tax deductions for deaths on or after July 1, 1979.** (ss. 72.14 (1) (e), 72.14 (2) and 72.33, Stats.) (1) In computing the taxable estate for Wisconsin inheritance tax purposes, a deduction shall be allowed for the full federal estate tax as finally determined and paid.

(2) Whenever the federal estate tax paid is not final and conclusive, a deduction may be claimed for the amount of tax due as shown on the return as filed, providing that at least that amount has been paid. If the final federal estate tax paid increases or decreases, the adjustment in the federal estate tax deduction is made within 30 days of final determination by submitting the adjustments with proof to the Department of Revenue under s. 72.33, Stats. Any additional tax owing should accompany the adjustments. Any refund will be certified upon audit and issued. To expedite processing, the date the original "Certificate Deter-

mining Inheritance Tax" (HT-214) was issued should be included with the information.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

**Tax 10.115 Federal estate tax deduction for deaths prior to July 1, 1979.** (ss. 72.14 (1) (e) and 72.14 (2), Stats.) (1) In computing the taxable estate for Wisconsin inheritance tax purposes, a deduction shall be allowed for the full federal estate tax as finally determined and paid.

(2) To qualify as a Wisconsin inheritance tax deduction, the following conditions must be met:

(a) The federal estate tax must be imposed and paid to the United States government.

(b) The Wisconsin deduction cannot exceed the actual federal tax paid.

(c) The value of each separate item of property on which the deduction is computed shall not exceed the value used for the Wisconsin tax determination. Each item shall be considered individually and a higher value of one item may not offset a lower value on another item.

(d) In making the deduction computation, no asset's value shall exceed the value of that asset used for federal estate tax purposes. Further, no adjustment is permitted for the difference between the federal gross estate and the gross estate used for Wisconsin inheritance tax purposes.

(3) The procedures to follow in computing the allowable federal estate tax deduction on Schedule L (Form HT-026) are as follows:

(a) Reduce the federal gross estate as finally determined by the amount which the value of any asset included for federal estate tax purposes exceeds the value of the asset for Wisconsin inheritance tax pruposes. When property is included for federal estate tax purposes but not for Wisconsin inheritance tax purposes, reduce the federal gross estate by the full value of all such property. This includes any portion of joint tenancy property included for federal estate tax purposes and not for Wisconsin inheritance tax purposes, such as the portion of joint tenancy property excluded from inheritance tax as any fractional share of a surviving joint tenant.

(b) Recompute the federal estate tax. As necessary, use the actual debts, burial and administration expenses, and recompute the proper marital deduction considereing the reduced federal gross estate, the will of the decedent and/or the Wisconsin Statutes.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; renum. from Tax 10.11, Register, July, 1982, No. 319, eff. 8-1-82.

**Tax 10.12 Deductibility of taxes.** (s. 72.14 (1) Stats.) (1) Any Wisconsin or federal income, withholding, unemployment, sales or transfer taxes attributable to a period prior to the decedent's date of death and due by the decedent and unpaid as of the date of death, together with interest and penalties thereon to the date of death, shall be deductible from the decedent's estate for inheritance tax purposes as a debt.

(2) Any Wisconsin or federal income, withholding, unemployment, sales or transfer taxes attributable to a period beginning on or after the date of death, together with interest and penalties thereon, or interest

and penalties attributable to any taxes in sub. (1) from the date of death until paid, shall not be deductible from the decedent's estate for inheritance tax purposes. This section does not apply to the federal estate tax deduction under s. 72.14 (1) (e), Stats.

**History:** Cr. Register, March, 1978, No. 267, eff. 4-1-78; r. and recr. Register, July, 1982, No. 319, eff. 8-1-82.

**Tax 10.13 Apportionment of property qualifying for exception.** (s. 72.15 (4), Stats.) Each distributee of property qualifying for exception under s. 72.15 (4), Stats., shall report that portion of the total exception based on the ratio that the value of property qualifying for exception distributable to such distributee bears to the total value of the property qualifying for exception distributable to all distributees.

**History:** Cr. Register, July, 1982, No. 319, eff. 8-1-82.