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CERTIFICATE

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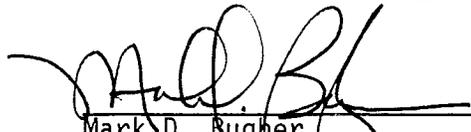
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Bureau

STATE OF WISCONSIN     )  
  ) SS  
DEPARTMENT OF REVENUE )

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to income and franchise taxation was duly approved and adopted by this department on May 22, 1989.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 22nd day of May, 1989.

  
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Mark D. Bugher  
Secretary of Revenue

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April 25, 1989

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ORDER OF THE DEPARTMENT OF REVENUE  
REPEALING, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue hereby adopts an order to repeal Tax 2.26(1) and (5), and 3.44; to renumber and amend Tax 2.20(2) and (3), 2.26(2), (3), (4), (6) and (7), 2.51(1)(a), 2.56(1)(a), (b), (c) and (d), and 2.88(2), (3) and (4); to amend Tax 2.16(title), (1) (a) and (c), (2), (3)(a), (4), (5)(a) (intro.), 3., 4., 6., 7., and (b) 1. and 2., 2.19(title), (1), (2), (3), and (6), 2.20(title) and (1), 2.21(title), (1) and (2), 2.24, 2.25(title), (1) (intro.) and (a), 2.26 (title) and (intro.), 2.45, 2.505(title), (1), (2), (3) (intro.), (c) and (d), 2.53(title) and (1)(intro.), 2.56(title) and (1), 2.65, 2.72(title), (1), (2) and (3)(c), 2.721(title), (1) and (4), 2.83(title), (1), (2) and (4), 2.88 (title) and 3.45; to repeal and recreate Tax 2.21(3) and 2.22; and to create Tax 2.16(6), 2.19(7), 2.20(4), 2.21(4), 2.24(2), 2.25(3), 2.26(6), 2.53(3), 2.56(6), 2.65(3), 2.72(4), 2.721(5), 2.83(6), 2.88(4) and 3.45(3)(b) and (c), (4) and (5), relating to income and franchise taxation.

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Analysis by the Department of Revenue

Statutory Authority: s. 71.80(1)(c), Stats.

Statutes Interpreted: ss. 71.02(2)(a) and (b), 71.03(1)(c), (d), (g) and (k) and (5), 71.04(2), (2d) and (15)(g), 71.11(8) and (9), 71.305, 71.307(2), 71.317(3) and 71.333, 1985 Stats., and 71.03(7), 71.24(7), 71.25(6) and (12), 71.44(3), 71.82(1) and (2)(a) and 71.90(1), Stats.

The changes in this Order affect income and franchise taxes.

SECTIONS 1 and 3. Tax 2.16 and 2.19 have been amended to eliminate excess verbiage, update format and style to reflect current practice, incorporate references from recent court cases, and clarify statutory references.

SECTIONS 2, 4, 7, 10, 13, 15, 21, 26, 29, 31, 33, 35, and 37. Tax 2.16(6), 2.19(7), 2.20(4), 2.21(4), 2.24(2), 2.25(3), 2.26(7), 2.53(3), 2.56(6), 2.65(3), 2.72(4), 2.721(5) and 2.83(6) have been created to recognize the federalization of Wisconsin's corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTIONS 5 and 6. New language and the renumbering of Tax 2.20(2) and (3) in Tax 2.20 permits certain finance companies to change to a deferred profit method of reporting discount on purchase of commercial paper without prior approval of the department. Title is amended to clarify statutory reference.

SECTION 8. Tax 2.21 (title), (1) and (2) have been amended to eliminate excess verbiage, update format and style to reflect current practice, and clarify statutory references.

SECTIONS 9. Tax 2.21(3) is repealed and recreated to clarify the department's long-standing position that if the Wisconsin operations of a nonresident contractor are part of a unitary business, the apportionment method must be used when filing a franchise tax return.

SECTION 11. Tax 2.22 is repealed and recreated to clarify the difference in tax treatment of securities held for resale and securities held for investment, to update the statutory reference, and to recognize the federalization of Wisconsin's corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTIONS 12, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 32, 34, and 36. Revisions to Tax 2.24, 2.25, 2.26, 2.45, 2.505, 2.53, 2.56, 2.65, 2.72, 2.721, and 2.83 eliminate obsolete language, update format, style and grammar, and correct statutory references.

SECTIONS 38, 39, and 40. The format of Tax 2.88, which relates to interest paid on refunded taxes, interest charged on unpaid taxes which are not delinquent, and interest charged on delinquent taxes, has been revised for clarity and to move old material to a footnote. New Tax 2.88(4) has been created concerning interest on refunds of taxes deposited with the department under s. 71.90(1), Stats.

SECTION 41. Tax 3.44, regarding organizational and reorganizational expenses, has been repealed since it is obsolete.

SECTIONS 42 and 43. Tax 3.45, relating to bond premium, discount and expense of corporations, is amended to correct grammar and improve format and style. Tax 3.45(3)(b), (c) and (4) have been created to codify long standing policy of the department based on judicial interpretations as listed in the note. Tax 3.45(5) has been created to recognize the federalization of Wisconsin's corporate franchise and income tax law by 1987 Wisconsin Act 27.

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SECTION 1. Tax 2.16(title), (1)(a) and (c), (2), (3)(a), (4), (5)(a)(intro.), 3., 4., 6. and 7., and (b)1. and 2. are amended to read:

Tax 2.16(title) CHANGE IN METHOD OF ACCOUNTING FOR CORPORATIONS.

(s. 71.11(8)(b), 1985 Stats.) (1) GENERAL. (a) The computation of adjustments necessary for a change in the method of accounting by corporations shall be made under the provisions of s. 71.11(8)(b), 1985 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 adjustment 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."~~

(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 changes shall be made in the manner described in sub. (5).

(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), 1985 Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin ~~franchise/income~~ franchise and income tax purposes.

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

(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~~ franchise and 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.)~~

Note to Revisor: Insert the following note after s. Tax 2.16(4):

Note: Wisconsin's treatment of transitional adjustments 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)(a) Applications to use the LIFO inventory method and subsequent changes in inventory accounting method shall be filed with the department pursuant to ~~rule~~ s. Tax 2.26. All other applications shall contain the following:

3. The reason~~s~~ or reasons for requesting the change;

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

6. A statement, and whenever possible a schedule showing the computation of adjustments to income for each year, which clearly indicate the manner in which it proposes to ~~affee~~ effect the change for Wisconsin ~~franchise/income~~ franchise or income tax purposes;

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

(b)1. Applications shall be filed before the end of the taxable year for which the change is to be effective. ~~Such~~ The 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~~ form 3115.

Note to Revisor: Delete present notes following sub. (5) and substitute the following notes after sub. (6):

Note: 1) As to a change in method of accounting for a single item refer to Ladish Co. v. Dept. of Revenue, 69 Wis. 2d 723 (1975).

2) As to a change of method of accounting from cash to accrual basis refer to the decisions of the Wisconsin Tax Appeals Commission in Streets and Roads Construction Corp. v. Dept. of Revenue, Docket No. I-6239 (July 28, 1981) and Wisconsin Railroad Services Corp. v. Dept. of Revenue, Docket No. I-6813 (June 5, 1985).

3) Refer to ss. Tax 2.25, "Corporation accounting generally", and 2.26, "Last-in, first-out method of inventorying for corporations", for departmental interpretations with respect to methods of accounting for inventories.

SECTION 2. Tax 2.16(6) is created to read:

Tax 2.16(6) APPLICABILITY. As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 3. Tax 2.19(title), (1), (2), (3), and (6) are amended to read:

Tax 2.19(title), INSTALMENT METHOD OF ACCOUNTING FOR CORPORATIONS. (s. 71.11(8),

1985 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 taxable 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 taxable 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.

Note to Revisor: Insert the following note after s. Tax 2.19(1):

Note: Refer to Castle Corporation vs. Wis. Dept. of Revenue, 142 Wis. 2d 716 (1987).

(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. But the transfer of an instalment sale obligation by merger or consolidation pursuant to s. 71.368(1)(a)1, 1985 Stats., is not a distribution by the merged or consolidated corporation as long as the surviving or consolidated corporation continues to report the gain to the state.

Note to Revisor: Insert the following note after s. Tax 2.19(2):

Note: Refer to Falls Communications, Inc. v. Wis. Dept. of Revenue, 131 Wis. 2d 545 (1986).

(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, 1985 Stats., applies.

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

SECTION 4. Tax 2.19(7) is created to read:

Tax 2.19(7) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 5. Tax 2.20(title) and (1) are amended to read:

Tax 2.20(title) ACCOUNTING FOR ACCEPTANCE CORPORATIONS, DEALERS IN COMMERCIAL PAPER, MORTGAGE DISCOUNT COMPANIES AND SMALL LOAN COMPANIES. (s. 71.11(8), 1985 Stats.) (1) Except as otherwise provided in sub. ~~(3)~~ (2), acceptance corporations and dealers in commercial paper ~~must~~ shall report the discount on the purchase of paper as income in the year of ~~such~~ purchase.

SECTION 6. Tax 2.20(2) and (3) are renumbered 2.20(3) and (2) and amended to read:

Tax 2.20(2) 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 deferral of income, and the expenses incurred in producing ~~said~~ the income ~~is~~ are made in accordance with generally accepted accounting principles and practice. The election of or change to ~~so-report-must~~ the deferred profit basis shall be made before the close of the year for which the return is made, and after having made ~~such~~ the election or change, the deferred profit basis of reporting ~~must~~ shall be adhered to in all subsequent periods. Those corporations which report their income on the accrual method are not required to obtain authorization from  
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the department to change from the method under sub. (1) to the deferred profit basis if notice of this change is given to the department in writing before the close of the year in which the change is to be made.

(3) Where the records of such acceptance corporations and dealers in commercial paper are kept upon on the deferred profit basis, schedules ~~should~~ shall 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.

SECTION 7. Tax 2.20(4) is created to read:

Tax 2.20(4) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 8. Tax 2.21(title), (1) and (2) are amended to read:

Tax 2.21(title) ACCOUNTING FOR INCORPORATED CONTRACTORS. (ss. 71.11(8), 1985 Stats. and 71.25(5), 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~~ taxable 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~~ the percentage of completion method, a portion of the total contract price is treated as sales for the current period, ~~such~~ This portion being based upon the percentage of completion, as may be determined by an engineer's or an architect's estimate or ~~such other records as~~ by another method which will ~~most~~ clearly reflect the income realized to date. ~~By this method the~~ The difference between the sales thus determined and the ~~total~~ actual cost ~~applicable to the sales~~ incurred, adjusted for inventories of materials at the end of the year, is ~~treated as~~ reported as gain or loss for the ~~income~~ year.

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

SECTION 9. Tax 2.21(3) is repealed and recreated to read:

Tax 2.21(3) The income derived from the performance of construction activities within Wisconsin by a nonresident contractor is attributable to Wisconsin and is subject to the Wisconsin franchise or income tax. If the operations in Wisconsin of the nonresident contractor are part of a unitary business, the apportionment method shall be used to determine Wisconsin income, and the separate accounting method may not be used without permission from the department.

SECTION 10. Tax 2.21(4) is created to read:

Tax 2.21(4) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

SECTION 11. Tax 2.22 is repealed and recreated to read:

Tax 2.22 ACCOUNTING FOR INCORPORATED DEALERS IN SECURITIES (s. 71.11(8), 1985 Stats.) (1) Dealers in securities shall report for franchise or income tax purposes on the accrual method of accounting.

(2) Inventories of securities held for sale shall be reported on a consistent basis conforming to that used in the trade or business.

(3) Securities held for investment purposes shall be reported at cost, and any increase or decrease in value shall be reported only at the time of sale.

(4) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 12. Tax 2.24 is amended to read:

Tax 2.24(title) ACCOUNTING FOR INCORPORATED RETAIL MERCHANTS. (s. 71.11(8), 1985 Stats.) (1) The "retail method" of ~~treating~~ valuing inventories ~~properly--reflects-the-taxable-income-and-will-be~~ is acceptable when it is consistently followed and adequate records are kept. ~~The~~ When a change is made to the retail method of valuing inventories from another method of valuing inventories, the difference between the beginning inventory, taken on the old basis, and the beginning inventory, taken on the basis of the "retail method," will constitute ~~taxable~~ an increase or decrease in income ~~or-deductible-expense~~ for the year in which the change is made. Retail merchants ~~should~~ shall report all other items of income and expense ~~upon~~ on the ~~ordinary~~ accrual method.

SECTION 13. Tax 2.24(2) is created to read:

Tax 2.24(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 14. Tax 2.25(title), (1)(intro.) and (a) are amended to read:

Tax 2.25(title) CORPORATION ACCOUNTING GENERALLY. (s. 71.11(8) and (9), 1985 Stats.) (1) In a business requiring the use of inventories, ~~the~~ income ~~therefrom-generally-can-be~~ is properly ~~reflected~~ computed by use ~~of~~ the accrual method of accounting, ~~and.~~ inventories 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~~ clearly reflect income are accepted.

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

SECTION 15. Tax 2.25(3) is created to read:

Tax 2.25(3) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

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SECTION 16. Tax 2.26(title) and (intro.) are amended to read:

Tax 2.26(title) "LAST IN, FIRST OUT" METHOD OF COMPUTING INVENTORY FOR CORPORATIONS. (s. 71.11(9), 1985 Stats.) Any corporation permitted or required to take inventories pursuant to ~~the provisions of~~ s. 71.11(9), 1985 Stats., may elect ~~with respect to those goods specified in its application and property subject to inventory~~ to compute its inventory in accordance with the method provided by section 472 of the ~~United-State~~ internal revenue code, provided that:

SECTION 17. Tax 2.26(1) is repealed.

SECTION 18. Tax 2.26(2), (3) and (4) are renumbered Tax 2.26(1), (2) and (3) and amended to read:

(1) The same ~~basis~~ method of ~~inventorying~~ computing inventory 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)~~ (5).

(2) Except as ~~herein~~ otherwise provided in this section, the change to and the use of the last in, first out ~~such~~ method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect ~~thereto~~ to this method of computing inventory by the ~~United-States~~ internal revenue service.

(3) ~~An application~~ A statement of election to use ~~such~~ the last in, first out method ~~must~~ shall 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.

SECTION 19. Tax 2.26(5) is repealed.

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SECTION 20. Tax 2.26(6) and (7) are renumbered Tax 2.26(4) and (5) and amended to read:

Tax 2.26(4) Except as provided in sub. ~~(7)~~ (5), 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~~ taxable 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.

(5) 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~~ its 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~~ its 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.

SECTION 21. Tax 2.26(6) is created to read:

Tax 2.26(6) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 22. Tax 2.45 is amended to read:

Tax 2.45(title) APPORTIONMENT IN SPECIAL CASES. (s. 71.25(12), 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)~~ 71.25(10), 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~~ the 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)~~ 71.25(6), 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 as~~ another factor or other 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 assessment, will be apprised of the factors used in the formula adopted.

SECTION 23. Tax 2.505(title), (1), (2), (3) (intro.), (c) and (d) are amended to read:

Tax 2.505 (title) APPORTIONMENT OF NET BUSINESS INCOME OF INTERSTATE PROFESSIONAL SPORTS CLUBS. (s. 71.25(6), Stats.)

(1) PROPERTY FACTOR. The property factor is a fraction as defined in s. ~~71.02(2)(a)~~ 71.25(7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. ~~71.07(2)(a)~~ 71.25(7), Stats., and s. Tax 2.39(3). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

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(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. ~~71.07(2)(b)~~ 71.25(8), Stats. Compensation shall be reported as provided in s. ~~71.07(2)(b)~~ 71.25(8), 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~~ internal revenue service ruling 71-137, ~~Cum.-Bull.-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)(e)~~ 71.25(9), Stats. Sales shall be included in the factor in accordance with s. ~~71.07(2)(e)~~ 71.25(9), Stats., s. Tax 2.39(5) and the following rules:

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

(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 to Revisor: Please delete the note at the end of the rule.

SECTION 24. Tax 2.53(title) and (1)(intro.) are amended to read:

Tax 2.53(title) STOCK DIVIDENDS AND STOCK RIGHTS RECEIVED BY CORPORATIONS. (ss. 71.03(1)(d) and (k), 71.305 and 71.307(2), 1985 Stats.) (1)(title) BASIS. If a shareholder receives new stock or stock rights as a distribution on old stock ~~previously~~ held before the distribution and under s. 71.305(1), 1985 Stats., ~~such~~ the distribution is not includable in gross income, then, except as provided in s. 71.307(2), 1985 Stats., the basis of the old stock with respect

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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 new stock or stock rights as a distribution on old stock ~~previously~~ held before the distribution, and under s. 71.305(1), 1985 Stats., a part of the distribution is not includable in gross income, (except as provided in s. 71.307(2), 1985 Stats.), the basis of the old 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~~ the distribution which is includable in gross income, pursuant to s. 71.305(2), 1985 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 in this subsection will apply ~~with-respect~~ to the stock rights only if ~~such~~ these rights are exercised or sold.

SECTION 25. Tax 2.53(1)(a) is renumbered Tax 2.53(2) and amended to read:

Tax 2.53(2)(title) EXCEPTION. ~~The~~ Under s. 71.307(2), 1985 Stats., the basis of rights to buy stock which ~~are~~ is excluded from gross income under s. 71.305(1), 1985 Stats., shall be zero if the fair market value of ~~such~~ the 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~~ for all the rights received by ~~him~~ the shareholder in a particular distribution ~~in-respect-to~~ and includes all the stock of the same class owned by ~~him~~ the shareholder in the issuing corporation at the time of ~~such~~ the distribution. ~~Such~~ The 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~~ This statement shall disclose the number of shares of the old stock owned by the shareholder on the date of distribution, the basis of ~~such~~ April 25, 1989

these 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~~ this 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.

SECTION 26. Tax 2.53(3) is created to read:

Tax 2.53(3) APPLICABILITY. As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 27. Tax 2.56(title) and (1) are amended to read:

Tax 2.56(title) INSURANCE PROCEEDS RECEIVED BY CORPORATIONS. (s. 71.03(1)(d), 1985 Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is ~~taxable~~ includable in income.

SECTION 28. Tax 2.56(1)(a), (b), (c) and (d) are renumbered Tax 2.56(2), (3), (4) and (5) and amended to read:

Tax 2.56(2) Under an interest option clause ~~under~~ in which all the principal proceeds are retained and interest ~~is~~ paid thereon on the principal periodically, the interest is ~~taxable~~ includable in income.

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

(4) When, under ~~the-same~~ an income option clause chosen by the beneficiary, payments are made to the beneficiary ~~(the-option-having-been-selected-by-the beneficiary),~~ the interest so paid is ~~taxable~~ includable in income.

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

SECTION 29. Tax 2.56(6) is created to read:

Tax 2.56(6) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 30. Tax 2.65 is amended to read:

Tax 2.65(title) INTEREST RECEIVED BY CORPORATIONS. (ss. 71.03(1)(c), 1985 Stats., and 71.26(2), 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 is 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.

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SECTION 31. Tax 2.65(3) is created to read:

Tax 2.65(3) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (2) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 32. Tax 2.72(title), (1), (2) and (3)(c) are amended to read:

Tax 2.72(title) EXCHANGES OF PROPERTY BY CORPORATIONS GENERALLY.

(s. 71.03(1)(g), 1985 Stats.) (1) Except ~~where otherwise~~ when 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~~ be realized, and ~~such~~ the fair market value ~~must~~ shall 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~~ , and in the event of future sale, ~~in such case,~~ the ~~income-tax-cost~~ adjusted tax basis of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except ~~where otherwise~~ when 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~~ adjusted tax basis 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~~ the sale being taxable income. If the ~~income-tax-cost~~ adjusted tax basis of the property exchanged is in excess of the fair market value of the property received

in exchange, ~~such~~ the excess shall be taken as the ~~income-tax-cost~~ adjusted tax basis of the property received which has no determinable fair market value, no loss being recognized ~~in such cases~~.

(3)(c) Exchanges of property held for productive use or investment pursuant to s. 71.03(5), 1985 Stats., ~~when the exchange occurred in a taxable year ended on or after December 31, 1957.~~

SECTION 33. Tax 2.72(4) is created to read:

Tax 2.72(4) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 34. Tax 2.721(title), (1) and (4) are amended to read:

Tax 2.721(title) EXCHANGES OF PROPERTY HELD FOR PRODUCTIVE USE OR INVESTMENT BY CORPORATIONS. (s. 71.03(5), 1985 Stats.) (1) Property held for productive use in a trade or business may be exchanged ~~tax-free~~ without recognition of gain or loss for property of a like kind held for investment as well as for property of a like kind held for productive use in a trade or business, and, similarly, property held for investment may be exchanged ~~tax-free~~ without recognition of gain or loss 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.

Note to Revisor: Add the following examples immediately after s. Tax 2.721(2):

EXAMPLES: 1) Unimproved real estate may be exchanged for unimproved real estate without recognition of gain or loss by a taxpayer not a dealer in real estate, because the properties are "like kind."

2) If unimproved real estate is exchanged for personal property, gain or loss is recognized, since the properties are not "like kind."

3) In an exchange of real estate for real estate by a dealer in real estate, gain or loss is recognized, since the property is part of its stock in trade.

Note to Revisor: Add the following note immediately after the above examples.

Note: For taxable years prior to 1984, if the property transferred was located in Wisconsin, nonrecognition of gain or loss is only applicable if the property acquired was located in Wisconsin. For the taxable year 1984 and

subsequent taxable years, s. 71.03(5), 1985 Stats., was amended to remove the requirement that the replacement property be located in Wisconsin in order to qualify for nonrecognition of gain or loss.

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

SECTION 35. Tax 2.721(5) is created to read:

Tax 2.721(5) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 36. Tax 2.83(title), (1), (2) and (4) are amended to read:

Tax 2.83(title) 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, 1985 Stats.) (1) To qualify for the benefits of section 333 of the internal revenue code in computing Wisconsin ~~taxable~~ net 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, 1985 Stats., a corporation, other than an excluded corporation, ~~which~~ that is a qualified electing shareholder, ~~must~~ 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.

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

SECTION 37. Tax 2.83(6) is created to read:

Tax 2.83(6) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply

to taxable year 1987 or to taxable years thereafter except if a corporation elects, under s. 3047(1)(c) of the Act to apply to the transaction ss. 71.301 to 71.372, 1985 Stats.

SECTION 38. Tax 2.88(title) is amended to read:

Tax 2.88(title) INTEREST RATES. (ss. 71.03(7), 71.24(7), 71.44(3), 71.82(1) and (2)(a) and 71.90(1), Stats.)

SECTION 39. Tax 2.88(2), (3) and (4) are renumbered Tax 2.88(3), (2) and (5) and are amended to read:

Tax 2.88(3) INTEREST ON REFUNDS. (a) Any refund of individual income or corporate franchise or income taxes ~~shall include interest as follows:~~ , where ~~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~~ include interest at the rate of 9% per year from the due date of the return to the date paid by the department, except as provided in par. (b).

~~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~~ No interest shall may be allowed on income and franchise taxes if the refund is paid certified on a refund roll within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This treatment shall apply to a refund of taxes resulting from an overpayment ~~by declaration~~ of estimated tax as well as from withheld taxes.

(2)(title) INTEREST ON 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.

April 25, 1989

(5) 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 delinquent interest under sub. ~~(3)~~ (2) from the end of the extension period until paid.

SECTION 40. Tax 2.88(4) is created to read:

(4) INTEREST ON DEPOSIT OF CONTESTED TAXES. Any refund of an amount deposited with the department pursuant to s. 71.90(1), Stats., shall include interest at the rate of 9% per year from the date the funds were deposited to the date refunded, provided the funds being refunded are from a return which has a filing due date on or after November 1, 1975.

Note to Revisor: Notes presently following Tax 2.88(4) before renumbering will now follow Tax 2.88(5). Add the following note after present note 3.

4. For any tax refunded from a return which had a filing due date prior to November 1, 1975, interest was 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.

SECTION 41. Tax 3.44 is repealed.

SECTION 42. Tax 3.45 is amended to read:

Tax 3.45(title) BOND PREMIUM, DISCOUNT AND EXPENSE--CORPORATIONS. ( s. 71.04(2) and (15)(g), 1985 Stats.) (1)(title) GENERAL. If bonds are issued at a discount or premium, the issuing corporation shall amortize the net amount of the discount or premium ~~shall be amortized~~ and the bond expenses over the life of the bonds.

(2)(title) RETIREMENT. Except as provided in s. 71.04(15)(g), 1985 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, bond

expense, or premium previously reflected in income ~~and-in-all-cases-bond-expenses shall-be-amortized-over-the-life-of-the-bonds.~~

(3)(title) REFINANCING. (a) If a bond issue is ~~refunded~~ refinanced 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~~ that year.

SECTION 43. Tax 3.45(3)(b) and (c), (4) and (5) are created to read:

Tax 3.45(3)(b) If old bonds are exchanged for new bonds instead of being refinanced by the proceeds of a new issue, then any unamortized premium, discount or expense attributable to the old issue shall be combined with similar items attributable to the new issue and amortized over the life of the new issue.

(c) If a bond issue is retired in exchange for stock of the issuing corporation, the transaction is considered a readjustment of the corporation's capital structure and any unamortized discount or expense is not deductible.

(4) MERGERS. The surviving corporation in a merger may not deduct the unamortized discount and expense applicable to a bond issue put out by the merged company when the issue is retired by the survivor. Neither may the surviving corporation deduct amortization of the bond discount and expense applicable to a bond issue put out by the merged company.

(5) APPLICABILITY. As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

Note to Revisor: Add the following note at the end of s. Tax 3.45:

Note: Refer to Great Western Power Co. of California vs. Commissioner, 297 U.S. 543; Liquid Carbonic vs. Commissioner, 34 BTA 1191; and Wisconsin Electric Power Company vs. Department, 251 Wis. 346.

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The repeals, amendments and creations contained in this order shall take effect on the first day of the month commencing after the date of publication as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small business.

Dated: May 22, 1989

DEPARTMENT OF REVENUE

By:   
Mark D. Bugher  
Secretary of Revenue



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6468

Tommy G. Thompson  
Governor

Mark D. Bugher  
Secretary of Revenue

May 23, 1989

RECEIVED

Orlan L. Prestegard  
Revisor of Statutes  
30 West Mifflin Street, Suite 702  
Madison, Wisconsin 53703  
Bureau

MAY 26 1989

Re: Clearinghouse Rule 86-248

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to income and franchise taxation.

These materials are filed with you pursuant to s. 227.20 (1), Wis. Stats.

Sincerely,

Mark D. Bugher  
Secretary of Revenue

MDB:VLG:bem  
Enclosure  
LEG/MO21159G

cc: Douglas J. LaFollette, Secretary of State  
Prentice Hall, Inc.  
Commerce Clearinghouse, Inc.



**State of Wisconsin** ● **DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-268-6466

**Tommy G. Thompson**  
Governor

**Mark D. Bugher**  
Secretary of Revenue

May 23, 1989

**RECEIVED**

MAY 26 1989

Revisor of Statutes  
Bureau

Douglas LaFollette  
Secretary of State  
Room 271, GEF-1  
Madison, WI 53702

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 86-248.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

Mark D. Bugher  
Secretary of Revenue

MDB:VLG:bem  
Enclosure  
LEG/M021159F

cc: Revisor of Statutes