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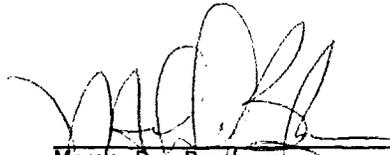
CERTIFICATE

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  
Tax 2.39 was duly approved and adopted by this department on April 8, 1991.

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 8th day  
of April, 1991.



Mark D. Bugher  
Secretary of Revenue

MDB:MPW:dab  
CKLEG/693

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7-1-91

ORDER OF THE DEPARTMENT OF REVENUE  
REPEALING AND RECREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal and recreate Tax 2.39 relating to the apportionment method of determining Wisconsin net income for franchise and income tax purposes.

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Analysis by the Wisconsin Department of Revenue

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

Statutes interpreted: ss. 71.04(4), (5), (6), (7), (9), (10) and (11) and 71.25(5), (6), (7), (8), (9), (11) and (12), Stats.

SECTION 1: Tax 2.39 is repealed and recreated for the following reasons:

a. Statutory references are changed as a result of the renumbering of Chapter 71 by 1987 Wisconsin Act 312.

b. Portions of the rule are renumbered and rearranged to provide a clear and consistent presentation of the material. Examples are added.

c. The entire rule has been revised to remove obsolete verbiage and update wording and style according to standards of the Legislative Council Rules Clearinghouse.

d. The following additional revisions are made:

1. In sub. (1) it is noted that resident individuals, estates and trusts do not apportion, as residents are taxed on all income (loss) under s. 71.04(1), Stats.

2. Definitions of terms used throughout the rule are given in sub. (2).

3. For purposes of computing the property factor of the apportionment formula:

(a) The computation of the value of mobile or movable property attributable to Wisconsin is revised in subsection (4)(a) to include the time the property is serviced and stored in Wisconsin in addition to the time it is actually in use in this state in the performance of its primary function.

(b) The description of "owned" property is clarified in subsection (4)(b) to conform to longstanding practice to include any adjustments to net income which affect property values, such as capitalizations of repairs and adjustments of inventory, reduction in the value of depletable property by the amount of cost depletion allowed as a deduction and the original cost of pollution abatement equipment which has been written off as an expense but which is still in use.

(c) The value of rental property is clarified in subsection (4)(c) to conform to longstanding practice to not include royalty payments for extraction of natural resources.

4. The payroll factor provisions of the rule in subsection (5) are expanded to cite examples of various portions of the Statutes which deal with the situs of compensation payments.

5. The sales factor provisions of the rule in subsection (6) are expanded to clarify the situs of sales of tangible personal property and services, including "throwback" sales, and to revise the rule with respect to sales to the federal government to reflect the changes to s. 71.25(9)(b), Stats., by 1989 Wisconsin Act 31.

6. Subsection (7) is added to provide for the treatment of partnerships and joint venture interests of corporations.

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SECTION 1. Tax 2.39 is repealed and recreated to read:

Tax 2.39 APPORTIONMENT METHOD. (ss. 71.04(4), (5), (6), (7), (9), (10) and (11) and 71.25(5), (6), (7), (8), (9), (11) and (12), Stats.)

(1) GENERAL. Except as provided in sub. (3)(a), any person, except resident individuals, resident estates and resident trusts, engaged in business both within and without Wisconsin shall report by the statutory apportionment method when the person's business in Wisconsin is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

NOTE: Refer to ss. 71.04(4) and 71.25(6), Stats.

(2) DEFINITIONS. In this section: (a) "Apportionable income" has the meaning in s. 71.25(5)(a), Stats.

(b) "Engaged in business within and without Wisconsin" means having business activity which is sufficient to create nexus in Wisconsin and at least one other state or foreign country.

(c) "Gross receipts" means gross sales less returns and allowances, plus service charges, freight, carrying charges or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales and use taxes, shall be included as part of the receipts if the taxes are passed on to the purchaser or included as part of the selling price of the product.

(d) "Nexus" means that a taxpayer's business activity in a state or foreign country is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. Nexus may exist even if a state or foreign country does not impose a tax on the taxpayer. Conversely, voluntary filing and paying income or franchise taxes when not required to do so, or paying a fee for qualification, organization or for the privilege of doing business in that state or foreign country does not, in itself, create nexus.

NOTE: Refer to s. Tax 2.82 for a description of factors which are recognized in determining whether nexus exists.

Examples: 1) State A imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the \$50 minimum tax, although it carries on no activities in State A. Corporation X does not have "nexus" in State A under these circumstances.

2) State B requires all nonresident corporations which qualify or register to do business in State B to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of \$50 and a maximum fee of \$500. Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State B also imposes a corporation income tax. Nonresident Corporation Y is qualified to do business in State B and pays the required fee to the Secretary of State but does not carry on any activities in State B other than utilizing its courts. Corporation Y does not have "nexus" in State B under these circumstances.

3) State C requires all nonresident corporations qualified or registered to do business in State C to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (1) outstanding capital stock, and (2) surplus and undivided profits. The fee or tax base attributable to State C is determined by a three-factor apportionment formula. Nonresident Corporation Z, which operates a plant in State C, pays the required fee or tax to the Secretary of State. Corporation Z by virtue of its operation of a plant in State C has "nexus" in State C.

4) State D imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation W files a return based upon its business activities in the state but the amount of computed liability is less than the minimum tax. Corporation W pays the minimum tax. Corporation W has "nexus" in State D under these circumstances.

5) Corporation U is actively engaged in manufacturing farm equipment in State E. State E imposes a net income tax but exempts corporations engaged in manufacturing farm equipment. Corporation U has "nexus" in State E under these circumstances.

6) Corporation V has a sales office and warehouse located in State F. State F doesn't impose a corporation franchise or income tax. Corporation V has "nexus" in State F.

(e) "Nonapportionable income" has the meaning in s. 71.25(5)(b), Stats.

(f) "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. A foreign country is not a state.

(3) APPORTIONMENT FRACTION. (a) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in s. 71.04(8) and 71.25(10), Stats., shall use 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. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04(1) and (4) or 71.25(5)(b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04(10) or 71.25(11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

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

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

NOTE: See ss. Tax 2.46, 2.47, 2.48, 2.49, 2.50 and 2.505 for special apportionment fractions of interstate air carriers, motor carriers, pipelines, finance companies, public utilities and professional sports clubs.

(b) The apportionment method may be used only if the taxpayer has nexus in Wisconsin and at least one other state or foreign country and its business within Wisconsin is an integral part of a unitary business.

NOTE: Refer to ss. 71.04(4) and 71.25(6), Stats.

(4) PROPERTY FACTOR. (a) Numerator; denominator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented and used by the taxpayer in Wisconsin in the production of apportionable income during the tax period. The denominator shall include the average value of all of the real and tangible personal property located everywhere owned or rented and used by the taxpayer in the production of apportionable income during the tax period. Property in transit on the date or dates for determining its average value, as described in par. (f), shall be considered to be at its destination, for purposes of computing the property factor. The value of mobile or movable property such as construction equipment, trucks, airplanes or other equipment which is located within and without Wisconsin during the tax period shall be determined for purposes of the numerator of the factor on the basis of the ratio of time used, serviced and stored within Wisconsin to total time used, serviced and stored 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 Wisconsin under the payroll factor.

NOTE: Refer to ss. 71.04(5) and 71.25(7), Stats.

(b) Owned property. Property owned by the taxpayer is valued at its original cost for purposes of computing the property factor. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes, prior to any adjustments, at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements to

the property and partial disposition of the property, by reason of sale, exchange, abandonment or other means. If the original cost of property is unascertainable, the property shall be included in the factor at its fair market value as of the date of acquisition by the taxpayer. Any subsequent adjustments, other than depreciation or amortization, to net income which affect property, such as capitalizations of repairs and adjustments to inventory, shall also be included in the property factor. The original cost of depletable property such as mines, oil and gas wells and timber shall be reduced by any extraction to the extent that cost depletion has been allowed. 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. Pollution abatement equipment or waste treatment facilities written off as an expense under s. 71.04(2b) and (2g), 1985-86 or prior years Stats., but still in use, shall be included at original cost.

NOTE: Refer to ss. 71.04(5)(c) and 71.25(7)(c), Stats.

(c) Rented property. Property rented by the taxpayer is valued at 8 times the net annual rental determined at arm's length for purposes of computing the property factor. Net annual rental is the annual rental paid by the taxpayer, or allocated by the department pursuant to s. 71.10(1), 71.30(2) or 71.80(1)(b), Stats., less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this definition of net annual rental may result in a negative value or clearly inaccurate valuation. In these exceptional instances, any other method which will properly reflect the net annual rental value may be required by the department or may be requested by the taxpayer; however, 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 rental value of the part of the property used by the taxpayer in the production of apportionable income bears to the total rental value of the same rental property.

(cm) Annual rental. In this subsection, annual rental:

1. 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. Where a taxpayer has rented property for a term of 12 or more months and the tax period for which the property factor is being computed covers a period of less than 12 months, such as may be due to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized; however, if the rental term is for less than 12 months, the rent shall be adjusted accordingly.

2. 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:

a. Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;

b. 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 or janitor services. If a payment includes rent and other charges unsegregated, such as rental charges for public warehouses, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items.

3. Does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles or royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from the property, whether denominated as royalty, advanced royalty, rental, delay rental or otherwise.

NOTE: Refer to ss. 71.04(5)(c) and 71.25(7)(c), Stats.

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

(f) Averaging property values. As a general rule the "average value" of property shall be determined by averaging the value at the beginning and ending of the tax period, but the department of revenue may require or the taxpayer may utilize 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 shall 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.

NOTE: Refer to ss. 71.04(5)(d) and 71.25(7)(d), Stats.

(5) PAYROLL FACTOR. (a) Numerator; denominator. The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income and the denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income. Compensation is paid in Wisconsin and included in the numerator if, as provided in ss. 71.04(6)(b) and 71.25(8)(b), Stats., one of the following applies:

1. The individual's service is performed entirely within Wisconsin.

Example: Corporation A has a manufacturing plant located in Wisconsin. The compensation of an Illinois resident who works at the Wisconsin manufacturing plant is included in the numerator of the payroll factor since the employe's service is performed entirely in Wisconsin.

2. The individual's service is performed within and without Wisconsin, but the service performed without Wisconsin is incidental to the individual's service within Wisconsin.

Example: Corporation B has its headquarters and a manufacturing plant in Wisconsin. Corporation B also has a manufacturing plant located in Indiana. The manager of the Wisconsin manufacturing plant spends two weeks during the tax year at the manufacturing plant located in Indiana training the new plant manager. The compensation of the Wisconsin plant manager is included in the numerator of the payroll factor because the service performed in Indiana is incidental to the service performed in Wisconsin.

3. A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin.

Example: Corporation C has a sales office located in Wisconsin. A salesperson working out of the Wisconsin office solicits sales in Wisconsin, Minnesota and Iowa. Since a portion of the salesperson's service is performed in Wisconsin and the salesperson's base of operations is in Wisconsin, the compensation of the salesperson is included in the numerator of the payroll factor.

4. A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

5. A portion of the service is performed within Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.

Example: Corporation E is headquartered in and has its sales office in Indiana and maintains inventory in Wisconsin. A Wisconsin resident salesperson solicits sales in Wisconsin and Minnesota. The compensation of the Wisconsin salesperson is included in the numerator of the payroll factor since a portion of the salesperson's service is performed in Wisconsin, the salesperson is a resident of Wisconsin and the salesperson is directed or controlled from Indiana but performs no services in Indiana.

6. The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Example: Corporation F has its sales office in Wisconsin. A salesperson resides in Nebraska and solicits sales in Nebraska and Kansas. Corporation F does not have nexus in Nebraska or Kansas. The salesperson returns to the Wisconsin sales office for two weeks each year for meetings and training. The compensation of the Nebraska salesperson is included in the numerator of the payroll factor since he is directed from an office in Wisconsin, returns to Wisconsin periodically for business purposes and Corporation F does not have nexus in Nebraska.

NOTE: Refer to ss. 71.04(6)(a) and (b) and 71.25(8)(a) and (b), Stats.

(b) Services. An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services in Wisconsin for at least 5 days during the year. The compensation of any one employe may not be split between two or more states during the year; however, this does not apply if the employe is transferred or changes positions during the year.

(c) Compensation. Compensation includes: 1. Wages, salaries, commissions and any other form of remuneration paid to employes for personal services including amounts contributed to a qualified cash or deferred arrangement under s. 401(k) of the internal revenue code on behalf of employes who have elected to participate in the plan. However, matching contributions to the trust by an employer under s. 401(k) of the internal revenue code are not included since the employes do not have a right to receive the matching contributions directly in cash.

2. 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 these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll factor is computed. In the case of employes not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employes shall be made as though the employes are subject to the federal internal revenue code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10(1), 71.30(2) or 71.80(1)(b), Stats., to a related corporation, as defined in s. 267(f)(1) of the internal revenue code, as consideration for the performance of personal services. As provided in s. 71.25(8)(d), Stats., the recipient of these fees may not include the compensation paid to its employes with respect to the personal services in either the numerator or denominator of its payroll factor and the situs of the fees is in Wisconsin if the services fulfill one of the requirements of par. (a). Except for these management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employe are excluded.

Example 1: Corporation A, headquartered in Illinois, owns 100% of the stock of Corporation B which is headquartered in Wisconsin. Employees of Corporation A perform all the accounting functions for Corporation B. For these services Corporation A charged \$30,000 of office payroll as management fees to Corporation B, which paid that amount to Corporation A. If the employees of Corporation A that performed the accounting services for Corporation B were based in Illinois and spent only part of their time in Wisconsin while performing these services, no portion of the \$30,000 is includable in the numerator of the payroll factor of Corporation B because the services do not meet the requirements of par. (a). The entire \$30,000 is includable in the denominator of the payroll factor of Corporation B. If Corporation A files a Wisconsin return on the apportionment basis, it may not include in its computation of the payroll factor the \$30,000 paid to its employees for services they performed for Corporation B.

Example 2: Corporation C, headquartered in Wisconsin, owns 100% of the stock of Corporation D which is also headquartered in Wisconsin. Employees of Corporation C prepare all tax returns for Corporation D. For these services Corporation C charged \$20,000 of tax department payroll as management fees to Corporation D, which paid that amount to Corporation C. All of the services were performed in Wisconsin. The \$20,000 is included in both the numerator and denominator of the payroll factor of Corporation D. Corporation C may not include the \$20,000 in either the numerator or denominator of its payroll factor.

NOTE: Refer to ss. 71.04(6)(d) and 71.25(8)(d), Stats.

(d) Excludable compensation. Compensation paid to produce nonapportionable income or losses or income exempt from taxation under ch. 71, Stats., may not be included in the numerator or denominator of the payroll factor.

NOTE: Refer to ss. 71.04(6)(c) and 71.25(8)(c), Stats.

(6) SALES FACTOR. (a) Numerator; denominator. The numerator of the sales factor shall include the gross receipts from sales which are in Wisconsin in the production of apportionable income; and the denominator shall include all gross receipts from sales in the production of apportionable income.

NOTE: Refer to ss. 71.04(7) and 71.25(9), Stats.

(b) Sales of tangible personal property attributable to Wisconsin.

1. Gross receipts from the sales of tangible personal property, except sales to the federal government as described in subd. 4, are in Wisconsin if

the property is delivered or shipped to a purchaser within Wisconsin regardless of the f.o.b. point or other conditions of the sales. Some situations in which property is considered to be delivered or shipped to a purchaser within Wisconsin are if:

a. The property is picked up outside Wisconsin by a purchaser having a Wisconsin business location and the purchaser returns to Wisconsin with the property.

Example: Corporation B is a Minnesota brewer that sells beer to a Wisconsin purchaser to be picked up at the brewer's shipping dock in Minnesota. The purchaser is a beer distributor which used its own vehicle to pick up the beer and haul it back to Wisconsin. Corporation B is subject to the tax by the State of Wisconsin. These dock sales are assigned to Wisconsin in Corporation B's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's location is in Wisconsin and the product is shipped to Wisconsin. Therefore, Corporation B, for Wisconsin franchise tax purposes, will include the amount of this dock sale in both the numerator and the denominator of the sales factor.

NOTE: In Pabst Brewing Co. v. Wisconsin Department of Revenue (Ct. App. Dist. IV, 1986), 130 Wis. 2d 291, the taxpayer sold beer to an Illinois distributor who picked it up in its own truck at the taxpayer's Wisconsin shipping dock and hauled it to Illinois. The Court held that the sales were not Wisconsin sales, since the location of the purchaser, rather than the location of the pickup of the product, controlled the determination of where the sale was assigned for purposes of the sales factor. The Court noted that if the sales were assigned to Wisconsin, the method of delivery, a condition of the sale, would be the determinative, which is contrary to statute. These sales are referred to as "dock sales," which are those sales where a purchaser uses its owned or rented vehicles or a common carrier it has made arrangements with to take delivery of the product at the seller-taxpayer's shipping dock.

b. The taxpayer, at the designation of the purchaser, or the purchaser delivers to or has the property shipped to a recipient other than the purchaser within Wisconsin.

Example: Corporation M is a Wisconsin manufacturer that sells plumbing ware to an Illinois wholesaler and retailer to be picked up at the manufacturer's shipping dock in Wisconsin. The purchaser has its corporate headquarters in Illinois. The purchaser uses its own vehicle to pick up plumbing ware and haul it to the job site of the purchaser's customer. The customer is a plumbing contractor that is working on a new motel being constructed in Madison, Wisconsin. These dock sales are assigned to Wisconsin in Corporation M's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's customer's location is in Wisconsin and the product is shipped to Wisconsin. The delivery to the plumbing contractor was

at the designation of the purchaser and that is where the product was delivered. Therefore, Corporation M, for Wisconsin franchise tax purposes, is required to include the amount of this dock sale in both the numerator and the denominator of the sales factor.

c. The shipment by either the taxpayer or the purchaser terminates in Wisconsin, even though the property is subsequently transferred by the purchaser to another state.

Example: Corporation B has a Wisconsin manufacturing plant which makes engines for an Indiana based manufacturer. Title to the engines passes to the purchaser after the engines are tested. Corporation B, at the direction of the purchaser, ships the tested engines to a public warehouse in Wisconsin. The warehouse stores the engines until directed to ship them by the purchaser. These sales are included in the numerator of the sales factor for Corporation B since the public warehouse is considered to be a business location of the Indiana purchaser and the warehouse is located in Wisconsin.

d. The recipient is in Wisconsin, even though the property is ordered from outside Wisconsin.

Example: Corporation A manufactures batteries at a location in Wisconsin. It sells batteries to an Illinois retailer which operates stores nationwide. The purchaser orders the batteries from its Illinois location and directs Corporation A to ship the batteries to its warehouse in Wisconsin. These sales are included in the numerator of the sales factor since the batteries were shipped to a Wisconsin location.

e. The property is being shipped by a seller or purchaser from one state to a consignee in another state and is diverted while enroute to a purchaser in Wisconsin, or the designee of a purchaser who is in Wisconsin.

Example: Corporation X, a manufacturer located in Superior, Wisconsin, sells a portion of its manufactured product via a consignment arrangement with a retailer-consignee in Chicago, Illinois. Pursuant to an order from the Chicago consignee for additional inventory, Corporation X ships via its own trucks additional inventory of its product to Chicago. After entering Illinois but before reaching Chicago, the driver receives instructions from the consignee to deliver the entire load to a customer in Beloit, Wisconsin. Since the property was shipped to a purchaser in Wisconsin, the sale is attributable to Wisconsin and the gross receipts from the sale are included in both the numerator and denominator of Corporation X's sales factor.

2. If the taxpayer does not have nexus in the state of destination, the sale is attributed to Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin. The amount included in the numerator of the sales factor shall be at 50% of the sales.

For purposes of this subdivision:

a. Sales are attributed to Wisconsin even though the taxpayer has a certificate of authority in the state of destination but the business activities in the destination state do not result in nexus based on the standards in s. Tax 2.82.

b. Sales are not attributed to Wisconsin if the taxpayer has a written opinion from the state of destination that the taxpayer has nexus in that state and the taxpayer is in agreement with the written opinion, even if the business activities in the destination state are not sufficient to create nexus under the standards of s. Tax 2.82.

c. Sales are not attributed to Wisconsin if the taxpayer is incorporated in the state of destination other than Wisconsin.

3. If a taxpayer's salesperson located in an office in Wisconsin makes a sale to a purchaser in another state in which the taxpayer does not have nexus and the property is not shipped or delivered from Wisconsin, the following rules apply:

a. If the taxpayer has nexus in the state from which the property is delivered or shipped, then the sale is in that state.

b. If the taxpayer does not have nexus in the state from which the property is delivered or shipped, then the sale is in Wisconsin and the amount included in the numerator of the sales factor shall be at 50% of the sale.

4. With respect to sales to the federal government:

a. For the taxable years beginning on or after January 1, 1989, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, in Wisconsin regardless of the f.o.b. point or other conditions of sale. For purposes of this section, only sales for which

the federal government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the federal government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the federal government, do not constitute sales to the federal government.

b. For taxable years beginning on or after January 1, 1989, and before January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin. The amount included in the numerator of the sales factor shall be at 50% of the sale.

c. For taxable years beginning on or after January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin and the taxpayer does not have nexus in the destination state. The amount included in the numerator of the sales factor shall be 50% of the sale.

Note: For taxable years beginning prior to January 1, 1989, gross receipts from the sales of tangible personal property to the federal government, including its agencies and instrumentalities, are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin.

(c) Sales other than sales of tangible personal property attributable to Wisconsin. 1. Sections 71.04(7)(d) and 71.25(9)(d), Stats., contain provisions for including gross receipts from transactions other than sales of tangible personal property in the numerator of the sales factor.

2. Under ss. 71.04(7)(d) and 71.25(9)(d), Stats., gross receipts are attributed to Wisconsin if the income producing activity which gave rise to

the receipts is performed wholly within Wisconsin. If the income producing activity is performed within and without Wisconsin, the receipts are attributed to Wisconsin in accordance with subd. 5.

3. For purposes of this paragraph, "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. This 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, 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. For purposes of this paragraph, "costs of performing" 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. Receipts from sales, other than sales of tangible personal property, are in Wisconsin if the income producing activity is performed wholly within

Wisconsin. If the income producing activity is performed partly within and partly without Wisconsin, receipts shall be assigned to Wisconsin based upon the ratio of direct costs of performing the services in Wisconsin to the direct costs of performing the services in all states having jurisdiction to tax the business. The following are special rules for determining when receipts from certain income producing activities are in Wisconsin during the taxable year:

a. Gross receipts from the sale, lease, rental or other use of real property are in Wisconsin if the real property is located in Wisconsin.

b. Gross receipts from the rental, lease, licensing the use of or other use of tangible personal property shall be assigned to Wisconsin if the property is within Wisconsin during the entire period of rental, lease, license or other use. If the property is within and without Wisconsin during the period of rental, gross receipts attributable to Wisconsin shall be based upon the ratio which the time the property was used in Wisconsin bears to the total time the property was used in all states having jurisdiction to tax the business during each year. However, if mobile property such as automobiles and trailers is within and without Wisconsin during the period of rental, gross receipts shall be attributed to the situs where the property is customarily kept or garaged or, for property that is not customarily kept at any location, gross receipts shall be attributed to the situs where the property first comes into the lessee's possession.

c. Gross receipts from the performance of personal services are attributable to Wisconsin if the services are performed entirely in Wisconsin. If the services are performed partly within and partly without Wisconsin, gross receipts shall be attributable to Wisconsin based upon the ratio which compensation and other direct costs of performing the services in

Wisconsin bear to total compensation and other direct costs of performing the services in all states having jurisdiction to tax the business during the taxable year. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to Wisconsin if the compensation related to performing the services is allocated to Wisconsin by s. 71.04(6)(b) or 71.25(8)(b), Stats.

6. The provisions of this paragraph shall also apply to sales, other than sales of tangible personal property, to the federal government.

(7) PARTNERSHIPS AND JOINT VENTURES. A partnership or unincorporated joint venture is considered an extension of the partners or owners when the partners or owners have more than a passive ownership interest in the partnership or unincorporated joint venture. When this is the case, partnership or unincorporated joint venture income or loss shall retain its character as apportionable or nonapportionable income or loss and the partner's or owner's share of property, payroll and sales used to produce apportionable business income or loss shall be included in the partner's or owner's apportionment factors. If the ownership interest is passive, the partnership or unincorporated joint venture interest shall be an investment, with the apportionment factors being unaffected.

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The rules contained in this order shall take effect on the first day of the month following its publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Wis. Stats.

Final Regulatory Flexibility Analysis

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

Dated: \_\_\_\_\_

April 8, 1991

By: \_\_\_\_\_

DEPARTMENT OF REVENUE

Mark D. Bugher  
Secretary of Revenue

FISCAL ESTIMATE

DOA-2048 (R 10/88)

ORIGINAL  
 CORRECTED

UPDATED  
 SUPPLEMENTAL

Subject

Apportionment Method

Fiscal Effect

State:  No State Fiscal Effect See Text of Fiscal Note

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation  Increase Existing Revenues
- Decrease Existing Appropriation  Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local:  No local government costs

- 1.  Increase Costs  
 Permissive  Mandatory
- 2.  Decrease Costs  
 Permissive  Mandatory

- 3.  Increase Revenues  
 Permissive  Mandatory
- 4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:
- Towns  Villages  Cities
  - Counties  Others \_\_\_\_\_

Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The rule changes update Tax Rule 2.39 to reflect recent law changes, codify current administrative practices and provide examples. These changes should have no fiscal effect.

The rule changes also specify that service and storage of mobile property must be taken into account in computing the property factor of the apportionment formula. The service and storage provision could result in a minimal annual revenue gain.

Long-Range Fiscal Implications

Agency Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue  
John Tuohy, 266-7817

Authorized Signature/Telephone No. 266-2700

*Margaret A. Deina*

Date

2/5/90

**FISCAL ESTIMATE WORKSHEET**

1989 Session

Detailed Estimate of Annual Fiscal Effect  ORIGINAL  UPDATED  
 DOA-2047(R 10/88)  CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.  
 Tax Rule 2.39

Subject  
 Apportionment Method

**I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).	Annualized Fiscal Impact on State funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
Salaries and Fringes		\$ -	\$ +
Staff Support Costs		-	+
Other State Costs		-	+
Local Assistance		-	+
Aids to Individuals or Organizations		-	+
<b>TOTAL State Costs by Category</b>		<b>\$ -</b>	<b>\$ +</b>
<b>B. State Costs by Source of Funds</b>			
GPR		\$ -	\$ +
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
<b>C. FTE Position Changes</b>			
		Increased Pos. + ( )	Decreased Pos. - ( )
<b>III. State Revenues- Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.</b>			
GPR Taxes		Decreased Rev. \$ -	Increased Rev. \$ +
GPR Earned		-	+
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
<b>TOTAL State Revenues</b>		<b>\$ -</b>	<b>\$ +</b>

**Net Annualized Fiscal Impact on State & Local Funds**

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+	-	Total Revenues	- +	-

NET Impact on State Funds \$ (+) or (-) See Text of Fiscal Note

NET Impact on Local Funds \$ (+) or (-) None

Agency/Prepared by: (Name & Phone No.)  
 Wisconsin Department of Revenue  
 John Tuohy, 266-7817

Authorized Signature/Telephone No. 266-2700 Date 2/15/90  
*Margaret A. Deans*



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

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

**Tommy G. Thompson**  
Governor

**Mark D. Bugher**  
Secretary of Revenue

April 8, 1991

Gary L. Poulson  
Assistant Revisor  
2nd Floor  
119 Martin Luther King, Jr. Blvd.  
Madison, Wisconsin 53703

Re: Clearinghouse Rule 90-128

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to Tax 2.39.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Bugher', written over a large, stylized flourish.

Mark D. Bugher  
Secretary of Revenue

MDB:MPW:dab  
CKLEG/692

Enclosure

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 ● 608-266-6466 ● FAX 608-266-5718

*Tommy G. Thompson*  
Governor

*Mark D. Bugher*  
Secretary of Revenue

April 8, 1991

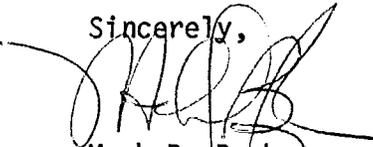
Douglas LaFollette  
Secretary of State  
30 West Mifflin Street, 10th Floor  
Madison, Wisconsin 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 90-128.

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

Sincerely,

  
Mark D. Bugher  
Secretary of Revenue

MDB:MPW:dab

Enclosure  
CKLEG/691

cc: Revisor of Statutes