

CR 92-169

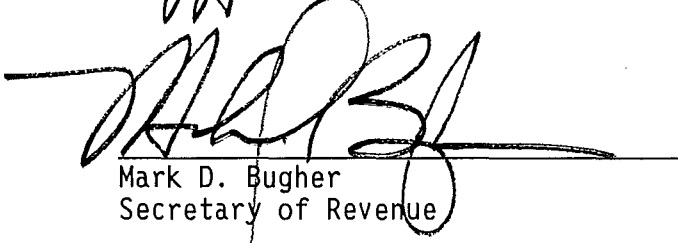
CERTIFICATE

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 income taxes was duly approved and adopted by this department on March 3, 1993.

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 3rd day of March, 1993.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1225

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MAR 5 1993
9:00
Revisor of Statutes
Bureau

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

The Wisconsin Department of Revenue adopts an order to repeal Tax 2.02(4)(b)1 and 2 and (9); to renumber Tax 2.02(10); to renumber Tax 2.02(11), (12) and (13) and as renumbered amend Tax 2.02(10)(a) and (b), (11)(a) and (12); and to amend Tax 2.02(3)(a)(intro.) and 1, (4)(a)1, 2, 3 and 4 and (b)(intro.), (5)(a), (6)(b), (7) and (8) and Tax 2.955(3)(intro.) and (a) and (4)(b)2 and 3, (c) and (d); relating to reciprocity and credit for taxes paid to other states.

Analysis by the Department of Revenue

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

Statutes interpreted: ss. 71.05(2) and 71.07(7), Stats.

SECTION 1. Tax 2.02(3)(a)(intro.) and 1 and (4)(a)1, 2, 3 and 4 are revised to reflect proper grammar and punctuation. Tax 2.02(4)(b)(intro.) is revised to reflect a change in Maryland law which terminates reciprocity between Wisconsin and Maryland, effective for taxable years beginning after December 31, 1991.

SECTIONS 2 and 4. Tax 2.02(4)(b)1 and 2 and (9) are repealed to reflect a change in Maryland law which terminates reciprocity between Wisconsin and Maryland.

SECTION 3. Tax 2.02(5)(a) is revised to conform format to Legislative Council Rules Clearinghouse standards, to reflect proper grammar and punctuation, and to reflect the renumbering of sub. (10). Tax 2.02(6)(b) and (7) are revised to reflect proper grammar and punctuation. Tax 2.02(8) is revised to conform format to Clearinghouse standards. The note at the end of Tax 2.02(5) is revised to reflect proper grammar, and the example at the end of Tax 2.02(6)(b) is revised to conform format to Clearinghouse standards.

SECTIONS 5 and 6. Tax 2.02(10), (11), (12) and (13) are renumbered to reflect the repeal of sub.(9). Tax 2.02(10)(a) and (b) and (11)(a) as renumbered are revised to reflect proper grammar and punctuation. Tax 2.02(12) as renumbered is revised to conform format to Clearinghouse standards. The note at the end of Tax 2.02 is revised to reflect proper grammar and punctuation, and to explain the effective date of the termination of reciprocity with Maryland and what the rule provided prior to the termination.

SECTION 7. Tax 2.955(3)(intro.) and (4)(b)2 and 3, (c) and (d) are revised to conform format to Clearinghouse standards. Tax 2.955(3)(a) is revised to reflect a change in Maryland law which terminates reciprocity between Wisconsin and Maryland. The years in the example at the end of

Tax 2.955(5) are updated, and the note at the end of Tax 2.955 is deleted because it is obsolete.

SECTION 1. Tax 2.02(3)(a)(intro.) and 1 and (4)(a)1, 2, 3 and 4 and (b)(intro.) are amended to read:

Tax 2.02(3)(a)(intro.) Under s. 71.05(2), Stats., income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on the personal service income, if the state of residence allows either of the following:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; ~~or~~

(4)(a)1. Kentucky; for the years beginning on and after January 1, 1961.

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

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

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

(b)(intro.) Wisconsin practices reciprocity with ~~the following states~~ Indiana, since prior to 1960, on the basis of an informal agreements agreement and acquiescence by Wisconsin and ~~the other state~~; Indiana.

SECTION 2. Tax 2.02(4)(b)1 and 2 are repealed.

SECTION 3. Tax 2.02(5)(a), (6)(b), (7) and (8) are amended to read:

Tax 2.02(5)(a) Personal service income included under reciprocity agreements is taxed by an employe's state of residence rather than by an employe's state of employment. Wisconsin will not tax personal service income earned in Wisconsin by residents of states with which Wisconsin has reciprocity, and those states may not tax personal service income which a Wisconsin resident earns in ~~their~~ those states, except as described in subs. (6),(7),(8) and ~~(10)~~ (9).

Note to Revisor: Change the note at the end of Tax 2.02(5) to read:

Note: Additional information on withholding on wages earned by employees engaged in interstate transportation activities may be obtained by writing to Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

(6)(b) The Illinois Income Tax Act, Article 15, section 1501(a)(20), defines a resident as "an individual (i) who is in this ~~state~~ State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this ~~state~~ State but is absent from the ~~state~~ State for a temporary or transitory purpose during the taxable year". Because of the differences in the definition of resident for Illinois and Wisconsin purposes, a person domiciled in Wisconsin may simultaneously be a resident of Illinois, or a person may be domiciled in Illinois but not be a resident of Illinois.

Note to Revisor: The word "State" in Tax 2.02(6)(b) should be capitalized because it is capitalized in the Illinois statutes and is quoted material. The quoted material should be italicized.

Note to Revisor: Change the example at the end of Tax 2.02(6)(b) to read:

Example: A person is domiciled in Wisconsin and takes a job in Illinois. The person does not intend to give up his or her Wisconsin domicile, but instead intends to return to Wisconsin once his or her job in Illinois is completed, in 2 to 3 years. Assume that Illinois considers the person's stay in Illinois as other than temporary or transitory. Therefore, the person is a resident of Illinois. The person is also a resident of Wisconsin because he or she is still domiciled in Wisconsin.

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

(8) PROVISIONS OF AGREEMENTS WITH INDIANA AND KENTUCKY. The reciprocity agreements with ~~the states of~~ Indiana and Kentucky are limited to wages, salaries and commissions.

SECTION 4. Tax 2.02(9) is repealed.

SECTION 5. Tax 2.02(10) is renumbered Tax 2.02(9).

SECTION 6. Tax 2.02(11), (12) and (13) are renumbered Tax 2.02(10), (11) and (12), and as renumbered Tax 2.02(10)(a) and (b), (11)(a) and (12) are amended to read:

Tax 2.02(10)(a) Nonresident persons, other than residents of Minnesota, employed in Wisconsin and residing in a state with which Wisconsin has reciprocity shall file form W-220, "Nonresident Employee's Withholding Reciprocity Declaration", with their Wisconsin employers to be exempt from withholding of Wisconsin income taxes. Upon receipt of this form, Wisconsin employers may not withhold Wisconsin income tax from Wisconsin personal service income of the employee.

(b) Persons who are residents of Minnesota employed in Wisconsin shall file form W-222, "Statement of Minnesota Residence", with their Wisconsin employers to be exempt from withholding of Wisconsin income taxes. Form W-222 should be filed within 30 days of beginning employment in Wisconsin, changing to a new employer in Wisconsin, or establishing Minnesota residency while continuing to work in Wisconsin. Upon receipt of this form, Wisconsin employers may not withhold Wisconsin income tax from Wisconsin personal service income of the employee. To continue the exemption from year to year, a new form W-222 is required to be filed by January 31 of each year.

(11)(a) Wisconsin residents employed in a state with which Wisconsin has reciprocity shall file form 1-ES, "Wisconsin Estimated Tax Voucher", with the ~~Wisconsin~~ Wisconsin department of revenue if their out-of-state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to make payments of estimated tax.

(12) DELINQUENT TAXES. Reciprocity agreements shall do not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.91(7), Stats.

Note to Revisor: Replace the note at the end of Tax 2.02 with the following:

Note: 1) Forms 1-ES, W-220 and W-222 and their instructions may be obtained free of charge by writing to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

2) Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from those employes' incomes may contact Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

3) The state of Maryland enacted an income tax law, Ch. 1, Laws 1992, 1st Spec. Sess., on May 1, 1992, which resulted in the termination of reciprocity between Wisconsin and Maryland, effective for taxable years beginning after December 31, 1991. Prior to enactment of Maryland Ch. 1, Laws 1992, 1st Spec. Sess., Wisconsin practiced reciprocity with Maryland since prior to 1960, based on an informal agreement and acquiescence by Wisconsin and Maryland. Under the provisions of prior Maryland law and s. 71.05(2), Wis. Stats., a Wisconsin resident could exclude from Maryland taxation, the income from salaries, wages, and compensation for personal services to the extent Wisconsin taxed the income of and accorded similar treatment to Maryland residents.

SECTION 7. Tax 2.955(3)(intro.) and (a) and (4)(b)2 and 3, (c) and (d) are amended to read:

Tax 2.955(3)(intro.) CREDITS NOT ALLOWED. An income tax credit shall ~~shall~~ may not be allowed for:

(a) Income tax paid to Illinois, Indiana, Kentucky, ~~Maryland~~, Michigan or Minnesota on personal service income earned in these states included under a reciprocity agreement.

(4)(b)2. If the corporation files a combined or composite return with that state on behalf of its shareholders who are nonresidents of that state and pays the tax on their proportionate share of the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin ~~Schedule~~ schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in ~~sub--(4)par.~~ par.(d).

3. If the corporation files a corporate income or franchise tax return with that state and pays tax on or measured by income earned there that is attributable to its shareholders who are nonresidents of that state, attach to

the Wisconsin income tax return either a copy of the Wisconsin Schedule schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in ~~sub-(4)~~par.(d).

(c) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is not recognized by the other state, if the corporation pays an income or franchise tax on or measured by the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin Schedule schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par.(d).

(d) If the tax-option (S) corporation is not subject to Wisconsin's income or franchise tax, a Wisconsin resident shareholder shall attach to the Wisconsin income tax return a letter provided by the corporation in lieu of Wisconsin Schedule schedule 5K-1 as required in ~~sub-(4)~~pars.(b)2 and 3 and (c). The letter shall include a schedule showing the shareholder's proportionate share of the items of income taxable by that state, the adjusted gross income, and the net tax paid.

Note to Revisor: Replace the example at the end of Tax 2.955(5) with the following:

Example: A Wisconsin resident receives income of \$4,000 in 1992 from rental property located in Iowa. The person files a 1992 declaration of estimated tax of \$200 with Iowa, with \$150 of estimated tax payments being made in 1992 and the fourth quarter payment of \$50 being made in January 1993. The Iowa income of \$4,000 is reported as income on the 1992 Iowa and Wisconsin returns. The 1992 Iowa income tax return shows the following:

1992 Iowa Return

Iowa Rental Income	<u>\$4,000</u>
Iowa Net Tax	\$ 185
Estimated Tax Payments	<u>200</u>
Refund	<u>\$ 15</u>

The taxpayer may claim a credit for net income tax paid to other states of \$185 on the 1992 Wisconsin return, even though a part of the tax was paid in 1993.


Note to Revisor: Delete the entire note at the end of Tax 2.955.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register 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 businesses.

Dated: March 3, 1993

DEPARTMENT OF REVENUE
BY: 
Mark D. Bugher
Secretary of Revenue

CKLEG1228

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FISCAL ESTIMATE

DOA-2048 (R11/90)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

Subject

Income Tax Reciprocity with Maryland

Fiscal Effect

State: No State Fiscal Effect

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

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

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

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 _____
 - School Districts VTAE Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

It is anticipated that the termination of reciprocity by Maryland will result in a net revenue loss which is believed to be insignificant.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Wisconsin Department of Revenue
Bruce Biermeier, 266-7396

Authorized Signature/Telephone No. 266-2700
Yeang-Eng Braun *Yeang-Eng Braun*

Date: 9/29/92

FISCAL ESTIMATE WORKSHEET

1991 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R11/90) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. TAX 2.02, 2.955	Amendment No.
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Subject: Income Tax Reciprocity with Maryland

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

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ - Unknown
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ - Unknown

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ <u>Unknown Revenue Loss</u>	\$ _____

Agency/Prepared by: (Name & Phone No.)
 Wisconsin Department of Revenue
 Bruce Biermeier, 266-7396

Authorized Signature/Telephone No. 266-2700

Yang Riff Braun

Date

4/29/92



State of Wisconsin • DEPARTMENT OF REVENUE

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

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 4, 1993

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Gary L. Poulson
Assistant Revisor
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

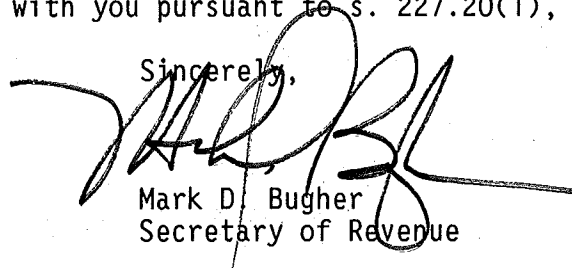
Re: Clearinghouse Rule 92-169

Dear Mr. Poulson:

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

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

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1224

Enclosure

cc: Douglas J. LaFollette, Secretary of State
Commerce Clearing House, Inc.
Research Institute of America, Inc.



State of Wisconsin • DEPARTMENT OF REVENUE

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

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March 4, 1993

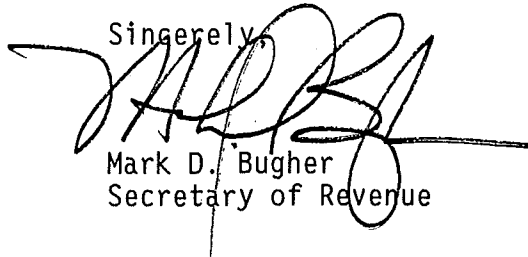
Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 92-169.

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

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1223

Enclosure

cc: Revisor of Statutes

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Bureau