

## Chapter Tax 2

## INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

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**Tax 2.01 Residence.** (s. 71.02, Stats.) Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file form I-827, "Residence Questionnaire", or the "Residence Questionnaire" which is a part of the 1NPR income tax form, with the Wisconsin department of revenue by attaching it to their Wisconsin income tax return for the year they claim to have changed residence, and shall furnish other information the department may require.

**Note:** Form I-827 or form 1NPR may be obtained from the Department of Revenue at 4638 University Avenue, Madison, or from any other Department of Revenue office located throughout the state, or by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

**History:** 1-2-56; r. (1); renum. (2) to be (1); renum. (3) to be (2) and am., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; r. (1), renum. (2) and am., Register, July, 1987, No. 379, eff. 8-1-87; am. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 2.02 Reciprocity.** (ss. 71.05 (2) and 71.64 (8), Stats.)  
(1) **PURPOSE.** This section explains the reciprocity agreements between Wisconsin and other states.

(2) **DEFINITIONS.** The following definitions pertain only to Wisconsin. Definitions of the same terms in other states may vary. In this section:

(a) "Personal service income" means all salaries, wages, commissions and fees earned by an employee and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Personal service income does not include income derived from activities involving the substantial use of capital or labor of others.

(b) "Resident" means a natural person who is domiciled in this state.

(3) **WISCONSIN LAW.** (a) 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.

2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on the personal service income.

(b) Under s. 71.64 (8), Stats., a Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement under sub. (4) need not withhold Wisconsin income tax from personal service income earned in Wisconsin by the nonresident.

(4) **AGREEMENTS WITH OTHER STATES.** (a) Wisconsin has formal reciprocity agreements with:

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 and after January 1, 1968.

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

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(b) Wisconsin practices reciprocity with Indiana, since prior to 1960, on the basis of an informal agreement and acquiescence by Wisconsin and Indiana.

(5) EFFECT OF RECIPROCITY. (a) Personal service income included under reciprocity agreements is taxed by an employee's state of residence rather than by an employee'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 those states, except as described in subs. (6), (7), (8) and (9).

(b) For personal service income included under reciprocity agreements, an employer need only withhold income tax for the state of residence of an employee.

(c) Federal law regulates withholding on wages earned by employees engaged in interstate transportation activities.

**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) PROVISIONS OF AGREEMENT WITH ILLINOIS. (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to employees for personal services." However, the agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income, to lottery winnings, or to persons identified in pars. (c) and (d).

(b) The Illinois Income Tax Act, Article 15, section 1501 (a) (20), defines a resident as "*an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year.*" 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.

**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.

**Note:** The term "temporary or transitory" as used in the definition of an Illinois resident set forth in sub. (6) (b) is not defined in either Illinois law or regulations. Therefore, whether or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

(c) The reciprocity agreement with Illinois does not apply to any form of compensation described in par. (a) paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of this person is taxable by Wisconsin. However, a credit against Wisconsin income tax may be claimed for income tax paid to Illinois.

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

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(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 Indiana and Kentucky are limited to wages, salaries and commissions.

(9) PROVISIONS OF AGREEMENT WITH MINNESOTA. (a) The reciprocity agreement with Minnesota is limited to income from personal services, including wages, salaries, tips, fees, commissions, bonuses, or similar earnings, provided the taxpayer personally renders the services. The reciprocity exclusion for personal service income does not apply where the personal or professional service income is earned as a part of a business operated by the taxpayer which has employees that do more than incidental duties for the business, or where there is the sale or delivery of goods which is more than an incidental part of the business. A partner's salary from a partnership where the selling of goods or services of the employees is more than incidental is subject to the reciprocity exclusion, but the partnership profits are not excluded. Distributions from a tax-sheltered annuity are also considered subject to the reciprocity exclusion.

(b) To qualify for the reciprocity exclusion, the Minnesota agreement requires the taxpayer to have a place of abode in Wisconsin, and the taxpayer is required to customarily return to it at least once a month.

(10) PROCEDURE FOR NONRESIDENTS. (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 Residency," 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.

(c) The reciprocity exclusion does not apply to Wisconsin lottery winnings of nonresident persons.

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

**Tax 2.88 Interest rates.** (ss. 71.03 (7), 71.24 (7), 71.44 (3), 71.82 (1) and (2) (a) and 71.90 (1), Stats.) (1) **INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT.** Unpaid individual income or corporate franchise or income taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(2) **INTEREST ON 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.

(3) **INTEREST ON REFUNDS.** (a) Any refund of individual income or corporate franchise or income taxes, where the tax being refunded is from a return which has a filing due date on or after November 1, 1975, shall 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).

(b) No interest may be allowed on income and franchise taxes if the refund is 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 of estimated tax as well as from withheld taxes.

(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.

(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. (2) from the end of the extension period until paid.

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

2) 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.

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1), (3) and (4), Register, September, 1983, No. 333, eff. 10-1-83; renum. (2) to (4) to be (3), (2) and (5) and am., cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.89 Estimated tax requirements for short taxable years.** (ss. 71.09 (9) and 71.29 (5), Stats.) (1) **GENERAL.** Under ss. 71.09 and 71.29, Stats., certain corporations and persons other than corporations shall make estimated tax payments. For short taxable years, estimated tax payments shall be made in accordance with this section.

**Notes:** For taxable years beginning on or after January 1, 1994, and ending before April 1, 1999, estimated tax includes the temporary recycling surcharge under s. 77.93, Stats.

(2) **DEFINITIONS.** In this section:

(a) "Corporation" includes corporations, tax-option (S) corporations, insurance companies, publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code, limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts, regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, nuclear decommissioning trust funds and virtually exempt entities as defined in s. 71.29 (1) (c), Stats.

(b) "Estimated tax payable" means the amount calculated under s. 71.09 (13) or 71.29 (9) or (10), Stats.

(c) "Persons other than corporations" includes individuals, estates, trusts other than those treated as corporations in par. (a), partnerships except publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code and limited liability companies treated as partnerships under the internal revenue code.

(d) "Short taxable year" means a period of less than 12 months.

(3) **NUMBER OF INSTALMENT PAYMENTS REQUIRED.** (a) For short taxable years, the following number of estimated tax instalment payments shall be made:

1. For periods of one month or less, none.
2. For periods of 2 to 3 months, one.
3. For periods of 4 to 6 months, 2.
4. For periods of 7 to 9 months, 3.
5. For periods of 10 to 11 months, 4.

(b) Except as provided in par. (c), for purposes of determining the required number of estimated tax instalment payments under par. (a), a portion of a month shall be treated as a full month.

(c) If a short taxable year terminates before the end of a month and another taxable year begins at that time, for estimated tax instalment purposes the first taxable period shall be treated as ending on the last day of that month and the second taxable period shall be treated as beginning on the first day of the following month.

**Note:** Refer to the examples of the estimated tax payment requirements for short taxable years involving a portion of a month that follow sub. (7) (b) 4.

(4) **DUE DATES OF INSTALMENT PAYMENTS FOR CORPORATIONS.** For short taxable years, corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

(a) For periods of 2 to 3 months, the last month of the taxable year.

(b) For periods of 4 to 6 months, the 3rd and last months of the taxable year.

(c) For periods of 7 to 9 months, the 3rd, 6th and last months of the taxable year.

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(d) For periods of 10 to 11 months, the 3rd, 6th, 9th and last months of the taxable year.

**(5) DUE DATES OF INSTALMENT PAYMENTS FOR PERSONS OTHER THAN CORPORATIONS.**

(a) Except as provided in pars. (b) and (c), for short taxable years, persons other than corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

1. For periods of 2 to 3 months, the first month following the close of the taxable year.

2. For periods of 4 to 6 months, the 4th month of the taxable year and the first month following the close of the taxable year.

3. For periods of 7 to 9 months, the 4th and 6th months of the taxable year and the first month following the close of the taxable year.

4. For periods of 10 to 11 months, the 4th, 6th and 9th months of the taxable year and the first month following the close of the taxable year.

(b) If a person other than a corporation files an income tax return on or before the last day of the first month following the close of the taxable year and pays the full amount computed on that return as payable, that person need not make the last payment of estimated tax.

(c) Instead of making estimated tax instalment payments, a farmer or fisher as defined in s. 71.09 (1) (a), Stats., may either pay the estimated tax in full by the 15th day of the first month after the close of the taxable year or file the tax return on or before the first day of the 3rd month following the close of the taxable year and pay the full amount computed on that return as payable.

**(6) COMPUTATION OF ESTIMATED TAX PAYABLE.** Corporations and persons other than corporations shall make estimated tax payments equal to the lesser of the following amounts:

(a) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(b) For individuals, corporations having less than \$250,000 of Wisconsin net income and estates and trusts having less than \$20,000 of Wisconsin taxable income for the current taxable year, the tax shown on the return for the preceding taxable year, provided the taxpayer filed a return for the preceding year covering a full 12-month year. When the current year is a short taxable year and the preceding year was a period of 12 months, the tax shown on the return for the preceding taxable year may be prorated based on the number of months in the short taxable year.

**Example:** Corporation A receives federal approval to change its taxable year from a calendar year to a fiscal year ending on June 30. To make the change, Corporation A files a franchise or income tax return for the period beginning January 1 and ending June 30. On this short-period return, it reports net tax of \$8,000. Corporation A's Wisconsin net income for the current taxable year is less than \$250,000. Therefore, its estimated tax payable is the lesser of 90% of the tax shown on its current year return or 100% of the tax shown on its prior year return, provided it had filed a tax return for that year covering a 12-month period. The tax shown on Corporation A's return for the preceding taxable year, a 12-month period, was \$6,000. Corporation A's estimated tax payable for the current taxable year is \$3,000, \$6,000 prior year's tax x 6 months/12 months.

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**Note:** Corporations having Wisconsin net income of \$250,000 or more for the current taxable year and estates or trusts having Wisconsin taxable income of \$20,000 or more for the current taxable year may not calculate their estimated tax payable under par. (b).

(c) Ninety percent of the tax calculated by annualizing the taxable income earned for the months in the taxable year ending before the due date of the instalment. The following special rules apply:

1. Corporations which determine their Wisconsin net incomes under the apportionment method may compute their annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the instalment for which the income is being annualized and the apportionment percentage on that return is greater than zero. A corporation that has at least \$250,000 of Wisconsin net income for the current taxable year may also compute annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the 3rd instalment, the apportionment percentage on that return is greater than zero, and the apportionment percentage used in computing the first 2 instalments is not less than the apportionment percentage used on that return.

2. Entities subject to tax on unrelated business taxable income and trusts and estates shall annualize their incomes for the months in the taxable year ending one month before the instalment due date.

**(7) PORTION OF ESTIMATED TAX PAYABLE IN EACH INSTALMENT.** The portion of the estimated tax payable in each instalment depends on when the taxpayer determines that the taxable year will be a period of less than 12 months and the number of instalment payments required, as follows:

(a) If an event that will terminate the taxable year before the end of the 12th month occurs after the taxpayer has begun making estimated tax payments, the initial estimated tax instalment payments shall be based on 25% of the estimated tax payable, with the last payment adjusted for the difference between the estimated tax liability and the amount previously paid.

**Examples:** 1) Corporation B, which has been filing tax returns on a calendar-year basis, receives federal approval to change its taxable year to a fiscal year ending on July 31. To make the change, Corporation B files a franchise or income tax return for the short taxable year beginning January 1 and ending July 31. Since this is a period of 7 months, Corporation B must make 3 estimated tax payments. Twenty-five percent of the estimated tax shall be paid for each of the instalments due March 15 and June 15. The balance of the estimated tax shall be paid on or before July 15. If Corporation B's estimated tax payable is \$80,000, Corporation B must pay \$20,000, 25% x \$80,000 estimated tax payable, for each of the instalments due March 15 and June 15 and \$40,000, 50% x \$80,000 estimated tax payable, for the instalment due July 15.

2) Corporation C, a calendar-year filer, merges into Corporation D on October 6. As a result, Corporation C files its final franchise or income tax return for the short taxable year beginning January 1 and ending October 6. Corporation C must make 4 estimated tax payments, each for 25% of the estimated tax payable. The instalments must be paid on or before March 15, June 15, September 15 and October 15. If Corporation C's estimated tax payable is \$100,000, Corporation C must pay \$25,000, 25% x \$100,000 estimated tax payable, for each instalment.

(b) If an event that will result in a taxable year of less than 12 months occurs before the taxpayer has begun making estimated tax payments, instalment payments shall be made as follows:

1. If one instalment is due, all of the estimated tax shall be paid at that time.

2. If 2 instalment payments are due, 75% of the estimated tax shall be paid for the first instalment and 25% shall be paid for the remaining instalment.

3. If 3 instalment payments are due, 50% of the estimated tax shall be paid for the first instalment and 25% shall be paid for each of the 2 remaining instalments.

4. If 4 instalment payments are due, 25% of the estimated tax shall be paid for each instalment.

**Examples:** 1) Corporation E owns 100% of the stock of Corporation F. The corporations file consolidated federal income tax returns on a calendar-year basis. On March 10, Corporation E sells all of the stock of Corporation F to third parties, severing the affiliated group. For federal purposes, Corporations E and F file a consolidated return for the period from January 1 through March 10. Corporation F files a separate federal return for the period from March 11 through December 31. Since the taxable period for Wisconsin purposes is the same as the federal taxable year, Corporation F must also file 2 short-period Wisconsin returns. For the first taxable year, Corporation F must make one estimated tax instalment payment for 100% of the estimated tax liability on or before March 15. For the second short period, Corporation F must make 3 estimated tax instalment payments. The first payment for 50% of the estimated tax liability is payable on or before June 15. Since March is the last month of the first short period, April is treated as the first month of the second short period. The second and third payments, each for 25% of the estimated tax, are due on or before September 15 and December 15, respectively. If Corporation F's estimated tax for the period beginning March 11 and ending December 31 is \$150,000, Corporation F must pay \$75,000, 50% x \$150,000 estimated tax payable, for the first instalment and \$37,500, 25% x \$150,000 estimated tax payable, for each of the remaining 2 instalments.

2) Corporation G buys 100% of the stock of Corporation H on August 29. Both corporations compute their incomes on a calendar-year basis. Corporations G and H file a consolidated federal income tax return for the period from August 30 through December 31. Corporation H files a separate federal return for the period from January 1 through August 29. Since the taxable year is the same for Wisconsin and federal purposes, Corporation H must file 2 short-period Wisconsin returns. For the first short taxable year, 3 estimated tax instalment payments are required, due on or before March 15, June 15 and August 15. Twenty-five percent of the estimated tax shall be paid for each of the instalments due March 15 and June 15 and the balance of the estimated tax shall be paid for the instalment due August 15. For the second short period, 2 instalments are payable on or before November 15 and December 15. Since August is the last month of the first short period, September is treated as the first month of the second short period. The first instalment payment, due November 15 is for 75% of the estimated tax and the payment due December 15 is for 25% of the estimated tax.

**(8) ANNUALIZED INCOME INSTALMENT PAYMENTS.** Under ss. 71.09 (13) (d) and 71.29 (9) (c), Stats., taxpayers may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the instalment payment's due date. Corporations that are subject to a tax on unrelated business taxable income and virtually exempt entities may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the date one month before the due date for the instalment payment. Annualized income installment payments shall be computed as follows:

**(a) Computation of annualized income.** Taxpayers shall annualize income for the annualization period as follows:

1. Compute the Wisconsin net income for the annualization period, excluding adjustments which remain constant from period to period, such as net business loss carryforwards and the amortization of adjustments for changes in the method of accounting.

2. Calculate the annualization factor for the annualization period by dividing the number of months in the taxable year by the number of months in the annualization period.

3. Multiply the amount computed in subd. 1 by the annualization factor computed in subd. 2.

4. Subtract from the result in subd. 3 any adjustments excluded from the calculation of Wisconsin net income in subd. 1 which remain constant for each period. Individuals shall also subtract the standard deduction.

**Example:** Corporation J's taxable year begins January 1 and ends May 10. It has Wisconsin net income of \$200,000 for the period from January 1 through February 28. Corporation J's annualization factor for that period is 2.5, calculated by dividing the 5 months of the taxable year by the 2 months of the annualization period. The annualized income for that period is \$500,000, which is \$200,000 Wisconsin net income x 2.5 annualization factor.

**(b) Computation of instalment payments.** Taxpayers shall calculate their estimated tax instalment payments based on annualized income for the annualization period as follows:

1. Determine the gross tax on the amount calculated under par. (a).

2. Subtract from the gross tax under subd. 1 any allowable tax credits, excluding estimated tax paid.

3. Multiply the net tax computed in subd. 2 by the applicable percentage from sub. (7).

**Example:** Corporation K, a calendar year filer, merges into Corporation L on July 14. Corporation K elects the annualized income method for determining whether it paid sufficient estimated tax. Corporation K's Wisconsin net income is \$300,000 for the first 2 months of the taxable year, \$1,400,000 for the first 5 months of the taxable year, and \$1,800,000 for the first 6 months of the taxable year. Corporation K has \$9,000 of tax credits and its net tax due for the year ending July 14 is \$135,000. Therefore, Corporation K's estimated tax payable is \$121,500. For Corporation K's 7-month year, the annualization factors are 3.5 (7 months/2 months), 1.4 (7 months/5 months), and 1.167 (7 months/6 months). Corporation K calculates its required estimated tax payments as follows:

	First 2 months	First 5 months	First 6 months
Wisconsin net income	\$ 300,000	\$1,400,000	\$1,800,000
Annualization factor	3.5	1.4	1.167
Annualized income	\$1,050,000	\$1,960,000	\$2,100,600
Annualized gross tax	82,950	154,840	165,947
Tax credits	9,000	9,000	9,000
Annualized net tax	\$ 73,950	\$ 145,840	\$ 166,947
Applicable percentage	22.5%	45%	90%
Portion of annualized tax	\$ 16,839	\$ 65,628	\$ 141,252
25% of estimated tax	30,375	60,750	121,500
Amount payable in preceding periods	0	16,639	60,750
Instalment payable	\$ 16,839	\$ 44,111	\$ 60,750

**Note:** After the end of the taxable year, persons other than corporations shall use schedule U and corporations shall use form 4U to determine whether they have made sufficient estimated tax payments. Taxpayers with short taxable years shall adjust the computations on those forms as provided in this section.

**History:** Cr. Register, December, 1995, No. 480, eff. 1-1-96.

**Tax 2.90 Withholding; wages.** (ss. 71.63 and 71.66 (3), Stats.) (1) The term "wages" means all remuneration for

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services performed by an employee for an employer unless specifically excepted under s. 71.63, Stats.

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

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

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. However, s. 71.63 (6) (i), Stats., excludes from wages remuneration paid in any medium other than cash for services not in the course of the employer's trade or business. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless the remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

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

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

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

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

(10) Any amount deducted by an employer from the remuneration of an employee is considered to be a part of

the employee's remuneration and is considered to be paid to the employee as remuneration at the time the deduction is made. It is immaterial that any act or law requires or permits such deductions.

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

(12) The value of any meals or lodging furnished to an employee by an employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee under the provisions of the internal revenue code, as defined in s. 71.01 (6), Stats.

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

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

(15) Withholding is not required:

(a) Upon amounts paid to an employee by the employee's employer under a wage continuation plan for a period during which the employee is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the internal revenue code, as defined in s. 71.01 (6), Stats.

(b) When, as provided by s. 71.66 (3), Stats., an employee certifies to an employer that the employee incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

**History:** Cr. Register, January 1963, No. 85, eff. 2-1-63; r. and recr. (12), cr. (15), Register, March, 1966, No. 123 eff. 4-1-66; am. (2), (14) and (15), Register, July, 1978, No. 271, eff. 8-1-78; am. (1), (4), (5), (8), (12), (13) and (15), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.91 Withholding; fiscal year taxpayers.** (ss. 71.64, 71.65 (1), 71.67 and 71.71 (1), Stats.) (1) Except as provided in sub. (2), amounts withheld pursuant to ss. 71.64 and 71.67, Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in the calendar year. If more than one taxable year begins in a calendar year, the amount shall be allowed as a credit for the last taxable year beginning in that calendar year.

(2) Any employee who reports income for taxation to the state of Wisconsin on a taxable year other than the calendar year shall be allowed as a credit for the fiscal year amounts withheld by his or her employer in the fiscal year, provided the employer, on or before the end of the first month following the close of the fiscal year, shall voluntarily furnish the employee with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to the fiscal year, but otherwise consistent with the written statement referred to in ss.

71.65 (1) and 71.71 (1), Stats., and the employee files a copy of the statement along with the fiscal year return.

**History:** Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.92 Withholding tax exemptions.** (ss. 71.66 and 71.83 (1) (a) 5 and (b) 4 and (2) (a) 5, Stats.) (1) An employee may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. The maximum number of federal exemptions allowable is computed by completing a federal form W-4, "Employee's Withholding Allowance Certificate." An employee claiming the same number of exemptions for both state and federal purposes is not required to complete a form WT-4, "Employee's Wisconsin Withholding Exemption Certificate." An employee who claims a different number of withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed form WT-4.

(2) An employee who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employee provides his or her employer with a completed form WT-4, "Employee's Wisconsin Withholding Exemption Certificate" which shows a claim for total exemption. For this purpose, a tax liability is "incurred" if the employee had for the preceding year, or anticipates for the current year, a net Wisconsin income tax due, i.e., gross tax less personal exemptions on a Wisconsin return. If an employee is married, the Wisconsin marital property laws for tax computation shall be considered in determining if the employee may claim this exemption.

(3) (a) Effective April 1, 1979, an employee may enter into a written agreement with his or her employer to withhold a lesser amount of tax than indicated in the withholding tax tables, if the employee determines the lesser amount approximates the employee's anticipated income tax liability for the year. Form WT-4A, "Wisconsin Employee Withholding Agreement", shall be used for this purpose and a completed copy of the form shall be sent by the employee to the department within 10 days after it is filed with the employer. If the employee fails to notify the department within the required 10 days, he or she shall be subject to a penalty of \$10, as provided by s. 71.20 (22) (c), Stats.

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

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

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

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

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

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) and (2), cr. (3), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2) and (3) (c), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.93 Withholding from wages of a deceased employee and from death benefit payments.** (ss. 71.63 (6) (j) and 71.64 (1) (a), Stats.) (1) GENERAL. Section 71.64 (1) (a), Stats., requires employers to withhold Wisconsin income tax from payments of wages "to an employee". Various types of payments are made to the estate or to beneficiaries of a deceased employee which resulted from the deceased person's employment. The department shall follow the federal internal revenue service's policy in determining whether withholding of income tax is required from these payments.

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

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

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

(b) Accrued vacation and sick pay.

(c) Termination and severance pay.

(d) Death benefits such as pensions, annuities and distributions from a decedent's interest in an employer's qualified stock bonus plan or profit sharing plan, as provided in s. 71.63 (6) (j), Stats.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) and (3) (d), Register, July, 1989, No. 403, eff. 8-1-89.

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

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

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

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

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

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

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

(b) The taxpayer's financial condition.

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

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

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

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

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

**Tax 2.94 Tax-sheltered annuities.** (s. 71.05 (1) (a), Stats.)

(1) **GENERAL.** (a) Payments for a tax-sheltered annuity purchased for an employee by a public school system or by an exempt educational, charitable or religious organization, which are excludable from the employee's gross income in the year of payment under s. 403 (b) of the internal revenue code, are also excludable in the year of payment for Wisconsin income tax purposes.

**Note:** The exclusion from gross income as provided in sub. (1) (a) is effective January 1, 1965, when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income. Payments prior to January 1, 1965, were taxable for Wisconsin income tax purposes.

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

(2) **MILWAUKEE CITY AND COUNTY EMPLOYE AND STATE TEACHERS RETIREMENT SYSTEMS.** Normal retirement benefits received from systems enumerated in s. 71.05 (1) (a), Stats., are exempt as provided by that section. The exemption is limited to payments from the accounts of those persons who were members of any of the systems on December 31, 1963, or who were retired from any of the systems on or before December 31, 1963. However, benefits received from tax-sheltered annuity deposits described in sub. (1) administered by these systems do not qualify for the exclusion from Wisconsin taxable income provided by s. 71.05 (1) (a), Stats. Tax-sheltered annuity benefits shall be included in gross income for Wisconsin income tax purposes as they are for federal income tax purposes, except as provided in sub. (3).

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

(b) If a school system purchased a tax-sheltered annuity for an employee prior to January 1, 1965, and the employee paid a Wisconsin income tax on the tax-sheltered annuity deposit which was used to pay the 1964 annuity premium, a subtraction modification under s. 71.05 (6) (b) 3, Stats., shall be allowed for the tax-sheltered annuity benefits received on or after January 1, 1974, which are included in federal adjusted gross income and upon which the employee previously paid a Wisconsin income tax. The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax-sheltered annuity benefits excludable from Wisconsin taxable income because of receipt prior to January 1, 1974.

**Examples:** In each example below, assume the employee is a taxpayer who files tax returns on a calendar year basis.

1) An employee made a deposit of \$200 for the purchase of a tax-sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employee retires after December 31, 1973, a subtraction modification under s. 71.05 (6) (b) 3, Stats., is permitted for the first \$200 of tax-sheltered annuity benefits received. All subsequent benefits are taxable with no subtraction modification allowed.

2) An employee made a deposit of \$300 for the purchase of a tax-sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employee retired prior to January 1, 1974, and \$120 of the benefits received were not included in Wisconsin taxable income. A subtraction modification under s. 71.05 (6) (b) 3, Stats., is permitted for the next \$180 (\$300 - \$120) received after December 31, 1973. All subsequent benefits are taxable with no subtraction modification allowed.

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

**History:** Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. (1) (a) and (b), renum. (1) (b), (c) and (3) (c) to be (1) (a), (b) and (3) (b) and am. (a) and (3) (b), am. (2) and (3) (a), Register, June, 1991, No. 426, eff. 7-1-91.

**Tax 2.95 Reporting of instalment sales by natural persons and fiduciaries.** (ss. 71.01 (6) and 71.04 (1) (a), Stats.) (1) **GENERAL.** The Wisconsin tax treatment of instalment sales by natural persons and fiduciaries is determined under the internal revenue code in effect under s. 71.01 (6), Stats. Instalment sales may be made of either real or personal property. Because for Wisconsin purposes, at the time of the sale, the seller may be either a resident or nonresident, and the property may be realty or personalty, tangible or intangible, and may be located within or without Wisconsin, special situations that are not addressed in the internal revenue code may arise which affect the reporting of the sale.

(2) **SITUS OF INCOME.** Under s. 71.04 (1) (a), Stats., all income or loss of resident individuals shall follow the residence of the individual. A nonresident's income or loss derived from the sale of real property or tangible personal property follows the situs of the property. Interest income of a nonresident and income from the sale of intangible personal property follows the individual's residence.

(3) **TAXATION OF PROCEEDS FROM INSTALMENT SALE OF INTANGIBLE PERSONAL PROPERTY.** (a) *Resident seller.* If the



seller is a Wisconsin resident, the portions of each instalment payment that represent gain and interest income from the sale which are received while the seller is a resident of this state are taxable by Wisconsin. If the resident seller abandons Wisconsin domicile and establishes residence in another state, neither the gain nor interest payments received while a nonresident is taxable by Wisconsin.

(b) *Nonresident seller.* If the seller is not a Wisconsin resident, the portions of each instalment payment that represent gain and interest income from the sale are not taxable by Wisconsin. If the seller subsequently becomes a Wisconsin resident after the sale, the portion of each instalment payment received after becoming a Wisconsin resident representing gain is not taxable by Wisconsin, but the portion representing interest on the instalment note is taxable by Wisconsin.

(4) **TAXATION OF PROCEEDS FROM INSTALMENT SALE OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY.** Upon the sale of real property or tangible personal property reported under the instalment method:

(a) *Wisconsin property.* 1. If the property is located in Wisconsin and the seller is a Wisconsin resident, the portion of each instalment payment that represents gain and interest income from the sale is taxable by Wisconsin.

2. If the property is located in Wisconsin and the seller is not a Wisconsin resident, the portion of each instalment payment that represents gain is taxable by Wisconsin. Interest income of a nonresident is *not* taxable by Wisconsin.

(b) *Out-of-state property.* For property located outside Wisconsin which is sold in taxable year 1975 or thereafter:

1. If the sale occurs while the seller is a Wisconsin resident and the seller is a Wisconsin resident at the time instalment payments are received, the portions of each of these instalment payments that represent gain and interest income from the sale are taxable by Wisconsin. However, if the seller no longer is a Wisconsin resident when instalment payments are received, the portions of each of these instalment payments that represent gain and interest income from the sale are not taxable by Wisconsin.

2. If the sale occurs while the seller is not a Wisconsin resident and the seller is a Wisconsin resident at the time instalment payments are received, the portion of each of the instalment payments that represents gain is not taxable by Wisconsin, but interest income from the sale is taxable. However, if the seller is not a Wisconsin resident at the time instalment payments are received, the portions of each of these instalment payments that represent gain and interest income from the sale are not taxable by Wisconsin.

**Note:** For taxable years prior to 1975, s. 71.07 (1), Stats., provided that for Wisconsin income taxation purposes, income or loss derived from the sale of real property or tangible personal property followed the situs of the property. Interest income and income or loss from the sale of intangible personal property followed the individual's residence. Therefore, if real property or tangible personal property which was located outside Wisconsin was sold on the instalment method prior to taxable year 1975:

1) The portion of each instalment payment that represents gain is not taxable by Wisconsin regardless of whether the seller is a resident or nonresident of Wisconsin at the time payments are received, regardless of whether the payments are received in 1975 or in any subsequent year.

2) The portion of each instalment payment that represents interest income is taxable by Wisconsin if the seller is a Wisconsin resident at the time payments are received. If the seller is a nonresident of Wisconsin at the time payments are received, the interest portion is not taxable by Wisconsin.

(5) **TAXATION OF PROCEEDS FROM SALE OF INSTALMENT OBLIGATION.** If the sale of an instalment obligation, i.e., an individual's right to unpaid instalments from the sale of property, occurs while the seller is a Wisconsin resident, gain or loss on the sale is taxable by Wisconsin. Internal revenue code s. 453B provides that any gain or loss resulting from the disposition of an instalment obligation shall be considered as resulting from the sale or exchange of the property in respect of which the instalment obligation was received. Therefore, if the sale of an instalment obligation occurs while the seller is not a Wisconsin resident, gain or loss on the sale is taxable by Wisconsin where the instalment obligation resulted from the sale of real property or tangible personal property located in Wisconsin.

**Example:** In 1990 an Illinois resident sells Wisconsin real estate for \$140,000. The adjusted basis of the property is \$70,000 which results in a gross profit percentage of 50%. The seller receives a down payment of \$40,000 and an instalment note of \$100,000 for the balance. In 1991, after receiving a \$60,000 payment on the principal plus interest of \$4,000, the instalment obligation is sold for \$45,000. The seller's Wisconsin taxable income from these transactions is as follows:

		Wisconsin Income
1990 - Selling price	\$140,000	
Wisconsin adjusted basis	70,000	
Gross profit	<u>\$ 70,000</u>	
Gross profit percent	50%	
Down payment received	\$ 40,000	
Profit reportable (50% x \$40,000)	20,000	\$ 20,000
Total Wisconsin Income		<u>\$ 20,000</u>
1991 - Payment on principal received	\$ 60,000	
Profit reportable (50% x \$60,000)	30,000	\$ 30,000
Interest received	4,000	-0-
Sale of instalment obligation:		
Selling price	45,000	
Less basis - unpaid balance of		
\$40,000 less unpaid profit due		
of \$20,000 (\$40,000 x 50%)	20,000	
Gain on sale of instalment obligation	25,000	<u>25,000</u>
Total Wisconsin Income		<u>\$ 55,000</u>

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (2) and (5) (b) 2.a. and b., am. (4) (a) and (b), (5) (b) 1.a., Register, September, 1983, No. 333, eff. 10-1-83; r. and recr. (1), r. (2), (3) (a), 5 (b) 1. (intro.), a. and b., renum. (3) (b) to be (2) and am., renum. (4) to be (3) and am., renum. (5) (intro.) (a) to be (4) (intro.) (a.), renum. (5) (b) 2 (intro.) a. and b. to be (4) (b) (intro.) 1. and 2. and am., renum. (6) to be (5) and am., Register, March, 1991, No. 423, eff. 4-1-91.

**Tax 2.955 Credit for taxes paid to other states.** 71.07 (7), Stats. (1) **DEFINITION.** In this section, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) **CREDITS ALLOWABLE.** (a) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate, or trust for any net minimum tax or income tax paid to another state upon income of the individual, estate or trust taxable by that state.

(b) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident shareholder in a

tax-option (S) corporation for any net minimum tax, income tax, or franchise tax paid by that shareholder to another state on or measured by income of the tax-option (S) corporation.

(3) **CREDITS NOT ALLOWED.** An income tax credit may not be allowed for:

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

Note: Refer to s. Tax 2.02 for information concerning reciprocity.

(b) Minimum tax or income tax paid to another state on income considered neither taxable income for Wisconsin tax purposes nor a tax preference item in the computation of the Wisconsin minimum tax.

(c) Minimum tax paid to a state which does not classify the minimum tax as an income tax.

(d) Income tax paid to a county, city, village, town or foreign country.

(4) **HOW TO CLAIM A CREDIT.** The amount of income tax credit claimed shall be entered on the line provided for net income tax paid to other states on Wisconsin income tax return form 1 or form INPR. The credit may not exceed the Wisconsin net tax. To support the credit claimed, the following information shall be attached to form 1 or form INPR:

(a) For a Wisconsin resident individual, estate, or trust, attach copies of the other state's income tax return and the wage statements, if any, to the Wisconsin income tax return.

(b) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is recognized by the other state:

1. If a Wisconsin resident shareholder files an individual income tax return with that state, attach a copy of the other state's income tax return to the Wisconsin income tax return.

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 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in 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 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in 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 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 5K-1 as required in 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.

(5) **YEAR IN WHICH TO CLAIM INCOME TAX CREDIT.** The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out-of-state income is considered taxable Wisconsin income.

**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	\$4,000
Iowa Net Tax	\$ 185
Estimated Tax Payments	200
Refund	\$ 15

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.

**History:** Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (4) (b), Register, January, 1981, No. 301, eff. 2-1-81; r. (2) (a) and (b), (3) (b), am. (2) (c), (3) (d) and (4), renum. (3) (c) to be (3) (b), r. and recr. (5), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2), (3) (a) and (b), (4) (intro.), renum. (3) (ev) to be (3) (d), cr. (2) (b), (3) (c), (4) (c) and (d), r. and recr. (4) (a) and (b), Register, June, 1990, No. 414, eff. 7-1-90; am. (3) (intro.), (a), (4) (b) 2., 3., (c) and (d), Register, April, 1993, No. 448, eff. 5-1-93.

**Tax 2.956 Historic structure and rehabilitation of nondepreciable historic property credits.** (ss. 71.07 (9m) and (9r), 71.28 (6) and (7) and 71.47 (5) and (6), Stats.) (1) **PURPOSE.** This section clarifies the phrase "first applies . . . for projects begun after December 31, 1988" as used in the initial applicability of s. 71.09 (12p) and (12q), Stats., as created by 1987 Wis. Acts 395 and 399, respectively. The initial applicability is provided in section 71 of Act 395 and in section 3203 (47) (mp) of Act 399.

(2) **DEFINITION OF "BEGUN".** In the initial applicability of s. 71.09 (12p) and (12q) Stats., the date a project is "begun" means the date on which the physical work of rehabilitation commences. The physical work of rehabilitation commences when actual construction, or destruction in preparation for construction, commences. The term "physical work of rehabilitation," however, does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration, such as placing boards over broken windows.

**History:** Emerg. cr. 12-28-88; cr. Register, June, 1989, No. 402, eff. 7-26-89.

**Tax 2.96 Extensions of time to file corporation franchise or income tax returns.** (ss. 71.24 (7) and 71.44 (3), Stats.) (1)

**DUE DATES.** (a) *General.* Except as provided in par. (b), corporation franchise or income tax returns, forms 4, 4I, 5 and 5S are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year and form 4T is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted.

(b) *Short-period returns.* Corporation franchise or income tax returns for periods of less than 12 months are due on or before the federal due date.

(2) **EXTENSIONS.** (a) *The automatic extension to 30 days after the federal due date.* If an automatic six-month extension of time has been allowed for filing the corresponding federal income tax return under the internal revenue code, an automatic extension until 30 days after the federal extended due date shall be allowed for filing the Wisconsin return. A copy of federal extension form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 6-month extension provision for the Wisconsin return to be considered timely filed.

**Note:** The additional 30-day extension allowed to corporations having a federal extension first applies for taxable years beginning on January 1, 1993, as a result of the enactment of 1993 Wis. Act 199.

(b) *The 30-day, 3-month or 6-month extension from department.* As an alternative to the extension in par. (a), a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 3 months in the case of a foreign corporation that does not have an office or place of business in the United States, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return. A request for a 30-day, 3-month or 6-month extension, form IC-830, from the department shall be filed by the taxpayer prior to the original due date of the tax return. Requests for extensions shall be mailed to the address specified by the department on form IC-830 or delivered to the department.

**Note:** The 3-month extension allowed to foreign corporations that do not have an office or place of business in the United States first applies for taxable years beginning on January 1, 1992, as a result of the enactment of 1991 Wis. Act 39.

(c) *Estimated tax payment.* A taxpayer who desires to minimize interest charges during the extension period may pay the estimated tax liability on or before the original due date of the franchise or income tax return. This shall be done by attaching a remittance to a corporation estimated tax voucher, form 4-ES, and mailing them to the address specified by the department on the form 4-ES. The estimated tax liability includes the temporary recycling surcharge imposed under s. 77.93, Stats.

**Note:** The inclusion of the temporary recycling surcharge in the estimated tax liability first applies for taxable years beginning on January 1, 1994, as a result of the enactment of 1993 Wis. Act 16.

(d) *Federal termination or refusal to grant extension.* If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before 30 days after the date of termination fixed by the internal revenue service.

(3) **INTEREST CHARGES AND LATE FILING FEES.** (a) *Regular interest.* Except as provided in par. (b), additional tax due with the complete return and the temporary recycling surcharge imposed under s. 77.93, Stats., which are not paid by the original due date are subject to interest at 12% per year during the extension period and 1 1/2% per month from the end of the extension period until the date of payment.

**Note:** The 12% per year interest charge during the extension period for temporary recycling surcharge not paid by the original due date first applies for taxable years beginning on January 1, 1993, as a result of the enactment of 1993 Wis. Act 16.

(b) *Delinquent interest.* If 90% of the tax shown on the return, form 4, 4I, 5 or 5S, is not paid by the 15th day of the 3rd month or, for form 4T, by the 15th day of the 5th month beginning after the end of the taxable year, the difference between that amount and the estimated taxes paid along with any interest due is subject to interest at 1 1/2% per month until paid regardless of any extension granted for filing the return. The tax shown on the return includes the temporary recycling surcharge imposed under s. 77.93, Stats.

**Note:** 1) The imposition of delinquent interest during the extension period applied for 1987 and prior taxable years and was reinstated by 1989 Wis. Act 31, effective for taxable years beginning on or after January 1, 1990.

2) The requirement to include temporary recycling surcharge payments in the tax shown on the return first applies for taxable years beginning on January 1, 1994, as a result of the enactment of 1993 Wis. Act 16.

(c) *Late filing fee.* A corporation return filed after the extension period is subject to a \$30 late filing fee.

**Note:** 1) Refer to s. 71.83 (3), Stats.

2) For franchise or income tax returns with an original or extended due date before July 20, 1985, the late filing fee was \$10.

3) The late filing fee was increased to \$20 for returns 60 or more days late by 1985 Wis. Act 29, effective for franchise or income tax returns with an original or extended due date on or after July 20, 1985.

4) The late filing fee was increased to \$30 by 1991 Wis. Act 269, effective for assessments, determinations or other actions taken on or after May 1, 1992.

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

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1), (2) (a) and (c), (3) (a) and (c), (4) and (5), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2) (a) and (b), (4) and (5), r. (2) (c), renun. (2) (d) to be (2) (c), Register, February, 1990, No. 410, eff. 3-1-90; r. and rec. Register, December, 1995, No. 480, eff. 1-1-96.

**Tax 2.97 Earned income credit eligibility.** (s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats.) (1) **GENERAL.** Under s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats., certain persons may claim an earned income credit based on the person's earned income or federal adjusted gross income.

(2) **DEFINITIONS.** In this section:

(a) "Earned income" means:

1. Wages, salaries, tips and other employee compensation.

2. The amount of the person's net earnings from self-employment for the taxable year within the meaning of s. 1402 (a) of the internal revenue code, but net earnings shall be determined with regard to the deduction allowed to the person under s. 164 (f) of the internal revenue code.

(b) "Qualifying child" means, with respect to any person for any taxable year, an individual:

1. Who meets the relationship test described in sub. (5) (a).

2. Who, except as provided in sub. (5) (a) 3, has the same principal place of abode as the person for more than one-half of the taxable year.

3. Who meets the age requirements of sub. (5) (b).

4. Whom the person properly identifies under the requirements of sub. (5) (c).

(3) **PERSONS ELIGIBLE FOR THE CREDIT.** (a) Except as provided in pars. (b), (c) and (d), a person who has a qualifying child for the taxable year may claim the earned income credit.

(b) A person may not claim the earned income credit for the taxable year if the person is the qualifying child of another person for that taxable year.

**Example:** You and your daughter lived with your mother during the taxable year. Both you and your mother meet all the requirements for the earned income credit for the taxable year.

Your daughter is your qualifying child. Both you and your daughter are qualifying children of your mother.

You cannot take the earned income credit because you are your mother's qualifying child.

(c) If 2 or more persons would be treated as eligible for the credit with respect to the same qualifying child for taxable years beginning in the same calendar year, only the person with the highest federal adjusted gross income for the taxable year may claim the earned income credit with respect to the qualifying child.

**Example:** You and your 5-year-old son moved in with your mother in April. You are not a qualifying child of your mother. Your son meets the conditions to be a qualifying child for both you and your mother. Your federal adjusted gross income for the taxable year was \$7,000 and your mother's was \$14,000. Since your mother's federal adjusted gross income was higher, only your mother may claim the earned income credit with respect to your son.

(d) A person who claims the foreign earned income exclusion under s. 911 of the internal revenue code for the taxable year may not claim the earned income credit.

(4) **EARNED INCOME COMPUTATION.** (a) The earned income of a person shall be computed without regard to any marital property laws.

(b) No amount received as a pension or annuity may be taken into account in computing earned income.

(c) No amount to which s. 871 (a) of the internal revenue code applies, relating to income of nonresident alien individuals not connected with United States business, may be taken into account in computing earned income.

(5) **"QUALIFYING CHILD" REQUIREMENTS.** (a) *Relationship test.* 1. An individual bears a relationship to the person if the individual is any of the following:

a. A son or daughter of the person, or a descendant of either.

b. A stepson or stepdaughter of the person.

c. An eligible foster child of the person.

2. Subdivision 1 does not apply to any individual who is married as of the end of the person's taxable year unless the person is entitled to a deduction under section 151 of the internal revenue code for that taxable year with respect to the individual or would be so entitled but for paragraph (2) or (4) of section 152 (e) of the internal revenue code.

3. For purposes of subd. 1.c, an eligible foster child is an individual not described in subd. 1.a or b who:

a. The person cares for as the person's own child.

b. Has the same principal place of abode as the person for the person's entire taxable year.

4. A child who is legally adopted or who is placed with a person by an authorized placement agency for adoption by the person shall be treated as a child by blood.

(b) *Age requirements.* An individual meets the requirements of this paragraph if the individual meets any of the following conditions:

1. Has not attained the age of 19 as of the end of the calendar year in which the taxable year of the person begins.

2. Is a student as defined in s. 151 (c) (4) of the internal revenue code who has not attained the age of 24 as of the end of the calendar year.

3. Is permanently and totally disabled as defined in s. 22 (e) (3) of the internal revenue code at any time during the taxable year.

(c) *Identification requirements.* The requirements of this paragraph are met if, as part of the tax return on which the credit is claimed:

1. The person provides the name and age of each qualifying child.

2. In the case of a qualifying child who has attained the age of one year before the end of the person's taxable year, the person provides the taxpayer identification number of the qualifying child.

(d) *Abode must be in the United States.* The requirements of sub. (2) (b) 2 and par. (a) 3. b shall be met only if the principal place of abode is in the United States.

**Note:** The provisions of this section are effective for taxable years beginning on or after January 1, 1994, as a result of the enactment of 1993 Wis. Act 16, which created s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats. Prior to the enactment of 1993 Wis. Act 16, the Wisconsin earned income credit was based on a percentage of the federal basic earned income credit.

**History:** Cr. Register, January, 1995, No. 469, eff. 2-1-95.

**Tax 2.98 Disaster area losses.** (ss. 71.01 (6) and 71.22 (4), Stats.) (1) (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used in a trade or business or for income-producing purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casual-

ties of this kind may be deductible on a federal and a Wisconsin income tax return.

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

(2) (a) The Wisconsin income tax treatment is determined under the federal internal revenue code in effect under s. 71.22 (4), Stats., for corporations and s. 71.01 (6), Stats., for individuals.

(b) If a corporation or an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin form 4X may be used by corporations and Wisconsin form 1X may be used by individuals.

**Note:** 1) For taxable years prior to 1987, the Wisconsin corporation tax law was contained in ch. 71, Stats., and was not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the internal revenue code were not available to corporations for Wisconsin franchise and income tax purposes for those years. The amendment allowing disaster losses for corporations was enacted by 1987 Wis. Act 27.

2) Section 71.02 (2) (d), 1983 Stats., which defines "Wisconsin taxable income," was renumbered 71.02 (2) (me), 1985 Stats., and amended by 1985 Wis. Act 29, effective with 1986 individual income tax returns filed in taxable year 1987. This amendment is reflected in s. Tax 2.98. Section 71.02 (2) (me), 1985 Stats., was again renumbered, s. 71.01 (16), Stats., by 1987 Wis. Act 312. For 1985 and prior year income tax returns filed in 1986 and prior taxable years, disaster area losses from damage to property used for

personal purposes were also allowed, as an itemized deduction, using the provisions in sub. (1) (b) and the individual treatment in sub. (2) (b).

3) As an example of Note 2) on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

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

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

4) Tax 2.98 explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law, however, it does not explain all the details regarding casualty losses. Internal Revenue Service Publication 549, entitled "Condemnations and Business Casualties and Thefts," may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources, and related casualty loss problems.

**History:** Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. (2), renum. (3) to be (2) and am. (2) (a) 1. and (b), Register, September, 1983, No. 333, eff. 10-1-83; am. (1) (a), r. (2) (b), renum. (2) (a) 1. and 2. to be (2) (a) and (b) and am., Register, February, 1990, No. 410, eff. 3-1-90.