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Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

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Tax 2.01 Residence. 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.

Note: Section Tax 2.01 interprets s. 71.02, Stats.

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. (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.

(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 Wiscon-

sin 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.

(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 employe. 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.

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

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

Note: Refer to s. Tax 2.955 for information on the credit for tax paid to other states.

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

Note: 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.

Note: Out−of−state employers of Wisconsin residents wishing to withhold Wisconsin income tax from those employees' incomes may contact Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

Note: 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), 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.

Note: Section Tax 2.02 interprets ss. 71.05 (2) and 71.64 (8), Stats.

History: Cr. Register, April 1978, No. 268, eff. 5−1−78; r. and recr., Register, March, 1991, No. 423, eff. 4−1−91; am. (3) (a) (intro.), 1., (4) (a) 1. to 4., (b) (intro.), (5) (a), (6) (b), (7) and (8), r. (4) (b) 1. and 2. and (9), renum. (10) to (13) to be (9) to (12) and am. (10) (a), (b), (11) (a) and (12), Register, April, 1993, No. 448, eff. 5−1−93.

Tax 2.03 Corporation returns. (1) FORMS. For the purpose of filing franchise or income tax returns, the secretary of revenue has designated the following forms for the use of corporations, as defined in s. 71.22 (1), Stats.:

(a) Form 4. Corporation franchise or income tax return. This return shall be used only by corporations reporting on the apportionment or separate accounting method.

(b) Form 4B. Apportionment data.

(c) Form 4BL. Net business loss carryforward.

(d) Form 4C. Separate accounting data.

(e) Form 4−ES. Corporation estimated tax voucher.

(f) Form 4H. Corporation declaration of inactivity.

(g) Form 4I. Insurance company franchise tax return.

(h) Form 4T. Exempt organization business franchise or income tax return.

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

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

(k) Form 5. Corporation franchise or income tax return. This return shall be used only by corporations whose entire net income is attributable to Wisconsin. It may not be used by tax−option (S) corporations or corporations which determine their Wisconsin net income by the apportionment or separate accounting method.

(L) Form 5E. Election by an S corporation not to be treated as a tax−option corporation.

(m) Schedule 5K−1. Tax−option (S) corporation shareholder's share of income, deductions, etc.

(n) Form 5R. Revocation of election by an S corporation not to be a tax−option corporation.

(o) Form 5S. Tax option (S) corporation franchise or income tax return.

(p) Form 5S−1. Tax−option (S) corporation supplemental schedules.

(q) Form 4466W. Corporation application for quick refund of overpayment of estimated tax.

(r) Form CU. Credit union declaration of exempt status.

(s) Schedule CU−1. Credit union net income.

(t) Schedule DC. Development zone credits.

(u) Schedule FC. Farmland preservation credit claim.

(v) Schedule FT. Farmland tax relief credit.

(w) Schedule HR. Historic rehabilitation credits.

(x) Schedule R. Research credits.

(2) INFORMATION RETURNS. Information returns required of corporations are specified in s. Tax 2.04.

(3) SIGNATURES. An officer of the corporation shall sign all returns required to be filed. If a return is prepared by someone other than an employee or officer of the corporation, the person preparing the return shall also sign as preparer.

(4) FILING RETURNS. All forms and information required to be filed or furnished by corporations shall be delivered to the department or mailed to the address specified by the department on the form or in the instructions.

Note: Forms may be delivered in person to the Department of Revenue at 4638 University Avenue, Madison, Wisconsin. Blank forms may be obtained at the same location, or by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708−8903.

Note: Section Tax 2.03 interprets ss. 71.24 (1), (1m) and (3), 71.365 (4) and (5) and 71.44 (1) (a) and (c) and (1m), Stats.

History: 1−2−56; am. Register, September, 1964, No. 105, eff. 10−1−64; am. Register, March, 1966, No. 123, eff. 4−1−66, am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1977, No. 261, eff. 10−1−77; am. Register, September, 1983, No. 333, eff. 10−1−82; am. (1) (a), (c) and (d), renum. (1) (f) to (j) and (2) to be (1) (g) to (k) and (3) and am. (1) (h) and (k) and (3), cr. (1) (f), (l) to (p) and (2), Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. (1), am. (3), Register, June, 1990, No. 414, eff. 7−1−90; r. and recr., Register, May, 1995, No. 473, eff. 6−1−95.

Tax 2.04 Information returns and wage statements.

(1) DEFINITION. In this section, "person" means an individual, trust, estate, partnership, limited liability company, association or corporation.

(2) COMPENSATION FOR SERVICES. Under ss. 71.65 (2), 71.71 (2), 71.72 and 71.80 (20), Stats., all persons carrying on activities within this state, whether taxable or not under ch. 71, Stats., are required to file with the department, on federal form W−2 or 1099−R, on Wisconsin form 9b or other forms approved by the department, or on magnetic media or in other machine−readable form, a statement of certain payments made within the preceding calendar year. For individuals who are residents of Wisconsin, the statement shall set forth the salaries, wages, bonuses, commissions, annuities, pensions, retirement pay, fees or other remuneration paid for services whether subject to withholding or not. For individuals who are nonresidents, the statement shall include all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, except retirement plan distributions identified in s. Tax 3.085 as being exempt from Wisconsin income tax. A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b. The following shall also apply with respect to compensation for services:

(a) All payments which are wages within the definition under s. 71.63 (6), Stats., regardless of amount, shall be reported on federal form W−2 or on magnetic media or in other machine−readable form.

(b) All payments which are not wages within the definition under s. 71.63 (6), Stats., but from which Wisconsin income tax has been withheld, shall be reported on federal form W−2 or 1099−R, as appropriate, or on magnetic media or in other machine−readable form.

(c) Payments of $600 or more which are not wages within the definition under s. 71.63 (6), Stats., and from which no Wisconsin income tax has been withheld, shall be reported on Wisconsin form 9b or federal form 1099, or on magnetic media or in other machine−readable form. However, if the payment was to an employee for whom a form W−2 is required under par. (a) or (b), the payment, regardless of amount, shall be included on form W−2.

(d) All statements required shall be filed by January 31, by delivering or mailing them to the department. Form WT−7, "Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages," shall accompany the statements submitted, either on paper or on magnetic media or in other machine−readable form, if the employer is required to be registered to withhold Wisconsin income taxes from employees' wages.

Note: Forms may be delivered in person to the Department of Revenue at 4638 University Avenue, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, 4638 University Ave., P.O. Box 8903, Madison, WI 53708−8903. Forms W−2 or 1099−R filed on paper may be mailed to Wisconsin Department of Revenue, P.O. Box 8920, Madison, WI 53708−8920. Corporations may mail forms 9b or substitute forms filed on paper to Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708−8908. Persons other than corporations may mail forms 9b or substitute forms filed on paper to Wisconsin Department of Revenue, P.O. Box 59, Madison, WI 53785.

(e) Sections 71.65 (5) and 71.73 (2), Stats., permit a thirty−day extension of time to file the statements described in this subsection. A written request may be sent to the department and to be effective shall be postmarked on or before the due date of the statements. The department's approval of the extension shall be attached to the statements when they are filed with the department.

Note: Written requests for extensions may be mailed to Wisconsin Department of Revenue, P.O. Box 8920, Madison, WI 53708−8920.

(3) RENTS AND ROYALTIES. Under ss. 71.70 and 71.80 (20), Stats., except as provided in par. (d), all persons making payments of rents and royalties of $600 or more to individuals who are residents of Wisconsin, regardless of where the property is located, and to nonresident individuals if the property is located in Wisconsin, shall file with the department, on form 9b or an approved substitute form, or on magnetic media or in other machine−readable form, a statement of payments made in the preceding calendar year. The following shall also apply with respect to rents and royalties:

(a) A copy of federal form 1099−MISC may be filed in lieu of Wisconsin form 9b.

(b) Corporations shall file by March 15 and payers other than corporations shall file by April 15, by delivering or mailing the statements to the department.

Note: Forms may be delivered in person to the Department of Revenue at 4638 University Avenue, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, 4638 University Ave., P.O. Box 8903, Madison, WI 53708−8903. Corporations may mail forms filed on paper to Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708−8908. Persons other than corporations may mail forms filed on paper to Wisconsin Department of Revenue, P.O. Box 59, Madison, WI 53785.

(c) No extension of time for filing forms 9b or substitute forms to report payments of rents or royalties may be allowed.

(d) The requirement to file form 9b or a substitute form does not apply to persons other than corporations who do not deduct the payments in determining Wisconsin taxable income.

(4) GAMBLING WINNINGS. (a) Under s. 71.67 (4) (c), Stats., the administrator of the gaming commission's lottery division shall file with the department a statement of winnings for each lottery prize of $2,000 or more paid in the preceding calendar year.

(b) Under s. 71.67 (5) (d), Stats., all persons licensed to sponsor and manage races under s. 562.05 (1) (b) or (c), Stats., shall file with the department a statement of winnings for each pari−mutuel wager payment of more than $1,000 paid in the preceding calendar year.

(c) The winnings required to be reported in pars. (a) and (b) shall be reported on federal form W−2G or on an approved substitute form.

(d) The statements required in pars. (a) and (b) shall be filed by January 31, by delivering or mailing them to the department.

Note: Forms W−2G or substitute forms may be delivered in person to the Department of Revenue at 4638 University Avenue, Madison, Wisconsin. Forms filed on magnetic media may be mailed to Wisconsin Department of Revenue, 4638 University Ave., P.O. Box 8903, Madison, WI 53708−8903. Forms filed on paper may be mailed to Wisconsin Department of Revenue, P.O. Box 8920, Madison, WI 53708−8920.

(e) No extension of time for filing forms W−2G or substitute forms to report payments of lottery prize winnings or pari−mutuel wager winnings may be allowed.

(5) DISALLOWANCE OF DEDUCTIONS. Items to be reported on forms W−2, 1099−R, 9b or substitute forms may be disallowed as deductions from gross income if not properly reported.

(6) MAGNETIC MEDIA REQUIREMENT. (a) Under s. 71.80 (20), Stats., if the internal revenue service requires a person to file wage statements or information returns on magnetic media or in other machine−readable form, comparable wage statements or information returns shall also be filed on magnetic media or in other machine−readable form with the department of revenue.

(b) A person shall be required to file wage statements or information returns on magnetic media or in other machine−readable form with the department of revenue only if both of the following conditions apply:

1. Wage statements or information returns comparable to those required to be filed on magnetic media or in other machine−readable form with the internal revenue service are also required to be filed with the department of revenue.

2. The wages or income reported on the wage statements or information returns are required to be reported to Wisconsin.

(c) 1. If fewer than 250 of any one type of wage statement or information return are required to be filed with the department, the department shall waive the requirement to file that type of wage statement or information return on magnetic media or in other machine−readable form.

2. If a payer participates in the combined federal/state filing program for forms 1099, the department shall waive the requirement to file those forms 1099 or comparable information returns on magnetic media or in other machine−readable form.

3. If a payer receives a waiver from the department, the payer is not required to file wage statements or information returns on magnetic media or in other machine−readable form with the department.

(7) COMBINED FILING PROGRAM. Payers who participate in the combined federal/state filing program with the internal revenue service and report to the internal revenue service items which are required to be filed on Wisconsin form 9b or a substitute form, are not required to file separate information returns for those items with the department of revenue.

Note: Under the combined federal/state filing program, the internal revenue service will forward information from the information returns to the department of revenue.

Note: The requirement to file Wisconsin wage statements or information returns on magnetic media or in other machine−readable form if the internal revenue service requires comparable statements to be filed in that manner for federal purposes is effective January 1, 1992, as a result of the creation of s. 71.80 (20), Stats., by 1991 Wis. Act 39.

Note: The requirement of payers to report lottery prize winnings and pari−mutuel wager winnings to the department is effective with winnings received by a payee on or after August 12, 1993, as a result of the creation of s. 71.67 (4) (c) and (5) (d), Stats., by 1993 Wis. Act 16.

Note: Section Tax 2.04 interprets ss. 71.26 (3) (e), 71.65 (2), 71.67 (4) and (5), 71.70, 71.71 (2), 71.72, 71.74 (4) and 71.80 (20), Stats.

History: 1−2−56; am. Register, September, 1964, No. 105, eff. 10−1−64, am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1977, No. 261, eff. 10−1−77; am. (1), (3), (4) and (6), cr. (7), Register, September, 1983, No. 333, eff. 10−1−83; r. and recr. Register, June, 1990, No. 414, eff. 7−1−90; r. and recr., Register, May, 1995, No. 473, eff. 6−1−95.

Tax 2.05 Transfers of capital stock, information return. (1) All corporations doing business within this state, whether subject to the franchise or income tax or not, shall file with the department of revenue on or before March 15 of each year reports of transfers of capital stock, including disposals, by individuals who were residents of Wisconsin during the preceding calendar year.

(2) Transfers of capital stock shall be reported on Wisconsin form 8 or on other substitute forms approved by the department and shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708.

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

Note: Section Tax 2.05 interprets s. 71.69, Stats.

History: 1−2−56; am. Register, September, 1964, No. 105, eff. 10−1−64; am. Register, March, 1966, No. 123, eff. 4−1−66, am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1983, No. 333, eff. 10−1−83; am. Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. Register, February, 1990, No. 410, eff. 3−1−90.

Tax 2.07 Earned income tax credit. (1) CRITERIA FOR PROVIDING INFORMATION. The department has established the following criteria regarding the dissemination of information to the public concerning the federal and Wisconsin earned income tax credits:

(a) Disseminate information to potential claimants in the most cost−effective manner possible.

(b) Disseminate information to the public through multiple channels to increase the probability that potential claimants will become aware of the earned income tax credits.

(c) Utilize volunteer tax preparers and community−based organizations that have personal contact with potential claimants, to provide earned income tax credit information and assistance.

(d) Clarify the relationship between federal and Wisconsin earned income tax credits and coordinate outreach efforts with the internal revenue service, or "IRS."

(e) Provide sufficient information to allow potential claimants to self−evaluate their eligibility for the earned income tax credits.

(f) Provide convenient ways for potential claimants to obtain additional information, assistance and forms.

(2) METHODS OF PROVIDING INFORMATION. Methods the department uses to disseminate information to the public concerning the federal and Wisconsin earned income tax credits include the following:

(a) Produce an informational flyer, distribute copies through appropriate organizations having regular contact with potential earned income tax credit claimants throughout the state, and have additional copies available for distribution upon request.

Example: Copies of the informational flyer may be distributed to members of the Wisconsin legislature or to various sites such as municipal buildings, community agencies, or job service centers.

(b) In conjunction with the IRS, when training volunteers who provide free tax−filing assistance throughout Wisconsin, include training to identify potential earned income tax credit claimants and to assist them in claiming both the federal and Wisconsin credits.

File inserted into Admin. Code 5−1−2002. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(c) Highlight the Wisconsin earned income tax credit in the Wisconsin individual income tax and homestead credit booklets.

(d) Mail camera−ready copies of earned income tax credit informational flyers to large Wisconsin employers, and request them to make and distribute copies of the flyer to their employees as appropriate.

(e) Work with the IRS in providing joint efforts to publicize both the federal and Wisconsin earned income tax credits.

Note: For the 1993 tax−filing season, the department and the IRS jointly utilized the IRS toll−free telephone information line, to provide callers with information about both the federal and Wisconsin earned income tax credits.

(f) Annually produce a report summarizing the level of participation in and level of benefits provided by the earned income tax credit program.

(g) Work with other state agencies, public utilities, and other organizations to distribute information about the federal and Wisconsin earned income tax credit programs.

Note: The federal earned income tax credit, provided under s. 32 of the internal revenue code, is available to eligible individuals and married couples filing a joint income tax return, who have at least one qualifying child living with them. The federal credit consists of three parts, as follows:

A basic credit, computed based on the amount of adjusted gross income or earned income, and whether the individual or couple had one qualifying child or two or more qualifying children.

A health insurance credit, computed based on the amount of adjusted gross income or earned income, and the amount paid for health insurance that covered at least one qualifying child.

An extra credit for a child born during the taxable year, computed based on adjusted gross income or earned income.

Note: The Wisconsin earned income tax credit is available under s. 71.07 (9e), Stats., to full−year Wisconsin residents who are eligible to claim the federal earned income tax credit. The Wisconsin credit is computed as a percentage of the federal basic credit, dependent upon whether the individual or couple have one qualifying child, two qualifying children, or three or more qualifying children.

Note: Section Tax 2.07 interprets ss. 71.07 (9e) and 73.03 (48), Stats.

History: Cr. Register, November, 1993, No. 455, eff. 12−1−93.

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

(a) *Individuals and fiduciaries*. 1. Form 1. Income tax. This return may be used by individuals who are full−year Wisconsin residents, whether married filing a joint return, married filing a separate return, filing as head of household or filing as single.

2. Form 1A. Income tax. This is an optional short form return which may be used by individuals who are full−year Wisconsin residents and filing as married filing a joint return, head of household or single.

3. Form WI−Z. Income tax. This is an optional short form return which may be used by individuals who are full−year Wisconsin residents and filing as married filing a joint return or single.

4. Form 1NPR. Income tax − nonresident and part−year resident. This return shall be used by individuals who are nonresidents of Wisconsin or part−year residents of Wisconsin, regardless of filing status.

5. Form 1X. Income tax − amended return. This return may be used by full−year Wisconsin resident individuals to amend form 1, 1A or WI−Z.

Note: Nonresident and part−year resident individuals shall use form 1NPR marked "amended return" to amend form 1NPR.

6. Form 1CNP. Combined individual and fiduciary income tax return for nonresident partners. This form may be used by nonresident partners and nonresident members of limited liability companies treated as partnerships.

7. Form 1CNS. Combined individual and fiduciary income tax return for nonresident tax−option (S) corporation shareholders.

8. Form 2. Fiduciary income tax return. This return may be used by estates and trusts, except exempt trusts with unrelated business taxable income.

9. Form 4T. Exempt organization business franchise or income tax return. This return shall be used by exempt trusts with unrelated business taxable income.

10. Form 1−ES. Estimated tax voucher. This form may be used by individuals, estates and trusts, except exempt trusts with unrelated business taxable income.

11. Form 4−ES. Corporation estimated tax voucher. This form shall be used by exempt trusts with unrelated business taxable income.

12. Form CN−ES. Composite estimated tax voucher. This form may be used by nonresident partners, members or shareholders using form 1CNP or 1CNS.

13. Schedule 2K−1. Beneficiary's share of income, deductions, etc.

14. Schedule 2440W. Disability income exclusion.

15. Schedule DC. Development zone credits.

16. Schedule EICW. Earned income credit.

17. Schedule FC. Farmland preservation credit claim.

18. Schedule H. Homestead credit claim.

19. Schedule HR. Historic rehabilitation credits.

20. Schedule I. Adjustments to convert federal adjusted gross income and itemized deductions to the amounts allowable under the applicable year's internal revenue code.

21. Schedule MT. Alternative minimum tax.

22. Schedule T. Transitional adjustments.

23. Schedule U. Underpayment of estimated tax by individuals and fiduciaries. This form may be used by individuals, estates and trusts, except exempt trusts with unrelated business taxable income.

24. Schedule 4U. Underpayment of estimated tax by corporations. This form shall be used by exempt trusts with unrelated business taxable income.

25. Schedule WD. Capital gains and losses. This form may be used by individuals.

26. Schedule WD (form 2). Capital gains and losses. This form may be used by estates and trusts, except exempt trusts with unrelated business taxable income.

27. Form 401T. Report of estate or inheritance tax payment.

28. Form W706. Estate tax return.

(b) *Partnerships and limited liability companies treated as partnerships*. 1. Form 3. Partnership return.

2. Schedule 3K−1. Partner's share of income, deductions, etc.

3. Form 3S. Partnership temporary recycling surcharge.

4. Form 3S−ES. Partnership estimated surcharge voucher.

5. Schedule D. Development zone credits.

6. Schedule HR. Historic rehabilitation credits.

(2) INFORMATION RETURNS. Information returns required of persons other than corporations are specified in s. Tax 2.04.

(3) FILING RETURNS. All forms and information required to be filed or furnished by persons other than corporations shall be filed or furnished by providing the information requested on the appropriate forms, signing the returns or forms as appropriate, and delivering them to the department or mailing them to the address specified by the department on the form or in the instructions.

Note: Forms may be delivered in person to the Department of Revenue at 4638 University Avenue, Madison, Wisconsin. Blank forms may be obtained at the same location, or by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708−8903.

Note: Section Tax 2.08 interprets ss. 71.03 (2), 71.20 (1) and 71.55 (3), Stats.

History: 1−2−56; am. Register, February, 1958, No. 26, eff. 3−1−58; am. Register, February, 1960, No. 50, eff. 3−1−60; am. Register, September, 1964, No. 105, eff. 10−1−64; r. and recr., Register, March, 1966, No. 123, eff. 4−1−66; am. Register, February, 1975, No. 230, eff. 3−1−75; am. (1), Register, November, 1977, No. 263, eff. 12−1−77; am. (3), Register, February, 1978, No. 266, eff. 3−1−78; am. (1) (a) and (b), (2) and (3), renum. (1) (c) and (d) to be (1) (k) and (l) and am., cr. (1) (c) to (j), Register, July, 1987, No. 379, eff. 8−1−87; r. and recr. (1), am. (3) (intro.), r. (3) (a) to (c), Register, June, 1990, No. 414, eff. 7−1−90; r. and recr. Register, May, 1995, No. 473, eff. 6−1−95.

File inserted into Admin. Code 5−1−2002. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

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

(2) Form I−804 does not have to be filed if the refund is claimed on a joint Wisconsin income tax return of the surviving spouse and the decedent. The surviving spouse shall write "filing as surviving spouse" in the signature area of the return. If someone other than the surviving spouse is the personal representative, the personal representative shall also sign the joint return.

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

Note: Section Tax 2.085 interprets s. 71.75 (10), Stats.

History: Cr. Register, October, 1976, No. 250, eff. 11−1−76; am. (1), Register, November, 1978, No. 275, eff. 12−1−78; am. (2), Register, September, 1983, No. 333, eff. 10−1−83; renum. (2) to be (3), cr. (2), Register, February, 1990, No. 410, eff. 3−1−90.

Tax 2.09 Reproduction of franchise or income tax forms. (1) GENERAL. Subject to the provisions of this section, the official Wisconsin franchise or income tax forms required to be filed with the department may be reproduced and the reproductions may be filed in lieu of the corresponding official forms. Any reproduction which varies from the official version in any particular, except as authorized in this section, shall be submitted to the department for approval before it is used. The department may reject any reproduction which is in whole or in part illegible or which is of a format that has not been approved by the department.

(2) SPECIFICATIONS. The following specifications shall apply:

(a) Printing of reproductions shall be by conventional printing processes, photocopying, computer graphics or similar reproduction processes and shall duplicate the font sizes, graphics and format of the official form. Reproductions may be printed on one side or both sides of the paper.

(b) Reproductions of optical character reader−scannable, or OCR−scannable, documents shall bear an OCR−scannable line as prescribed for the specific document type. Photocopies of OCR−scannable forms may not be filed.

(c) The reproductions shall be on paper of substantially the same weight and texture, and of quality at least as good as that used in the official forms.

(d) In the reproduction of tax forms, official forms printed on colored paper may be reproduced on white paper, and black ink may be substituted for colored ink.

(e) The size of the reproduction, both as to dimensions of the paper and image reproduced on it, shall be the same as that of the official form, except that full−page official forms which are other than 8½ inches by 11 inches in size may be reproduced on 8½ inch by 11 inch paper.

(f) Except for returns executed by fiduciaries as provided in sub. (3) or returns filed electronically, all signatures required on returns which are filed with the department shall be original, affixed subsequent to the reproduction process.

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

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

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

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

Note: Written requests for approval of substitute forms should be mailed to Wisconsin Department of Revenue, Processing Forms Approval, P.O. Box 8903, Madison, WI 53708−8903.

Note: Section Tax 2.09 interprets ss. 71.03 (6) (a), 71.20 (1), 71.24 (1) and 71.44 (1) (a), Stats.

History: 1−2−56; am. Register, February, 1958, No. 26, eff. 3−1−58; am. Register, February, 1960, No. 50, eff. 3−1−60; am. (2), Register, March, 1966, No. 123, eff. 4−1−66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9−1−74; am. (intro.), (2), (6) (intro.) and (a), Register, November, 1977, No. 263, eff. 12−1−77; am. (3), Register, September, 1983, No. 333, eff. 10−1−83; correction in (5) made under s. 13.93 (2m) (b) 4., Stats., Register, July, 1987, No. 379; r. and recr. Register, May, 1996, No. 485, eff. 6−1−96.

Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (1) INDIVIDUALS AND FIDUCIARIES. At the time of filing Wisconsin income tax returns by individuals and fiduciaries, a complete copy of the federal income tax return for the same taxable year, including all schedules, statements, documents and computations which affect the computation of Wisconsin income, credits or penalties, shall be included and filed with the Wisconsin return. Copies of the short form federal returns 1040A and 1040EZ are not required to be filed if a Wisconsin form 1A or WI−Z is being filed for the same taxable year. If the federal form is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designated by the electronic filer shall be included and filed with the Wisconsin return.

(2) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES TREATED AS PARTNERSHIPS. (a) Except as provided in par. (b), at the time of filing Wisconsin income tax returns by partnerships and limited liability companies treated as partnerships under s. 71.20 (1), Stats., a complete copy of the federal income tax return for the same taxable year, including all schedules, statements, documents and computations which affect the computation of Wisconsin income, deductions and credits, shall be included and filed with the Wisconsin return. If the federal form is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designated by the electronic filer shall be included and filed with the Wisconsin return.

(b) Copies of the federal schedules K−1 are not required to be filed for those partners or members for whom a Wisconsin schedule 3K−1 is being filed for the same taxable year. A Wisconsin schedule 3K−1 shall be filed in lieu of federal schedule K−1 for a partner or member if any of the following applies:

1. The computation of the Wisconsin income or deductions differs from the federal amount.

2. The partner or member is a nonresident of Wisconsin or part−year resident of Wisconsin and the partnership or limited liability company has activities within and without Wisconsin.

3. The partnership or limited liability company calculates any Wisconsin income tax credits.

Note: Section Tax 2.10 interprets ss. 71.03 (5) and 71.20 (1), Stats.

History: Register, December, 1965, No. 120, eff. 1−1−66; am. Register, June, 1990, No. 414, eff. 7−1−90; r. and recr. Register, May, 1995, No. 473, eff. 6−1−95.

Tax 2.105 Notice by taxpayer of federal audit adjustments and amended returns. (1) PURPOSE. This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin franchise or income tax and temporary recycling surcharge purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(2) DEFINITION. In this section, "taxpayer" includes individuals, estates, trusts, partnerships, limited liability companies and corporations.

(3) GENERAL. (a) Under ss. 71.76 and 77.96 (4), Stats., a taxpayer meeting the conditions described in sub. (4) shall report to the department changes or corrections made to a tax return by the internal revenue service, or file with the department amended

Wisconsin franchise or income tax returns or amended temporary recycling surcharge returns reporting any information contained in amended returns filed with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state.

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within 90 days of the date the department receives the taxpayer's report of federal adjustments or amended return described in par. (a). The 90−day limitation does not apply to instances where the taxpayer files an incorrect franchise or income tax return or temporary recycling surcharge return with intent to defeat or evade the franchise or income tax or temporary recycling surcharge assessment.

(4) TAXPAYER REQUIRED TO REPORT. (a) *Federal adjustments.* If the federal net income tax payable, a credit claimed or carried forward, a net operating loss carried forward or a capital loss carried forward on a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall report the adjustments to the department within 90 days after they become final. The following shall also apply with respect to federal adjustments:

1. 'Finality of federal adjustments.' For the purpose of determining when the federal adjustments become final, the following shall be deemed a final determination:

a. Payment of any additional tax, not the subject of any other final determination described in subd. 1. b., c., d. or e.

b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment. Federal form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," or 870−AD, "Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment," are the forms prescribed for this purpose.

c. Expiration of the 90−day time period, or the 150−day period in the case of a notice addressed to a person outside the United States, within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within that time.

d. A closing agreement entered into with the internal revenue service under section 7121 of the internal revenue code.

e. A decision by the United States tax court or a judgment, decree or other order by a court of competent jurisdiction which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. A court of competent jurisdiction includes a United States district court, a court of appeals, a court of claims or the United States supreme court.

Note: Decisions of the U.S. tax court and other courts ordinarily become final as follows:

a. If no appeal is made of a U.S. tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable cases involving deficiencies of $10,000 or less heard by the U.S. tax court under s. 7463 of the internal revenue code become final 90 days after they are entered.

b. Appealed decisions of the U.S. tax court become final as set forth in s. 7481 of the internal revenue code.

c. A decision of a U.S. district court normally becomes final if not appealed to the U.S. court of appeals within 60 days of the judgment, decree or order.

d. A decision of the U.S. court of claims or the U.S. court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the U.S. supreme court within 90 days of the judgment or decree.

e. A decision of the U.S. supreme court is normally final upon the expiration of a period of 25 days from the date the decision is rendered, if a motion for reconsideration or rehearing is not filed within that time.

2. 'Information to report to department.' The taxpayer shall submit to the department a copy of the final federal audit report issued by the internal revenue service together with any other documents or schedules necessary to inform the department of the adjustments as finally determined. The report shall be included with an amended Wisconsin return if a Wisconsin refund is being claimed and may be, but is not required to be, included with an amended return if additional Wisconsin tax or temporary recycling surcharge is due or if there is no change in tax or temporary recycling surcharge.

3. 'Agreement with adjustments.' A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin franchise or income tax or temporary recycling surcharge purposes unless a statement is included with the report to the department stating why the taxpayer believes the adjustments are incorrect.

(b) *Amended returns.* If a taxpayer files an amended federal tax return and the changes on the amended federal tax return affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall file with the department an amended Wisconsin return reflecting the same changes. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

(c) *Where and how to submit report or amended return.* An amended Wisconsin return or a taxpayer's report of federal adjustments submitted with an amended Wisconsin return shall be filed in accordance with the provisions of s. Tax 2.12 (5) and (6). A taxpayer's report of federal adjustments submitted to the department without an amended return shall be identified as reflecting federal adjustments made by the internal revenue service and shall be mailed to Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708−8906. The report submitted without an amended return may not be made a part of or attached to any Wisconsin tax return.

(5) ASSESSMENTS AND REFUNDS BY DEPARTMENT. If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after the adjustments become final or after an amended return is filed with the internal revenue service or another state, the department may make an assessment or issue a refund relating to the report or amended return as follows:

(a) *Assessments.* Under s. 71.77 (2), Stats., the department may make an assessment within 4 years from the date the original Wisconsin franchise or income tax return was filed. However, under s. 71.77 (7) (a), Stats., if the taxpayer reported less than 75% of the correct net income and the additional tax for the year exceeds $200 for a joint return, or $100 for a return other than a joint return, an assessment may be made within 6 years after the return was filed.

(b) *Refunds.* Under s. 71.75 (2), Stats., the department may issue a refund if an amended return is filed within 4 years of the unextended date the original Wisconsin franchise or income tax return was due.

(c) *Exceptions.* 1. An assessment may be made later than the 4− and 6−year periods provided in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report of federal adjustments or an amended Wisconsin return. However, the assessment made after the expiration of the 4− and 6−year periods shall only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department after the expiration of the 4−year period for filing an amended

Wisconsin return as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax or temporary recycling surcharge liability, may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustments.

3. The 90−day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of the 90 days.

4. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund shall only relate to those federal adjustments or the changes on the amended return. Notice of the assessment or refund shall be given to the taxpayer within 90 days of the date the department received the report of federal adjustments or an amended Wisconsin return from the taxpayer.

Examples: 1) Federal adjustments were made to an individual's 1989 calendar−year basis federal income tax return; the adjustments became final on June 1, 1994. On August 15, 1994, within 90 days after the adjustments became final, the department received the taxpayer's report of the adjustments. Although the 4−year period provided by s. 71.77 (2), Stats., for making adjustments to the 1989 Wisconsin return expired on April 15, 1994, the department had until November 13, 1994, 90 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) An individual filed an amended 1993 calendar−year basis New York return on June 1, 1994. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 12, 1994. Under the 4−year assessment period in s. 71.77 (2), Stats., the department has 4 years from April 15, 1994, the due date of the 1993 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(6) TAXPAYER'S FAILURE TO REPORT FEDERAL ADJUSTMENTS OR FILE AMENDED WISCONSIN RETURNS. (a) *Adjustments and amended returns relating to taxable year 1987 and thereafter.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return, relating to the taxable year 1987 and thereafter, within the 90−day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax or temporary recycling surcharge relating to the adjustments or amended return within 4 years after discovery by the department.

Example: An individual taxpayer filed a 1993 calendar−year basis Wisconsin income tax return on April 15, 1994. The internal revenue service made adjustments to the 1993 federal income tax return which the taxpayer did not report to the department within 90 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on May 1, 1996. The department may issue an assessment for the adjustments any time on or before May 1, 2000.

(b) *Adjustments and amended returns relating to 1986 and prior taxable years.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return which related to 1986 or prior taxable years within the 90−day period described in sub. (3) (b), the department may assess additional Wisconsin franchise or income tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed or within 2 years after the date when the federal determination of tax becomes final, whichever is later. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar−year basis, is considered as filed on the last date prescribed by law under s. 71.77 (8), Stats.

Example: An individual taxpayer filed a 1986 income tax return on April 15, 1987. The taxpayer filed an amended return with Ohio on January 1, 1988. The result of the amended return was a reduction in the net tax paid to Ohio on income also reported to Wisconsin. The taxpayer did not notify the department within 90 days of filing the amended Ohio return. The department has until April 15, 1997, to issue an assessment for the Ohio amended return's effect on the Wisconsin credit for taxes paid to other states.

Note: Section 71.76, 1989 Stats., was amended by 1991 Wis. Act 39, effective for federal changes or corrections to a federal income tax return that became final on or after August 15, 1991, and for amended federal and other state returns filed on or after August 15, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, a taxpayer was required to report internal revenue service adjustments to taxable income that affected the income reportable or tax payable to Wisconsin, and to file an amended Wisconsin return if information contained on an amended federal or other state tax return affected income reportable or tax payable to Wisconsin.

Note: Section Tax 2.105 interprets ss. 71.75 (2), 71.76, 71.77 (2) and (7) and 77.96 (4), Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; correction in (3) (a) 1. a. made under s. 13.93 (2m) (b) 4., Stats., Register, July, 1987, No. 379; r. (2), (4) and (5) (d); renum. (1), (3), (5) (a) to (c) and (6) to be (2), (4), (6) and (7) and am. (2), (4) (a) 1.b., c. and e, (b), (6) (a) to (c) and (7), cr. (1), (3) and (5), Register, February, 1990, No. 410, eff. 3−1−90; r. and recr. Register, May, 1996, No. 485, eff. 6−1−96.

Tax 2.11 Credit for sales and use tax paid on fuel and electricity. (1) DEFINITIONS. In this section:

(a) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step−by−step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities. However, fuel and electricity used directly in manufacturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

(b) "Manufacturing" has the meaning specified in s. 77.54 (6m), Stats., by virtue of s. 71.28 (3) (a) 1., Stats.

(c) "Paid" has the meaning specified in s. 71.22 (8), Stats.

(d) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. 71.28 (3) (a) 2., Stats.

(2) CREDIT ALLOWABLE. (a) Under s. 71.28 (3), Stats., a corporation may reduce its income or franchise tax liability for the year by an amount equal to the Wisconsin state and county sales and use taxes it has paid on fuel and electricity consumed in manufacturing personal property within Wisconsin.

(b) If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(c) The credit is allowable for all Wisconsin and Wisconsin county sales and use taxes paid during the taxable year on fuel or electricity destined for manufacturing purposes, regardless of when the fuel or electricity was or is to be consumed.

Note: Refer to *Streets and Roads Construction Corporation v. Wisconsin Department of Revenue,* Wisconsin Tax Appeals Commission, Docket No. I−6239, July 28, 1981, and *Fort Howard Paper Company v. Wisconsin Department of Revenue,* Wisconsin Tax Appeals Commission, Docket No. I−8266, November 1, 1983.

(3) CARRY FORWARD OF UNUSED CREDIT. (a) If a corporation is entitled to a sales and use tax credit under s. 71.28 (3), Stats., the credit, to the extent not offset by the tax liability of the same year, may be offset against the tax liability of the subsequent year and each succeeding year up to a total of 15 years until the credit has been completely offset.

Note: The carry forward of the sales tax credit was increased from 5 to 15 years by 1985 Wis. Act 29, and the 15 year carry forward first applies to credits carried forward from the 1980 taxable year.

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

(4) CREDIT INCLUDABLE IN NET INCOME. Under s. 71.26 (2), Stats., the credit computed for sales and use taxes paid on fuel and electricity consumed in manufacturing under s. 71.28 (3), Stats., shall be included in net income for the tax year. Except for tax−option corporations, the entire credit computed for the tax year is includable in net income, even though the credit is not entirely used or no income or franchise tax liability exists. Under s. 71.34 (1) (e), Stats., tax−option corporations shall only include in net income the amount of credit computed under s. 71.28 (3), Stats., and used to offset the income or franchise tax liability of the current year.

Note: Section Tax 2.11 interprets ss. 71.26 (2), 71.28 (3) and 71.34 (1) (e), Stats.

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

(1) (d), (b) and (a) and am., cr. (1) (c), r. and recr. (2) and (4), Register, February, 1990, No. 410, eff. 3−1−90.

Tax 2.12 Amended returns. (1) SCOPE. This section applies to amended Wisconsin franchise or income tax returns, amended partnership returns, amended temporary recycling surcharge returns and amended farmland preservation credit and homestead credit claims.

(2) DEFINITION. In this section, "timely filed," in the case of an amended return or credit claim, means the amended return or credit claim is actually in the possession of the department prior to the expiration of the statutory limitation period or extended limitation period, or it is mailed in a properly addressed envelope with postage prepaid and is received by the department within 5 working days after the last day of the statutory limitation period or extended limitation period.

(3) GENERAL. (a) The department shall accept amended returns and credit claims to correct previously filed original, other amended or adjusted Wisconsin franchise or income tax returns, partnership returns, temporary recycling surcharge returns or farmland preservation credit or homestead credit claims.

(b) Under s. 71.75 (6), Stats., and as provided in this section, a refund of taxes or credits under ch. 71, Stats., or temporary recycling surcharge under s. 77.96 (4), Stats., may be claimed only by filing an amended return or credit claim.

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward.

(d) An amended Wisconsin return filed to report internal revenue service adjustments as provided in s. Tax 2.105 (4) (a) shall include a copy of the final federal audit report.

(e) An amended return or credit claim does not begin or extend the statute of limitation periods for assessing additional tax or temporary recycling surcharge or claiming a refund.

(4) TIMELY FILING. (a) Except as provided in par. (b), if an amended return or credit claim shows a refund, it shall be filed within 4 years of the unextended due date of the original return.

(b) The 4−year filing limitation in par. (a) does not apply in the following situations:

1. Except as provided in subds. 3. and 4., an amended Wisconsin return or credit claim requesting a refund may not be filed for any year covered by a field audit which resulted in a refund or no change in the tax owed, or in an assessment that has become final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015, Stats., provided the department advises the taxpayer that the field audit is final unless the taxpayer appeals the result.

2. Except as provided in subds. 3. and 4., an amended Wisconsin return or credit claim requesting a refund may not be filed for any item of income or deduction assessed as a result of an office audit, provided the assessment has become final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015, Stats.

3. An amended Wisconsin return or credit claim requesting a refund of the tax or temporary recycling surcharge paid as a result of an office audit or field audit assessment may be filed within 2 years of the date the tax or temporary recycling surcharge was assessed if no petition for redetermination was filed.

4. An amended Wisconsin return requesting a refund of an overpayment attributable to a capital loss carryback may be filed by a corporation within 4 years after the due date, or extended due date, for filing the return for the taxable year of the capital loss that is carried back.

5. If the limitation period for making an assessment or refund has been extended by written agreement between a taxpayer and the department, an amended Wisconsin return or credit claim requesting a refund relating to the year or years covered by the extension agreement may be filed during the extension period.

6. An amended Wisconsin return filed under the provisions of sub. (3) (c) shall be filed with the department within 90 days after the date the amended federal or other state return is filed.

7. An amended Wisconsin return filed under the provisions of sub. (3) (d) shall be filed with the department within 90 days of the date on which the federal audit adjustments become final.

8. An amended Wisconsin return filed under the provisions of s. 71.30 (4), Stats., to claim a reduction of income resulting from a renegotiation or price redetermination of a defense contract or subcontract shall be filed within one year of the final determination.

Note: Refer to s. Tax 2.105 for additional information regarding amended Wisconsin returns required as a result of filing amended federal or other state returns, or reports required as a result of federal audit adjustments made by the internal revenue service.

(5) FORMS. (a) Except as provided in par. (b), an amended Wisconsin return or credit claim requesting a refund shall be filed on the proper form as shown in the following table, in the manner prescribed in sub. (6). An amended return filed for a purpose other than to request a refund is not required to be filed on the forms indicated below.

ORIGINAL FORM	AMENDED FORM
1, 1A, WI−Z	1X
1NPR	1NPR
1 or 1A with Schedule H	1X + corrected H*
1 with Schedule FC	1X + corrected FC*
1NPR with Schedule H or FC	1NPR + corrected H or FC*
ORIGINAL FORM	**AMENDED FORM**
Schedule H alone	Schedule H
2	2
3	3
3S	3S
4	4X
4I	4I
4T	4T
5	4X
5S	5S
1CNP	1CNP
1CNS	1CNS

* If H or FC is changed.

(b) The department may prescribe a special form for taxpayers to use in claiming a refund, to address a specific tax issue. In this situation, the special form may be used in lieu of the amended form prescribed in par. (a).

Example: Wisconsin form 1X−R was developed in 1993 to address the issue of the flow−through of interest exempt from Wisconsin taxes received from a qualified retirement plan.

(6) MANNER. (a) An amended return or credit claim shall be in writing, indicate the reporting period for which the change was made and contain a statement setting forth the specific grounds upon which the amended form is based.

(b) An amended return or credit claim other than form 1X or 4X shall be identified as an amended form by checking the

"amended return" box if one is provided on the form or by marking "AMENDED" across the top of the first page of the amended form.

(c) An amended return or credit claim requesting a refund may not be made a part of or attached to any original Wisconsin return or credit claim.

(d) An amended return or credit claim shall be mailed to the department at the address specified on the form or in its instructions or at the address provided for mailing amended Wisconsin returns or credit claims.

Note: The address for mailing amended Wisconsin returns or credit claims is Wisconsin Department of Revenue, P.O. Box 8991, Madison, WI 53708−8991.

Note: Sections 71.75 (2) and 71.77 (5), 1989 Stats., were amended by 1991 Wis. Act 39, effective August 15, 1991. Under the statutes in effect immediately prior to the enactment of 1991 Wis. Act 39, sub. (4) (b)4. did not apply.

Note: Section 71.76, 1989 Stats., was amended by 1991 Wis. Act 39, effective for federal changes or corrections to a federal income tax return that became final on or after August 15, 1991, and for amended federal and other state returns filed on or after August 15, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, a taxpayer was required to report internal revenue service adjustments to taxable income that affected the income reportable or tax payable to Wisconsin, and to file an amended Wisconsin return if information contained on an amended federal or other state tax return affected income reportable or tax payable to Wisconsin.

Note: Section 71.75 (4), 1989 Stats., was amended by 1991 Wis. Act 39, effective for field audit notices issued on or after October 1, 1991. Under the statute in effect immediately prior to the enactment of 1991 Wis. Act 39, the limitation in sub. (4) (b)1. applied only to field audits which resulted in an assessment of additional tax.

Note: Section Tax 2.12 interprets ss. 71.30 (4), 71.74, 71.75, 71.76, 71.77, 71.80 (18) and 77.96 (4), Stats.

History: Cr. Register, August, 1976, No. 248, eff. 9−1−76; am. (1) (a), Register, September, 1983, No. 333, eff. 10−1−83; am, (1) (a) and (b), r. and recr. (1) (c) and (2), Register, February, 1990, No. 410, eff. 3−1−90; r. and recr. Register, May, 1996, No. 485, eff. 6−1−96.

Tax 2.30 Property located outside Wisconsin — depreciation and sale. (1) SCOPE. This section applies only with respect to resident individuals, estates, and trusts.

(2) DEFINITION. In this section, "internal revenue code" means the internal revenue code in effect for the taxable year specified in s. 71.01 (6), Stats.

Example: For taxable year 1988, "internal revenue code" means the internal revenue code in effect on December 31, 1987.

(3) RESIDENT INDIVIDUALS, ESTATES, AND TRUSTS. Income or loss derived from property and business located outside Wisconsin by resident individuals, estates, and trusts, is taxable or deductible as appropriate under ch. 71, Stats. Except as provided in sub. (4), the basis for depreciation and for determining gain or loss on disposition of property for these taxpayers is the same as the basis determined under the internal revenue code, whether the property was acquired before becoming or while a resident of this state.

(4) EXCEPTIONS. (a) When an individual acquires a new residence, the adjusted basis of the new residence is not reduced for nonrecognized gain from the sale or exchange of an old residence located outside Wisconsin if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or

2. The sale or exchange of the old residence occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

(b) When an individual sells or exchanges a principal residence located outside Wisconsin and the nonrecognition of gain provisions do not apply, the adjusted basis of the residence sold or exchanged is not reduced for nonrecognized gain from any previous sale or exchange of a principal residence located outside Wisconsin if:

1. The previous sale or exchange occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or

2. The previous sale or exchange occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

Example: A taxpayer becomes a Wisconsin resident on July 1, 1988. Prior to becoming a Wisconsin resident the taxpayer had owned several different homes. Each time a new home was acquired, the federal nonrecognition of gain provisions applied with respect to the gain realized from the sale of the previous home. Upon becoming a Wisconsin resident, the taxpayer owned a home in Missouri with a federal adjusted basis of $65,000 ($95,000 cost, less $30,000 of gains postponed from prior sales). The Missouri home was sold for $97,000 in August 1988. The taxpayer decides not to purchase a new residence. The Wisconsin adjusted basis of the Missouri home is $95,000.

(c) For residential real property and certain agricultural real property placed in service during taxable year 1986, depreciation and gain or loss on disposition of the property shall be computed under the internal revenue code in effect on December 31, 1980 unless:

1. The property is placed in service out−of−state by a taxpayer during taxable year 1986 before the taxpayer becomes a Wisconsin resident. In this case, the property's adjusted basis and depreciation are the same as the amounts allowable for federal tax purposes.

Example: A taxpayer becomes a Wisconsin resident on January 1, 1987. Prior to that date, the taxpayer is an Illinois resident. On July 1, 1986, the taxpayer purchases and places in service residential real property located in Illinois. On the taxpayer's 1987 Wisconsin return, the taxpayer's adjusted basis and depreciation on this property will be the same as the amounts shown on the taxpayer's 1987 federal return. The taxpayer does not have to recompute the basis of the property and depreciate it using one of the methods permitted under the December 31, 1980 Code.

2. The property located out−of−state is acquired in a transaction occurring in taxable year 1986 or thereafter where the basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor. The adjusted basis of the property on the date of the transfer is the same as the federal adjusted basis.

Example: A taxpayer is a Wisconsin resident. The taxpayer receives by gift on January 1, 1986, residential real property located in Illinois. The adjusted basis of the property to the donor, transferor, is $200,000. In acquiring the property by gift, the taxpayer, transferee, receives the same adjusted basis in the property as the transferor. The Wisconsin adjusted basis will be the federal adjusted basis on January 1, 1986.

Note: In the case of *Wisconsin Department of Revenue vs. Romain A. Howick,* 100 Wis. 2d 274 (1981), the Wisconsin supreme court held that for the purpose of determining a loss on a sale, the basis of property located outside Wisconsin acquired before the owner became a Wisconsin resident is the basis determined under the internal revenue code. In this section the same principle is applied to gains realized on the disposition of such property. This principle was codified into s. 71.05 (1) (m), Stats., by 1985 Wis. Act 261, effective for the earliest taxable year in respect to which additional assessments or refunds may be made. Section 71.05 (1) (n) and (o), Stats., was also created by 1985 Wis. Act 261 to provide exceptions with respect to a principal residence effective for the same period of time. Section 71.05 (l), (m), (n), and (o), Stats., was renumbered s. 71.05 (12) (a), (b), and (c), Stats., by 1987 Wis. Act 312.

Note: Section 71.07 (1), Stats., was amended by Chapter 39, Laws of 1975, effective with the 1975 taxable year. Prior to the 1975 taxable year, income or loss derived from real property or tangible personal property followed the situs of the property from which derived. Section 71.07 (1), Stats., was renumbered ss. 71.04 (1) (a) and 71.362 (1), Stats., by 1987 Wis. Act 312.

Note: Section Tax 2.30 interprets ss. 71.05 (12) (a), (b) and (c), (15), (16), (17) and (18) and 71.04 (1) (a), Stats.)

History: Cr. Register, April, 1978, No. 268, eff. 5−1−78; r. and recr. (3), Register, July, 1982, No. 319, eff. 8−1−82; r. (2), renum. (1) to be (2) and am., cr. (1) and (4), am. (3), Register, June, 1990, No. 414, eff. 7−1−90.

Tax 2.31 Compensation received by nonresident members of professional athletic teams. (1) SCOPE. This section apportions and allocates to Wisconsin, in a fair and equitable manner, a nonresident employee's total compensation for services rendered in Wisconsin as a member of a professional athletic team. The section does not apply to employees domiciled in a state with which Wisconsin has a reciprocity agreement.

Note: Wisconsin has reciprocity agreements with Illinois, Indiana, Kentucky, Michigan and Minnesota.

(2) DEFINITIONS. In this section:

(a) Except as provided in subds. 1. and 2., "duty days" means all days during the taxable year from the beginning of a professional athletic team's official pre−season training period through the last game in which the team competes or is scheduled to compete and days on which a member of a professional athletic team renders a service for a team on a date outside this time period. Rendering a service includes conducting training and rehabilitation activities at the facilities of the team. Included within duty days shall be game days, practice days, days spent at team meet-

File inserted into Admin. Code 5−1−2002. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

ings, promotional caravans and preseason training camps, days spent participating in instructional leagues, days spent at special games such as the "Pro Bowl" or an "all−star" game and days served with the team through all post−season games in which the team competes or is scheduled to compete. The following exceptions to this definition apply:

1. Duty days for any person who joins a professional athletic team after the beginning of the team's official pre−season training period shall begin on the day the person joins the team. Conversely, duty days for any person who leaves a professional athletic team before the last scheduled game shall end on the day the person leaves the team. Where a person switches professional athletic teams during a taxable year, separate duty day calculations shall be made for the periods the person was with each team.

2. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member has been suspended without pay and prohibited from performing any services for the team, may not be treated as duty days.

(b) "Member of a professional athletic team" includes employees who are active players, players on the disabled list or any other persons such as coaches, managers and trainers, and who are required to and do travel with and perform services on behalf of a professional athletic team on a regular basis.

(c) "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, hockey or soccer team.

(d) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year by the member for services rendered from the beginning of the official pre−season training period through the last game in which the team competes or is scheduled to compete during that taxable year, and during the taxable year on a date outside this time period. The compensation includes, but is not limited to, salaries, wages, bonuses as described in sub. (3) (c) and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. The compensation may not include strike benefits, severance pay, termination pay, contract or option year buy−out payments, expansion or relocation payments or any other payments not related to services rendered for the team.

Examples: Services rendered on a date that does not fall within the regular season include participation in:

1) Instructional leagues.

2) The "Pro Bowl."

3) Promotional caravans.

(3) METHOD OF ALLOCATION. (a) *General.* The allocation to Wisconsin of income earned by a nonresident employee as total compensation for services rendered as a member of a professional athletic team shall be made on the basis of a fraction, the numerator of which is the number of duty days spent within Wisconsin rendering services for the team in any manner during the taxable year and the denominator of which is the total number of duty days spent both within and outside Wisconsin during the taxable year.

(b) *Duty days during the taxable year.* Duty days shall be included in the fraction described in par. (a) for the taxable year in which they occur, including where a team's official pre−season training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one taxable year. The following additional provisions apply:

1. Days during which a member of a professional athletic team is on the disabled list, does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Wisconsin, may not be considered duty days spent in Wisconsin. However, all days on the disabled list shall be included in the total duty days spent both within and outside Wisconsin.

2. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event may not be considered duty days spent in Wisconsin but shall be considered in the total duty days spent both within and outside Wisconsin.

(c) *Bonuses.* Bonuses which shall be included for purposes of the allocation described in par. (a) are:

1. Performance bonuses earned as a result of play during the season, including bonuses paid for championship, playoff or "bowl" games played by a team or for selection to all−star league or other honorary positions.

2. Bonuses paid for signing a contract, unless all of the following conditions are met:

a. The payment of the signing bonus is not conditional upon the signee playing any games for the team or performing any subsequent services for the team, or even making the team.

b. The signing bonus is payable separately from the salary and any other compensation.

c. The signing bonus is nonrefundable.

Examples: The following examples illustrate the provisions of this subsection:

1) Player A, a member of a professional athletic team, is a nonresident of Wisconsin. Player A's contract for the team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a two−year contract which covers seasons that occur during taxable year 1/taxable year 2, and taxable year 2/taxable year 3. Player A's contract provides that A receive $500,000 for the season which occurs during taxable year 1/taxable year 2, and $600,000 for the season which occurs during taxable year 2/taxable year 3. Player A receives $550,000 from the contract during taxable year 2 ($250,000 for one−half the year 1/year 2 season and $300,000 for one−half the year 2/year 3 season). The portion of the compensation received by Player A for taxable year 2 which is allocable to Wisconsin is determined by multiplying the compensation Player A receives during the taxable year ($550,000) by a fraction, the numerator of which is the total number of duty days Player A spends rendering services for the team in Wisconsin during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of Player A's duty days spent both within and outside Wisconsin for the entire taxable year 2.

2) Player B, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team but is located in Wisconsin, B's team travels to Wisconsin for a game. The days B's team spends in Wisconsin for practice, games, meetings, etc., while B is present at the clinic, are not considered duty days spent in Wisconsin for Player B for that taxable year, but those days are included within total duty days spent both within and outside Wisconsin.

3) Player C, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Wisconsin as well as at personal facilities in Wisconsin. The days C performs rehabilitation exercises in the facilities of C's team are considered duty days spent in Wisconsin for Player C for that taxable year. However, days Player C spends at personal facilities in Wisconsin are not considered duty days spent in Wisconsin for Player C for that taxable year, but those days are included within total duty days spent both within and outside Wisconsin.

4) Player D, a member of a professional athletic team, is a nonresident of Wisconsin. During the season, D travels to Wisconsin to participate in the annual all−star game as a representative of D's team. The days D spends in Wisconsin for practice, the game, meetings, etc., are considered to be duty days spent in Wisconsin for Player D for that taxable year, as well as included within total duty days spent both within and outside Wisconsin.

5) Assume the same facts as in example 4, except that Player D is not participating in the all−star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending the game solely as a spectator. The days Player D spends in Wisconsin for the game are not considered to be duty days spent in Wisconsin. However, those days are included within total duty days spent both within and outside Wisconsin.

6) Player E, a member of a professional athletic team, is a nonresident of Wisconsin. During the pre−season, E travels to Wisconsin to participate in a training camp which E's team conducts in Wisconsin. E performs no further services in Wisconsin. E's team does not play any regular season or playoff games in Wisconsin. The days E spends in Wisconsin at the team's training camp are considered to be duty days spent in Wisconsin for Player E for that taxable year.

(4) ALTERNATIVE METHODS OF ALLOCATION. It is presumed that application of the provisions of this section will result in a fair and equitable apportionment of compensation received by nonresident members of professional athletic teams. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion the compensation, the department may require the member of a professional athletic team to apportion and allocate the compensation under a method which the department prescribes, provided the prescribed method results in a fair and equitable apportionment. A nonresident member of a profes-

sional athletic team may submit a proposal for an alternative method to apportion compensation where the member demonstrates that the method provided under this section does not fairly and equitably apportion the compensation. The proposed method shall be fully explained on the member's Wisconsin income tax return.

Note: Section Tax 2.31 interprets ss. 71.02 and 71.04 (1) (a) and (11), Stats.
History: Cr. Register, May, 1996, No. 485, eff. 6−1−96.

Tax 2.32 Recycling surcharge – gross receipts defined. (1) PURPOSE. This section defines "gross receipts" for purposes of the recycling surcharge under subch. VII of ch. 77, Stats.

Note: For any taxable year, a recycling surcharge is imposed on: (a) individuals, estates, trusts, statutory employees and partnerships that have at least $4,000,000 in gross receipts from a trade or business for the taxable year; (b) corporations and insurers that have at least $4,000,000 in gross receipts from all activities for the taxable year; and (c) individuals, estates, trusts and partnerships engaged in farming that have at least $1,000,000 in gross receipts from farming for the taxable year.

(2) DEFINITIONS. In subch. VII of ch. 77, Stats., and this section:

(a) "Gross receipts from all activities of corporations" means the sum of the following items reportable by corporations other than those listed in pars. (c) and (d):

1. Gross receipts or sales reportable on line 1a of federal form 1120, U. S. corporation income tax return.

2. Gross dividends reportable on line 4 of federal form 1120.

3. Gross interest income reportable on line 5 of federal form 1120.

4. Gross rents reportable on line 6 of federal form 1120.

5. Gross royalties reportable on line 7 of federal form 1120.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on lines 8 and 9 of federal form 1120.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

Note: In this subsection, line numbers of forms refer to the 1999 forms.

(b) "Gross receipts from all activities of exempt organizations taxable as corporations" means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on line 1a of federal form 990−T, exempt organization business income tax return.

2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990−T.

3. Gross rents includable in computing rent income on line 6 of federal form 990−T.

4. Gross income from unrelated debt−financed property includable in computing unrelated debt−financed income on line 7 of federal form 990−T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990−T.

6. Gross investment income includable in computing investment income on line 9 of federal form 990−T.

7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990−T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990−T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(c) "Gross receipts from all activities of insurance companies" means the sum of the following items reportable by insurance companies:

1. Gross premiums earned reportable on lines 1 and 8 of schedule A on federal form 1120−PC, U. S. property and casualty insurance company income tax return.

2. Gross dividends reportable on line 2 of schedule A, or line 2 of schedule B if applicable, on federal form 1120−PC.

3. Gross interest income reportable on line 3a of schedule A, or line 1a of schedule B if applicable, on federal form 1120−PC.

4. Gross rents reportable on line 4 of schedule A, or line 3 of schedule B if applicable, on federal form 1120−PC.

5. Gross royalties reportable on line 5 of schedule A, or line 4 of schedule B if applicable, on federal form 1120−PC.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 6 and 7 of schedule A, or lines 5 and 7 of schedule B if applicable, on federal form 1120−PC.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(d) "Gross receipts from all activities of tax−option (S) corporations" means the sum of the following items reportable by S corporations:

1. Gross receipts or sales reportable on line 1a of federal form 1120S, U. S. corporation income tax return for an S corporation.

2. Gross rents includable in computing the income from real estate and other rental activities reportable on lines 2 and 3a of schedule K on federal form 1120S.

3. Gross interest income reportable on line 4a of schedule K on federal form 1120S.

4. Gross dividends reportable on line 4b of schedule K on federal form 1120S.

5. Gross royalties includable in computing royalty income reportable on line 4c of schedule K on federal form 1120S.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on line 4 of federal form 1120S and lines 4d, 4e, 4f and 5 of schedule K on federal form 1120S.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(e) "Gross receipts from farming, of individuals, estates, trusts and partnerships engaged in farming" means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on lines 1, 4, 5a, 6a, 7a, 8a and 9 of federal schedule F, profit or loss from farming.

2. The gross sales price of farm assets, including livestock, includable in computing ordinary income or loss on federal form 4797, sales of business property.

(f) "Gross receipts of exempt organizations taxable as trusts" means the total receipts or sales from all trade or business activities other than farming, reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include any of the following:

1. Gross receipts or sales reportable on line 1a of federal form 990−T, exempt organization business income tax return.

2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990−T.

3. Gross rents includable in computing rent income on line 6 of federal form 990−T.

4. Gross income from unrelated debt−financed property includable in computing unrelated debt−financed income on line 7 of federal form 990−T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990−T

6. Gross investment income includable in computing investment income on line 9 of federal form 990−T.

7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990−T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990−T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(g) "Gross receipts of individuals, estates, trusts and statutory employees" means the total receipts or sales from all trade or business activities other than farming, reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include any of the following:

1. Gross receipts or sales reportable on line 1 of federal schedule C, profit or loss from business.

2. Gross receipts reportable on line 1 of federal schedule C−EZ, net profit from business.

3. The gross sales price of assets includable in computing ordinary income or loss on federal form 4797, sales of business property.

Note: See par. (e) for information relating to individuals, estates and trusts engaged in farming.

(h) "Gross receipts of partnerships" means the total receipts or sales from all trade or business activities other than farming, reportable by partnerships for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include the sum of the following:

1. Gross receipts or sales reportable on line 1a of federal form 1065, U. S. partnership return of income.

2. Gross receipts, other than farm receipts, passed through from other partnerships and fiduciaries and includable in computing the amount on line 4 of federal form 1065.

3. The gross sales price from the sale or disposition of business assets, other than farm assets, includable in computing the net gain or loss on line 6 of federal form 1065.

4. Gross receipts from the rental of tangible personal property.

5. Other gross receipts includable in computing other income or loss on line 7 of federal form 1065.

Note: See par. (e) for information relating to partnerships engaged in farming.

Note: Section Tax 2.32 interprets subch. VII of ch. 77, Stats.

Note: Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9, to replace the expired temporary recycling surcharge with a recycling surcharge, effective for taxable years beginning on or after January 1, 2000. This section applies to the recycling surcharge imposed for taxable years beginning on or after January 1, 2000.

Note: Cr. Register, August, 2000, No. 536, eff. 9−1−00.

Tax 2.39 Apportionment method. (1) GENERAL. Except as provided in sub. (3) (a), any person, except resident individuals, resident estates and resident trusts, engaged in business both within and without Wisconsin shall report by the statutory apportionment method when the person's business in Wisconsin is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

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

(2) DEFINITIONS. In this section:

(a) "Apportionable income" has the meaning in s. 71.25 (5) (a), Stats.

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

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

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

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

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

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

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

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

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

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

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

(f) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States. A foreign country is not a state.

(3) APPORTIONMENT FRACTION. (a) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04 (8) and 71.25 (10), Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25 (14), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04 (1) and (4) or 71.25 (5) (b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

1. If either the property factor or payroll factor is omitted, the other factor shall represent $33^1/_3$% of the fraction and the sales factor shall represent $66^2/_3$% of the fraction.

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

Note: See ss. Tax 2.46, 2.47, 2.475, 2.48, 2.49, 2.50 and 2.505 for special apportionment fractions of interstate air carriers, motor carriers, railroads, sleeping car companies, car line companies, pipelines, finance companies, public utilities and professional sports clubs.

(b) The apportionment method may be used only if the taxpayer has nexus in Wisconsin and at least one other state or foreign

country and its business within Wisconsin is an integral part of a unitary business.

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

Note: See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations.

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

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

(b) *Owned property.* Property owned by the taxpayer is valued at its original cost for purposes of computing the property factor. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes, prior to any adjustments, at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements to the property and partial disposition of the property, by reason of sale, exchange, abandonment or other means. If the original cost of property is unascertainable, the property shall be included in the factor at its fair market value as of the date of acquisition by the taxpayer. Any subsequent adjustments, other than depreciation or amortization, to net income which affect property, such as capitalizations of repairs and adjustments to inventory, shall also be included in the property factor. The original cost of depletable property such as mines, oil and gas wells and timber shall be reduced by any extraction to the extent that cost depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes. Pollution abatement equipment or waste treatment facilities written off as an expense under s. 71.04 (2b) and (2g), 1985−86 or prior years Stats., but still in use, shall be included at original cost.

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

(c) *Rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined at arm's length for purposes of computing the property factor. Net annual rental is the annual rental paid by the taxpayer, or allocated by the department pursuant to s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., less any annual rental received by the taxpayer from sub−rentals. In exceptional cases this definition of net annual rental may result in a negative value or clearly inaccurate valuation. In these exceptional instances, any other method which will properly reflect the net annual rental value may be required by the department or may be requested by the taxpayer; however, in no case may the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the rental value of the part of the property used by the taxpayer in the production of apportionable income bears to the total rental value of the same rental property.

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

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

2. Is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

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

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities or janitor services. If a payment includes rent and other charges unsegregated, such as rental charges for public warehouses, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services in Wisconsin for at least 5 days during the year. The compensation of any one employee may not be split between 2 or more states during the year; however, this does not apply if the employee is transferred or changes positions during the year.

(c) *Compensation.* Compensation includes:

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

2. The value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll factor is computed. In the case of employees not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employees shall be made as though the employees are subject to the federal internal revenue code.

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

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

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

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

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

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

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

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

(b) *Sales of tangible personal property attributable to Wisconsin.* 1. Gross receipts from the sales of tangible personal property, except sales to the federal government as described in subd. 4., are in Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin regardless of the f.o.b. point or other conditions of the sales. Some situations in which property is considered to be delivered or shipped to a purchaser within Wisconsin are if:

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

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

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

referred to as "dock sales," which are those sales where a purchaser uses its owned or rented vehicles or a common carrier it has made arrangements with to take delivery of the product at the seller−taxpayer's shipping dock.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. With respect to sales to the federal government:

a. For the taxable years beginning on or after January 1, 1989, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, in Wisconsin regardless of the f.o.b. point or other conditions of sale. For purposes of this section, only sales for which the federal government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the federal government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the federal government, do not constitute sales to the federal government.

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

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

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

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

2. Under ss. 71.04 (7) (d) and 71.25 (9) (d), Stats., gross receipts are attributed to Wisconsin if the income producing activity which gave rise to the receipts is performed wholly within Wisconsin. If the income producing activity is performed within and without Wisconsin, the receipts are attributed to Wisconsin in accordance with subd. 5.

3. For purposes of this paragraph, "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. This activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes but is not limited to the following:

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

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

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

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

4. For purposes of this paragraph, "costs of performing"means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

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

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tax the business. The following are special rules for determining when receipts from certain income producing activities are in Wisconsin during the taxable year:

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

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

c. Gross receipts from the performance of personal services are attributable to Wisconsin if the services are performed entirely in Wisconsin. If the services are performed partly within and partly without Wisconsin, gross receipts shall be attributable to Wisconsin based upon the ratio which compensation and other direct costs of performing the services in Wisconsin bear to total compensation and other direct costs of performing the services in all states having jurisdiction to tax the business during the taxable year. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to Wisconsin if the compensation related to performing the services is allocated to Wisconsin by s. 71.04 (6) (b) or 71.25 (8) (b), Stats.

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

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

Note: Section Tax 2.39 interprets ss. 71.04 (4), (5), (6), (7), (9), (10) and (11) and 71.25 (5), (6), (7), (8), (9), (11) and (12), Stats.

History: Cr. Register, August, 1973, No. 212, eff. 9−1−73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12−1−73; cr. (intro.), Register, January, 1978, No. 265, eff. 2−1−78; r. and recr. Register, June, 1991, No. 426, eff. 7−1−91; am. (2) (f), (4) (c), (cm) 2. a. and (f), r. (6) (b) 2. b., renum. (6) (b) 2. c. to be (6) (b) 2. b., Register, May, 1995, No. 473, eff. 6−1−95; emerg. am. (3) (a) (intro.), eff. 9−19−98; am. (3) (a) (intro.), Register, March, 1999, No. 519, eff. 4−1−99.

Tax 2.395 Alternative method of apportionment. **(1)** DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of part or all of its property and employees to one or more subsidiaries in exchange for 100% of the subsidiary's stock.

(b) "Corporation" means a corporation for profit that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23 (1) or (2), Stats.

(c) "Subsidiary" means a corporation that files an application under this section with a corporation that directly or indirectly owns 100 % of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25 (6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have owed if corporate restructuring had not occurred and results in at least $2 million of additional Wisconsin tax liability.

Note: This definition applies only for purposes of s. 71.25 (14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23 (1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation together with its subsidiary may file an application on or before January 1, 2000 to use an alternative method of apportionment under this section if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25 (10) (a), Stats., a public utility as defined in s. 71.25 (10) (b), Stats., or a tax−option corporation as defined in s. 71.34 (2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) The corporation retains direct or indirect ownership of 100% of the subsidiary's stock and the subsidiary has not been engaged in business in or outside this state since the date of its incorporation.

(d) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25 (6), Stats., would result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) CONTENT OF THE APPLICATION. The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the present method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liabil-

ity of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is being audited by the department at the time of the application.

Note: The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708−8933.

(4) ALTERNATIVE METHODS OF APPORTIONMENT. The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.

2. If the customer receives the benefit of the service in more than one state, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25 (14) (c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. (a) Except as provided in par. (b), once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the alternative apportionment method is no longer appropriate as determined under sub. (7) (b).

(b) Notwithstanding par. (a), the aggregate of the corporation's and the subsidiaries' Wisconsin tax liability shall be the greater of the Wisconsin tax liability calculated using the approved alternative apportionment or the Wisconsin tax liability calculated as if the corporate restructuring had not taken place.

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT. (a) 1. If the department upon audit or review finds that the use of the apportionment method prescribed in s. 71.25 (6), Stats., does not result in an unfair representation of the degree of business activity in this state for the first taxable year for which an alternative method of apportionment was approved, the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25 (6), Stats.

2. If the department upon audit or review finds that the use of the alternative apportionment method in subsequent taxable years is no longer appropriate as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25 (6), Stats., for each of the subsequent taxable years.

(b) In determining whether a corporation may continue to use the alternative method of apportionment, the department shall look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25 (6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub. (8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment method, in a subsequent taxable year the corporation may request a new alternative method of apportionment. The department shall submit the new proposed alternative method of apportionment to the co−chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25 (14) (c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub. (6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25 (6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material relative to its business activity. The returns shall be filed with the department's audit bureau.

Note: The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

Note: Section Tax 2.395 interprets s. 71.25 (14), Stats.

History: Emerg. cr. eff. 9−19−98; cr. Register, March, 1999, No. 519, eff. 4−1−99.

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

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

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

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

Note: Section Tax 2.41 interprets ss. 71.04 (4) and 71.25 (6), Stats.

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

Tax 2.44 Permission to change basis of allocation. Except when income must be reported on the apportionment basis, permission to make a change either from separate accounting to apportionment, or vice versa shall be obtained in writing from the department upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708−8906 before the end of the tax year for which the change is desired.

Note: Section Tax 2.44 interprets ss. 71.04 (4) and 71.25 (6), Stats.

History: 1−2−56, am. Register, September, 1964, No. 105, eff. 10−1−64; am. Register, February, 1975, No. 230, eff. 3−1−75; am. Register, September, 1983, No. 333, eff. 10−1−83; corrections made under s. 13.93 (2m) (b) 6., Stats., Register, March, 1999, No. 519.

Tax 2.45 Apportionment in special cases. When the business of any person, other than an interstate professional sports club or "financial organization" or"public utility," as defined in s. 71.25 (10), Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of the person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in s. 71.25 (6), Stats., or by separate accounting in view of the unitary nature of the business, the department will substitute in the place of some or all of the statutory apportionment factors another factor or other factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation the taxpayer, at the time of the assessment, will be apprised of the factors used in the formula adopted.

Note: Section Tax 2.45 interprets s. 71.25 (12), Stats.

History: Cr. Register, December, 1956, No. 12, eff. 1−1−57; am. Register, August, 1973, No. 212, eff. 9−1−73; am. Register, September, 1983, No. 333, eff. 10−1−83; am. Register, July, 1989, No. 403, eff. 8−1−89.

Tax 2.46 Apportionment of business income of interstate air carriers. The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

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

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

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

Note: Section Tax 2.46 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

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

Tax 2.47 Apportionment of net business incomes of interstate motor carriers. (1) DEFINITION. In this section, "ton mile" means the movement of one ton of persons or property, or both, the distance of one mile. For carriage of persons, each person shall be considered the equivalent of 200 pounds.

(2) GENERAL. For taxable years beginning on or after January 1, 1997, the apportionable income of an interstate motor carrier of persons or property, or both, doing business in Wisconsin, shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 factors:

(a) The ratio of the gross receipts from carriage of persons or property, or both, first acquired for carriage in Wisconsin to the total gross receipts from carriage of persons or property, or both, everywhere.

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

(3) SUBSTITUTION OF FACTORS. Whenever gross receipts data is not available the department may authorize or direct substitution of a similar factor, such as gross tonnage, and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor, such as revenue miles.

(4) MERCANTILE AND MANUFACTURING BUSINESSES. This section does not apply to any mercantile or manufacturing business which engages in some interstate carriage as an incident of the mercantile or manufacturing business.

Note: Section Tax 2.47 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Cr. Register, April, 1966, No. 124, eff. 5−1−66; am. (intro.). Register, August, 1973, No. 212, eff. 9−1−73; r. and recr. Register, October, 1996, No. 490, eff. 1−1−97.

Tax 2.475 Apportionment of net business incomes of interstate railroads, sleeping car companies and car line companies. (1) DEFINITIONS. In this section:

(a) "Gross receipts from carriage" means gross receipts received for the carriage of property or persons net of interline payments made to other railroads as a result of the interchange of carriage between and among railroads. Gross receipts from carriage includes interline payments received from other railroads.

(b) "Revenue ton mile" means the movement of one net ton of property or persons, or both, the distance of one mile, for consideration. For carriage of persons, each person shall be considered the equivalent of 150 pounds, and the average weight of the contents of head end cars, or "baggage cars," is considered to be 4 tons.

(2) INTERSTATE RAILROADS AND SLEEPING CAR COMPANIES. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income for taxable years beginning on or after January 1, 1991, the income of a railroad or sleeping car company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 factors:

(a) The ratio of the gross receipts from carriage of property or persons, or both, first acquired for carriage in Wisconsin to the total gross receipts from carriage of property or persons, or both, everywhere.

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

(3) SUBSTITUTION OF FACTORS. Whenever gross receipts data is not available the department may authorize or direct substitution of a similar factor, such as gross tonnage, and whenever revenue ton mile data is not available the department may similarly authorize substitution of a similar factor, such as revenue miles.

(4) CAR LINE COMPANIES. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income for taxable years beginning on or after January 1, 1991, the

income of a car line company operating within and without Wisconsin shall be allocated or apportioned to Wisconsin as provided in s. 71.04 (4) or 71.25 (6), Stats., and s. Tax 2.39.

Note: Section 71.26 (1) (a), Stats., was amended by 1991 Wis. Act 39, effective for taxable years beginning on or after January 1, 1991. For taxable years beginning before January 1, 1991, railroads, sleeping car companies and car line companies were exempt from Wisconsin franchise and income taxation.

Note: Section Tax 2.475 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Emerg. cr. eff. 2−17−92; cr. Register, August, 1992, No. 440, eff. 9−1−92.

Tax 2.48 Apportionment of net business incomes of interstate pipeline companies. (1) GENERAL. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income, the income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the 3 factors in subs. (3), (4) and (5).

(2) DEFINITIONS. In this section:

(a) "Compensation" includes:

1. Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

2. The value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll factor is computed. In the case of employees not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employees shall be made as though the employees are subject to the federal internal revenue code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., to a related corporation, as defined in section 267 (f) (1) of the internal revenue code, as consideration for the performance of personal services. The recipient of these fees may not include the compensation paid to its employees with respect to the personal services in either the numerator or denominator of its payroll factor.

(b) "Traffic unit" means the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, or other appropriate measure of product.

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

(b) *Valuation.* Property owned by the taxpayer is generally valued at its cost net of depreciation and write−offs as determined for Wisconsin franchise or income tax purposes. Any adjustments to net income which affect property, such as capitalizations of repairs, depreciation or amortization adjustments and adjustments to inventory, shall also be included in the property factor. The value of depletable property, such as mines, oil and gas wells and timber, shall be original cost reduced by any extraction to the extent that depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin franchise or income tax purposes. In any case in which the property factor is distorted by reason of the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, or in any case in which the Wisconsin net cost cannot be ascertained, the department shall authorize or direct some other method of determining the property fraction that will produce an equitable result.

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

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

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

(4) PAYROLL FACTOR. (a) *Numerator; denominator.* The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income. The denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income.

(b) *Compensation paid in Wisconsin.* Except as provided in par. (c), compensation is paid in Wisconsin if one of the following applies:

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

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

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

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

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

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

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

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in

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Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

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

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

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

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

(c) *Management fee situs.* The situs of management or service fees described in sub. (2) (a) 3. is in Wisconsin to the extent the related corporation's employees performing the services meet one of the requirements in par. (b).

(d) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services for at least 5 days during the year. The compensation of any one employee may not be split between 2 or more states during the year; however, this does not apply if the employee is transferred or changes positions during the year.

(e) *Excluded compensation.* Compensation related to the operation, maintenance, protection or supervision of real or tangible and intangible personal property used in the production of nonapportionable income, and amounts paid to retired employees shall be excluded from both the numerator and the denominator of the payroll factor. Except for management or service fees paid to a related corporation, payments made to an independent contractor or any other person not properly classifiable as an employee are also excluded.

(f) *Elimination of factor.* In any case in which the company has no employees nor pays management or service fees to a related corporation, or in which the department determines that employees are not a substantial income producing factor, the department may order or permit the elimination of the payroll factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

(5) TRAFFIC UNIT FACTOR. The numerator shall be the total number of traffic units in Wisconsin during the tax period. The denominator shall be the total number of traffic units everywhere during the tax period.

Note: Section Tax 2.48 interprets s. 71.25 (10) (c), Stats.

History: Cr. Register, November, 1969, No. 167, eff. 12−1−69; am. (intro.), Register, August, 1973, No. 212, eff. 9−1−73; am. (1) (intro.), r. (1) (a), (b) and (c), r. and recr. (2), cr. (3), (4) and (5), Register, June, 1991, No. 426, eff. 7−1−91; reprinted to restore dropped copy in (3) (e), Register, March, 1999, No. 519.

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

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

(b) The ratio of the total compensation paid to employees located in this state to the total compensation paid to employees located everywhere, determined in accordance with the provisions of ss. 71.04 (6) and 71.25 (8), Stats., and s. Tax 2.39 (5). "Compensation paid to employees" includes deductible management or service fees paid to a related corporation directly or indirectly for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employees with respect to such personal services in either the numerator or denominator of its payroll factor.

(2) If the leasing of tangible personal property represents a substantial source of business (apportionable) income, in addition to the "gross receipts" described in sub. (1) (a), the department may authorize or direct the use of any other method to effect an equitable apportionment of the taxpayer's income.

(3) The term "finance company" means any "financial organization" defined in ss. 71.04 (8) (a) and 71.25 (10) (a), Stats., except any type of insurance company.

Note: Section Tax 2.49 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Cr. Register, August, 1973, No. 212, eff. 9−1−73; am. (1) (b), Register, July, 1978, No. 271, eff. 8−1−78; corrections in (1) (b) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1999, No. 519.

Tax 2.50 Apportionment of net business income of interstate public utilities. (1) Except as provided in sub. (2), the apportionable income of "public utilities", as defined in s. 71.04 (8) (b) or 71.25 (10) (b), Stats., operating within and without Wisconsin, shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the 3 ratios provided in s. 71.04 (5), (6) and (7) or 71.25 (7), (8) and (9), Stats., and s. Tax 2.39.

(2) The apportionable income of interstate air carriers, interstate motor carriers and interstate pipeline companies shall be apportioned to Wisconsin as provided in ss. Tax 2.46, 2.47 and 2.48, respectively.

Note: Section Tax 2.50 interprets ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.

History: Cr. Register, August, 1973, No. 212, eff. 9−1−73; am. (1), Register, February, 1990, No. 410, eff. 3−1−90.

Tax 2.505 Apportionment of net business income of interstate professional sports clubs. The apportionable income of professional sports clubs engaged in income producing activities both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using an apportionment fraction composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined as follows:

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

(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), Stats., and s. Tax 2.39 (4). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71−137, Cum. Bull., 1971−1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) SALES FACTOR. The sales factor is a fraction as defined in s. 71.25 (9), Stats. Sales shall be included in the factor in accord-

ance with s. 71.25 (9), Stats., s. Tax 2.39 (5) and the following rules:

(a) *Gate receipts.* Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numerator of the sales fraction for taxpayers whose home facility is in Wisconsin shall include all gate receipts from games played in its home facility. The numerator of the sales fraction for taxpayers whose home facility is outside Wisconsin shall include the percentage of gate receipts received from games played in Wisconsin.

(b) *Radio and television receipts.* Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in Wisconsin in proportion to the number of games played in Wisconsin to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in Wisconsin if the games are played in Wisconsin.

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

(d) *Player contracts, franchises, etc.* Income from player contract transactions, franchise fees, and other similar sources shall be excluded from the numerator and the denominator of the sales fraction.

Note: Section Tax 2.505 interprets s. 71.25 (6), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1−1−81; am. (1) to (3) (intro.), (c) and (d), Register, July, 1989, No. 403, eff. 8−1−89.

Tax 2.82 Nexus. (1) DEFINITIONS. In this rule:

(a) "Representative" does not include an independent contractor. A person may be considered a representative even though he or she may not be considered an employee for other purposes such as the withholding of income tax from commissions. If a person is subject to the direct control of the foreign corporation, he or she may not qualify as an independent contractor under P. L. 86−272. *(Herff Jones Company v. State Tax Commission,* Oregon Supreme Court, August 23, 1967, 430 P. 2d 998.)

(b) "Business location" includes a repair shop, parts department, purchasing office, employment office, warehouse, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employees or customers. A residence of an employee or representative is not ordinarily considered a business location of the employer unless the facts indicate otherwise. It could be considered a business location under one or more of the following conditions: a portion of the residence is used exclusively for the business of the employer, the employee is reimbursed or paid a flat fee for the use of this space by the employer; the employee's phone is listed in the yellow pages under the name of the employer; the employee uses supplies, equipment or samples furnished by the employer; or the space is used by the employee to interview prospective employees, hold sales meetings, or discuss business with customers.

(2) BACKGROUND. (a) Every domestic corporation (one incorporated under Wisconsin's laws), except those exempt under s. 71.01 (3), Stats., and every "licensed" foreign corporation (one not incorporated in Wisconsin) is required to file a complete corporation franchise/income tax return (form 4 or 5) regardless of whether or not business was transacted.

(b) A foreign corporation is "licensed" if it has obtained a Certificate of Authority from the Wisconsin secretary of state to transact business in this state pursuant to s. 180.801, Stats. A "licensed" foreign corporation is presumed to be subject to Wisconsin franchise/income taxes.

Note: 1989 Wis. Act 303 repealed s. 180.801, Stats.

(c) An unlicensed foreign corporation is subject to Wisconsin franchise/income taxes if it has "nexus" with Wisconsin. The purpose of this rule is to provide guidelines for determining what constitutes "nexus", that is, what business activities are needed for a foreign corporation to be subject to Wisconsin franchise/income taxes.

(3) FEDERAL LIMITATIONS ON TAXATION OF FOREIGN CORPORATIONS. (a) *Federal constitutional provisions.* 1. Article I, Section 8 of the U.S. Constitution grants congress the power to regulate commerce with foreign nations and among the several states. States are prohibited from levying a tax which imposes a burden on interstate or foreign commerce. However, this does not mean states may not impose any tax on interstate commerce. A state tax on net income from interstate commerce which is fairly attributable to the state is constitutional. (*Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S. Ct. 357.)

2. Section I of the 14th Amendment protects taxpayers within any class against discrimination and guarantees a remedy against illegal taxation.

(b) *Federal Public Law 86−272.* 1. Under Public Law 86−272, a state may not impose its franchise/income tax on a business selling tangible personal property, if the *only* activity of that business is the solicitation of orders by its salesperson or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be *limited* to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation under Public Law 86−272 is lost.

2. This law, enacted by congress in 1959, does not extend to:

a. Those businesses which sell services, real estate or intangibles in more than one state;

b. Domestic corporations; or

c. Foreign nation corporations, i.e., those not incorporated in the United States.

3. If the *only* activities in Wisconsin of a foreign corporation selling tangible personal property are those described in subd. 3. a. and b. such corporation is not subject to Wisconsin franchise/income taxes under P.L. 86−272:

a. Usual or frequent activity in Wisconsin by employees or representatives soliciting orders for tangible personal property which orders are sent outside this state for approval or rejection.

b. Solicitation activity by non−employe independent contractors, conducted through their own office or business location in Wisconsin.

(4) WHAT CONSTITUTES "NEXUS". (a) *Factors.* If a foreign corporation has one or more of the following activities in Wisconsin, it is considered to have "nexus" and shall be subject to Wisconsin franchise/income taxes:

1. Maintenance of any business location in Wisconsin, including any kind of office.

2. Ownership of real estate in Wisconsin.

3. Ownership of a stock of goods in a public warehouse or on consignment in Wisconsin.

4. Ownership of a stock of goods in the hands of a distributor or other non−employe representative in Wisconsin, if used to fill orders for the owner's account.

5. Usual or frequent activity in Wisconsin by employees or representatives soliciting orders with authority to accept them.

6. Usual or frequent activity in Wisconsin by employees or representatives engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, repair of equipment).

7. Operation of mobile stores in Wisconsin (such as trucks with driver−salespersons), regardless of frequency.

8. Miscellaneous other activities by employees or representatives in Wisconsin such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for

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customer personnel in the operation, repair and maintenance of the taxpayer's products.

9. Leasing of tangible property and licensing of intangible rights for use in Wisconsin.

10. The sale of other than tangible personal property such as real estate, services and intangibles in Wisconsin.

11. The performance of construction contracts and personal services contracts in Wisconsin.

(b) *How to obtain ruling.* The guidelines in par. (a) as to what activities constitute "nexus" should not be considered all−inclusive. A ruling may be requested about a particular foreign corporation as to whether it is subject to Wisconsin franchise/income taxes by writing to the Wisconsin Department of Revenue, Audit Technical Services Section, P.O. Box 8906, Madison, WI 53708.

Note: Section Tax 2.82 interprets ss. 71.01 (1) and (2) and 71.10 (1), Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2−1−79; correction in (3) (b) 1. made under s. 13.93 (2m) (b) 5., Stats., Register, November, 1993, No. 455.

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

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, 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 taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

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

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

(b) The taxpayer's financial condition.

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

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

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

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

Note: Section Tax 2.87 interprets s. 71.13 (1) (b), Stats.

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

Tax 2.88 Interest rates. (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: 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.

Note: 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.

Note: Section Tax 2.88 interprets ss. 71.03 (7), 71.24 (7), 71.44 (3), 71.82 (1) and (2) (a) and 71.90 (1), Stats.

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. (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.

Note: 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.

(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.

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.

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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	$156,947
Applicable percentage	22.5%	45%	90%
Portion of annualized tax	$ 16,639	$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	$ 16,639	$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.

Note: Section Tax 2.89 interprets ss. 71.09 (9) and 71.29 (5), Stats.

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

Tax 2.90 Withholding; wages. (1) The term"wages" means all remuneration for 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 of or 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.

Note: Section Tax 2.90 interprets ss. 71.63 and 71.66 (3), Stats.

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. (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.

Note: Section Tax 2.91 interprets ss. 71.64, 71.65 (1), 71.67 and 71.71 (1), Stats.

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. (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.

Note: 1987 Wis. Act 312 repealed s. 61.20 (22), 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

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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.

Note: 1987 Wis. Act 312 repealed s. 71.20 (16), Stats.

(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: 1987 Wis. Act 312 repealed s 71.20 (22), Stats.

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.

Note: Section Tax 2.92 interprets ss. 71.66 and 71.83 (1) (a) 5. and (b) 4. and (2) (a) 5., Stats.

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. (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.

Note: Section Tax 2.93 interprets ss. 71.63 (6) (j) and 71.64 (1) (a), 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. (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.

Note: Section Tax 2.935 interprets s. 71.20 (5) (c), Stats.

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. (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 EMPLOYEE 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).

(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.

Note: Section Tax 2.94 interprets s. 71.05 (1) (a), Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5−1−78; r. (1) (a) and (3) (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. (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	$70,000	
	Gross profit percent	50%	
	Down payment received	$40,000	
	Profit reportable (50% x $40,000)	20,000	$20,000
	Total Wisconsin Income		$20,000
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 ($45,000 − $20,000)	25,000	25,000
Total Wisconsin Income			$55,000

Note: Section Tax 2.95 interprets ss. 71.01 (6) and 71.04 (1) (a), Stats.

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. (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.

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(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 1NPR. 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 1NPR:

(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.

Note: Section Tax 2.955 interprets s. 71.07 (7), Stats.

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) (cv) 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. (1) PURPOSE. This section clarifies the phrase *"first applies . . . for projects begun after December 31, 1988"* as used in the initial applicability of s. 71.07 (9m) and (9r), 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. 71.07 (9m) and (9r) 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.

Note: Section Tax 2.956 interprets ss. 71.07 (9m) and (9r), 71.28 (6) and (7) and 71.47 (5) and (6), Stats.

History: Emerg. cr. 12−28−88; cr. Register, June, 1989, No. 402, eff. 7−26−89; **corrections in (1) and (2) made under s. 193.93 (2m) (b) 7., Stats.**

Tax 2.96 Extensions of time to file corporation franchise or income tax returns. (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.

Note: Section Tax 2.96 interprets ss. 71.24 (7) and 71.44 (3), Stats.

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), renum. (2) (d) to be (2) (c), Register, February, 1990, No. 410, eff. 3−1−90; r. and recr. Register, December, 1995, No. 480, eff. 1−1−96.

Tax 2.97 Earned income credit eligibility. (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 section 1402 (a) of the internal revenue code, but net earnings shall be determined with regard to the deduction allowed to the person under section 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 section 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 section 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

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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 section 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 section 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.

Note: Section Tax 2.97 interprets s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats.

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

Tax 2.98 Disaster area losses. (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 casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

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

(2) (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: 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.

Note: 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).

Note: 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 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers, assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977. If the election was not made, the loss was deductible on the taxpayer's 1976 return.

Note: 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.

Note: Section Tax 2.98 interprets ss. 71.01 (6) and 71.22 (4), Stats.

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.