

## Chapter Tax 2

## INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

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**Tax 2.01 Residence.** (Section 71.01, Wis. Stats.) (1) The residence of a wife is that of her husband unless there is affirmative evidence to the contrary or unless the husband and wife are permanently separated. The residence of a minor child, unless emancipated, is that of its father, or of the mother, if the father is deceased.

(2) Individuals claiming a change of residence (domicile) from Wisconsin to another state shall file a "declaration of residence" with the Central Audit section of the Department of Taxation by delivery to 315 West Gorham Street, Madison, Wisconsin, or by mailing to Post Office Box 80, Madison, Wisconsin 53701, and shall furnish such other information as the department may require.

**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.

**Tax 2.02 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.021 History:** Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.03 Corporation returns.** For the purpose of filing franchise or income tax returns, the tax commissioner has designated the following forms for the use of corporations:

Form 4. Return of income for the calendar or fiscal year.

Form 4A. Balance sheets as of beginning and end of taxable year; analysis of surplus account; reconciliation of book income with net income reported.

Form 4B. Apportionment data (when applicable to the corporation).

Form 4C. Separate accounting data (when applicable to the corporation).

All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivered to the Corporation Section at 317 West Gorham Street, Madison, Wisconsin.

**Note:** Blank forms may be obtained from the department at the Processing Center, 149 East Wilson Street, Madison, or by mail request to P. O. Box 98, Madison, Wisconsin 53701.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.04 Information returns; forms WT-9, 9b and 9X for corporations.** (Sections 71.04 (1) and (2), 71.10 (1), (8m) and (8n) Wis. Stats.). All corporations carrying on activities within this state, whether taxable or not under this chapter, shall file with the department of taxation, on or before January 31 of each year on forms WT-9 or 9b statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, provided that salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in section 71.19 (1) Wis. Stats. Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9. Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments to residents and non-residents of Wisconsin of

rents and royalties on property in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b. The forms herein referred to must be filed on the date indicated regardless of the fact that the corporation keeps its records on a fiscal year other than the calendar year. No one of interest, dividends, rents or royalties needs to be reported if it is less than \$100.00. Each corporation must file with forms 8 or 9b, forms 9X showing the number of reports made on forms 8 or 9b. (See also Wis. Adm. Code section Tax 2.05). Items required to be reported on forms WT-9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

*Note:* Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin 53701.

(Corporations failing to file forms WT-9 or 9b as prescribed by law shall be subject to fine of not less than \$50.00 nor more than \$500.00. See section 71.11 (45), Wis. Stats.)

*History:* 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.05 Information returns, forms 8 for corporations.** (Section 71.10 (1), Wis. Stats.) All corporations doing business within this state, whether subject to the franchise or income tax or not, are required to file with the department of taxation by mailing to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivery to the Corporation Section at The Wisconsin Taxation Building, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8 as prescribed by the tax commissioner, statements of such transfers of capital stock as have been made by residents of Wisconsin during the preceding calendar year.

*Note:* Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin, 53701.

(Corporations failing to file such statements shall be subject to a fine of not less than \$50 or more than \$500. See section 71.11 (45), Wis. 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.

**Tax 2.06 Information returns required of partnerships and persons other than corporations.** (Sections 71.10 (8m) and 71.10 (8n), 71.10 (15) and 71.11 (25), Wis. Stats.) Informational returns reporting remuneration paid for services, whether or not within the definition of "wages" in section 71.19 (1), Wis. Stats., must be filed on or before January 31 of each year on forms WT-9 or 9b. Form WT-7 (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages) should accompany forms WT-9. Informational returns reporting other items such as interest paid or rent paid must be filed on or before April 15 of each year on forms 9b. Items required to be reported on informational returns will be disallowed as deductions from gross income if not properly reported. Such returns should be mailed to the Department of Taxation, P. O. Box 59, Madison, Wisconsin 53701 or delivered at The Wisconsin Taxation Building, 4638 University Avenue, Madison.

*Note:* Blank forms may be obtained by writing the Department of Taxation, Central Processing Center, P. O. Box 58, Madison, Wisconsin 53701 (149 E. Wilson Street).

*History:* 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.07 Income tax returns of dissolved corporations.** (Section 71.10 (1), Wis. Stats.) The officers of a corporation which has been dissolved during the income year must file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The final return must indicate the disposition of all corporate assets.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.08 Returns of persons other than corporations.** (1) For the purpose of filing income tax returns, the commissioner of taxation has designated the following forms for the use of persons other than corporations:

Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.

Form 1A. (Short form).

Form 2. For trustees, executors, administrators, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on form 1).

Form 3. For partnerships and joint ventures.

(2) Information returns required of persons other than corporations are specified in Wis. Adm. Code sections Tax 2.06 and Tax 3.63. See also Tax 3.07.

(3) Returns required to be filed by persons other than corporations shall be filed by mailing to P. O. Box 59, Madison, Wisconsin 53701, or delivery to Processing Center, Department of Taxation, Madison.

*Note:* Blank forms may be obtained by mail request to Wisconsin Department of Taxation, Processing Center, P. O. Box 58, Madison, Wisconsin 53701.

**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.

**Tax 2.09 Reproduction of forms.** Subject to the conditions set forth under this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions filed with the department in lieu of the corresponding official forms:

(1) The reproductions must be made by photo-offset, photo-engraving or by some similar photographic process. They may be reproduced on one side or both sides of the paper.

(2) The reproductions must be on paper of substantially the same color, weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may not, therefore, be reproduced on white paper.

(3) Since all of the official forms are printed in black ink, such printing must be reproduced in black.

(4) The size of the reproductions, both as to dimensions of the paper and image reproduced thereon, must be the same as that of the official form.

(5) All signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

**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.

Register, December, 1966, No. 132

**Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns.** (Section 71.10 (6), Wis. Stats.) It is deemed necessary for the administration of the tax imposed by chapter 71, Wis. Stats., that at the time of filing Wisconsin income tax returns for the taxable year 1965 and for taxable years thereafter by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year (including all schedules, statements, documents and computations) should be included and filed with the Wisconsin return. Accordingly, such complete copies of federal income tax returns are directed to be so filed except copies of the short form federal return which, at the time of adoption of this rule is designated as federal form 1040A.

**History:** Cr. Register, December, 1965, No. 120, eff. 1-1-66.

**Tax 2.11 Tax table** (Section 71.09 (3), Wis. Stats., applicable to the calendar year 1966 and corresponding fiscal years, and subsequent years).

To find your gross normal tax read down income columns until you find the line covering the net taxable income:

If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is
At Least	But Less Than		At Least	But Less Than		At Least	But Less Than		At Least	But Less Than	
\$ 0	\$ 50	\$ .70	\$3,720	\$3,760	\$119.60	\$6,270	\$6,300	\$245.70	\$8,325	\$8,350	\$377.80
50	100	2.00	3,760	3,800	121.30	6,300	6,330	247.50	8,350	8,375	379.60
100	150	3.40	3,800	3,840	122.90	6,330	6,360	249.20	8,375	8,400	381.40
150	200	4.70	3,840	3,880	124.60	6,360	6,390	250.90	8,400	8,425	383.20
200	250	6.10	3,880	3,920	126.30	6,390	6,420	252.60	8,425	8,450	385.00
250	300	7.40	3,920	3,960	128.00	6,420	6,450	254.30	8,450	8,475	386.80
300	350	8.80	3,960	4,000	129.70	6,450	6,480	256.00	8,475	8,500	388.60
350	400	10.10	4,000	4,035	131.30	6,480	6,510	257.70	8,500	8,525	390.40
400	450	11.50	4,035	4,070	133.00	6,510	6,540	259.40	8,525	8,550	392.20
450	500	12.80	4,070	4,105	134.60	6,540	6,570	261.10	8,550	8,575	394.00
500	550	14.20	4,105	4,140	136.30	6,570	6,600	262.80	8,575	8,600	395.80
550	600	15.50	4,140	4,175	137.90	6,600	6,630	264.60	8,600	8,625	397.60
600	650	16.90	4,175	4,210	139.50	6,630	6,660	266.30	8,625	8,650	399.40
650	700	18.20	4,210	4,245	141.20	6,660	6,690	268.00	8,650	8,675	401.20
700	750	19.60	4,245	4,280	142.80	6,690	6,720	269.70	8,675	8,700	403.00
750	800	20.90	4,280	4,315	144.50	6,720	6,750	271.40	8,700	8,725	404.80
800	850	22.30	4,315	4,350	146.10	6,750	6,780	273.10	8,725	8,750	406.60
850	900	23.60	4,350	4,385	147.80	6,780	6,810	274.80	8,750	8,775	408.40
900	950	25.00	4,385	4,420	149.40	6,810	6,840	276.50	8,775	8,800	410.20
950	1,000	26.30	4,420	4,455	151.10	6,840	6,870	278.20	8,800	8,825	412.00
1,000	1,050	27.70	4,455	4,490	152.70	6,870	6,900	279.90	8,825	8,850	413.80
1,050	1,100	29.20	4,490	4,525	154.40	6,900	6,930	281.70	8,850	8,875	415.60
1,100	1,150	30.70	4,525	4,560	156.00	6,930	6,960	283.40	8,875	8,900	417.40
1,150	1,200	32.20	4,560	4,595	157.60	6,960	6,990	285.10	8,900	8,925	419.20
1,200	1,250	33.60	4,595	4,630	159.30	6,990	7,000	285.90	8,925	8,950	421.00
1,250	1,300	35.10	4,630	4,665	160.90	7,000	7,025	287.30	8,950	8,975	422.80
1,300	1,350	36.60	4,665	4,700	162.60	7,025	7,050	289.00	8,975	9,000	424.60
1,350	1,400	38.10	4,700	4,735	164.20	7,050	7,075	290.70	9,000	9,025	426.30
1,400	1,450	39.50	4,735	4,770	165.90	7,075	7,100	292.40	9,025	9,050	428.10
1,450	1,500	41.00	4,770	4,805	167.50	7,100	7,125	294.00	9,050	9,075	429.90
1,500	1,550	42.50	4,805	4,840	169.20	7,125	7,150	295.70	9,075	9,100	431.70
1,550	1,600	44.00	4,840	4,875	170.80	7,150	7,175	297.40	9,100	9,125	433.50
1,600	1,650	45.40	4,875	4,910	172.40	7,175	7,200	299.10	9,125	9,150	435.30
1,650	1,700	46.90	4,910	4,945	174.10	7,200	7,225	300.70	9,150	9,175	437.10
1,700	1,750	48.40	4,945	4,980	175.70	7,225	7,250	302.40	9,175	9,200	438.90
1,750	1,800	49.90	4,980	5,015	177.30	7,250	7,275	304.10	9,200	9,225	440.70
1,800	1,850	51.30	5,015	5,040	178.80	7,275	7,300	305.80	9,225	9,250	442.50
1,850	1,900	52.80	5,040	5,070	180.40	7,300	7,325	307.40	9,250	9,275	444.30
1,900	1,950	54.30	5,070	5,100	181.90	7,325	7,350	309.10	9,275	9,300	446.10
1,950	2,000	55.80	5,100	5,130	183.50	7,350	7,375	310.80	9,300	9,325	447.90
2,000	2,050	57.30	5,130	5,160	185.00	7,375	7,400	312.50	9,325	9,350	449.70
2,050	2,100	58.90	5,160	5,190	186.60	7,400	7,425	314.10	9,350	9,375	451.50
2,100	2,150	60.50	5,190	5,220	188.20	7,425	7,450	315.80	9,375	9,400	453.30
2,150	2,200	62.10	5,220	5,250	189.70	7,450	7,475	317.50	9,400	9,425	455.10
2,200	2,250	63.70	5,250	5,280	191.30	7,475	7,500	319.20	9,425	9,450	456.90
2,250	2,300	65.30	5,280	5,310	192.80	7,500	7,525	320.80	9,450	9,475	458.70
2,300	2,350	66.90	5,310	5,340	194.40	7,525	7,550	322.50	9,475	9,500	460.50
2,350	2,400	68.50	5,340	5,370	196.00	7,550	7,575	324.20	9,500	9,525	462.30
2,400	2,450	70.10	5,370	5,400	197.50	7,575	7,600	325.90	9,525	9,550	464.10
2,450	2,500	71.70	5,400	5,430	199.10	7,600	7,625	327.50	9,550	9,575	465.90
2,500	2,550	73.30	5,430	5,460	200.60	7,625	7,650	329.20	9,575	9,600	467.70
2,550	2,600	74.90	5,460	5,490	202.20	7,650	7,675	330.90	9,600	9,625	469.50
2,600	2,650	76.50	5,490	5,520	203.80	7,675	7,700	332.60	9,625	9,650	471.30
2,650	2,700	78.10	5,520	5,550	205.30	7,700	7,725	334.20	9,650	9,675	473.10
2,700	2,750	79.70	5,550	5,580	206.90	7,725	7,750	335.90	9,675	9,700	474.90
2,750	2,800	81.30	5,580	5,610	208.40	7,750	7,775	337.60	9,700	9,725	476.70
2,800	2,850	82.90	5,610	5,640	210.00	7,775	7,800	339.30	9,725	9,750	478.50
2,850	2,900	84.50	5,640	5,670	211.60	7,800	7,825	340.90	9,750	9,775	480.30
2,900	2,950	86.10	5,670	5,700	213.10	7,825	7,850	342.60	9,775	9,800	482.10
2,950	3,000	87.70	5,700	5,730	214.70	7,850	7,875	344.30	9,800	9,825	483.90
3,000	3,040	89.30	5,730	5,760	216.20	7,875	7,900	346.00	9,825	9,850	485.70
3,040	3,080	91.00	5,760	5,790	217.80	7,900	7,925	347.60	9,850	9,875	487.50
3,080	3,120	92.70	5,790	5,820	219.40	7,925	7,950	349.30	9,875	9,900	489.30
3,120	3,160	94.40	5,820	5,850	220.90	7,950	7,975	351.00	9,900	9,925	491.10
3,160	3,200	96.10	5,850	5,880	222.50	7,975	8,000	352.70	9,925	9,950	492.90
3,200	3,240	97.70	5,880	5,910	224.00	8,000	8,025	354.40	9,950	9,975	494.70
3,240	3,280	99.40	5,910	5,940	225.60	8,025	8,050	356.20	9,975	10,000	496.50
3,280	3,320	101.10	5,940	5,970	227.20	8,050	8,075	358.00	10,000	10,025	498.30
3,320	3,360	102.80	5,970	6,000	228.70	8,075	8,100	359.80	10,025	10,050	500.10
3,360	3,400	104.50	6,000	6,030	230.40	8,100	8,125	361.60	10,050	10,075	501.90
3,400	3,440	106.10	6,030	6,060	232.10	8,125	8,150	363.40	10,075	10,100	503.70
3,440	3,480	107.80	6,060	6,090	233.80	8,150	8,175	365.20	10,100	10,125	505.50
3,480	3,520	109.50	6,090	6,120	235.50	8,175	8,200	367.00	10,125	10,150	507.30
3,520	3,560	111.20	6,120	6,150	237.20	8,200	8,225	368.80	10,150	10,175	509.10
3,560	3,600	112.90	6,150	6,180	238.90	8,225	8,250	370.60	10,175	10,200	510.90
3,600	3,640	114.50	6,180	6,210	240.60	8,250	8,275	372.40	10,200	10,225	512.70
3,640	3,680	116.20	6,210	6,240	242.30	8,275	8,300	374.20	10,225	10,250	514.50

## TAX ON INCOMES OF \$10,000 AND OVER

IF NET TAXABLE INCOME IS		GROSS TAX IS	
At least	But less than	This amt. + this %	on excess over
\$10,000 —	\$11,000.....	\$502.50 plus 8.2%	— \$10,000
11,000 —	12,000.....	584.50 plus 8.7%	— 11,000
12,000 —	13,000.....	671.50 plus 9.2%	— 12,000
13,000 —	14,000.....	763.50 plus 9.7%	— 13,000
14,000 —	.....	860.50 plus 10.0%	— 14,000

**History:** Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. and recr. Register, May, 1964, No. 101; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, December, 1966, No. 132, eff. 1-1-67.

**Tax 2.14 Aggregate personal exemption of husband and wife.** The aggregate personal exemption allowable to a husband and wife pursuant to section 71.09 (6) (a), Wis. Stats., when each files a return, may be divided between them according to their choice.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.15 Methods of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may return its income in accordance with the method of accounting regularly employed in keeping its books. If no method of accounting is regularly employed or if the method employed does not clearly reflect the income, the department of taxation may prescribe the method to be used. A method of accounting will not be regarded as clearly reflecting the income unless all items of gross income and all deductions are treated with reasonable consistency.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.16 Changes in method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department of taxation. Applications for such change must set forth clearly the nature of the business, the method of accounting used in keeping the books, and the reasons for changing the method of reporting. In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.17 Cash method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) The use of the cash method of accounting and reporting does not properly reflect taxable income in cases where, at the end of the taxable year, the records reflect accounts receivable, accounts payable, or inventories.

**Tax 2.18 Accrual method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor, inventories are necessary, and no accounting method in regard to purchases and sales will correctly reflect the income except the accrual

method. Special methods of accounting employed in special trades or businesses may, with the written approval of the department of taxation, be used in reporting income.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.19 Installment method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.). (1) Subject to the approval of the department of taxation, a sale or other disposition by a corporation of real property, or a casual sale or other casual disposition of personal property (other than personal property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year) for a price exceeding \$1000, may be returned on the installment basis in the case of a sale or other disposition in an income year beginning on or after January 1, 1967, provided that in the income year of the sale or other disposition there are no payments or the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30% of the selling price. On the installment basis there shall be returned as income from the installment sale in any income year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(2) Use of the installment method, in each instance, shall be conditional upon the implied agreement of the corporation to take into income in any year in which it distributes the installment obligation, the unreported balance of gain on the installment sale or exchange.

(3) The installment method shall not be permitted with respect to any installment sale or exchange made subsequent to adoption of a plan of liquidation to which section 71.337, Wis. Stats., applies.

(4) Corporations regularly engaged in the business of selling personal property and keeping records on the installment basis will be required to report for franchise or income tax purposes on the accrual basis.

(5) The expenses incident to each installment sale or exchange must be deferred on the same basis that the profit arising from the sale or exchange is deferred.

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

**History:** 1-2-56; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967.

**Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies.** (Section 71.11 (8), Wis. Stats.) (1) Except as otherwise provided in subsection (3) hereof, acceptance corporations and dealers in commercial paper must report the discount on the purchase of paper as income in the year of such purchase.

(2) Where the records of such acceptance corporations and dealers in commercial paper are kept upon the deferred profit basis, schedules should be attached to the tax returns clearly setting forth the unrealized profit accounts and reconciling the income and surplus per books with the taxable net income.

(3) Acceptance corporations and dealers in commercial paper may elect to report their taxable income on the deferred profit basis, pro-



vided that their books and records are kept on that basis and provided further that both the deferment of income and the expenses incurred in producing said income is made in accordance with accepted accounting principles and practice. The election to so report must be made before the close of the year for which the return is made, and after having made such election the deferred profit basis of reporting must be adhered to in all subsequent periods.

**Tax 2.21 Accounting for incorporated contractors.** (Section 71.11 (8), Wis. Stats.) (1) The general rules for reporting income on the accrual basis apply to incorporated contractors except that, in the case of contracts upon which work is performed in 2 or more consecutive income years, the percentage of completion basis may be used provided such basis clearly reflects the income taxable under chapter 71, Wis. Stats.

(a) Under this method of accounting at the close of the taxable year, a portion of the total contract price is treated as sales for the current period, such portion being based upon the percentage of completion, as determined by an engineer's or an architect's estimate or such other records as will most clearly reflect the income realized to date. By this method the difference between the sales thus determined and the total cost applicable to the sales is treated as taxable income.

(2) The profit on jobs taken on a cost plus basis and uncompleted at the close of a taxable year should be computed in accordance with

the terms of the contract and reported at that time, and cannot be deferred until the year in which the contract is completed.

(3) The income derived from construction contracts performed in Wisconsin is taxable. Records must be kept which will permit of a proper distribution of the tax paid on such income between taxation districts. Data must be submitted with the tax return indicating the basis for the distribution of the tax between taxation districts.

**History:** 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.22 Accounting for incorporated dealers in securities.** (Section 71.11 (8), Wis. Stats.) The income of dealers in securities can be properly reflected for income tax purposes only by use of the accrual method of accounting. As securities constitute the stock in trade, the inventories thereof must be taken consistently on a uniform basis conforming to that used in the trade or business.

**Tax 2.23 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.24 Accounting for incorporated retail merchants.** (Section 71.11 (8), Wis. Stats.) The "retail method" of treating inventories properly reflects the taxable income and will be acceptable when it is consistently followed and adequate records are kept. The difference between the inventory taken on the old basis and the inventory taken on the basis of the "retail method" will constitute taxable income or deductible expense for the year in which the change is made. Retail merchants should report all other items of income and expense upon the ordinary accrual method.

**Tax 2.25 Corporation accounting generally.** (Sections 71.11 (8) and 71.11 (9), Wis. Stats.) (1) In a business requiring the use of inventories, the income therefrom generally can be properly reflected by use of the accrual method of accounting, and inventories taken in accordance with the best accounting practice in the trade or business and used by the taxpayer to show his financial position can be accepted.

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

(b) Whether the cost or the lower of cost or market basis of valuing inventories is used, the basis adopted must be applied with reasonable consistency to the entire inventory, and no change from one basis to the other will be permitted without written permission from the department of taxation.

(2) Inventories and inventory records must be preserved as a part of the accounting records of the taxpayer and available for examination and verification.

**History:** 1-2-56; am. (1) (b), Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.26 "Last in, first out" method of inventorying for corporations.** (Section 71.11 (9), Wis. Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of section 71.11 (9), Wis. Stats., may elect with respect to those goods specified in its application and properly subject to inventory to compute its inventory

in accordance with the method provided by section 472 of the United States internal revenue code, provided that:

(1) The first inventory which may be computed on said basis is the closing inventory for the taxable year 1940.

(2) The same basis of inventorying is used in reporting income for taxation to the United States bureau of internal revenue, and that the inventories used in reporting income to the United States bureau of internal revenue and to the Wisconsin department of taxation agree both as to computation and amounts except as provided in subsection (7).

(3) Except as herein otherwise provided, the change to and the use of such method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect thereto by the United States bureau of internal revenue.

(4) An application to use such method must be filed with the Wisconsin department of taxation in substantially the same form as required by the bureau of internal revenue, and the same shall be filed with the return for the taxable year in which the change is to be made effective. The opening inventory for the period in which the election to change is exercised shall be taken on the basis previously accepted and approved.

(5) There shall be applicable for Wisconsin income tax purposes, in addition to those regulations of the United States bureau of internal revenue made generally applicable by subsection (3) hereof, that regulation, authorized by section 1321 of the internal revenue code, concerning involuntary liquidation and replacement of inventories, except, however, that income adjustments for the difference between the replacement cost and the original inventory cost of the base stock inventory liquidated shall be made to the net income of the year in which the replacement is made instead of to the net income for the year of liquidation. (5 effective June 5, 1946).

(6) Except as provided in subsection (7), any corporation which has been computing its inventory for Wisconsin income tax purposes in accordance with section 472 of the United States internal revenue code and which has been authorized or directed by the United States commissioner of internal revenue to change its method of inventory valuation for federal income tax purposes shall also change its method of inventory valuation for Wisconsin income tax purposes. To correlate its Wisconsin basis with the federal basis, the opening inventory for the income year in which the change is made shall be reported on the basis previously accepted and approved whereas the closing inventory shall be on the new method of valuation. No adjustment is to be made to the closing inventory of the preceding taxable year. Notice of the change in method shall be filed with the return on which it is effective and shall be supported by a copy of the authorization or order to change inventory method for federal income tax purposes.

(7) Any corporation which has been authorized or directed by the United States Commissioner of Internal Revenue to treat the cutting of timber as a sale or exchange of timber for purposes of computing its federal income tax liability and has included in its inventory for federal income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, may exclude from its

inventory, for Wisconsin income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of taxation, include such excess in its inventory for Wisconsin income tax purposes subject to such conditions as said department may prescribe.

**History:** 1-2-56; am. (2) and (6), and cr. (7), Register, March, 1960, No. 51, eff. 4-1-60; am. intro. par., (6) and (7), Register, March, 1966, No. 123, eff. 4-1-66.

### *DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS*

**Tax 2.41 Separate accounting method.** (Section 71.07 (2), Wis. Stats.) (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. 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 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.

(a) 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. Such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation. All expenses connected with the interest, dividends and rentals realized from investments such as the above are not subject to allocation but must be applied against the investment income. The taxability of the net investment income depends upon the situs of the investment property or the residence of the recipient.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58.

**Tax 2.42 Apportionment method.** (Section 71.07 (2), Wis. Stats.) Any person engaged in business within and without the state must report by the statutory apportionment method when the business of such person within the state is an integral part of a unitary business, unless the department of taxation expressly permits reporting on a different basis. The factors used in the apportionment method are as follows:

(1) Tangible property includes land, buildings, machinery and equipment, inventories and other tangible personal property actually owned and used in producing apportionable income. Tangible property

which is used in producing nonapportionable or nontaxable income cannot be included in the property factor. The value at which tangible property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

(2) The cost of manufacturing, collecting, assembling or processing within Wisconsin must be determined in all cases in the same manner and under the same rules as the cost for the entire business within and without Wisconsin is determined. When a product is partially completed outside of the state and then shipped into the state for further processing or completion, only the labor and manufacturing expense incurred from the time that the product is brought into the state becomes a part of the cost within Wisconsin, and the total material used in manufacturing both within and without the state shall be allocated on some equitable basis such as the ratio of direct labor and manufacturing expense within Wisconsin to the total thereof. Unless inconsistent with the best accounting practice in the trade or business, amounts realized on the sale of scrap produced in the manufacturing process shall be treated as a recovery of, and in reduction of, cost of manufacturing, for purposes of the cost of manufacturing factor.

(3) Sales are made in Wisconsin if made through or by offices, agencies or branches located within the state, regardless of the location of the purchaser. Sales made by a foreign corporation to customers in Wisconsin through the medium of solicitors or traveling salesmen are not Wisconsin sales unless such salesmen are identified with offices, agencies or branches located within Wisconsin. Sales made by a sales office in Wisconsin to customers located outside of Wisconsin are Wisconsin sales for purposes of apportionment. Goods sold through a sales office in Wisconsin may be shipped direct from a factory located outside the state to a customer located outside the state and still be Wisconsin sales. Goods sold through a sales office located outside of the state without the intervention of any Wisconsin office, branch or agency but shipped from a factory located in Wisconsin to a Wisconsin customer are not Wisconsin sales. As used in section 71.07 (2) (c), Wis. Stats., and in this regulation, the term "sales" shall extend to and include by-product sales, but shall not include scrap sales treated as a reduction of cost of manufacturing pursuant to subsection (2) hereof.

**History:** 1-2-56; am. (2) and (3), Register, January, 1968, No. 145, eff. 2-1-68.

#### **Tax 2.43 Nonapportionable income. (Section 71.07 (2), Wis. Stats.)**

(1) The expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. In the case of dividends and interest received which follows the residence of the recipient, only the excess of the amounts received over the sum of interest paid and dividends deducted plus other related expenses can be considered as nonapportionable income. If the interest paid, deductible dividends received and related expenses exceed the total interest and dividends received, no deduction from total net income can be made for nonapportionable interest and dividends. All of the

nonapportionable income must be deducted from the total net income of the business to determine the apportionable income to which the apportionment percentage is applied. Any nonapportionable income attributable to Wisconsin must be added to the apportionable income allocated to Wisconsin to determine the total Wisconsin net income.

**History:** 1-2-56; r. (1) (a), Register, August, 1960, No. 56, eff. 8-1-60.

**Tax 2.44 Permission to change basis of allocation.** (Section 71.07 (2) Wis. Stats.) Except when income must be reported on the apportionment basis, permission to make a change either from separate

accounting to apportionment, or vice versa, must be obtained in writing from the commissioner of taxation upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application must be filed before the end of the income year for which the change is desired.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.45 Apportionment in special cases.** (Section 71.07 (5), Wis. Stats.) When the business of any person within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in section 71.07 (2), Wis. Stats., (or by separate accounting in view of the unitary nature of the business), the department will substitute in the place of some or all of the statutory apportionment factors such other factor or 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. The business income of interstate air carriers shall be apportioned as provided in Wis. Adm. Code section Tax 2.46.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Tax 2.46 Apportionment of business income of interstate air carriers.** (Section 71.07(5), Wis. Stats.) 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.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57.

**Tax 2.47 Apportionment of net business income of interstate motor carriers of property.** (1) (Section 71.07(5) Wis. Stats.) The apportionable income of an interstate motor carrier of property, doing business in Wisconsin, shall be apportioned to Wisconsin, on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere;

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

(2) Whenever gross receipts' data is not available, the department may authorize or direct substitution of a similar factor (e.g. gross tonnage) and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor (e.g. revenue miles).

(3) For purposes of this regulation a "ton mile" reflects the movement of one ton of freight for the distance of one mile.

(4) This regulation shall not apply to mercantile or manufacturing businesses which engage in some interstate hauling as an incident of such mercantile or manufacturing businesses.

(5) This regulation shall apply with respect to the determination of income tax or franchise tax liability for any income year open to assessment or refund on the effective date hereof.

**History:** Cr. Register, April, 1966, No. 124, eff. 5-1-66.

**Tax 2.48 Apportionment of net business incomes of interstate pipeline companies.** (Section 71.07 (5), Wis. Stats.) (1) With respect to the imposition of the Wisconsin income or franchise tax on or measured by income of the calendar year 1969, or corresponding fiscal year, and thereafter, the apportionable income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 3 ratios:

(a) The ratio of tangible property owned, and used by the taxpayer in Wisconsin to produce apportionable income, to the total of such property owned and used by him to produce apportionable income everywhere. The amount of such property for purposes of both the numerator and denominator shall be Wisconsin income tax net cost. 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 Wisconsin income tax net cost cannot be ascertained, the department may authorize or direct such other method of determining the property fraction as will produce an equitable result.

(b) The ratio of traffic units (e.g. barrel miles, cubic foot miles or other appropriate measure of product movement) in Wisconsin to the total of such units everywhere.

(c) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere. An employe shall be deemed located in Wisconsin if his services are performed entirely within Wisconsin, or if services performed without the state are incidental to services within Wisconsin, or if some of the service is performed in Wisconsin and the base of operations is in Wisconsin, or if there is no base of operations and the place from which the service is directed and controlled is in Wisconsin, or if the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. Compensation paid to retired employes shall be excluded from both the numerator and the denominator.

(2) In any case in which the company has no employes or in which the department determines that employes are not a substantial income



producing factor, it may order or permit the elimination of the compensation factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

**History:** Cr. Register, November, 1969, No. 167, eff. 12-1-69.

### GROSS INCOME

**Tax 2.51 Rent received by corporations from Wisconsin real estate.** (Section 71.03 (1)(b), Wis. Stats.) Rentals must be included in the gross income when they accrue or are actually received by the taxpayer, depending upon the method of accounting used in reporting income. Rentals which have not actually been received in cash will be treated as received if available to or subject to the disposal of the landlord.

### Tax 2.53 Stock dividends and stock rights received by corporations.

(1) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305, Wis. Stats., such distribution is not includable in gross income then, except as provided in section 71.307 (2), Wis. Stats., the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305 (1), Wis. Stats., a part of the distribution is not includable in gross income (except as provided in 71.307 (2), Wis. Stats.), the basis of the stock with respect to which the distribution is made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution without regard to the fair market value of any part of such distribution which is includable in gross income pursuant to section 71.305 (2), Wis. Stats. The date of distribution in each case shall be the date the stock or the rights are actually distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

(a) *Exception.* The basis of rights to buy stock which are excluded from gross income under section 71.305 (1) Wis. Stats., shall be zero if the fair market value of such rights on the date of distribution is less than 15% of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights. The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. Such statement shall disclose the number of shares of the old stock by the shareholder on the date of distribution, the basis of such shares, and the fair market value of the old shares and of the rights on the date of distribution. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

**Tax 2.56. Insurance proceeds received by corporations.** (Section 71.03 (1) (d), Wis. Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is taxable income.

(a) Under an interest option clause under which all the principal proceeds are retained and interest paid thereon periodically, the interest is taxable income.

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

(c) When, under the same option, payments are made to the beneficiary (the option having been selected by the beneficiary), the interest so paid is taxable income.

(d) When, under the same option, payments are made to the beneficiary (the option having been designated by the insured), the

instalment payments are made under the insurance contract, and no part of the payment is taxable income.

**History:** 1-2-56, r. (1), (3) (b), (3) (c) and (3) (d) and renun. (2) to be (1) and (3) (a) to be (1) (d), Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.57 Annuity payments received by corporations.** Annuity payments under an endowment or annuity contract are income to the extent of any payment after the income tax cost (aggregate premiums or consideration) has been recovered. However, when the contract provides for the separation of the periodic payments into principal and interest, the interest so received is taxable when received.

**Tax 2.60 Dividends on stock sold "short" by corporations.** (Section 71.03 (1) (d), Wis. Stats.) When stock is sold "short" for later delivery, the purchaser receives the dividend, since he is the owner of the borrowed stock, and the amount credited to the lender of the stock and charged to the "short" seller is income upon which the lender is subject to tax. The amount charged to the "short" seller becomes part of the cost of the stock sold.

**Tax 2.61 Building and loan dividends on instalment shares received by corporations.** (1) An amount (dividend) credited to shareholders of a building and loan association has a taxable status as income for the year of the credit to the extent of the amount available to the shareholder.

(2) An amount (dividend) received by such shareholder at maturity of his share in excess of the accumulated amounts so reported as income shall be treated as income in the year of such receipt.

**Tax 2.63 Dividends accrued on stock.** (Section 71.03 (1) (d), Wis. Stats.) In the case of stock purchased by a corporation between dividend dates, the entire amount of the dividend is income to the vendee and must be included in its income when received. The amount advanced by the vendee to the vendor in contemplation of the next dividend payment is an investment of capital.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.65 Interest received by corporations.** (Section 71.03 (1) (c), Wis. Stats.) (1) In general, all interest is includable in the income by which the franchise tax is measured, including interest received on monies invested in obligations of the United States government and its instrumentalities and agencies. If a corporation is not subject to the franchise tax, but subject to net income taxation, interest on federal obligations is not taxable, but interest on postal savings and federal tax refunds is taxable to corporations subject to net income taxation. Profit or loss on the sale or other disposition of federal obligations is a taxable gain or deductible loss for purposes of both the franchise tax measured by net income and the net income tax. (See Section 71.07 (1) Wis. Stats. for situs of interest income).

(2) Interest is deemed to be received when accrued or received in cash, depending upon the method of accounting used by the taxpayer corporation. Interest becomes taxable to a corporation reporting on a cash basis when it is made available to it. Coupons on bonds which are due but have not been cashed are considered as received provided that the cash for payment of the coupons is available. Accrued inter-

est paid on bonds purchased between interest payment dates shall be treated as a deduction from the interest thereon received.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.67 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.69 Income from Wisconsin business.** (Sections 71.01 and 71.07, Wis. Stats.) All of the income realized from business carried on in Wisconsin is taxable. The fact that a person or corporation is licensed to do business in Wisconsin is evidence that it is doing business in the state, within the meaning of this chapter. However, a person or corporation may be doing business in this state within the meaning of this chapter even though not licensed. In all cases of doubt the complete facts should be reported to the commissioner of taxation for determination.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.70 Gain or loss on capital assets of corporations; basis of determining.** (Section 71.03 (1) (g), Wis. Stats.) (1) Profits or losses resulting from the sale or other disposition of capital assets are ordinarily taxable income or deductible losses for the year in which the sale or other disposition takes place. In certain cases of real estate sales involving deferred payments, the profit may be treated as not wholly realized in the year of sale and may be deferred in accordance with the terms of payment. (See Wis. Adm. Code section Tax 2.71)

(a) The fair market value at January 1, 1911 must be determined in the light of the facts and circumstances known as of that date. In the absence of competent evidence to the contrary, cost less depreciation sustained to January 1, 1911 will be considered the fair market value as of that date. The method of arriving at the January 1, 1911 value must be clearly set forth in the income tax returns.

(b) Stocks, bonds and other securities are considered as capital assets when held by a person other than a dealer in securities. The profit or loss on sale or other disposition of securities is, therefore, determined in the same manner and on the same basis as that used for other capital assets.

(c) In determining the profit or loss on the sale of stock received as a stock dividend subsequent to January 1, 1926, the total income tax cost of the original shares on which the dividend was declared is allocated to the new and old shares with due regard to the fair market value of the new and old shares at the date of the dividend.

**Tax 2.71 History:** 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; r. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967.

**Tax 2.72 Exchanges of property by corporations generally.** (Section 71.03 (1) (g), Wis. Stats.) (1) Except where otherwise specifically provided by chapter 71, where property is exchanged for other property which has a fair market value, a taxable gain or deductible loss may result, and such fair market value must be treated as the price realized for the property exchanged and the cost price of the property received, for purposes of future sale. When the property received in exchange has no determinable market value, the property received takes the place of the property exchanged, and no profit or loss is recognized. In the event of future sale in such case, the income tax cost of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except where otherwise specifically provided by chapter 71, where property of two different kinds is received in exchange for property, one kind having a determinable fair market value and the other no determinable fair market value, the gain is measured by the excess of the fair market value of the property received over the income tax cost of the property exchanged. The property received which has no determinable fair market value is considered as having no cost in case of future sale, the entire proceeds of such sale being taxable income. If the income tax cost of the property exchanged is in excess of the fair market value of the property received in exchange, such excess shall be taken as the income tax cost of the property received which has no determinable fair market value, no loss being recognized in such cases.

(3) Taxable gain or deductible loss must be computed when used working assets such as automobiles and machinery were traded in on the purchase price of new assets of a like kind in all cases in which the exchange occurred in a taxable year ending prior to December 31, 1957. The only exception to this rule occurs in the case of a taxpayer who has been permitted or required to use a composite rate of depreciation. (For the handling of such exchanges occurring in taxable years ending on and after December 31, 1957, when both the property exchanged and the property received have a situs in Wisconsin, see section 71.03 (6) Wis. Stats.)

(4) In general there are 4 types of exchanges upon which exemption from tax may be claimed:

(a) Exchanges made pursuant to a plan of reorganization.

(b) Exchanges in which the property received in trade has no determinable market value.

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

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. (4) (c) and renum. (4) (d) to be (4) (c) and am., Register, March, 1966, No. 123, eff. 4-1-66.

#### **Tax 2.721 Exchanges of property held for productive use or investment by corporations. (Section 71.03 (5), Wis. Stats.)**

(1) Property held for productive use in trade or business may be exchanged tax free for property of a like kind held for investment as well as for property of a like kind held for productive use in trade or business, and, similarly, property held for investment may be exchanged tax free for property of a like kind held for productive use in trade or business as well as for property of a like kind held for investment.

(2) The phrase "of a like kind" has reference to the nature or character of the property and not its grade or quality. One kind or class of property may not be exchanged tax free for property of a different kind or class.

(3) A leasehold interest in land cannot be exchanged tax free for a fee title unless the lease has 30 years or more to run.

(4) Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or

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

**History:** Cr. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.73 Involuntary conversion by corporations.** (Section 71.03 (1) (g), Wis. Stats.) (1) In all cases of gain on involuntary conversion where such gain is not recognized for franchise or income tax purposes, the property acquired in the replacement is deemed to take the place of the property destroyed for purposes of depreciation, depletion and profit or loss on subsequent sale or other disposition.

(2) In all cases of involuntary conversion which result in losses, such losses are allowable in the year in which the conversion takes place.

(3) This section does not apply when insurance money received on the conversion of Wisconsin assets is used in replacement outside of Wisconsin. In such case, the gain or loss must be reported in the year of conversion.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.74 Gain or loss on disposition of property by corporations; adjustments to basis.** (Section 71.03 (1) (g), Wis. Stats.) (1) In determining gain or loss disposition of property on or after August 1, 1963 the cost or other basis shall be decreased for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion by the greater of the following 2 amounts:

(a) The amount allowed as deductions in computing taxable income, to the extent resulting in a reduction of the corporation's income taxes, or

(b) The amount allowable for the years involved.

(2) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion shall be made on the basis of the facts reasonably known to exist at the end of the taxable year. A corporation is not permitted to take advantage in a later year of its prior failure to take any such allowance or its taking an allowance plainly inadequate under

the known facts in prior years. In the case of depreciation, if in prior years the corporation has consistently taken proper deductions under one method, the amount allowable for such prior years shall not be increased even though a greater amount would have been allowable under another proper method.

(3) If the corporation has not taken a depreciation deduction either in the taxable year or for any prior taxable year, adjustments to basis of the property for depreciation allowable shall be determined by using the straight line method of depreciation.

(4) With respect to the calendar year 1964 and corresponding fiscal years and thereafter, if the corporation with respect to any property has taken a deduction for depreciation properly under one of the methods provided in section 71.04 (13) (b), Wis. Stats., for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable in such case will be the deduction under the method which was used by the corporation with respect to that property.

(5) The amount allowed which resulted in a reduction of the corporation's taxes is hereinafter referred to as the "tax-benefit amount allowed." For the purpose of determining whether the tax-benefit amount allowed exceeded the amount allowable, a determination must be made of that portion of the excess of the amount allowed over the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such case the reduction in basis required would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent of the remainder of such excess. In such a case the reduction in basis required would be the amount of the tax-benefit amount allowed.

(6) For the purpose of determining the tax-benefit amount allowed, the only adjustments made in determining whether there would be an increase in tax shall be those resulting from the disallowance of the amount allowed. The taxable years for which the determination is made shall be the taxable year for which the deduction was allowed and any other taxable year which would be affected by the disallowance of such deduction. Examples of such other taxable years are taxable years to which there was a carry-over of a net business loss for the taxable year for which the deduction was allowed. In determining whether the disallowance of any part of the deduction would not have resulted in an increase in any tax previously determined, proper adjustment must be made for previous determinations under chapter 71, Wis. Stats.

(7) If a determination must be made with respect to several properties for each of which the amount allowed for the taxable year exceeded the amount allowable, the tax benefit amount allowed with respect to each of such properties shall be an allocated portion of the tax-benefit amount allowed determined by reference to the sum of the amounts allowed and the sum of the amounts allowable with respect to such several properties.

(8) A corporation seeking to limit the adjustment to basis to the tax-benefit amount allowed for any period, in lieu of the amount

allowed, must establish the tax benefit amount allowed. A failure of adequate proof as to the tax benefit amount allowed with respect to one period does not preclude the corporation from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

(9) The amount allowable for prior periods is determined under the law applicable to such prior periods.

(10) Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization and depletion to the extent actually sustained in respect of (a) any period during which the corporation was engaged in business entirely outside of Wisconsin, or (b) any period during which the property was held by a person or organization not subject to income taxation under chapter 71, Wis. Stats. The amount actually sustained is that amount charged off on the books of the corporation where such amount is considered by the commissioner to be reasonable. Otherwise the amount actually sustained will be the amount that would have been allowed as a deduction had the corporation been subject to income tax during those periods, determined by the straight line method.

**History:** Cr. Register, February, 1965, No 110, eff. 3-1-65; am. (1) (a), (2), (3), (4), (5), and r. (8), renum. (9) to be (8) and am., renum. (10) to be (9) and (11) to be (10) and am., Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.75 Recoveries by corporations.** (Section 71.03 (1) (k), Wis. Stats.) Recoveries of items previously charged off as loss or as expense are taxable income in the year of recovery.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.76 Refunds of taxes to corporations.** (Section 71.03 (1) (k), Wis. Stats.) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are taxable income.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.77 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.78 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.79 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.80 Improvements on leased real estate, income to corporate lessor.** (Section 71.03 (1) (k), Wis. Stats.) If improvements are made on leased property and the life of such improvements extends beyond the terms of the lease, the lessor derives taxable income at the expiration of the lease, the amount of which is represented by the fair market value of the improvements at the time.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.81 Damages received by corporations.** (Section 71.03 (1) (k), Wis. Stats.) Damages may result in taxable income when recovered on account of injury to property, interference with property rights or breach of contract, when the amounts received as damages are in excess of the income tax cost of the property destroyed. Damages recovered for libel of business reputation are taxable income.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.82 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.83 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.84 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.85 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.



**Tax 2.86 Income to corporations from cancellation of government contracts.** (Section 71.03 (1) (k), Wis. Stats.) Amounts claimed under cancelled government contracts not reported in the return for the year in which claim therefor was filed must be included as income in the year in which such claim is allowed.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.87 Contributions for line extension.** (Section 71.03 (1) (k), Wis. Stats.) Amounts received by a public utility corporation from its customers in consideration of the extension of its service lines are taxable income. If and when such amounts are subsequently refunded, they are valid deductions in the year of refund.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.90 Withholding; wages.** (Section 71.19 Wis. Stats.) (1) The term "wages" means all remuneration for services performed by an employe for his employer unless specifically excepted under section 71.19, Wis. 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 retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employe for his 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. (See however section 71.19 (1) (i), Wis. Stats., relating to the exclusion from wages of 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 employes its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe 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 employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding his absence from work, constitutes wages.

(9) Any payments made by an employer to an employe 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 employe is considered to be a part of the employe's remuneration and is considered to be paid to the employe 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 employe, without deduction from the remuneration of or other reimbursement from the employe, on account of any tax imposed upon the employe by any taxing authority.

(12) The value of any meals or lodging furnished to an employe by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employe under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. 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 his employes generally, are not considered as wages subject to withholding, if such 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 his employes.

(14) Tips or gratuities paid directly to an employe by a customer of an employer, and not accounted for by the employe to the employer, are not subject to withholding.

(15) Withholding is not required upon amounts paid to an employe by his employer under a wage continuation plan for a period during which the employe is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. 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.

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in paragraph (2) hereof, amounts withheld pursuant to section 71.20, Wis. Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(2) Any employe who reports his income for taxation to the state of Wisconsin on an income year other than the calendar year shall be allowed as a credit for any such fiscal year amounts withheld by

his employer in such fiscal year provided his employer, on or before the end of the first month following the close of such fiscal year, shall voluntarily furnish such employe with 2 legible copies and the department of taxation with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in section 71.10 (8) (a), Wis. Stats., and the employe files a copy of such statement along with his fiscal year return.

**History:** Cr. Register, March, 1963, No. 87, eff. 4-1-63.