

Chapter Tax 3

INCOME TAXATION, DEDUCTIONS FROM GROSS INCOME, EXCLUSIONS AND EXEMPTIONS, ETC.

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Tax 3.01 Rents paid by corporations. (section 71.04 (2), Wis. Stats.) Rents paid on property used in producing taxable income are deductible from gross income. The cost of leaseholds, acquired for cash or property, represents rent paid in advance and as such is deductible from gross income in equal amounts over the life of the leaseholds. Taxes paid by the lessee for the lessor are to be treated as additional rent paid and are a deductible expense.

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

Tax 3.03 Dividends received, deductibility of. (section 71.04 (4), Wis. Stats.) (1) In determining whether 50% or more of the net income or loss for the preceding year of the corporation paying the dividend was used in computing taxable income, if the corporation paying the dividend was subject to the franchise tax measured by net income, interest income from the federal government and its instrumentalities must be included but deductible dividends must be disregarded. If the corporation paying the dividend was subject to the net income tax, non-taxable

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interest from the federal government or its instrumentalities and deductible dividends must both be disregarded.

(2) When a corporation keeps its records on the basis of a fiscal year ending not later than June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending within the calendar year when such dividends are paid. When a corporation keeps its records on the basis of a fiscal year ending subsequent to June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending in the year prior to the calendar year when such dividends are paid.

(3) All dividends must be reported in full on the income tax return of the person receiving them, regardless of the deductibility of certain dividends received by corporations. Corporate taxpayers should deduct such dividends as they believe to be deductible. Whether or not the dividends are deductible will be determined in accordance with the records on file with the department of revenue and proper adjustment will be made.

(4) All corporations doing business within Wisconsin must report the dividends paid to residents of Wisconsin on forms 9b. (See Wis. Adm. Code section Tax 2.04).

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 3.05 Profit-sharing distributions by corporations. (section 71.04 (1), Wis. Stats.) (1) Payments made to officers and employes for services rendered under the terms of a profit-sharing agreement, in lieu of or in addition to fixed salaries or other compensation, are proper deductions from gross income. Payments made to the stockholders of a corporation who are not actively engaged in the business are not allowable deductions. If profit-sharing distributions are based on stock holdings, they will be treated as dividends and, therefore, are not allowable deductions.

(a) The form or method of fixing compensation is not decisive as to the deductibility thereof. If payments are made pursuant to a profit-sharing agreement entered into between employer and employe before services are rendered, which is not influenced by any consideration on the part of the employer other than that of securing the services of the employe on fair and advantageous terms, they will be allowable as deductions from gross income even though in the actual working out of the contract such payments may prove to be greater than the amounts which would ordinarily be paid.

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

Tax 3.07 Bonuses and retroactive wage adjustments paid by corporations. (section 71.04 (1), Wis. Stats.) Bonuses for services actually rendered but not based upon a prearranged bonus agreement or established policy are allowable when actually paid, provided such payments when added to the stipulated salaries or other compensation do not exceed a reasonable compensation for the services rendered. Bonuses paid to employes and others which do not have in them the element of compensation or are excessive in comparison to the services rendered are not deductible from gross income. Christmas

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Tax 3.47 Legal expenses and fines—corporations. (section 71.04 (2), Wis. Stats.) Legal expenses incurred in connection with the operation of a taxpayer's business are proper deductions, unless such business is conducted in violation of law. Fines are not deductible.

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

Tax 3.48 Research or experimental expenditures. (section 71.04 (2f), Wis. Stats.) (1) **DEFINITIONS.** In this section: (a) "Research or experimental expenditures" mean expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term includes generally all such costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention or similar property, and improvements to such already existing property and the cost of obtaining a patent, such as attorney's fees expended in making or perfecting a patent application but not the costs of acquiring another's patent, model, production, or process. The term does not include expenditures such as those for the ordinary testing or inspection of materials or products for quality control, management studies, consumer surveys, advertising or promotions or expenditures paid or incurred for research in connection with literary, historical, or similar projects, nor land or depreciable property whether incurred by the taxpayer or by another person or organization on its behalf, to the extent of the cost of the component materials of the depreciable property, the costs of labor or other elements involved in its construction and installation or cost attributable to the acquisition or improvement of the property.

(b) "Paid or incurred" shall be construed according to the method of accounting used by the taxpayer in computing taxable income.

(2) **DEDUCTION.** Subject to certain limitations, a corporate taxpayer may elect to either deduct research and experimental expenditures paid or incurred during a taxable year beginning after December 31, 1969 in the year paid or incurred, or to defer such expenditures and amortize them over a period of not less than 60 months selected by the taxpayer beginning with the month in which the taxpayer first realizes benefits from the expenditures, or to depreciate the expenditures over the useful life of the property to which they relate.

(a) **Election to treat as expense.** Election to treat research or experimental expenditures as expenses may be made by claiming such expenses as a deduction on the return for the year in which paid or incurred. The election shall apply to all research or experimental expenditures paid or incurred in the taxable year of adoption and all subsequent years unless a different method is authorized by the secretary of revenue or a delegate.

(b) **Election to amortize.** 1. If a taxpayer has not elected to deduct research or experimental expenditures as currently deductible expenses, it may elect to treat as deferred expenses which may be amortized ratably over a period of not less than 60 months as selected by the taxpayer those expenditures which are chargeable to a capital account with no determinable useful life. However, if the property resulting from the expenditures has a determinable useful life, the capitalized expenditures or the unamortized balance thereof shall be amortized or depreciated over the determinable useful life.

2. The election to defer and amortize shall be made by attaching a signed statement to the taxpayer's return for the first taxable year to which the election is applicable and shall set forth the information required under subparagraph 1.174-4(b) (1) of the internal revenue code regulations.

(c) *Change in method or period.* Permission to change to a different method of treating research or experimental expenditures or to a different period of amortization of deferred expenses shall be required from the secretary of revenue in writing. A request for permission shall be addressed to the secretary of revenue, P.O. Box 80, Madison, Wisconsin 53701. The request shall include the name, address and signature of the taxpayer and shall be filed not later than the end of the first taxable year in which the different method is to be used. The request shall set forth the information required under either subparagraph 1.174-3(a) (3) or subparagraph 1.174-4(b) (2) of the internal revenue code regulations.

(3) **EFFECT ON BASIS.** Research and experimental expenditures not deducted currently are chargeable to a capital account and shall be added to the basis of the property resulting from such expenditures. Upon the sale or other disposition of such property in which a gain or loss is recognized an adjustment to basis shall be made in computing gain or loss for any amortization allowed or allowable.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78.

Tax 3.52 Automobile expenses—corporations. (section 71.04 (2), Wis. Stats.) If an automobile is used exclusively for business purposes, the actual expenses of operation, including gasoline, oil, license fees, insurance premiums and depreciation, are deductible from gross income. If the automobile is used partly for business and partly for personal purposes, the expenses of operation, including gasoline, oil, license fees, insurance premiums, depreciation, chauffeur's salary, etc., may be apportioned on the basis of the mileage devoted to business and personal uses, and the amount allocated to business purposes will constitute an allowable deduction from the taxable income derived therefrom.

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

Tax 3.54 Miscellaneous expenses not deductible—corporations. (section 71.04 (2), Wis. Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following: Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employes, unless reported as compensation paid on form WT-9 or form 9b; dues to fraternal orders, social clubs and luncheon clubs.

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

Tax 3.55 Donations and contributions—corporations. (section 71.04 (5), Wis. Stats.) (1) Contributions by corporations may be deducted only if the recipient is operating within Wisconsin.

(2) No deductions for contributions, donations or gifts is allowable if the income tax return of the taxpayer before deducting such contributions, donations or gifts shows a loss.

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(3) Deductions for contributions, donations or gifts are not allowable unless the name and address of each recipient and the amount given each recipient is listed in the income tax return of the taxpayer.

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

MISCELLANEOUS

Tax 3.61 Mobile home monthly parking permit fees. (section 71.02 (2) (f), Wis. Stats.) Mobile home monthly parking permit fees imposed under section 66.058 (3) (c), Wis. Stats., shall be deductible by individuals as an itemized deduction in computing the Wisconsin income tax.

Note: The mobile home monthly parking permit fee is an itemized deduction to individuals for the federal income tax under s. 164 (a) (2) of the Internal Revenue Code.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

Tax 3.81 Offset of occupational taxes paid against normal franchise or income taxes. (sections 70.41 (1), (3) and 70.42 (1), (3), Wis. Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The taxpayer may present his receipt showing payment of such tax to the department of revenue as so much cash in payment of normal franchise or income tax assessed against him in the following year on the tax roll for the same district. If the normal franchise or income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.

(2) If the taxpayer neglects to present his occupational tax receipt at the proper time and pays his entire normal franchise or income tax in cash, he cannot present the receipt at a later date and secure a refund of the normal franchise or income tax paid. A taxpayer cannot tender in payment of an additional normal franchise or income tax assessed at a later date an occupational tax receipt that might have been used had the proper franchise or income tax assessment been made in the first place. If the occupational tax receipt tendered in payment of a normal franchise or income tax exceeds the normal income tax, such excess cannot be applied in payment of additional normal franchise or income tax for the same year assessed at a later date. Occupational tax receipts issued in one taxing district cannot be offset against normal franchise or income tax appearing on the roll for another district.

History: 1-2-56; am. (1), 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.

Tax 3.82 Evasion of tax through affiliated interests. (section 71.11 (7) (a) and (b), Wis. Stats.) In administering this section the department of revenue will apply the statute as interpreted by the following cases:

- (1) Cliffs Chemical Co. v. Tax Commission, 193 W 295
- (2) Buick Motor Co. v. Milwaukee, 43 F (2d) 385
- (3) Curtis Companies v. Tax Commission, 314 W 85
- (4) Palmolive Co. v. Conway, 37 F (2d) 114; 43 F (2d) 226; 56 F (2d)

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- (5) Burroughs Adding Machine Co. v. Tax Commission, 237 W 423

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(6) Northern States Power Co. v. Tax Commission, 237 W 423

ASSESSMENT, ABATEMENT AND REFUND PROCEDURE

Tax 3.91 Application for abatement. (sections 71.10 (13) and 71.12 (1), Wis. Stats.) (1) The application for abatement specified in section 71.12 (1), Wis. Stats., must be written, preferably on typewriter, on only one side of plain white paper not more than 8 1/2 inches wide by 11 inches long and must be filed in duplicate. It must set forth clearly and concisely the specific grievances to the additional assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every application must be signed by the taxpayer or by his duly authorized representative.

(2) An application for abatement is not "filed" within the proper time to meet the requirements of section 71.12 (1), Wis. Stats., unless it is actually received within the 30-day period, or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the thirtieth day of the period provided in section 71.12 (1), Wis. Stats., and actually received by the department of revenue within 5 days of such 30-day period.

History: 1-2-66; am. Register, February, 1976, No. 230, eff. 3-1-76.

Tax 3.92 Informal conference. The taxpayer may request in said application, or at any time before the department of revenue has acted thereon, an informal conference at which the facts and issues involved in the assessment may be discussed. Any such conference will be held at a time and place determined by the department.

History: 1-2-66; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1976, No. 230, eff. 3-1-76.

Tax 3.93 Closing stipulations. If the informal conference results in an agreement as to facts and issues and the law applicable thereto the taxpayer and the department of revenue may enter into a closing stipulation.

History: 1-2-66; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1976, No. 230, eff. 3-1-76.

Tax 3.94 Claims for refund. (1) Claims for refund may be filed as provided in section 71.10 (10), Wis. Stats., and shall be in the same form as applications for abatement under Wis. Adm. Code section Tax 3.91. A claim for refund is not "filed" within the proper time to meet the requirements of section 71.10 (10), Wis. Stats., unless it is actually in the possession of the department of revenue prior to the expiration of the limitation period provided in section 71.10 (10), Wis. Stats., or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day of said limitation period, and actually received by the department of revenue within 5 days of said limitation period.

(2) Under section 71.10 (11), Wis. Stats., the reduction of income resulting from renegotiation or price redetermination of any defense contract or subcontract is allowable as a deduction from income of the year in which such income was reported for taxation. A claim for refund filed under this subsection must be accompanied by a verified or photographed copy of the renegotiation agreement or price redetermination. No interest is payable on such refund.

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(3) When by reason of the allowance of amortization of war facilities over a period shorter than computed in arriving at the original renegotiation adjustment, or for any other reason, a portion of the profits originally determined to be excessive are rebated to the taxpayer by the federal government, such rebate is to be treated as a further renegotiation adjustment, and should be allocated back to the year of the income which was adjusted. Where a refund of Wisconsin income taxes (due to renegotiation) has previously been made, the additional taxes payable by reason of a renegotiation rebate are to be assessed without interest for the reason that such taxes constitute a return to the state of a portion of the previous refund.

History: 1-2-56; am. (1) and (2), Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, May, 1966, No. 125, eff. 6-1-66.