

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 Revenue by delivery to 4638 University Avenue, 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. Am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.02 Reciprocity. (section 71.03 (2) (c), Wis. Stats.) (1) GENERAL. (a) In this rule, "residence" and "resident" are synonymous with "domicile" and "domiciliary", respectively, except when referring to the reciprocity agreement with Illinois. A person may be a resident of Illinois while domiciled in Wisconsin or a person may be domiciled in Illinois but not be a resident of Illinois. The Illinois Income Tax Act defines a resident as "an individual (i) who is in this state for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year".

(b) Income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on such personal service income if that state allows:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; or
2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on such income.

(c) A Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement need not withhold Wisconsin income tax from personal service income earned in Wisconsin by such nonresidents.

(2) PERSONAL SERVICE INCOME DEFINED. Income from personal services includes all salaries, wages, commissions and fees earned by an employe and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Income from personal services does not include income derived from activities involving the substantial use of capital or labor of others.

(3) CURRENT RECIPROcity. (a) Wisconsin currently practices some form of income tax reciprocity with Illinois, Indiana, Kentucky, Maryland, Michigan and Minnesota. Formal agreements have been signed

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with Illinois, Kentucky, Michigan and Minnesota. Reciprocity with Indiana and Maryland is based on informal agreements and acquiescence by both states.

(b) Wisconsin's formal reciprocity agreements are effective for the following years: 1. Kentucky: for the years beginning on and after January 1, 1961.

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

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

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

(e) The informal agreements with Indiana and Maryland have been in effect since prior to 1960.

(4) EFFECT OF RECIPROcity. (a) Personal service income included under reciprocity agreements shall be taxed by an employe's state of residence rather than by an employe's state of employment. Wisconsin shall not tax personal service income earned in Wisconsin by a resident of states with which Wisconsin has reciprocity and such states shall not tax personal service income which a Wisconsin resident earns in their states, except as described in subs. (5) and (6).

(b) An employer need only withhold income tax for the state of residence of an employe. However, federal law regulates withholding on wages earned by employes engaged in interstate transportation activities. (Additional information may be obtained by contacting the Wisconsin department of revenue, compliance section, P.O. Box 8902, Madison, Wisconsin 53708.

(5) PROVISIONS OF AGREEMENT WITH ILLINOIS. (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to employes for personal services" (emphasis added). The agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income.

(b) The agreement does not apply to compensation paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of such a person is taxable by Wisconsin. However, a credit may be claimed for income tax paid to Illinois on personal service income earned outside Wisconsin.

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

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

(7) PROCEDURE FOR NONRESIDENTS. Nonresident persons employed in Wisconsin and residing in a state with which Wisconsin has reciprocity may file Form W-220 ("Nonresident Employee's Withholding Reciprocity Declaration") with their Wisconsin employers. Upon receipt of this

form, Wisconsin employers shall not withhold Wisconsin income tax from Wisconsin personal service income of such employes.

(8) **PROCEDURE FOR WISCONSIN RESIDENTS.** (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity (as well as those employed in other states) shall file Form 1-ES ("Wisconsin Declaration of Estimated Tax") with the Wisconsin department of revenue if their out-of-state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to file a declaration.

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

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

(9) **DELINQUENT TAXES.** Reciprocal agreements shall not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under section 71.135, Wis. Stats.

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

Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from such employe's incomes may contact the department's compliance bureau, P.O. Box 8902, Madison, Wisconsin 53708.

The term "temporary or transitory" as used in the definition of an Illinois resident set forth in subsection (1) is not defined in either Illinois law or regulations. Therefore, whether or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

History: Cr. Register, April, 1978, No. 268, eff. 6-1-78.

Tax 2.03 Corporation returns. For the purpose of filing franchise or income tax returns, the secretary of revenue 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).

Form 5. Optional return of income for the calendar or fiscal year (to be used only by corporations whose entire net income is taxable in Wisconsin).

All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Corporation Section Register, April, 1978, No. 268

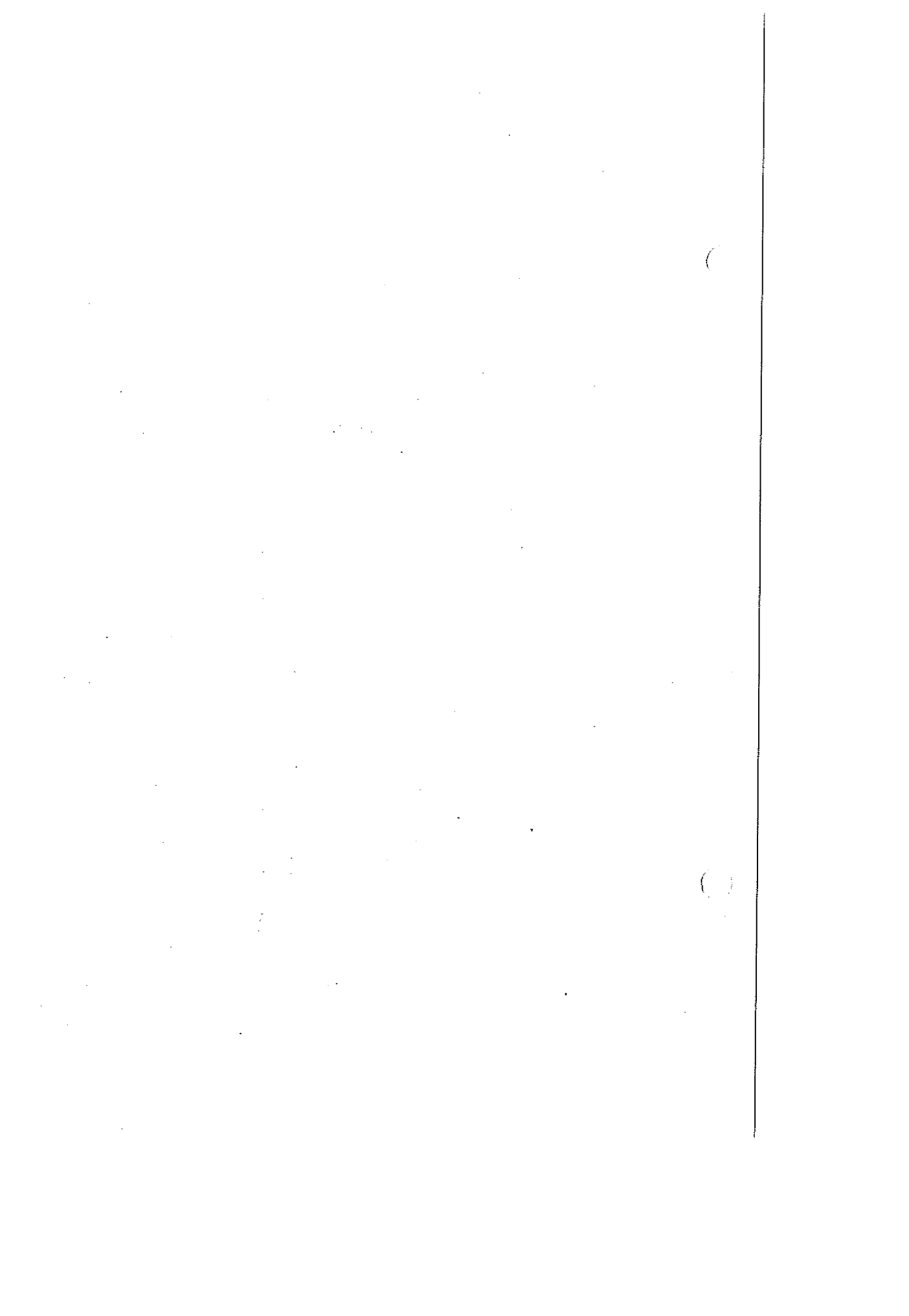
of the Wisconsin Department of Revenue, P. O. Box 98, Madison, Wisconsin 53701 or delivered to the Corporation Section at 4638 University Avenue, Madison, Wisconsin.

Note: Blank forms may be obtained from the department 4638 University Avenue, Madison, or by mail request to P. O. Box 58, 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, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 2.04 Information returns; forms WT-9, 9b, and 9X for corporations. (sections 71.04 (1) and 71.10 (1), (8m) and (8n), Wis. Stats.)
(1) All corporations carrying on activities within this state, whether taxable or not under chapter 71, Wis. Stats., shall file with the department of revenue, on or before January 31 of each year on forms WT-9 or 9b or on such other forms as may be approved by the department, 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

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in accordance with section 472 of the United States internal revenue code and which has been authorized or directed by the United States internal revenue service 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 internal revenue service 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 revenue, 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; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.30 Property located outside Wisconsin—depreciation and sale. (section 71.07 (1) Stats.) (1) **DEFINITIONS.** In this rule, “internal revenue code” means the internal code in effect for the taxable year specified by section 71.02 (2) (b), Wis. Stats., and “federal adjusted basis” means those amounts determined under such code. For example, for the taxable year 1976 “internal revenue code” means the federal internal revenue code in effect on December 31, 1975.

(2) **GENERAL.** (a) Prior to tax year 1975, income or loss derived from real property or tangible personal property followed the situs of the property from which derived.

(b) In 1975, section 71.07 (1), Wis. Stats., was amended, effective with the 1975 tax year, to read in part:

“All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust. Income or loss of nonresident individuals and nonresident estates and trusts from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived. Income or loss of nonresident individuals and nonresident estates and trusts derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived.”

(3) **TREATMENT IN 1975 AND SUBSEQUENT YEARS FOR RESIDENT INDIVIDUALS, ESTATES AND TRUSTS.** For tax year 1975 and thereafter, income or loss from property and business located outside Wisconsin, received by

resident individuals, estates and trusts, is taxable. The basis for depreciation and for determining gain or loss on disposition of property for such taxpayers is as follows:

(a) *Property acquired while a resident.* For property located outside Wisconsin, acquired while taxpayer was a resident of Wisconsin:

1. *Depreciation.* The basis of such property for depreciation shall be the same as the basis determined under the internal revenue code.

2. *Sale.* The basis used in determining gain or loss upon the sale or other disposition of such property shall be the same as the basis determined under the internal revenue code.

(b) *Property acquired before becoming a resident.* For property located outside Wisconsin, acquired before taxpayer became a resident of Wisconsin:

1. *Depreciation.* The basis of such property for depreciation shall be the same as the basis determined under the internal revenue code.

2. *Sale.* Under the principles established by the Wisconsin Supreme Court in *Falk v. Rosa* (1930), 201 Wis. 292, and *Siesel v. Wisconsin Tax Commission* (1935), 217 Wis. 661, limitations exist on the amount of gain or loss which is includable in Wisconsin taxable income upon the sale or other disposition of such property. The amount of gain or loss for Wisconsin tax purposes is limited to the lesser of the difference between:

a. The selling price and federal adjusted basis at the time of sale; or

b. The selling price and the fair market value of the property on the date Wisconsin residence was established, such fair market value being reduced by depreciation allowed or allowable during the period of Wisconsin residence; except that if

c. The difference by one computation (a or b above) represents a gain and the difference by the other computation represents a loss, then no gain or loss is reportable for Wisconsin purposes. When this situation occurs, a schedule shall be attached to the Wisconsin income tax return, Form 1, showing both computations.

3. *Modification.* When the Wisconsin gain or loss is determined under subd. 2 b or c, the amount of such gain or loss will differ from that reported on an individual's federal income tax return. Such difference shall be treated as an "other" modification and reported in Part II on page 2 of Wisconsin Form 1. (See the note at the end of this rule for example computations of the Wisconsin gain or loss.)

(c) *Installment sales of property located outside Wisconsin.* 1. *Sale prior to January 1, 1975.* The gain (or loss) on a sale prior to January 1, 1975 of property located outside Wisconsin by residents and nonresidents is not taxable for Wisconsin purposes. If a taxpayer elected for federal purposes to report the gain on such a pre-1975 sale on the installment method (as provided in section 453 of the internal revenue code), in some instances a portion of the gain could be included in federal adjusted gross income on the taxpayer's 1975 and subsequent years' federal income tax return. Any such installment gain shall be excluded from Wisconsin income by entering the amount of the installment gain as an "other" subtraction modification in Part II on page 2 of the Wisconsin Form 1.

2. *Sale while a nonresident.* The gain (or loss) on a sale of property located outside Wisconsin occurring while a taxpayer was a nonresident of this state is not taxable for Wisconsin purposes regardless of whether the sale occurred before or after 1975. Any such gain (to the extent included in federal adjusted gross income), regardless of whether or not reported on the installment method, shall be excluded from Wisconsin income by entering the amount of such gain as an "other" subtraction modification in Part II on page 2 of Wisconsin Form 1.

Note: Examples of the computation of Wisconsin gain or loss on out-of-state property acquired before becoming a Wisconsin resident and sold while a resident of Wisconsin, as described in sub. (3) (b) follow:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Original Cost	Fair Market Value At Time Wisc. Residency Estab.	Federal Adjusted Basis At Time Residency Estab.	Depreciation Allowed Or Allowable While A Wisconsin Resident	Federal Adjusted Basis At Time Of Sale	Selling Price	Federal Gain or Loss	Wisconsin Gain or Loss
\$ 10,000	\$ 15,000	\$ 5,000	\$ 700	\$ 4,300	\$ 20,000	\$ 15,700	\$ 5,700 a
10,000	4,000	5,000	700	4,300	20,000	15,700	15,700 b
10,000	25,000	5,000	700	4,300	20,000	15,700	-0- c
10,000	4,000	5,000	700	4,300	1,000	(3,300)	(2,300) d
10,000	15,000	5,000	700	4,300	4,000	(300)	(300) e
10,000	4,000	5,000	700	4,300	3,500	(800)	-0- f

a \$20,000 (col. 6) less 14,300 (col. 2 less col. 4) = \$5,700 gain.

b \$20,000 (col. 6) less 4,300 (col. 5) = \$15,700 gain.

c \$20,000 (col. 6) less 4,300 (col. 5) = \$15,700 gain; \$20,000 (col. 6) less 24,300 (col. 2 less col. 4) = \$4,300 loss; therefore, no gain or loss is reportable for Wisconsin purposes.

d \$1,000 (col. 6) less 3,300 (col. 2 less col. 4) = \$2,300 loss.

e \$4,000 (col. 6) less 4,300 (col. 5) = \$300 loss.

f \$3,500 (col. 6) less 4,300 (col. 5) = \$800 loss; \$3,500 (col. 6) less 3,300 (col. 2 less col. 4) = \$200 gain; therefore, no gain or loss is reportable for Wisconsin purposes.

History: Cr. Register, April, 1978, No. 268, eff. 6-1-78.

DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS

Tax 2.39 Apportionment method. (Section 71.07 (2), Wis. Stats.) Any person doing business both in and outside this state shall report by the statutory apportionment method when the person's business in this state is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

(1) For the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, the factors used in the apportionment method for all businesses except "financial organizations" and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., are the property factor, the payroll factor and the sales factor. Property, payroll or sales related to the production of nonapportionable income under section 71.07 (1), Wis. Stats., shall not be included in either the numerator or the denominator of any of the apportionment factors.

(1m) Beginning with calendar year 1974, or corresponding fiscal year, and thereafter, in lieu of the equally weighted 3-factor apportionment fraction based on property, payroll and sales, there shall be used an apportionment fraction composed of a sales factor representing 50% of the

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fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. If one of these factors is omitted pursuant to section 71.07 (3), Wis. Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

(a) If either the property factor or payroll factor is omitted, the other of such factors shall represent 33 1/3% of the fraction and the sales factor shall represent 66 2/3% of the fraction.

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

(2) In order to use the apportionment method the taxpayer must have income from business activity subject to taxation by this state and at least one other state or foreign country. Income from business activity includes only business (apportionable) income. As used in this rule a taxpayer is subject to taxation or taxable in a state or foreign country if the state or foreign country has jurisdiction to impose an income tax or a franchise tax measured by net income.

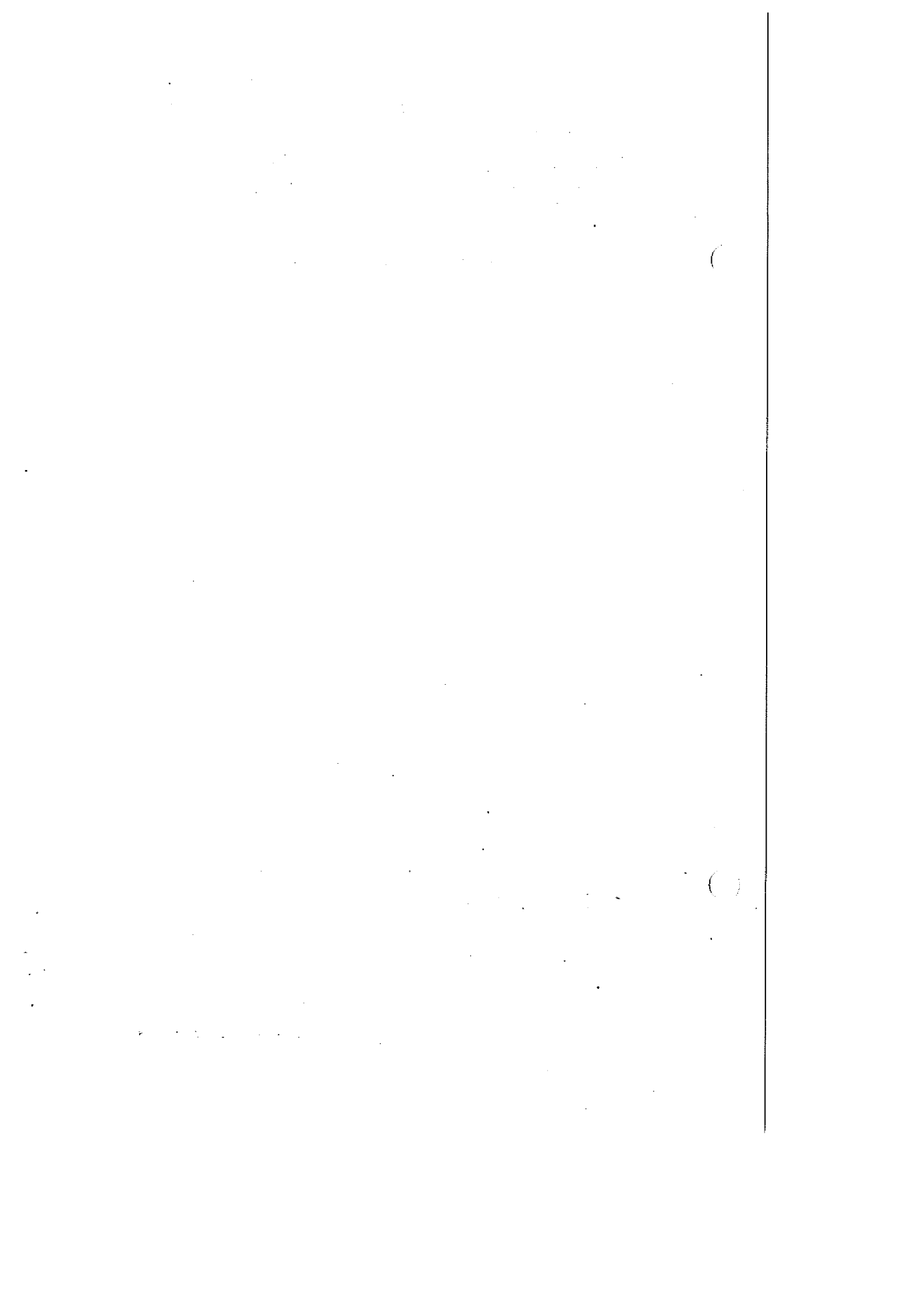
(3) (a) *Property factor; numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer in this state and used by the taxpayer in the production of business (apportionable) income during the tax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

(b) *Property factor; owned property.* Property owned by the taxpayer is valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes.

(c) *Property factor; rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined as at arm's length. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this may result in a negative value or clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the taxpayer, but in no case shall the net annual rental be less than an

amount which bears the same ratio to the total annual rental paid by the taxpayer as the value of the part of the property used by the taxpayer bears to the total value of the same rental property. The "annual rental" is the amount paid as rental for the property for a 12 month period. Where property is rented for less than a 12 month period, the net rent

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(2) An employe who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employe provides his or her employer with a completed Form WT-4E ("Exemption from Withholding of Wisconsin Income Tax"). For this purpose, a tax liability is "incurred" if the employe had for the preceding year or anticipates for the current year a net Wisconsin income tax due (gross tax less personal exemptions on a Wisconsin return). If an employe is married, the net tax of the employe's spouse shall not be considered in determining if the employe may claim this exemption.

Note: Forms WT-4 and WT-4E may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 58, Madison, Wisconsin 53701.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

Tax 2.93 Withholding from wages of a deceased employe and from death benefit payments. (sections 71.19(1)(j) and 71.20(1), Wis. Stats.) (1) GENERAL. Section 71.20(1), Wis. Stats., requires employers to withhold Wisconsin income tax from payments of wages "to an employe". Various types of payments are made to the estate or to beneficiaries of a deceased employe which resulted from the deceased person's employment. The department shall follow the federal internal revenue service's policy in determining whether withholding of income tax is required from such payments.

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

(3) PAYMENTS NOT SUBJECT TO WITHHOLDING. The following types of payments to a decedent's personal representative or heir shall not be subject to withholding of Wisconsin income tax: (a) Payments representing wages accrued to the date of death but not paid until after death.

(b) Accrued vacation and sick pay.

(c) Termination and severance pay.

(d) Death benefits such as pensions, annuities and distributions from a decedent's interest in an employer's qualified stock bonus plan or profit sharing plan (section 71.19(1)(j), Wis. Stats.).

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

Tax 2.94 Tax sheltered annuities. (section 71.03(2)(d), Stats.) (1) GENERAL. (a) For many years members of the state teachers' retirement system have had the privilege of paying in voluntary additional deposits, to provide additional retirement income to supplement normal retirement benefits. In January of 1964 it became possible for such members to pay in additional deposits under a new program known as the Tax Sheltered Annuity Plan.

(b) When a tax sheltered annuity is purchased for an employe by a public school system or by an exempt educational, charitable or religious organization, the deposit used to acquire this annuity may be excluded from the employe's gross income in the year of payment under section 403(b) of the internal revenue code. Accordingly, since January 1, 1965,

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when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income, these payments also have been excluded from employes' taxable income for Wisconsin income tax purposes. Prior to that date, such payments were taxable for Wisconsin income tax purposes.

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

(2) SECTION 71.03 (2) (D) EXEMPTION. Normal retirement benefits received from systems enumerated in section 71.03 (2) (d), Wis. Stats., are exempt as provided by that section. However, benefits received from tax sheltered annuity deposits administered by such systems do not qualify for the exclusion from Wisconsin taxable income provided by that statute. Tax sheltered annuity benefits shall be treated the same for Wisconsin income tax purposes as for federal income tax purposes; that is, they shall be included in gross income.

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

(b) Tax sheltered annuity benefits received on or before December 31, 1973 shall be considered nontaxable. A subtraction modification under section 71.05 (1) (b) 4, Wis. Stats., shall be permitted for such benefits as were included in federal gross income.

(c) If a school system purchased a tax sheltered annuity for an employe prior to January 1, 1965, and the employe paid a Wisconsin income tax on the tax sheltered annuity deposit which was used to pay the 1964 annuity premium, a subtraction modification under section 71.05 (1) (b) 4, Wis. Stats., shall be allowed for the tax sheltered annuity benefits received on or after January 1, 1974 which are included in federal income and upon which the employe previously paid a Wisconsin income tax.

The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax sheltered annuity benefits excludable from Wisconsin income because of receipt prior to January 1, 1974, as illustrated in the following examples which assume that the taxpayer files its tax return on a calendar year basis:

Example 1: An employe made a deposit of \$200 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employe retires after January 1, 1974, a subtraction modification under section 71.05 (1) (b) 4 is permitted for the first \$200 of tax sheltered annuity benefits received. All subsequent benefits are taxable with no subtraction modification allowed.

Example 2: An employe made a deposit of \$300 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and \$120 of such benefits received were not included in Wisconsin taxable income. A subtraction modification under section 71.05 (1) (b) 4 is permitted for the next \$180 (\$300 - \$120) received after January 1, 1974. All subsequent benefits are taxable with no subtraction modification allowed.

Example 3: An employe made a deposit of \$160 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and treated \$200 of such benefits as nontaxable for Wisconsin Register, April, 1978, No. 268

income tax purposes. All such benefits received after January 1, 1974 are taxable with no subtraction modification allowed.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Tax 2.96 Extension of time to file corporation franchise or income tax returns. (section 71.10(5) (a), Wis. Stats.) (1) **GENERAL.** Corporation franchise or income tax returns (Forms 4 and 5) are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year unless an extension of time for filing has been granted. Such returns and inventory reports (Form 10) due on and after April 24, 1976 may be filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, for such returns, a corporation may obtain an extension from the department for a period not to exceed 30 days, if the extension is requested prior to the original due date of the return.

(2) **PROCEDURE.** (a) *The 30 day extension from department.* A request for a 30 day extension (Form IC-830) from the department shall be filed in duplicate by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged on the copy of the extension request which is returned to the taxpayer.

(b) *The 3-month federal extension.* 1. A copy of federal extension Form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 3-month extension provision for the Wisconsin return to be considered timely filed.

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay any estimated tax liability on or before the 15th day of the 3rd month following the taxable year. This may be done by attaching a remittance either to an amended "Wisconsin Declaration of Estimated Corporation Franchise or Income Tax" form or to a copy of the federal extension (Form 7004) and mailing them to the department of revenue.

(c) *Additional federal extensions.* If an additional extension of time has been granted by the internal revenue service, a copy of both sides of the extension (Form 7005), showing the action and signature of the district director, shall be filed with the department within 10 days of the date the approved form is received by the taxpayer. Timely filing of this form shall extend the due date of the Wisconsin return for the same period. A copy of Form 7005 shall also be attached to the Wisconsin return when filed.

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

(3) **INTEREST CHARGES AND LATE FILING FEES.** (a) Any additional tax due with the complete return which is not paid by the original due date is subject to interest at 9% per year during the extension period and 1½% per month from the end of the extension period until the date of payment.

(b) Any required installments of estimated tax unpaid as of the original due date of the return are subject to interest at 1½% per month until paid regardless of any extensions granted for filing the return.

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(c) Corporation returns and inventory reports filed after the extension period are each subject to a \$10 late filing fee.

(4) **CONSOLIDATED RETURNS.** Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension (Form 7004) shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return. A copy of any approved additional federal extension (Form 7005) shall be submitted for each such corporation within 10 days of its receipt by the taxpayer and a copy of Form 7005 shall be attached to the Wisconsin return when it is filed.

(5) **DOMESTIC INTERNATIONAL SALES CORPORATIONS.** Since a Domestic International Sales Corporation's (DISC's) federal annual information return (Form 1120 DISC) is not due for federal purposes until the 15th day of the 9th month following the end of the taxable year and the DISC's Wisconsin return (Form 4 or 5) is due on or before the 15th day of the 3rd month following the end of the taxable year, a federal extension for a DISC cannot apply to the Wisconsin return. If a complete Wisconsin return cannot be filed by the due date, a tentative return may be filed by such date or a 30 day extension may be requested under section 71.10(5)(a), Wis. Stats.. A tentative return then shall be filed before the end of the extension period to avoid the imposition of late filing penalties.

Note: Requests for extensions and related correspondence, documents or remittances shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

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

Tax 2.97 Sale of constant basis assets acquired prior to becoming a Wisconsin resident. (Sections 71.05(1)(a)3, (b)3 and (j); (2)(a)5 and (b); and (4), Wis. Stats.) (1) **GENERAL.** (a) The Wisconsin income of a Wisconsin resident who sells a constant basis asset, which was acquired prior to becoming a resident, shall be adjusted in the year of sale for any difference between the federal adjusted basis and the Wisconsin adjusted basis of such asset. If this difference in basis results in the federal loss being greater than the Wisconsin loss, adjustments to Wisconsin income may be required in the year of sale and in any subsequent years in which a capital loss may be carried forward.

(b) "Constant basis assets" (section 71.05(2)(a)5, Wis. Stats.) are assets (other than inventories) which are not subject to depreciation, depletion or amortization, and for which the computation of taxable income is not affected until the asset is sold or otherwise disposed of. Examples include vacant land, stocks and bonds.

(2) **LIMITATION OF GAIN OR LOSS ON SALE OF CONSTANT BASIS ASSETS.** In *Falk v. Wisconsin Tax Commission* (1930), 201 Wis. 292 and *Siesel v. Wisconsin Tax Commission* (1935), 217 Wis. 661, the Wisconsin Supreme Court set limitations on the amount of gain or loss includable in Wisconsin taxable income upon the sale or other disposition of a constant basis asset. The amount of gain or loss for Wisconsin purposes shall be limited to the lesser of:

(a) The selling price less federal adjusted basis of the constant basis asset at the time of sale; or

(b) The selling price less the fair market value of the constant basis asset on the date Wisconsin residence was established.

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(c) As an exception, if one computation ((a) or (b) above) represents a gain and the other computation represents a loss, then no gain or loss shall be reportable for Wisconsin purposes. (See Note (2) at the end of this rule.)

(3) MODIFICATION REQUIRED. (a) When the Wisconsin gain or loss is determined under computation (2) (b) or is zero because of the exception in (2) (c), the amount of such gain or loss will differ from that reported on the individual's federal income tax return. Such difference shall be reported as an addition or subtraction modification, as appropriate, in Part II, page 2 of Form 1. A statement shall be attached to Form 1 showing how the modification was determined.

(b) Listed below are explanations of how to compute the amount of the modification. In the explanations, "X" means the selling price less the fair market value on the date Wisconsin residence was established.

1. If the federal gain exceeds the "X" gain, a subtraction modification is required in the year of sale for the difference between the federal gain and the "X" gain. (See example c of Note (2) at the end of this rule.)

2. If the federal gain is less than the "X" gain, no modification is required. (See example d.)

3. If the federal loss is less than the "X" loss, no modification is required. (See example e.)

4. If there is a federal gain but an "X" loss, a subtraction modification is required in the year of sale for the amount of the federal gain. (See example a.)

5. If there is a federal loss but an "X" gain, an addition modification is required in the year of sale for that part of the federal loss deducted in the year of sale. If any part of the remaining federal loss is carried over and deducted in a subsequent year, an addition modification is required in any such year for the amount of the capital loss carryover which is deducted. (See example b.)

6. If the federal loss is larger than the "X" loss, an addition or subtraction modification, as appropriate, is required to account for such difference. The taxable year in which this adjustment will be made is dependent upon the facts regarding each specific transaction. (See examples f, g and h.)

(4) INSTALLMENT SALES. When the gain on the sale of a constant basis asset is reported on the installment method (internal revenue code section 453) and the Wisconsin gain is less than the federal gain, a subtraction modification is required in each year in which payments of principal are received on the sale. The amount of the subtraction modification which shall be entered on Part II, page 2 of Form 1, is computed using the equation: (principal payments received during the year divided by contract price) multiplied by (federal gain less Wisconsin gain) equals (subtraction modification). (See Note (1) below).

Note: (1) An example of the computation of the modification described in sub. (4) is as follows:

Capital stock purchased in 1970 having a federal adjusted basis of \$15,000 is sold by Mr. A for \$25,000 in 1975. The fair market value of the stock was \$19,000 at the time Mr. A became a resident of Wisconsin in 1972. The sale is reported on the installment method. There is a difference of \$4,000 between the federal gain of \$10,000 (\$25,000 less \$15,000) and the Wisconsin gain of \$6,000 (\$25,000 less \$19,000). Principal payments of \$5,000 are received in

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1975 and in each of the subsequent 4 years. The required subtraction modification in 1975 (and each of the subsequent 4 years) is computed as follows:

\$5,000 (principal payments) x	\$4,000 (federal gain =	\$800 (subtraction
\$25,000 (contract price)	less Wisconsin gain)	modification in 1975 and in each of the subsequent 4 years)

(2) Examples of the computation of Wisconsin gain or loss on constant basis assets acquired before becoming a Wisconsin resident and sold while a resident of Wisconsin in 1975 follow: (Dollar amounts in parentheses represent a loss in a transaction.)

Examples of the computation of Wisconsin gain or loss on constant basis assets acquired before becoming a Wisconsin resident and sold while a resident of Wisconsin in 1975. (Dollar amounts in parentheses represent a loss in a transaction.)

	(1)	(2)	(3)	(4)	(5)	(6)
	Federal Adjusted Basis	Fair Market Value at Time Wisconsin Residence Established	Selling Price	1975 Federal Gain or Loss (col. 3 less col. 1)	Difference Between Fair Market Value and Selling Price (col. 3 less col. 2)	1975 Wisconsin Gain or Loss
a	\$10,000	\$25,000	\$20,000	\$10,000	(\$5,000)	\$ -0-
b	10,000	200	1,000	(9,000)	800	-0-
c	10,000	16,000	20,000	10,000	4,000	4,000
d	10,000	8,000	20,000	10,000	12,000	10,000
e	10,000	15,000	4,000	(6,000)	(11,000)	(6,000)
f	10,000	4,000	3,500	(6,500)	(500)	(500)
g	10,000	5,000	1,000	(9,000)	(4,000)	(4,000)
h	10,000	9,400	8,200	(1,800)	(1,200)	(1,200)

a & b Since one computation (columns 4 or 5) results in a gain and the other computation (columns 4 or 5) results in a loss, there is no Wisconsin gain or loss for these two examples.

a A subtraction modification of \$10,000 in 1975 is required, which is the difference between the federal gain (\$10,000) and the Wisconsin gain (0).

b An addition modification in 1975 is required for that portion of the \$9,000 federal loss which is deducted on the 1975 federal return. If any part of the \$9,000 loss is deducted as a capital loss carryover for federal purposes in a subsequent year, an addition modification is required in such year for that part of the loss deducted on the federal return in such year. For example, if only \$1,000 is deducted on the 1975 federal return as a loss, an addition modification of \$1,000 is required on the 1975 Wisconsin return. If the remaining \$8,000 is deducted over the next 8 years at \$1,000 per year on the federal returns, an addition modification of \$1,000 is required on each of the Wisconsin returns for these 8 years.

c,d,e,f,g & h In these six examples, the Wisconsin gain or loss is the lesser gain or loss of columns 4 and 5. In examples f, g and h, it should be assumed that the loss is a not long-term capital loss and that no other capital assets were disposed of during the year.

c A subtraction modification of \$6,000 in 1975 is required, which is the difference between the federal gain (\$10,000) and column 5. (\$4,000).

d A modification is not required because the federal gain (\$10,000) is less than the column 5 gain (\$12,000).

e A modification is not required because the federal loss (\$6,000) is less than the column 5 loss (\$11,000).

- f An addition modification in 1975 is required for the difference between that part of the \$6,500 federal loss deducted on the 1975 federal return, and the Wisconsin loss of \$500. An addition modification will also be required in subsequent years for that portion of the capital loss carryover deducted on the federal return each year. For example, if \$1,000 of the \$6,500 loss is deducted on the federal return in 1975, a \$500 addition modification is required in 1975, which is the difference between the amount deducted for federal purposes (\$1,000) and the Wisconsin loss (\$500). As the remaining portion of the loss is deducted in the carryover years, an addition modification will be required in each such year to remove such loss from Wisconsin taxable income.
- g No modification is required in 1975 because the federal adjusted gross income figure used as the starting point for determining Wisconsin taxable income would already reflect the maximum amount of capital loss currently deductible (\$1,000). When, in subsequent years, the aggregate total of the \$9,000 capital loss deducted on the federal return exceeds the total Wisconsin loss allowable (\$4,000), an addition modification will be required to remove such excess loss from Wisconsin taxable income. For example, if \$1,000 of loss is deducted in each of the succeeding carryover years, an addition modification would be required in 1979 (the fourth carryover year) as the total Wisconsin loss allowable of \$4,000 would have been deducted in the years 1975 through 1978.
- h A subtraction modification in 1975 of \$100 would be required to bring the Wisconsin capital loss deduction for that year up to the maximum amount allowable of \$1,000 (this subtraction modification is provided by s. 71.05 (1) (j), Wis. Stats.). This would be necessary because only one-half of the \$1,800 net long-term loss would be deductible on the 1975 federal return. In 1976 a subtraction modification for the remaining \$200 (\$1,200 less the \$1,000 deducted in 1975) of loss allowable for Wisconsin purposes would be required.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Tax 2.98 Disaster area losses. (section 71.02 (2) (b), Stats.) (1) **GENERAL.** (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used for personal or business purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

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

(2) **FEDERAL TAX TREATMENT OF DISASTER LOSSES.** (a) *Federal law.* 1. Internal revenue code section 165 (a) provides for a deduction for certain kinds of casualty losses.

2. Internal revenue code section 165 (h) provides for a deduction of certain disaster losses and reads:

“Disaster losses.—Notwithstanding the provisions of subsection (a), any loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 may, at the election of the taxpayer, be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred. Such deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claims the loss. If an election is made under this subsection, the casualty resulting in the loss

will be deemed to have occurred in the taxable year for which the deduction is claimed."

(b) *What is a casualty loss.* A casualty is the complete or partial destruction or loss of property resulting from an event that is identifiable; damaging to property; and sudden, unexpected and unusual. 1. A casualty loss includes damage from a hurricane, tornado, flood, storm, shipwreck, fire or accident and damage to trees and shrubs. If ornamental trees and shrubs on residential property are damaged or destroyed by a casualty, there may be a deductible casualty loss. A deductible loss occurs when there has been a decrease in the total value of the real estate. However, a different principle applies in cases of such damages to similar property used for business purposes. (Internal revenue service publication 547 explains the loss computation and lists additional items which may qualify as casualty losses.)

2. Losses not deductible as casualties include: a. The loss of trees, shrubs and other plants on property used for residential purposes, as the result of disease, or fungus spread by beetles, insects, worms or other similar cause.

b. Costs involved in the care of personal injuries and the cost of temporary lights, fuel, moving or rental of temporary quarters.

c. Loss of future profits, for example, from ice storm damage to standing timber that reduces the rate of growth or the quality of future timber. The damage must actually result in property (ex., existing timber) being rendered unfit for use to qualify as a casualty.

(c) *Amount of deductible casualty loss.* 1. In general, the amount of loss is the decrease in fair market value of property resulting from the casualty, limited to the adjusted basis of the property, and reduced by any insurance or other compensation received or expected to be received. If the adjusted basis of the property is zero, there is no deductible loss.

2. Different principles apply to a casualty loss deduction on property used for personal purposes and property used for business purposes:

a. A casualty loss on property used solely for *personal* purposes is deductible only to the extent that the loss exceeds \$100 for each casualty.

b. A casualty on property used solely for *business* purposes or property held for the production of income is deductible in full without the \$100 reduction.

(d) *When a loss is deductible.* Casualty losses are generally deductible only in the tax year in which the casualty occurred even though the damaged property may not be repaired or replaced until the succeeding year. However, if a taxpayer sustains a casualty loss from a *disaster* in an area subsequently determined by the president of the United States to warrant federal assistance, internal revenue code section 165 (h) gives the taxpayer the election of claiming a loss on the return for the tax year in which the loss occurred or the preceding tax year.

(e) *Making the election to claim the loss in the preceding taxable year.* 1. The election generally shall be made on or before the later of the due date (exclusive of extensions) for filing the income tax return for the tax year in which the disaster actually occurred, or the due date (with

regard to extensions) of the return for the preceding tax year. For example, in the absence of any extensions of time to file, a calendar year individual taxpayer has until April 15, 1977, to amend a 1975 tax return to claim a disaster loss which took place during 1976.

2. The taxpayer's election shall be in writing, signed by the taxpayer and shall be made on a return, an amended return or a claim for refund. It shall specify the date or dates of the disaster and the city, town or village, county, and state where the damaged or destroyed property was located. In making the election, the taxpayer shall compute the amount of the loss under the usual rules for casualty losses as if it occurred in the year preceding that of the disaster.

3. The election becomes irrevocable 90 days after it is made.

4. If the taxpayer does not make the election on the tax return for the preceding year, the loss is deductible on the return for the year in which the disaster occurred.

(3) WISCONSIN TAX TREATMENT OF DISASTER LOSSES. (a) *Individuals*. 1. The Wisconsin income tax law for individuals is the same as the federal tax law (Internal revenue code section 165(h)) regarding disaster losses. Therefore, the federal provisions explained in sub. (2) also apply to individuals for Wisconsin income tax purposes.

2. If an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin Form 1X may be used.

(b) *Corporations*. The Wisconsin corporation tax law (in chapter 71, Wis. Stats.) is not referenced to the federal law in regard to disaster losses. Therefore, the election provisions for individuals in internal revenue code section 165(h) are not available to corporations for Wisconsin franchise/income tax purposes.

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

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

An individual who sustained a casualty loss from this disaster in any of these 22 counties (regardless of where that individual resided) could have elected to deduct the loss on the individual's 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers (assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977). If the election was not made, the loss was deductible on the taxpayer's 1976 return.

(2) This rule explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law. This rule does not explain all the details regarding casualty losses. However, Internal Revenue Service Publication 547, entitled "Tax Information on Disaster, Casualty Losses, and Thefts", may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income,

how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources and related casualty loss problems.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Tax 2.99 Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974. (sections 71.02(2)(b) and 71.05(1)(b)6, Stats.) (1) **LAW CHANGE FOR TAXABLE YEAR 1975.** Chapter 39, Laws of 1975, amended section 71.02(2)(b), Wis. Stats., so that for purposes of determining Wisconsin income and deduction amounts for the taxable year 1975, an individual, partnership, estate or trust shall use the internal revenue code enacted as of December 31, 1974.

(2) **EFFECT OF AMENDMENTS TO THE INTERNAL REVENUE CODE.** (a) *Amendments to the internal revenue code enacted on or before December 31, 1974.* Amendments enacted on or before December 31, 1974 shall be considered a part of the internal revenue code in effect on December 31, 1974, and shall be recognized for Wisconsin income tax purposes, even though such amendments became operative after December 31, 1974. For example, the provisions of P.L. 93-406—the Employee Retirement Income Security Act of 1974 (Pension Reform Act)—enacted September 2, 1974, applies for Wisconsin purposes even though certain portions of the act did not become operative until after December 31, 1974.

(b) *Amendments to the internal revenue code enacted after December 31, 1974.* Amendments enacted after December 31, 1974 shall not be considered a part of the internal revenue code in effect on December 31, 1974, regardless of whether such amendments become operative before or after December 31, 1974. Such amendments shall not be recognized for Wisconsin income tax purposes.

(3) **AMENDMENTS TO THE INTERNAL REVENUE CODE.** Descriptions of some amendments to the internal revenue code enacted after December 31, 1974 and their treatment for Wisconsin purposes follows: (a) *Amendments affecting federal adjusted gross income.* 1. *Deferred gain on sale of personal residence.* a. Federal: Additional time is allowed to purchase a new residence for purposes of deferring a gain on the sale of the old residence. If a new residence is purchased, the time period is 18 months rather than 12 months. If a new residence is constructed, the time period is 24 months rather than 18 months. (P.L. 94-12, enacted March 29, 1975.)

b. Wisconsin: The time period is still 12 months for purchase of a residence and 18 months for construction of a residence. If replacement of an old residence is not made within these periods, the gain on the sale of the old residence shall be included in Wisconsin taxable income.

2. *Contributions to retirement plans.* a. Federal: The internal revenue code provides that a cash basis employer or self-employed person may treat Keogh plan contributions made on or before the due date (or a later date if an extension of time for filing was obtained) of the person's 1975 federal income tax return as if they had been made on the last day of the 1975 taxable year. For example, Keogh plan contributions may be made during the period January 1, 1976 through April 15, 1976 (due date of a 1975 calendar year return) and still be claimed as a deduction on a 1975 federal income tax return. This extended time period for making contributions to Keogh plans is provided by 2 separate federal laws: Keogh plans established after January 1, 1974, provided by Pension Reform Act (P.L. 93-406, enacted September 2, 1974); and Keogh plans

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existing as of January 1, 1974, provided by Tax Reduction Act of 1975 (P.L. 94-12, enacted March 29, 1975).

b. Wisconsin: As a result of the enactment of section 71.05 (1) (b) 6, Wis. Stats., in Chapter 224, Laws of 1975, the treatment of contributions to a Keogh plan for Wisconsin income tax purposes for 1975 is the same as the federal provisions explained above. Contributions made on or before the due date (or a later date if an extension of time for filing was obtained) of the taxpayer's 1975 Wisconsin income tax return may be treated as if they had been made on the last day of the 1975 taxable year.

3. *Amortization of income rental housing and pollution control facilities.* a. Federal: Expenditures to rehabilitate low and moderate income rental housing and for pollution control facilities which are made in 1975 may be amortized over 5 years. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: Such expenditures shall be depreciated over the useful life of the improvements for Wisconsin purposes. (However, special write-off provisions may be available for pollution control facilities under section 71.05 (1) (h) or (i), Wis. Stats.)

4. *Depletion of oil and gas wells.* a. Federal: The percentage depletion allowance for certain oil and gas wells was either no longer available or has been altered. (P.L. 94-12, enacted March 29, 1975.)

b. Wisconsin: This depletion allowance shall be retained at 1974 levels for Wisconsin purposes.

5. *Depreciation - ADR.* a. Federal: Taxpayers electing to use the Asset Depreciation Range System (ADR) for depreciating business assets acquired in 1975 may exclude real estate assets from that system. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: For Wisconsin purposes, when the ADR System is elected, it shall be applied to all assets acquired during 1975 with no exclusions permitted.

(b) *Amendments affecting itemized deductions, standard deduction and low-income allowance.* 1. *Political contributions.* a. Federal: The limitation on the amount of political contributions which were deductible was increased to \$100 for single persons and \$200 for married couples. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: The limit shall be \$50 for single persons and \$100 for married couples.

2. *Newsletter funds.* a. Federal: Additional political contributions qualified as being deductible. Candidacy requirements were relaxed and contributions to elected officials or candidates newsletter funds were considered deductible. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: Contributions to newsletter funds and unannounced candidates shall not be deductible.

3. *Child care.* a. Federal: For taxable years beginning after March 29, 1975, the income limitation applicable to child-dependent care was increased to \$35,000. (P.L. 94-12, enacted March 29, 1975.)

b. Wisconsin: The income limitation shall remain at \$18,000.

4. *Sales tax.* a. Federal: The internal revenue service published state sales tax tables for 1975. These tables may be used to determine the amount of sales tax to be claimed as an itemized deduction on a 1975 federal income tax return. (These tables did not result from enactment of new federal law.)

b. Wisconsin: The 1975 state sales tax tables published by the internal revenue service shall also be used to determine the sales tax to be claimed as an itemized deduction for Wisconsin purposes in 1975. However, the amount of the sales tax deduction shall be based on federal adjusted gross income as computed under the internal revenue code in effect on December 31, 1974.

5. *Standard deduction and low-income allowance.* a. Federal: The standard deduction and low-income allowance were increased for federal tax purposes.

b. Wisconsin: The standard deduction shall remain at 15% of Wisconsin adjusted gross income, not to exceed \$2,000 for an unmarried individual or \$2,000 in the aggregate for a husband and wife. The low-income allowance shall remain at \$1,300 for an unmarried individual or \$1,300 in the aggregate for a husband and wife.

(4) REPORTING DIFFERENCES RESULTING FROM AMENDMENTS ENACTED AFTER DECEMBER 31, 1974. (a) *Individuals.* 1. In computing taxable income for federal purposes for 1975, an individual shall consider amendments to the internal revenue code enacted after December 31, 1974. The federal income tax return attached to the Wisconsin income tax return, Form 1, may reflect such amendments. However, since Wisconsin does not recognize amendments to the internal revenue code enacted after December 31, 1974, there may be differences between the amounts of "federal adjusted gross income" and "itemized deductions" as shown on the federal income tax return and such amounts as determined for Wisconsin purposes.

2. Wisconsin Schedule I shall be used to report differences resulting from amendments to the internal revenue code enacted after December 31, 1974.

3. The amount of an individual's standard deduction or low-income allowance will also be different for federal than for Wisconsin purposes. However, such differences shall *not* be reported on Schedule I. The amount of standard deduction or low-income allowance permitted for Wisconsin shall be entered on line 6 of the Wisconsin income tax return, Form 1 or Form 1A.

(b) *Partnerships, estates and trusts.* The federal returns required to be attached to the Wisconsin Form 2 (estates and trusts) and Form 3 (partnerships) may reflect amendments enacted to the internal revenue code after December 31, 1974. Therefore, differences may exist between the amounts of certain income and deduction items as shown for federal purposes and those reportable for Wisconsin purposes. The differences resulting from amendments enacted after December 31, 1974 shall be identified on the Wisconsin Form 2 or Form 3. If the differences affect the amount of distributable income reportable by a partner or beneficiary for Wisconsin purposes, the partner or beneficiary shall report such differences on Wisconsin Schedule I.

Note: For the years 1965 through 1974, Wisconsin's income tax law was "federalized" as it pertained to individuals, partnerships, estates and trusts. Federal definitions of income and Register, April, 1978, No. 268

deductions as determined under the internal revenue code for a current taxable year were used in computing Wisconsin taxable income.

Copies of Schedule I may be obtained from any department of revenue office or by writing to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Tax 2.991 Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975. (section 71.02(2)(b), Stats.) (1) LAW CHANGE FOR TAXABLE YEAR 1976. Chapter 224, Laws of 1975, amended section 71.02(2)(b), Wis. Stats., so that for purposes of determining Wisconsin income and deduction amounts for the taxable year 1976, an individual, partnership, estate or trust shall use the internal revenue code enacted as of December 31, 1975.

(2) EFFECTS OF NEW LAW FOR TAXABLE YEAR 1976. (a) *Amendments to the internal revenue code enacted on or before December 31, 1975.* Amendments enacted on or before December 31, 1975 shall be considered a part of the internal revenue code in effect on December 31, 1975, and therefore recognized for Wisconsin income tax purposes for the taxable year 1976, even though such amendments may not become operative until after December 31, 1975.

(b) *Amendments to the internal revenue code enacted after December 31, 1975.* Amendments enacted after December 31, 1975 shall not be considered a part of the internal revenue code in effect on December 31, 1975, regardless of whether such amendments become operative before or after December 31, 1975. Such amendments will not be recognized for Wisconsin income tax purposes for the taxable year 1976.

(3) REPORTING DIFFERENCES RESULTING FROM AMENDMENTS TO THE INTERNAL REVENUE CODE ENACTED AFTER DECEMBER 31, 1975. (a) *Individuals.* 1. In computing taxable income for *federal purposes* for 1976, an individual must consider amendments to the internal revenue code enacted after December 31, 1975 (e.g., the provisions of the federal "Tax Reform Act of 1976"). The federal income tax return attached to the Wisconsin income tax return, Form 1, may reflect such amendments. However, since Wisconsin does *not* recognize amendments to the internal revenue code enacted after December 31, 1975, there may be differences between the amounts of "federal adjusted gross income" and "itemized deductions" shown on the federal income tax return and such amounts reportable for Wisconsin purposes.

2. Wisconsin Schedule I shall be used to report differences resulting from amendments to the internal revenue code enacted after December 31, 1975.

3. The amount of an individual's standard deduction or low-income allowance will also be different for federal than for Wisconsin purposes. However, such differences shall *not* be reported on Schedule I. The amount of standard deduction or low-income allowance permitted for Wisconsin shall be entered on line 6 of the Wisconsin income tax return, Form 1 or Form 1A.

(b) *Partnerships, Estates and Trusts.* The federal returns required to be attached to the Wisconsin Form 2 (estates and trusts) and Form 3 (partnerships) may reflect amendments enacted to the internal revenue code after December 31, 1975. Therefore, differences may exist between the amounts of certain income and deduction items as shown for federal

purposes and those reportable for Wisconsin purposes. The differences resulting from amendments enacted after December 31, 1975 shall be identified on the Wisconsin Form 2 or Form 3. If the differences affect the amount of distributable income reportable by a partner or beneficiary for Wisconsin purposes, the partner or beneficiary shall report such differences on Wisconsin Schedule I.

(4) **INCOME AND DEDUCTION ITEMS WHICH DIFFER FOR WISCONSIN-FEDERAL PURPOSES FOR 1976.** (a) A copy of the 1976 Wisconsin Schedule I and its instructions is set out following this rule and incorporated herein. The Schedule I instructions contain a detailed listing of changes to the internal revenue code enacted after December 31, 1975. The proper treatment of each item for Wisconsin purposes is also described.

(b) The differences probably affecting the greatest number of taxpayers involve the sick pay exclusion (see A. 1., Schedule I instructions) and child care expenses (see B. 42, Schedule I instructions). Wisconsin Schedules 2440W (sick pay) and 2441W (child care) have been developed for use in computing the proper Wisconsin deductions for these items.

Note: For the years 1965 through 1974, Wisconsin's income tax law was "federalized" as it pertained to individuals, partnerships, estates and trusts. Federal definitions of income and deductions as determined under the internal revenue code for a current taxable year were used in computing Wisconsin taxable income.

For the taxable year 1975, the Wisconsin income tax law was amended (Chapter 39, Laws of 1975, amended section 71.02(2)(b)) to provide that the computation of income and deduction amounts for individuals, partnerships, estates and trusts shall be based on the internal revenue code enacted as of December 31, 1974, rather than the December 31, 1975 internal revenue code. (Rule Tax 2.99 explains how 1975 Wisconsin taxable income shall be computed under the December 31, 1974 Internal Revenue Code).

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

SCHEDULE I

WISCONSIN
DEPARTMENT
OF REVENUE

ADJUSTMENTS TO CONVERT 1976 FEDERAL
ADJUSTED GROSS INCOME AND ITEMIZED
DEDUCTIONS TO THE AMOUNTS ALLOWABLE
UNDER THE INTERNAL REVENUE CODE ENACTED
AS OF DECEMBER 31, 1975.

Attach to Wisconsin Form 1

1976

Name, address and social security number as shown on your return

PART I - FEDERAL ADJUSTED GROSS INCOME

(Read instructions before completing Schedule I)

1. Enter your 1976 federal adjusted gross income from line 15c, Form 1040
2. Adjustment for sick pay
 - a. Excludable sick pay from Wisconsin Schedule 2440W
 - b. Sick pay excluded from federal income on line 15b, Form 1040
 - c. Subtotal (combine lines 1, 2a and 2b)
3. Supplemental schedule of gains or losses (federal Form 4797)
 - a. Enter any loss claimed on line 9(b)(2), Form 4797
 - b. Enter any gain reported on line 9(b)(2), Form 4797
 - c. Enter revised gain or loss from line 9(b)(2), Form 4797
(attach revised Form 4797)
 - d. Subtotal (combine lines 3a, 3b, and 3c-indicate a loss by parenthesis)
4. Capital gains and losses (federal Schedule D and Form 4798)
 - a. Enter any loss claimed on line 30a, federal Form 1040
 - b. Enter any gain reported on line 30a, federal Form 1040
 - c. Enter revised capital gain or loss from line 30a, Form 1040 (attach revised
Schedule D, Form 4798 and any accompanying schedules)
 - d. Subtotal (combine lines 4a, 4b and 4c-indicate a loss by parenthesis)
5. Subtotal (combine lines 2c, 3d and 4d)
6. Other adjustments:

Description	Amount		Difference
	Amount per 1976 federal return	determined under 12/31/75 IRC	
a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____
d. _____	_____	_____	_____
e. _____	_____	_____	_____
f. _____	_____	_____	_____
g. _____	_____	_____	_____
h. _____	_____	_____	_____
i. Total Difference (combine the "Difference" column for lines 6a through 6h)	_____	_____	_____

7. Federal adjusted gross income as computed under the 12/31/75 Internal Revenue Code (combine lines 5 and 6i). Enter here and on line 1 of Wisconsin Form 1. (If the above figures are from a joint federal return and both spouses have income, first enter this total on line 39, column A, Part I on page 2 of Form 1. Complete columns A, B and C of Part I. Carry forward the amounts from line 39, columns B and C to line 1 of Form 1.)

PART II - ITEMIZED DEDUCTIONS

- This part must be completed whenever adjustments have been made in Part I and deductions are itemized.
- Even though Part I is not used, it will be necessary to complete this part if an adjustment is required for such items as investment interest limitation, child care (household and dependent care) expenses, and office in the home expenses.

8. Enter your 1976 federal itemized deductions from line 40, federal Schedule A
9. Child care (household and dependent care) expenses—enter allowable deduction from line 16, Wisconsin Schedule 2441W

10. Other adjustments:

Description	Amount per 1976 federal return	Amount determined under 12/31/75 IRC	Difference
a. Medical expense	_____	_____	_____
b. Contributions	_____	_____	_____
c. Sales tax	_____	_____	_____
d. Interest expense	_____	_____	_____
e. Other (specify) _____	_____	_____	_____
f. _____	_____	_____	_____
g. _____	_____	_____	_____
h. _____	_____	_____	_____
i. _____	_____	_____	_____
j. Total Difference (combine the "Difference" column for lines 10a through 10i)	_____	_____	_____

11. Itemized deductions as computed under the 12/31/75 Internal Revenue Code (combine lines 8, 9 and 10j). Enter here and on line 6 of Wisconsin Form 1.

INSTRUCTIONS FOR COMPLETING WISCONSIN SCHEDULE I-1976

INTRODUCTION—The Wisconsin Statutes require that the computation of taxable income on the 1976 Wisconsin income tax return is to be based on the Internal Revenue Code enacted as of December 31, 1975. Changes to the Internal Revenue Code enacted after that date do not apply for Wisconsin income tax purposes. Thus, certain income and deduction items may be different for federal and Wisconsin purposes. Those differences must be adjusted on this schedule.

WHO MUST FILE—If the computation of a person's federal adjusted gross income or federal itemized deductions reflects any of the changes in federal income tax law which are listed below, this schedule must be completed and attached to the Wisconsin income tax return, Form 1. If a married couple is filing a joint federal return, only one Schedule I should be prepared and it should be based on the joint income and deduction amounts reported on the federal return.

PARTNERS and BENEFICIARIES OF ESTATES AND TRUSTS—The income and deduction items computed on the Wisconsin returns of partnerships, estates and trusts may also be affected by the differences between Wisconsin and federal law for 1976. As a result, the distributive share of these items which are reportable on the individual Wisconsin income tax returns of the respective partners and beneficiaries may differ for Wisconsin and federal income tax purposes. Such partners and beneficiaries should receive notification from the partnership, estate or trust of the amounts reportable for Wisconsin purposes. By comparing the amounts reportable for Wisconsin and federal purposes, the partner or beneficiary should determine the items which differ and make the appropriate adjustments on Schedule I.

Wisconsin residents who are members of partnerships or beneficiaries of estates or trusts which are not required to file Wisconsin returns may not receive notification from the partnership, estate or trust of the items reportable for Wisconsin purposes. Such residents should determine if any adjustments are required on Schedule I.

A list of the differences in Wisconsin-federal law which affect only the computation of income receivable from a partnership may be found in section C on page 4. Certain items in section A may also affect such income.

SPECIFIC INSTRUCTIONS

(Numbered to correspond with the line numbers on Schedule I)

INSTRUCTIONS FOR PART I

1. Enter your 1976 federal adjusted gross income as shown on line 15c of your federal return, Form 1040. If you are married and filing a joint federal return, this figure will be your joint federal income.
2. If the sick pay excludable from your Wisconsin income differs from the sick pay (disability income) excluded from federal income, enter on line 2a the excludable sick pay computed on Wisconsin Schedule 2440W. On line 2b, enter the sick pay (disability income) excluded from federal income on line 15b, Form 1040.
3. If you sold or otherwise disposed of certain property during 1976, the gain or loss reportable from such sale may differ for Wisconsin and federal purposes. (The provisions of federal law which may produce such differences are described in section A.) To properly report such gain or loss on your Wisconsin return, it may be necessary to remove all gain or loss included in your federal adjusted gross income. This is done by entering the appropriate figure on line 3a or 3b, or 4a or 4b. Then enter the revised gain or loss figure on line 3c or 4c, and attach to Form 1 a revised federal Schedule D or Form 4797 or 4798 marked "Revised to 12/31/75 IRC".
4. See the listing under ITEMS REQUIRING ADJUSTMENT for other items that require adjustment. Enter on lines 6a through 6h each of the items for which an adjustment is being made.

INSTRUCTIONS FOR PART II

8. Enter your 1976 federal itemized deductions from line 40 of federal Schedule A.
9. Persons incurring expenses for household and dependent care services (child care) which qualify as an itemized deduction on their Wisconsin return must complete Wisconsin Schedule 2441W. Enter on line 9 of Schedule I the allowable deduction as shown on line 16 of Wisconsin Schedule 2441W. CAUTION—persons claiming the standard deduction on their Wisconsin return cannot claim a deduction for these expenses.
10. See the listing (section B on page 4) under ITEMS REQUIRING ADJUSTMENT for details on adjustments that may be necessary to other deductions.

Whenever federal adjusted gross income has been increased or decreased in Part I of Schedule I, itemized deductions for medical expense, sales tax and contributions may also require adjustments. The deductible amount of those items is determined by using federal adjusted gross income, as computed under the 12/31/75 Internal Revenue Code.

Public Law 94-253, enacted March 31, 1976, and Public Law 94-267, enacted April 15, 1976, respectively.)

Listed below are brief explanations of differences between the Internal Revenue Code for 1975 and 1976. The "Federal" explanation indicates how an item is to be treated for federal income tax purposes under the December 31, 1976 Internal Revenue Code. The "Wisconsin" explanation indicates how the item is to be treated for Wisconsin purposes under the Internal Revenue Code enacted as of December 31, 1975.

If you need additional information regarding any of these items, contact any Wisconsin Department of Revenue office.

A. ITEMS AFFECTING THE COMPUTATION OF FEDERAL ADJUSTED GROSS INCOME*

1. Sick Pay Exclusion:

- (a) Federal— The sick pay exclusion is no longer available to taxpayers who are only temporarily absent from work. A taxpayer must now be permanently and totally disabled to exclude any portion of income as sick pay. Also, any exclusion available must be reduced on a dollar-for-dollar basis by the amount of the taxpayer's adjusted gross income (as computed before the sick pay exclusion) in excess of \$15,000. Waiting periods are no longer imposed for purposes of determining the amount of a sick pay exclusion.
- (b) Wisconsin— Taxpayers who are temporarily absent from work due to sickness or injury continue to be eligible for a sick pay exclusion and no reduction in the amount excludable is required when income exceeds \$15,000. Waiting periods continue to apply with respect to the amount of exclusion available during the first 30 calendar days of absence. (Wisconsin Schedule 2440W should be completed to determine the proper amount of sick pay excludable for Wisconsin purposes.)

2. Federal Employee Disability Pensions:

- (a) Federal— Members of the armed forces, the National Oceanic and Atmospheric Administration, the Public Health Service or the Foreign Service, who first enter the service of such organization after September 24, 1975, may be limited as to the amount of disability income (received for non-combat injuries) which they may exclude from their taxable income.
- (b) Wisconsin— All disability payments received by such individuals are excludable from income.

3. Rental of Vacation Homes:

- (a) Federal— A limitation (14 days or 10% of the days rented, whichever is greater) is placed on the amount of personal use which may be made of rental vacation property without reducing rental expenses attributable to such property. Deductible expenses are limited to the amount of rent derived from the property whenever personal use exceeds the limitation. However, a minimum rental use provision is also created to provide that when a vacation home is rented out for fewer than 15 days in any taxable year, the rental income derived may be excluded from gross income and no rental expenses may be deducted.
- (b) Wisconsin— Income derived from the rental of a vacation home must be reported regardless of the extent of rental activity. Losses incurred are subject to the provisions of Section 183 of the Internal Revenue Code, relating to activities not engaged in for profit.

4. Business Use of Personal Residence:

- (a) Federal— The deduction of business expenses (e.g., office-in-home) attributable to a taxpayer's personal residence is generally restricted to cases where a portion of the home is used for business purposes on an exclusive and regular basis. Combined (business and personal) use or occasional use of a portion of the home will not meet the exclusive use test. In the case of employees, any business use of the home must also be for the convenience of their employer.

- An overall limitation (measured by the income produced by the business activity) is placed on the amount of business expenses which may be deducted.
- (b) Wisconsin- Expenses may be deducted for the partial use of residential property for business purposes, even though not attributable to a portion of the home used on an exclusive basis. Deductible amounts are not limited by the income generated by the business activity in the home.
- 5. Cancellation of Student Loans:**
- (a) Federal- The forgiveness of all or a portion of student loans funded by federal, state or local government programs will not produce taxable income when such forgiveness is contingent upon the recipient working for a specified period of time in a certain area or for a certain class of employer.
- (b) Wisconsin- Any portion of a student loan which is forgiven must be included in the recipient's income for the year in which it is forgiven.
- 6. Political Party Debts:**
- (a) Federal- Certain taxpayers using the accrual-basis method of accounting may now claim a business bad debt deduction for worthless debts owed by a political party or committee, if certain requirements are met.
- (b) Wisconsin- No deduction is allowable for a worthless debt owed by a political party or committee.
- 7. Crop Disaster Payments:**
- (a) Federal- Disaster payments received by cash-basis farmers under the authority of the Agricultural Act of 1949 for crop damage or destruction will be treated in the same manner as crop insurance proceeds. That is, an election may be made to delay including such payments in income until the year after receipt, provided that income from the crops involved would normally be reported in that year.
- (b) Wisconsin- A cash-basis farmer will be required to report such disaster payments as income in the year received.
- 8. Preservation of Historic Structures:**
- (a) Federal- Several tax incentives are provided to encourage the preservation and rehabilitation of historic structures listed in the National Register or certified by the Department of the Interior. Essentially, they consist of rapid write-off provisions for rehabilitation expenditures, and restrictions on deductions for demolition costs and depreciation of newly constructed buildings.
- (b) Wisconsin- Expenditures relating to historical structures will continue to be treated in the same manner as those for other types of property.
- 9. Qualified Stock Options:**
- (a) Federal- Qualified stock option rules for employee plans have been repealed as of May 20, 1976. This means most stock options granted after that date will produce income which must be reported by the recipient either in the current year or at the time the option is exercised. (However, options granted under plans adopted prior to May 20, 1976, will continue to receive special treatment if they are exercised before May 20, 1981.)
- (b) Wisconsin- Stock options granted under "qualified" plans will continue to receive special tax treatment. The recipient will not be required to report any income at the time the option is granted or when it is exercised. Rather, the recognition of income is postponed until the option or any stock acquired under it is sold.
- 10. Livestock Sold Because of Drought:**
- (a) Federal- Farmers who use the cash-basis method of accounting may elect to delay including the proceeds from drought caused sales of certain livestock in income until the following taxable year. This election is available only to farmers located in drought areas designated as eligible for federal assistance.
- (b) Wisconsin- A cash-basis farmer must report the proceeds from all livestock sales as income in the year received.
- 11. Construction Period Interest and Taxes:**
- (a) Federal- A limitation is placed on the amount of construction period interest and taxes which may be deducted in the year paid or accrued with respect to nonresidential real property, the construction of which began in 1976. A minimum of 50% of such expenses must be capitalized for amortization after the property is available for use or sale.
- (b) Wisconsin- Construction period interest and taxes on nonresidential property may either be deducted currently or capitalized, at the election of the taxpayer.
- 12. Gain From Condemnation of Real Property:**
- (a) Federal- Additional time is allowed to acquire replacement property for purposes of deferring the recognition of a gain from property which has been disposed of due to condemnation proceedings. The replacement period is now three years.
- (b) Wisconsin- The replacement period remains at two years. If qualifying replacement property is not acquired within that time, any gain resulting from the condemnation sale must be included in Wisconsin taxable income.
- 13. Recapture of Depreciation on Certain Real Property:**
- (a) Federal- All post-1975 accelerated depreciation (with the exception of that claimed on certain government subsidized housing) will be treated as ordinary income, rather than capital gain income at the time the property is sold.
- (b) Wisconsin- The portion of accelerated depreciation which will be treated as ordinary income will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.
- 14. Gain on Sales Between Related Parties:**
- (a) Federal- The provisions restricting capital gain treatment when a sale or exchange is between related individuals or between an individual and a controlled corporation have been broadened for transactions taking place after October 4, 1976.
- (b) Wisconsin- The definitions of "related parties" will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.
- 15. Outdoor Advertising Displays:**
- (a) Federal- Certain outdoor advertising displays involuntarily converted through condemnation may be regarded as real property rather than tangible personal property. This will allow taxpayers to acquire replacement real property and defer the recognition of a gain from the conversion.
- (b) Wisconsin- Such property will continue to be regarded as personal property and any gain realized from the involuntary conversion must be included in Wisconsin taxable income.
- 16. Mutual Funds Tax Exempt Interest:**
- (a) Federal- A distribution of state or local municipal bond interest received from certain mutual funds will retain its character as tax exempt income. Thus the recipient may exclude such amount from taxable income.
- (b) Wisconsin- Such interest will not retain its character as tax exempt income when distributed by a mutual fund, and must be included in income.
- 17. Exchange Fund Partnerships:**
- (a) Federal- Gain will be recognized when appreciated property is transferred, after February 17, 1976, to a partnership constituting an investment company and results in a diversification of investments.
- (b) Wisconsin- No gain will be recognized at the time of such transfer.
- 18. Armed Forces Health Professions Scholarships:**
- (a) Federal- Amounts received under the above scholarship program in 1976 may be excluded from taxable income.
- (b) Wisconsin- Such amounts must be included in income.
- 19. Income Earned in Foreign Country:**
- (a) Federal- The income exclusion permitted to certain U.S. citizens earning income in a foreign country has been reduced to \$15,000 annually.
- (b) Wisconsin- This exclusion will be determined under the Internal Revenue Code in effect on December 31, 1975.

20. Pollution Control Facilities:

- (a) Federal- The cost of certain pollution control facilities may be amortized over a 5-year period.
- (b) Wisconsin- Such expenditures must be depreciated over the useful life of the facility. (However, it should be noted that special write-off provisions may be available for such facilities under s. 71.05 (1) (h) or (i) of the Wisconsin Statutes.)

21. Owner-Employee Retirement Plan Contributions:

- (a) Federal- Contributions by an owner-employee to a Keogh type retirement plan which is a level-premium annuity contract may be made without regard to the 25% of earned income limitation.
- (b) Wisconsin- Such retirement plan contributions will continue to be subject to the 25% of earned income limitation.

22. Minimum \$750 Contribution to Retirement Plans of Self-Employed Individuals:

- (a) Federal- Self-employed individuals having an adjusted gross income of less than \$15,000 may make contributions of up to \$750 to a Keogh type retirement plan without regard to the 25% of earned income limitation.
- (b) Wisconsin- Such retirement plan contributions will continue to be subject to the 25% of earned income limitation.

23. Individual Retirement Accounts:

- (a) Federal- Members of the Armed Forces Reserves, the National Guard and volunteer fire-fighters may qualify for an individual Retirement Account deduction regardless of the fact that they participate in a military or government retirement plan.
- (b) Wisconsin- Such individuals will not be allowed to deduct contributions made to an individual Retirement Account.

24. Tax Sheltered Annuities:

- (a) Federal- Amounts contributed by certain tax exempt employers to provide annuities for employees may now be invested in regulated investment companies which issue either redeemable or non-redeemable shares (i.e., open-end or closed-end mutual funds) without the employee having to recognize income currently.
- (b) Wisconsin- Such contributions must be invested in regulated investment companies which issue redeemable shares in order to be excludable from an employee's income.

25. Sports Franchisees:

- (a) Federal- New methods are prescribed for allocating a portion of the purchase price of a sports franchise to depreciable player contracts. Also, the depreciation recapture provisions relating to sales of player contracts have been altered.
- (b) Wisconsin- Allocation of purchase price and depreciation recapture amounts will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.

26. Production Costs of Films, Books, Records, Etc.:

- (a) Federal- Amounts attributable to the production of a film, book, record or similar property must be capitalized and deducted over the period that such property will produce substantially all of its income.
- (b) Wisconsin- All or a portion of such expenses may be deducted in the year paid or accrued.

27. Low-Income Housing Rehabilitation Expenditures:

- (a) Federal- Certain expenditures incurred to rehabilitate low-income rental housing may be amortized over a 5-year period.
- (b) Wisconsin- Such expenditures must be depreciated over the useful life of the improvements made.

28. Recapture of Intangible Drilling Costs:

- (a) Federal- Previously deducted intangible drilling expenses will be treated as ordinary income upon sale of oil and gas properties, to the extent such deductions exceed amounts which would be allowed if the expenses were capitalized and amortized over the useful life of the well.
- (b) Wisconsin- Amounts previously deducted for such expendi-

29. Option Closing Transactions:

- (a) Federal- The writer of certain securities options will realize short-term capital gain or loss from closing transactions involving options granted after September 1, 1976.
- (b) Wisconsin- Gain or loss on such transactions will continue to be treated as ordinary rather than capital gain income.

30. Nonresident Aliens:

- (a) Federal- A nonresident alien married to a U.S. citizen may elect to be taxed as a citizen. As a result, such individual will be subject to tax on his or her entire worldwide income, but also will be allowed to claim the standard deduction, low-income allowance or itemized deductions available to U.S. citizens.
- (b) Wisconsin- Such individual will continue to be treated as a nonresident alien. Generally, only income from U.S. sources will be includable in income and only amounts attributable to U.S. business activities, charities or properties are allowable as deductions.

31. Farmers' Excess Deduction Account:

- (a) Federal- No further additions to excess deduction accounts have to be made for losses sustained after the tax year 1975.
- (b) Wisconsin- Farm losses deducted against non-farm income must continue to be accumulated in excess deduction accounts. Thus, gains from the sale of farm property will continue to be subject to farm loss recapture provisions.

32. Prepaid Interest:

- (a) Federal- Taxpayers using the cash-basis method of reporting may only deduct prepaid interest expense in the tax year in which the interest represents a charge for the use of the funds borrowed. In other words, the interest expense must be prorated over the term of the loan and deducted accordingly.
- (b) Wisconsin- Cash-basis taxpayers may deduct prepaid interest expenses in the year paid, if such advance payment is for a period not extending more than 12 months beyond the end of the current taxable year and the deduction will not materially distort income.

33. Investment Interest:

- (a) Federal- The amount of interest on investment indebtedness which is deductible in any one taxable year is limited to \$10,000, plus the taxpayer's net investment income. Investment interest which is not deductible for any taxable year can be carried over without limitation to future years.
- (b) Wisconsin- The limitation regarding deductible investment interest applicable for taxable year 1975 will be retained for Wisconsin purposes. Generally, the limitation is \$25,000, plus net investment income and long-term capital gain income, plus one-half of any interest exceeding these amounts. Investment interest which is not deductible in the current year can be carried over to future years, but may be subject to further limitation in the carry-over year as provided by the Internal Revenue Code in effect on December 31, 1975.

34. Losses Limited to Amounts "At Risk":

- (a) Federal- Operating losses attributable to certain types of business activities may be deducted only to the extent of investment which is "at risk". The specific activities are: (1) Holding, producing or distributing motion picture films or video tapes; (2) Farming (but not farming operations involving trees other than fruit or nut trees); (3) Equipment leasing; or (4) Exploring for or exploiting of oil and gas resources.
- (b) Wisconsin- The amount of operating loss which may be deducted with respect to the above activities will not be subject to the "at risk" limitation.

35. Income From Controlled Foreign Corporations:

- (a) Federal- Certain investments made by controlled foreign corporations will no longer result in U.S. shareholders having to include amounts of undistributed corporate earnings and profit in their income. The specific investments involved are

domestic corporation and (2) movable oil and gas drilling rigs for use on the U.S. continental shelf.

- (b) Wisconsin- Shareholders of controlled foreign corporations which invest in the above types of U.S. property may be required to report undistributed earnings and profits of such corporations as income.

36. Bad Debt Deductions:

- (a) Federal- Losses arising from the guaranty of a loan (other than a loan to a corporation) may not be deducted unless the guarantee agreement was entered into for profit or as part of the guarantor's trade or business. Losses attributable to trade or business activities are deductible as ordinary losses. Those attributable to transactions entered into for profit must be deducted as short-term capital losses.
- (b) Wisconsin- Losses incurred as the result of guaranteeing loans of other individuals will continue to be deductible, even though the guarantee may not have been related to the guarantor's trade or business or entered into for the purpose of realizing a profit. Those losses which are related to the guarantor's trade or business are deductible as ordinary losses. Others must be deducted as short-term capital losses. However, an exception exists where although the guarantee is not related to the guarantor's business, the loan proceeds were used for business reasons by the actual borrower. In this instance the loss may be deducted as an ordinary loss.

37. International Boycotts and Bribes of Foreign Officials:

- (a) Federal- U.S. shareholders of a controlled foreign corporation must report as income a pro-rata share of the corporation's nondistributed income attributable to boycott activities and any illegal payments that have been made to foreign officials.
- (b) Wisconsin- No income will result from either of the above activities.

38. ConRail Securities Exchanges:

- (a) Federal- Tax-free treatment has been extended to the exchange of stocks and securities held in eleven insolvent eastern U.S. railroads for others upon the formation of ConRail (Consolidated Rail Corporation).
- (b) Wisconsin- This automatic tax-free treatment for such exchanges will not apply. The proper treatment for these exchanges must be determined on the basis of the provisions of the Internal Revenue Code in effect on December 31, 1975.

39. Depletion-Oil and Gas Wells:

- (a) Federal- The exemption permitting small producers to claim percentage depletion on certain oil and gas properties has been modified.
- (b) Wisconsin- The qualifications to be met for purposes of claiming percentage depletion will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.

40. Tax-Free Rollovers of Retirement Plan Proceeds:

- (a) Federal- Tax-free rollover provisions have been made available to employees who receive distributions from retirement plans which have been discontinued by their employers. When such amounts are properly reinvested in a new retirement plan, the recognition of any gain is postponed.
- (b) Wisconsin- Such distributions must be included in Wisconsin income for the year in which received.

41. Foreign Trust Income:

- (a) Federal- Income produced by assets transferred to a foreign trust may be taxed directly to the person (grantor) making such transfer.
- (b) Wisconsin- Such income will not be taxable to the grantor.

B. ITEMS AFFECTING THE COMPUTATION OF FEDERAL ITEMIZED DEDUCTIONS

42. Child Care Expenses:

- (a) Federal- Child care expenses are no longer allowable as an itemized deduction. Rather, a portion of such expenses is allowed as a credit which is applied directly to the taxpayer's federal income tax liability. In addition, certain eligibility requirements have been changed and the adjusted gross income limitation has been removed.
- (b) Wisconsin- An itemized deduction will continue to be allowed for employment related child care expenses. However, 1975 eligibility requirements will apply and the amount of any deduction will be reduced when adjusted gross income exceeds \$35,000. (Wisconsin Schedule 2441W should be completed to determine the amount of child care expenses allowable as an itemized deduction.)

43. Contributions of U.S. Government Publications:

- (a) Federal- A deduction for a contribution of U.S. Government publications to charity after October 4, 1976 will be allowed only for the amount paid for such publications.
- (b) Wisconsin- Deductions for contributions of such items may continue to be based on their fair market value.

44. Foreign Tax Paid:

- (a) Federal- An itemized deduction for foreign taxes may not include any amount of tax which is allocable to income excludable from federal adjusted gross income.
- (b) Wisconsin- The full amount of foreign taxes paid will be allowable as an itemized deduction.

45. Contributions of Partial Interests in Real Property:

- (a) Federal- A deduction is allowed for a contribution, exclusively for conservation purposes, of a partial interest in an historic land area or structure.
- (b) Wisconsin- Such contributions will not be deductible.

C. ITEMS AFFECTING THE COMPUTATION OF PARTNERSHIP INCOME

46. Farming Syndicates:

- (a) Federal- Generally, farming syndicates (partnerships) which were either established during 1976 or had a membership change during 1976 are required to deduct expenses for feed, seed, fertilizer and other farm supplies when such items are used or consumed (not when paid for); and to capitalize the costs of poultry and preproductive orchard, vineyard or citrus grove expenses.
- (b) Wisconsin- Subject to certain limitations, such expenses may be deducted in the year paid or accrued for Wisconsin purposes.

47. Additional First-Year Depreciation:

- (a) Federal- The total amount of first-year depreciation that a partnership may pass through to all partners is limited to \$2,000.
- (b) Wisconsin- Partnerships may pass through up to \$4,000 of additional first-year depreciation to each partner.

48. Retroactive Allocations:

- (a) Federal- Income or losses are allocable to partners only for the portion of a year in which a partner is a member of the partnership.
- (b) Wisconsin- Retroactive allocations of income or loss continue to be subject to the provisions of the Internal Revenue Code in effect on December 31, 1975.

49. Special Allocations:

- (a) Federal- Special allocations of income, loss, deduction or credit items among partners are restricted.
- (b) Wisconsin- Special allocations may be allowed if their purpose is not to avoid or evade income tax.