

DEPARTMENT OF REVENUE

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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 2.03 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 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

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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.

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 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 employe shall be included in the numerator of the factor if the employe'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

(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 2.96 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 of interest at 1½% per month until paid regardless of any extensions granted for filing the return.

(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

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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.