

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

Tax 2.01	Residence	Tax 2.44	Permission to change basis of allocation
Tax 2.02	Reciprocity	Tax 2.45	Apportionment in special cases
Tax 2.03	Corporation returns	Tax 2.46	Apportionment of business income of interstate air carriers
Tax 2.04	Information returns; forms WT-9, 9b and 9x for corporations	Tax 2.47	Apportionment of net business income of interstate motor carriers of property
Tax 2.045	Information returns; forms 9c for employers of nonresident entertainers, entertainment corporations or athletes	Tax 2.48	Apportionment of net business incomes of interstate pipeline companies
Tax 2.05	Information returns; forms 8 for corporations	Tax 2.49	Apportionment of net business incomes of interstate finance companies
Tax 2.06	Information returns required of partnerships and persons other than corporations	Tax 2.50	Apportionment of net business incomes of interstate public utilities
Tax 2.07	Income tax returns of dissolved corporations	Tax 2.51	Rent received by corporations from Wisconsin real estate
Tax 2.08	Returns of persons other than corporations	Tax 2.53	Stock dividends and stock rights received by corporations
Tax 2.085	Claim for refund on behalf of a deceased taxpayer	Tax 2.56	Insurance proceeds received by corporations
Tax 2.09	Reproduction of income tax forms	Tax 2.57	Annuity payments received by corporations
Tax 2.10	Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns	Tax 2.60	Dividends on stock sold "short" by corporations
Tax 2.11	Credit for sales and use tax paid on fuel and electricity	Tax 2.61	Building and loan dividends on instalment shares received by corporations
Tax 2.12	Amended income and franchise tax returns	Tax 2.63	Dividends accrued on stock
Tax 2.13	Moving expenses	Tax 2.65	Interest received by corporations
Tax 2.14	Aggregate personal exemptions	Tax 2.69	Income from Wisconsin business
Tax 2.15	Methods of accounting for corporations	Tax 2.70	Gain or loss on capital assets of corporations; basis of determining
Tax 2.16	Change in method of accounting for corporations	Tax 2.72	Exchanges of property by corporations generally
Tax 2.17	Cash method of accounting for corporations	Tax 2.721	Exchanges of property held for productive use or investment by corporations
Tax 2.18	Accrual method of accounting for corporations	Tax 2.73	Involuntary conversion by corporations
Tax 2.19	Instalment method of accounting for corporations	Tax 2.74	Gain or loss on disposition of property by corporations; adjustments to basis
Tax 2.20	Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies	Tax 2.75	Recoveries by corporations
Tax 2.21	Accounting for incorporated contractors	Tax 2.76	Refunds of taxes to corporations
Tax 2.22	Accounting for incorporated dealers in securities	Tax 2.80	Improvements on leased real estate, income to corporate lessor
Tax 2.24	Accounting for incorporated retail merchants	Tax 2.81	Damages received by corporations
Tax 2.25	Corporation accounting generally	Tax 2.86	Income to corporations from cancellation of government contracts
Tax 2.26	"Last in, first out" method of inventorying for corporations	Tax 2.90	Withholding; wages
Tax 2.30	Property located outside Wisconsin—depreciation and sale	Tax 2.91	Withholding; fiscal year taxpayers
Tax 2.39	Apportionment method	Tax 2.92	Withholding tax exemptions
Tax 2.40	Nonapportionable income	Tax 2.93	Withholding from wages of a deceased employe and from death benefit payments
Tax 2.41	Separate accounting method		
Tax 2.42	Apportionment method		
Tax 2.43	Nonapportionable income		

<p>Tax 2.94 Tax sheltered annuities</p> <p>Tax 2.96 Extension of time to file corporation franchise or income tax returns</p> <p>Tax 2.97 Sale of constant basis assets acquired prior to becoming a Wisconsin resident</p> <p>Tax 2.98 Disaster area losses</p>	<p>Tax 2.99 Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974</p> <p>Tax 2.991 Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975</p>
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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

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 employee's state of residence rather than by an employee'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 employee. However, federal law regulates withholding on wages earned by employees 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 *employees* 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 employees.

(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 employee'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. 5-1-78.

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

DEPARTMENT OF REVENUE

8-3

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

Next page is numbered 9

not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not.

(2) Salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in section 71.19 (1) Wis. Stats.

(3) Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9.

(4) Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments of all rents and royalties on property regardless of location, and payments to residents and non-residents of Wisconsin of rents and royalties on property located in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b or other approved forms. The forms must be filed on the date indicated even if the corporation keeps its records on a fiscal year other than a calendar year.

(5) Payments of interest, dividends, rents or royalties of less than \$100 to any one individual need not be reported.

(6) Each corporation must file with forms 8, 9b or approved substitute forms, forms 9X showing the number of reports made on forms 8, 9b or approved substitute forms. (See also Wis. Adm. Code section Tax 2.05). Items required to be reported on forms WT-9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

Note: (1) Section 71.07 was amended in 1975 to make all income of resident individuals, estates and trusts taxable.

(2) This rule will permit the use of approved substitute forms in lieu of official forms.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 2.045 Information returns; form 9c for employers of nonresident entertainers, entertainment corporations or athletes. (sections 71.02(1) (e) and (2) (p) and 71.10 (18), Wis. Stats.) Every resident person or firm which employs or engages the services of a nonresident entertainer, a nonresident athlete or group of athletes, or a domestic or foreign entertainment corporation, for performance within this state for a contract price exceeding \$1,950, or which has receipt, custody or control of the proceeds of an entertainment or sporting event within this state, shall file with the department a statement reporting information about the entertainer, athlete or entertainment corporation within 90 days of the event. Such statement shall be made on Form 9c even though the employer may file Form WT-9 or 9b with the department as required by sections Tax 2.04 and 2.06.

Note: Forms may be obtained by mail request to the Wisconsin Department of Revenue. Requests for forms should be addressed to P.O. Box 8903, Madison, Wisconsin 53708.

This rule implements legislation requiring these returns which becomes effective January 1, 1978.

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

Register, February, 1978, No. 266

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

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, 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.

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

Note: Amended to permit the filing of approved substitute forms in lieu of official forms.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr. Register, September, 1964, No. 105, 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 2.07 Income tax returns of liquidated or dissolved corporations. (section 71.10 (1), Wis. Stats.) The officers of a corporation which has been liquidated or dissolved during the income year shall file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The franchise tax applies only to those corporations that are actually doing business in Wisconsin after the close of the period covered by the franchise tax return. Corporations which cease to do business in the income year covered by the return must file an income tax return to account for their final operation. A corporation which has liquidated or dissolved during the income year shall include the following information in its final return:

- (1) A copy of its plan of liquidation or reorganization.
- (2) The section of chapter 71 under which it liquidated or reorganized.

(3) The disposition of the assets. If the assets were sold, indicate the selling price, adjusted cost basis at the time of sale, gain or loss realized on the sale and the date of the sale.

(4) A list of the shareholders, their addresses and the amount received by each shareholder from the distribution or distributions. (The list should be submitted in addition to the required Forms 9b).

(5) The date of the final distribution.

Note: The information specified in this rule is necessary for the audit of the final return of a corporation.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, September, 1977, No. 261, eff. 10-1-77.

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

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

(b) Form 1A. (Short form).

(c) Form 2. For trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on Form 1).

(d) Form 3. For partnerships and joint ventures.

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

(3) Returns required to be filed by persons other than corporations shall be filed by mailing them to P.O. Box 268, Madison, Wisconsin 53790 if a tax is due. If a refund is payable or if no amount is due, the return shall be filed by mailing it to P.O. Box 59, Madison, Wisconsin 53785. Returns required to be filed by fiduciaries shall be filed by mailing them to P.O. Box 8904, Madison, Wisconsin 53708.

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

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1), Register, November, 1977, No. 263, eff. 12-1-77; am. (3), Register, February, 1978, No. 266, eff. 3-1-78.

Tax 2.085 Claim for refund on behalf of a deceased taxpayer. (Section 71.10 (10), Wis. Stats.) (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the refund exceeds \$50, the claimant shall file, with the income tax return, a completed form 1-804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) Forms required to be filed under subsection (1) shall be mailed to the Department of Revenue, P.O. Box 80, Madison, Wisconsin 53701.

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

Tax 2.09 Reproduction of income tax forms. Subject to this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions may be filed with the department in lieu of the corresponding official forms. The department may reject any form which is in whole or in part illegible.

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

(2) The reproductions must be on paper of substantially the same weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may be reproduced on white paper.

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

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

(5) Except for returns executed by fiduciaries as provided in (6) below, all signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

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

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

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

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

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9-1-74; am. (intro.), (2), (6) (intro.) and (a), Register, November, 1977, No. 263, eff. 12-1-77.

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

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

Tax 2.11 Credit for sales and use tax paid on fuel and electricity. (section 71.043, Wis. Stats.) (1) DEFINITIONS. In this rule: (a) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in section 71.043 (4) (a), Wis. Stats..

Register, February, 1978, No. 266

(b) "Manufacturing" has the meaning designated in section 77.51 (27), Wis. Stats. by virtue of section 71.043 (4) (b), Wis. Stats..

(c) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising and administrative department activities. If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(d) "Cost of manufacturing" as used in section 71.043 (1), Wis. Stats., and as defined in section 71.07 (2) (b), 1969 Wis. Stats.: 1. "shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the department of revenue the peculiar circumstances in any case justify a different treatment, this term shall generally be interpreted to include as elements of cost the following:

a. The total cost of all goods, materials and supplies used in manufacturing . . .

b. The total wages and salaries paid or incurred during the income year in such manufacturing . . . activities.

c. The total overhead or manufacturing burden properly assignable according to good accounting practice . . ." (Section 71.07 (2) (b), Wis. Stats. (1969))

2. Includes the cost of fuel and electricity used in the manufacturing process during the year and the sales tax paid thereon.

3. Includes the total costs of all the manufacturing operations of a corporation in this state.

(2) CREDIT ALLOWABLE. (a) 1973 and subsequent taxable years. Section 71.043 (2), Wis. Stats., provides that "The tax imposed upon or measured by corporation net income of the taxable year 1973 and subsequent taxable years pursuant to s. 71.01 (1) or (2) may be reduced by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. . . ."

(b) 1972 taxable year. Section 71.043 (1), Wis. Stats., provides that "The tax imposed upon or measured by corporation net income of the taxable year 1972 pursuant to s. 71.01 (1) or (2) may be reduced by an amount equal to so much of the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state as was paid on fuel and electricity costs in excess of 2% of the cost of manufacturing within this state as determined pursuant to s. 71.07 (2) (b). Such deduction may not exceed 50% of the tax computed without such reduction."

(3) CARRY FORWARD OF UNUSED CREDIT. (a) Any unused 1972 sales tax credit shall not be carried forward.

(b) If a corporation is entitled to a sales and use tax credit for 1973 and subsequent tax years under section 71.043(2), Wis. Stats., such credit, to the extent not offset by the tax liability of the same year, may be offset against the tax liability of the subsequent year and each succeeding year up to a total of 5 years or when the credit has been completely offset, whichever occurs first.

(c) The sales tax credit computed for 1973 and subsequent tax years shall first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied.

Note: An example of the computation and application of the credit follows:

Computation of Income or Franchise Tax Payable after Sales Tax Credit

	#1 1972	#2 1973	#3 1974
a. Income (franchise) tax payable before sales tax credit	\$ 4,000.00	\$ 1,000.00	\$10,000.00
b. Sales tax credit of current year available (schedule below)	\$ 3,076.92	\$ 3,846.15	\$ 3,846.15
c. Current year's credit allowable (1972 and 1973)	\$ 2,000.00*	\$ 1,000.00	
d. Carry forward of unused 1973 credit		\$ (2,846.15)	\$ 2,846.15
e. Total credit allowable in 1974 (b & d)			\$ 6,692.30
f. Income (franchise) tax payable after sales tax credit	\$ 2,000.00	\$ -0-	\$ 3,307.70

*The credit in 1972 was limited to 50% of the income or franchise tax computed without such reduction, and there is no provision for carrying forward the unused 1972 credit.

Computation of Sales Tax Credit Available

	(a) Annual Total 1972-3-4	(b) 4% Tax Paid Credit Available
Wisconsin cost of manufacturing for the year (including fuel and electricity)	\$1,000,000	
Cost of fuel and electricity directly consumed in manufacturing in Wisconsin	\$ 100,000	
Sales tax credit available in 1973 and subsequent years: $\$100,000 \div 1.04 = \$96,153.85 \times 4\% =$		\$3,846.15 (1)
Less 2% of 1972 cost manufacturing in Wisconsin	-\$ 20,000	
Base for 1972 sales tax credit computation	\$ 80,000	
Sales tax credit available in 1972: $\$80,000 \div 1.04 =$		
$\$76,923.08 \times 4\% =$		\$3,076.92 (1)

In this example all the amounts shown under column (a) above include the 4% tax paid on fuel and electricity directly consumed in manufacturing during the year.

(1) An alternative method of computation is to divide \$100,000 or \$80,000 by 26.

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

Tax 2.12 Amended income and franchise tax returns. (1) WHEN SHALL BE FILED. (a) The department shall accept amended returns to correct Wisconsin income tax returns previously filed.

(b) Because an amended return is not the original return, it shall not begin or extend the statute of limitation periods for the assessment of additional tax or the claim of a refund.

(c) If an amended return shows a refund, it shall be filed within 4 years of the due date of the original return. However, a claim for a refund of the tax assessed by an office audit shall be filed within 2 years of the date assessed if no petition for redetermination was filed and if the year is not closed by field audit.

(2) FORMS. (a) The following forms may be used for filing an amended return:

1. Form 1X for individuals.
2. Form 4X for corporations.

(b) If forms other than those specified in par. (a) are used to amend a tax return, such forms shall be clearly marked across the top of the first page "AMENDED RETURN."

Note: The department accepts amended individual income tax, corporate income tax, and franchise tax returns to allow taxpayers to correct overstatements or understatements of net income and computations of tax contained on their original return.

Forms 1X and 4X are similar in format and use to Forms 1040X and 1120X, the amended U.S. individual and corporate returns. Although the use of these 2 state forms is not mandatory, the department prefers that they be used. They are designed to simplify the filing and expedite the processing of the information. Copies may be obtained from any Wisconsin department of revenue office.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 2.13 Moving expenses. (section 71.05 (1) (a) 7 and (b) 4, Wis. Stats.) (1) **GENERAL.** Certain moving expenses qualify for a deduction in arriving at federal adjusted gross income. When a person *moves into* Wisconsin, such expenses are allowed as a deduction in computing Wisconsin adjusted gross income. The deductibility of moving expenses incurred in *moving from* Wisconsin was changed for 1975 and subsequent taxable years by the enactment of section 71.05 (1) (a) 7, which provides for an add modification for "Moving expenses incurred to move from this state".

(2) **TREATMENT OF MOVING EXPENSES INCURRED IN MOVING FROM WISCONSIN.** (a) *1975 and Subsequent Taxable Years.* For 1975 and subsequent taxable years, moving expenses incurred in moving from Wisconsin may be deducted in arriving at federal adjusted gross income for federal income tax purposes. However, an add modification (section 71.05 (1) (a) 7) shall be made for such expenses in determining Wisconsin adjusted gross income. The following example illustrates the add modification for such moving expenses for a taxpayer moving from Wisconsin to New York:

Wisconsin Gross Income	\$18,000
New York Gross Income	600
Moving Expenses to New York	(4,000)
Federal Adjusted Gross Income	\$14,600
*Add Modification for Moving Expenses to New York	
	4,000
Subtract Modification: New York Gross Income	(600)
Wisconsin Adjusted Gross Income	<u>\$18,000</u>

*The add modification of \$4,000 for moving expenses to New York is entered in Part II, page 2 of the Wisconsin income tax return, Form 1.

(b) *1974 and Prior Taxable Years.* 1. For 1974 and prior taxable years for Wisconsin income tax purposes, moving expenses incurred in moving from Wisconsin may be applied to reduce adjusted gross income earned outside Wisconsin. However, when such moving expenses exceed the adjusted gross income earned outside Wisconsin, the excess cannot be added back in arriving at Wisconsin adjusted gross income because there is no statutory provision for that type of modification. The only modification applicable is set forth in section 71.05 (1) (b) 4 which limits the subtraction of income earned outside Wisconsin to a net figure. Section 71.05 (1) (b) (intro) and 4 provides as follows: "Subtract, to the extent included in federal taxable or adjusted gross income: . . . Any other amount not subject to taxation under this chapter, less any amount allocable thereto which has been deducted in the computation of federal taxable or adjusted gross income."

2. The following 2 examples illustrate the treatment of moving expenses for 1974 and prior taxable years for a Wisconsin resident moving to New York in arriving at Wisconsin adjusted gross income. They also illustrate that a subtract modification cannot be made to federal adjusted gross income unless outside Wisconsin income exceeded the moving expenses in 1974 and prior taxable years.

Example 1

Wisconsin Gross Income	\$18,000
New York Gross Income	600
Moving Expenses to New York	<u>(4,000)</u>
Federal Adjusted Gross Income	<u>\$14,600</u>

Wisconsin adjusted gross income is also \$14,600 in this example. Since the moving expenses of \$4,000 exceed the New York gross income of \$600, there is no subtract modification of New York income in arriving at Wisconsin adjusted gross income. The excess of moving expenses over New York gross income is not added back in arriving at Wisconsin adjusted gross income.

Example 2

Wisconsin Gross Income	\$18,000
New York Gross Income	5,000
Moving Expenses to New York	<u>(4,000)</u>
Federal Adjusted Gross Income	\$19,000
*Subtract Modification—\$5,000 (New York Income) less \$4,000 (Moving Expenses)	<u>(1,000)</u>
Wisconsin Adjusted Gross Income	<u>\$18,000</u>

*In accordance with section 71.05 (1) (b) 4, a subtract modification shall be made for the amount not subject to Wisconsin taxation (New York income of \$5,000), less the amount allocable thereto (moving expenses of \$4,000).

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

Tax 2.14 Aggregate personal exemptions. The aggregate personal exemptions allowable under section 71.09 (6p) (a) and (b), Wis. Stats., when each files a return, may be divided between husband and wife according to their choice.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, November, 1977, No. 263, eff. 12-1-77.

Register, February, 1978, No. 266

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

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.16 Change in method of accounting for corporations. (section 71.11 (8) (b), Wis. Stats.) (1) **GENERAL.** (a) A change in the method of accounting by corporations shall be made under section 71.11 (8) (b), Wis. Stats., which reads as follows: "In computing a corporation's taxable income for any taxable year, commencing after December 31, 1953, if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply, and except that this rule shall not modify or change the rule as to federal income and excess profits taxes set forth in s. 71.02 (1) (c)."

(b) A change in a corporation's method of accounting may involve an overall change of the entire accounting system or it may involve only a single item.

(c) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department. Applications for such change shall be made in the manner described in sub. (5).

(d) In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

(2) **CHANGE IN METHOD OF ACCOUNTING FOR SINGLE ITEMS.** Any change in the accounting treatment of a single item, if "material", is deemed a change in the method of accounting under section 71.11 (8) (b), Wis. Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin franchise/income tax purposes.

(3) **1953 ACCOUNT BALANCES.** (a) *Taxpayer-initiated change.* On a taxpayer-initiated change, the net 1953 account balances shall not be allowed as an offset in the year of change.

(b) *Department-initiated change.* 1. On a department-initiated change, the net 1953 balances shall be allowed as an offset in the year of change in accordance with the internal revenue code and federal regulations.

2. Net 1953 account balances shall be computed by the taxpayer and adequately supported by its accounting records in order for them to be allowed as offsets in the year of change.

3. No offset is available for taxpayers incorporated after December 31, 1953 or in connection with changes involving LIFO inventories.

(c) Paragraphs (a) and (b) shall apply to all tax years open to assessment or refund.

(4) **TRANSITIONAL ADJUSTMENTS.** The entire impact of a change in method of accounting shall be reflected in net income of the year of change for Wisconsin franchise/income tax purposes, thereby resulting in a doubling up of income and/or deductions in that year. (This represents a significant difference from the federal treatment which, in general, permits a 10-year amortization of the net transitional adjustment at the beginning of the year of change.)

(5) **APPLICATION FOR CHANGE IN METHOD OF ACCOUNTING.** (a) Applications to use the LIFO inventory method and subsequent changes in inventory accounting method shall be filed with the department pursuant to rule Tax 2.26. All other applications shall contain the following:

1. Nature of the taxpayer's business;
2. The method of accounting used in keeping its books;
3. The reason (s) for requesting the change;
4. A legible copy of federal Form 3115, "Application for Change in Accounting Method";
5. Legible copies of *all* subsequent correspondence with the internal revenue service pertaining to such application;
6. A statement, and whenever possible a schedule, which clearly indicate the manner in which it proposes to affect the change for Wisconsin franchise/income tax purposes;
7. A copy of the entry, its date and explanation, made on the books to accomplish the change. (When no book entry is made, the reason for its absence shall be stated.); and
8. Any other pertinent information.

(b) 1. Applications shall be filed before the end of the taxable year for which the change is to be effective. Such applications shall be in letter form with supporting schedules and data and mailed to: Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708.

2. The department has no form comparable to federal Form 3115.

Note: See *Ladish Co. v. Dept. of Revenue* (1975), 69 Wis. 2d 723, concerning a change in method of accounting for a single item.

Rules Tax 2.25, "Corporation accounting generally" and 2.26, "'Last in, first out' method of inventorying for corporations" describe department interpretations with respect to methods of accounting for inventories.

(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: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, November, 1977, No. 263, eff. 12-1-77; r. and recr. Register, May, 1978, No. 269, eff. 6-1-78.

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

Tax 2.18 Accrual method of accounting for corporations. (section 71.11 (8), Wis. Stats.) In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor, inventories are necessary, and no accounting method in regard to purchases and sales will correctly reflect the income except the accrual method. Special methods of accounting employed in special trades or businesses may, with the written approval of the department of revenue, be used in reporting income.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.19 Instalment method of accounting for corporations. (section 71.11 (8), Wis. Stats.). (1) Subject to the approval of the department of revenue, a sale or other disposition by a corporation of real property, or a casual sale or other casual disposition of personal property (other than personal property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year) for a price exceeding \$1000, may be returned on the instalment basis in the case of a sale or other disposition in an income year beginning on or after January 1, 1967, provided that in the income year of the sale or other disposition there are no payments or the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30% of the selling price. On the instalment basis there shall be returned

as income from the instalment sale in any income year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

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

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

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

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

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

History: 1-2-56; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

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

(3) Acceptance corporations and dealers in commercial paper may elect to report their taxable income on the deferred profit basis, provided that their books and records are kept on that basis and provided further that both the deferment of income, and the expenses incurred in producing said income is made in accordance with accepted accounting principles and practice. The election to so report

Next page is numbered 11

must be made before the close of the year for which the return is made, and after having made such election the deferred profit basis of reporting must be adhered to in all subsequent periods.

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

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

(2) The profit on jobs taken on a cost plus basis and uncompleted at the close of a taxable year should be computed in accordance with the terms of the contract and reported at that time, and cannot be deferred until the year in which the contract is completed.

(3) The income derived from construction contracts performed in Wisconsin is taxable.

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

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

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

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

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

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

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

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

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

Tax 2.26 "Last in, first out" method of inventorying for corporations. (Section 71.11 (9), Wis. Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of section 71.11 (9), Wis. Stats., may elect with respect to those goods specified in its application and properly subject to inventory to compute its inventory in accordance with the method provided by section 472 of the United States internal revenue code, provided that:

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

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

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

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

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

(6) Except as provided in subsection (7), any corporation which has been computing its inventory for Wisconsin income tax purposes

in accordance with section 472 of the United States internal revenue code and which has been authorized or directed by the United States 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 Residency Estab. Wisc.	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	\$ 5,300
10,000	4,000	5,000	700	4,300	20,000	15,700	15,700
10,000	25,000	5,000	700	4,300	20,000	15,700	-
10,000	4,000	5,000	700	4,300	1,000	(3,300)	(2,600)
10,000	15,000	5,000	700	4,300	4,000	(300)	(300)
10,000	4,000	5,000	700	4,300	3,500	(800)	-

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. 5-1-78.

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

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 $33 \frac{1}{3}\%$ of the fraction and the sales factor shall represent $66 \frac{2}{3}\%$ 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

Next page is numbered 15

paid for the actual period of rental shall constitute the "annual rental" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall be adjusted accordingly. Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property, and includes: 1. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items. "Annual rental" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

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

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

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

(4) **PAYROLL FACTOR; WHAT IS COMPENSATION.** The term "compensation" includes wages, salaries, commissions and any other form of remuneration paid to employes for personal services. Compensation includes the value of board, rent, housing, lodging, and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal internal revenue code. In the case of employes not subject to the federal internal revenue code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employes shall be made as though such employes

were subject to the federal internal revenue code. Compensation includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor. Except for such management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employe are excluded.

(5) (a) *Sales factor; sales made in general business operations.* 1. For the purposes of the sales factor, the term "sales" means generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations which produce business (apportionable) income.

2. In the case of a taxpayer whose business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) *Sales factor; sales made in other types of business activity.* As applied to a taxpayer engaged in business activity other than or in addition to the manufacturing and selling or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity.

1. If the business activity consists of providing services, such as the operation of an advertising agency or the performance of equipment service contracts or the performance of research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

2. If the business activity consists of performing cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts includes the taxpayer's reimbursed cost plus the fee.

3. If the business activity is the renting of real or tangible personal property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

4. If the business activity is the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(c) *Sales factor; what sales of tangible personal property are in this state.* 1. Gross receipts from the sales of tangible personal property (except sales to the United States government: see Tax 2.39 (5) (d)) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale, or if the property is shipped from an office, store, warehouse, factory, or other

place of storage in this state and the taxpayer is not taxable in the state of destination.

2. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is in this state, even though the property is ordered from outside this state.

3. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

4. The term "purchaser within this state" shall include a recipient other than the purchaser if the taxpayer, at the designation of the purchaser, delivers to or has the property shipped to such a recipient within this state.

5. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, or the designee of a purchaser who is in this state, the sale is in this state.

6. If the taxpayer is not taxable in the state of destination for lack of sufficient nexus or by operation of Public Law 86-272, 15 U.S.C.A., Section 381-385, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

7. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchasers, the following rules apply:

a. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

b. If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

(d) *Sales factor; sales to the United States government.* Gross receipts from the sales of tangible personal property to the United States government, including its agencies and instrumentalities, are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(e) *Sales factor; numerator.* The numerator of the sales factor will include the gross receipts from sales which are attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(f) *Sales factor; numerator; sales other than sales of tangible personal property.* 1. In General: Section 71.07 (2) (c) 3, Wis. Stats., contains provisions for including gross receipts from transactions other

than sales of tangible personal property in the numerator of the sales factor.

2. Under this section gross receipts are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. If the income producing activity is performed within and without this state such receipts are attributed to this state in accordance with Subdivision 5 of this paragraph.

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

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

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

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

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

4. Costs of performance; defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

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

b. The following are special rules for determining when receipts from the income producing activities described below are in this state during the taxable year:

(i) Gross receipts from the sale, lease, rental or other use of real property are in this state if the real property is located in this state.

(ii) Gross receipts from the rental, lease, licensing the use or other use of tangible personal property shall be assigned to this state if the property is within this state during the entire period of rental, lease, license or other use. If the property is within and without this state during such year, gross receipts attributable to this state shall be based upon the ratio which the time the property was used in this state bears to the total time the property was used in all states having jurisdiction to tax such business during such year.

(iii) Gross receipts from the performance of personal services are attributable to this state if the services are performed entirely in this state. If the services are performed partly within and partly without this state,

gross receipts shall be attributable to this state based upon the ratio which compensation and other direct costs of performing such services in this state bear to total compensation and other direct costs of performing such services in all states having jurisdiction to tax such business. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to this state if the compensation related to performing such services is allocated to this state by section 71.07 (2) (b) 4, Wis. Stats.

c. The provisions of sections Tax 2.39 (5) (b) 2 and (5) (f) shall also apply to sales, other than sales of tangible personal property, to the United States government.

(6) "BUSINESS (APPORTIONABLE) INCOME" DEFINED. "Business (apportionable) income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(7) "STATE" DEFINED. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12-1-73; cr. (intro.), Register, January, 1978, No. 265, eff. 2-1-78.

Tax 2.40 Nonapportionable income. (Section 71.07 (1) and (2), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. Directly related expenses must be deducted in full, whereas expenses related to both business income and nonapportionable income shall be prorated in a manner which fairly distributes the deduction between such incomes.

(2) For all businesses which apportion their income to Wisconsin, other than "financial organizations" and "public utilities" as defined in section 71.07 (2) (d), Wis. Stats., nonapportionable dividends and interest received which follow the residence of the recipient shall first be reduced by deductible dividends received, and the balance shall be limited to the amount by which total apportionable and nonapportionable interest and non-deductible dividends received exceeds the sum of the expenses related thereto and deductible interest paid. If the latter sum exceeds such total interest and non-deductible dividends received, no deduction from total net income can be made for nonapportionable interest and dividends received. In no event can dividends and interest received which follow the residence of the recipient exceed the total amount of such nonapportionable interest and dividends received.

(3) For "financial organizations" (except insurance companies) and "public utilities" as defined in section 71.07 (2) (d), Wis. Stats., dividends and interest received which follow the residence of the recipient must be reduced by related expenses and deductible dividends received. Interest paid and deductible is deemed to be related expense in an amount determined by multiplying the total of such interest paid by a fraction, the numerator of which is the average tax basis of the intangible property producing, or capable of producing, such income and the denominator of which is the depreciated average tax basis of the total

property owned and used in the production of all income during the year. This paragraph shall also apply to all other businesses not covered by (2) above.

(3m) Subsections (2) and (3) apply for only the calendar years 1973 and 1974 or corresponding fiscal years.

(4) Total nonapportionable income or loss and Wisconsin nonapportionable income or loss must be adjusted for federal income taxes if federal income taxes are deductible in determining total company net income.

(5) The total net income or loss of the business must be adjusted to eliminate all of the net nonapportionable income or loss to determine the apportionable income or loss to which the apportionment percentage is applied. The resulting income or loss apportioned to Wisconsin must then be adjusted to include the Wisconsin net nonapportionable income or loss.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (3m), Register, November, 1977, No. 263, eff. 12-1-77.

Tax 2.41 Separate accounting method. (Section 71.07 (2), Wis. Stats.) (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: the ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business.

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

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

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

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

Register, January, 1978, No. 265

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

(1) Tangible property includes land, buildings, machinery and equipment, inventories and other tangible personal property actually owned and used in producing apportionable income. Tangible property which is used in producing nonapportionable or nontaxable income cannot be included in the property factor. The value at which tangible property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

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

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

(4) This rule is superseded by Wis. Adm. Code section Tax 2.39 with respect to 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.

History: 1-2-56; am. (2) and (3), Register, January, 1968, No. 145, eff. 2-1-68; cr. (4), Register, August, 1973, No. 212, eff. 9-1-73.

Tax. 2.43 Nonapportionable income. (Section 71.07 (2), Wis. Stats.) (1) The expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. In the case of dividends and interest received which follows the residence of the recipient, only the excess of the amounts received over the sum of interest paid and dividends deducted plus other related expenses can be considered as nonapportionable income. If the interest paid, deductible dividends received and related expenses exceed the total interest and dividends received, no deduction from total net income can be made for nonapportionable interest and dividends. All of the nonapportionable income must be deducted from the total net income of the business to determine the apportionable income to which the apportionment percentage is applied. Any nonapportionable income attributable to Wisconsin must be added to the apportionable income allocated to Wisconsin to determine the total Wisconsin net income.

(2) This rule is superseded by Wis. Adm. Code section Tax 2.40 with respect to 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.

History: 1-2-56; r. (1) (a), Register, August, 1960, No. 56, eff. 8-1-60; cr. (2), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.44 Permission to change basis of allocation. (Section 71.07 (2), Wis. Stats.) Except when income must be reported on the apportionment basis, permission to make a change either from separate accounting to apportionment, or vice versa, must be obtained in writing from the department of revenue upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application must be filed before the end of the income year for which the change is desired.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.45 Apportionment in special cases. (Section 71.07 (5), Wis. Stats.) When the business of any person, other than a "financial organization" or "public utility," as defined in section 71.07 (2) (d), Wis. Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in section 71.07 (2), Wis. Stats., (or by separate accounting in view of the unitary nature of the business), the department will substitute in the place of some or all of the statutory apportionment factors such other factor or factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation the taxpayer, at the time of the

assessment, will be apprised of the factors used in the formula adopted.

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

Tax 2.46 Apportionment of business income of interstate air carriers. (Section 71.07 (2) (e), Wis. Stats.) The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios: (1) The ratio which the aircraft arrivals and departures within this state scheduled by such carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period; provided that in the case of nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures; (2) the ratio which the revenue tons handled by such carrier at airports within this state during the calendar or fiscal year bears to the total revenue tons handled at airports within and without this state during the same period; (3) The ratio which such air carrier's originating revenue within this state for the calendar or fiscal year bears to the total originating revenue within and without this state for the same period.

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

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

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

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

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

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

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

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

History: Cr. Register, April, 1966, No. 124, eff. 5-1-66; am. (intro.). Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.48 Apportionment of net business incomes of interstate pipeline companies. (Section 71.07 (2) (e), Wis. Stats.) (1) With

respect to the imposition of the Wisconsin income or franchise tax on or measured by income of the calendar year 1969, or corresponding fiscal year, and thereafter, the apportionable income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 3 ratios:

(a) The ratio of tangible property owned, and used by the taxpayer in Wisconsin to produce apportionable income, to the total of such property owned and used by him to produce apportionable income everywhere. The amount of such property for purposes of both the numerator and denominator shall be Wisconsin income tax net cost. In any case in which the property factor is distorted by reason of the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, or in any case in which Wisconsin income tax net cost cannot be ascertained, the department may authorize or direct such other method of determining the property fraction as will produce an equitable result.

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

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

(2) In any case in which the company has no employes or in which the department determines that employes are not a substantial income producing factor, it may order or permit the elimination of the compensation factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.49 Apportionment of net business incomes of interstate finance companies. (Section 71.07 (2) (e), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and thereafter, the business (apportionable) income of a finance company engaged in business within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of gross receipts in Wisconsin to the total gross receipts everywhere. "Gross receipts" includes all business income associated with the lending of money in the normal course of business such as interest, discounts, finance charges or fees and service charges or fees. Gains from sales of assets, charges to a related corporation for personal services of employes and miscellaneous income are not

includable in "gross receipts" for the purpose of computing this factor. "Gross receipts" will be assigned as income to this state if the transaction producing the income was principally negotiated in this state.

(b) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere, determined in accordance with the provisions of section 71.07 (2) (b), Wis. Stats., and Wis. Adm. Code section Tax 2.39 (2). "Compensation paid to employes" includes deductible management or service fees paid to a related corporation directly or indirectly for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor.

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

(3) The term "finance company" means any "financial organization" defined in section 71.07 (2) (d), Wis. Stats., except any type of insurance company.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73.

Tax 2.50 Apportionment of net business income of interstate public utilities. (Section 71.07 (2) (e), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except as provided in subsection (2) below, the business income of "public utilities", as defined in section 71.07 (2) (d) 2, Wis. Stats., operating within and without Wisconsin, shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the 3 ratios provided in subsections 71.07 (2) (a), (b) and (c), Wis. Stats., and Wis. Adm. Code section Tax 2.39.

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

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73.

GROSS INCOME

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

Tax 2.53 Stock dividends and stock rights received by corporations. (1) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305, Wis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tax 2.70 Gain or loss on capital assets of corporations; basis of determining. (Section 71.03 (1) (g), Wis. Stats.) (1) Profits or losses resulting from the sale or other disposition of capital assets are ordinarily taxable income or deductible losses for the year in which the sale or other disposition takes place. In certain cases of real estate sales involving deferred payments, the profit may be treated as not wholly realized in the year of sale and may be deferred in accordance with the terms of payment. (See Wis. Adm. Code section Tax 2.19) ✓

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

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

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

Tax 2.71 History: 1-2-56; am, (1), Register, March, 1966, No. 123, eff. 4-1-66; r. Register, October, 1966, No. 130 effective with respect to income years beginning on and after January 1, 1967; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

Register, February, 1975, No. 230

tax cost of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

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

(3) In general there are 3 types of exchanges upon which exemption from tax may be claimed:

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

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

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

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. (4) (c) and renum. (4) (d) to be (4) (c) and am., Register, March, 1966, No. 123, eff. 4-1-66; r. (3) and renum. (4) to be (3), Register, February, 1975, No. 230, eff. 3-1-75.

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

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

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

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

(4) Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

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

Tax 2.73 Involuntary conversion by corporations. (Section 71.03

(1) (g), Wis. Stats.) (1) In all cases of gain on involuntary conversion

where such gain is not recognized for franchise or income tax purposes, the property acquired in the replacement is deemed to take the place of the property destroyed for purposes of depreciation, depletion and profit or loss on subsequent sale or other disposition.

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

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

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

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

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

(b) The amount allowable for the years involved.

(2) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion shall be made on the basis of the facts reasonably known to exist at the end of the taxable year. A corporation is not permitted to take advantage in a later year of its prior failure to take any such allowance or its taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the corporation has consistently taken proper deductions under one method, the amount allowable for such prior years shall not be increased even though a greater amount would have been allowable under another proper method.

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

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

(5) The amount allowed which resulted in a reduction of the corporation's taxes is hereinafter referred to as the "tax-benefit amount allowed." For the purpose of determining whether the tax-benefit amount allowed exceeded the amount allowable, a determination must be made of that portion of the excess of the amount allowed

over the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such case the reduction in basis required would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent of the remainder of such excess. In such a case the reduction in basis required would be the amount of the tax-benefit amount allowed.

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

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

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

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

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

the corporation been subject to income tax during those periods, determined by the straight line method.

History: Cr. Register, February, 1965, No. 110 eff. 3-1-65; am. (1) (a), (2), (3), (4), (5), and r. (8), renum. (9) to be (8) and am., renum. (10) to be (9) and (11) to be (10) and am., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

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

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

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

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

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

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

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

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

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

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

Tax 2.87 Contributions for line extension. **History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 2.90 Withholding; wages. (section 71.19 Wis. Stats.) (1) The term "wages" means all remuneration for services performed by an employe for his employer unless specifically excepted under section 71.19, Wis. Stats.

(2) The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales, commissions on insurance premiums, pensions and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employe for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may

be paid on the basis of piecework, or a percentage of the profits, and may be paid hourly, daily, weekly, monthly or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. (See however section 71.19 (1) (i), Wis. Stats., relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business). If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employes its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe no longer exists between the person in whose employ the services were performed and the individual who performed them.

(6) In general, pensions and retired pay are wages subject to withholding. So called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

(7) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(8) Amounts of so-called "vacation allowances" paid to an employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding his absence from work, constitutes wages.

(9) Any payments made by an employer to an employe on account of dismissal, that is, involuntary separation from the service of the employer, constitutes wages regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments.

(10) Any amount deducted by an employer from the remuneration of an employe is considered to be a part of the employe's remuneration and is considered to be paid to the employe as remuneration at the time the deduction is made. It is immaterial that any act or law requires or permits such deductions.

(11) The term "wages" includes the amount paid by an employer on behalf of an employe, without deduction from the remuneration of or other reimbursement from the employe, on account of any tax imposed upon the employe by any taxing authority.

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

(13) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases) furnished or offered by an employer to his employes generally, are not considered as wages subject to withholding, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment or efficiency of his employes.

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

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

History: Cr. Register, January 1963, No. 85, eff. 2-1-63; r. and recr. (12), cr. (15), Register, March, 1966, No. 123 eff. 4-1-66.

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

(2) Any employe who reports his income for taxation to the state of Wisconsin on an income year other than the calendar year shall be allowed as a credit for any such fiscal year amounts withheld by his employer in such fiscal year provided his employer, on or before the end of the first month following the close of such fiscal year, shall voluntarily furnish such employe with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in section 71.10 (8) (a), Wis. Stats., and the employe files a copy of such statement along with his fiscal year return.

History: Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.92 Withholding tax exemptions. (sections 71.20(9) (e) and (14), Wis. Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as claimed for federal withholding purposes. An employe who elects to have federal withholding exemptions apply for Wisconsin withholding purposes shall notify his or her employer of this election. An employe making this election is not required to complete a Wisconsin withholding exemption certificate, Form WT-4. An employe who claims fewer withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed Wisconsin withholding exemption certificate, Form WT-4.

Register, December, 1977, No. 264

(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,

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.

(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.

(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

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:

<u>\$5,000 (principal payments)</u> 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 net 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 Employe 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

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.

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.