

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

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**Tax 2.01 Residence.** (s. 71.01, 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 P. O. Box 8906, Madison, Wisconsin 53708, and shall furnish such other information as the department may require.

**History:** 1-2-56; r. (1); renun. (2) to be (1); renun. (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.** (s. 71.03 (2) (c), 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.

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(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



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.

**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.

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(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 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

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**Tax 2.88 Interest rates.** (ss. 71.09 (5), 71.10 (5) and 71.13 (1) (a), Stats.) (1) **INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT.** Unpaid individual income or corporate franchise or income taxes which are not delinquent shall bear interest as follows:

(a) For taxes due on or after November 1, 1975, interest shall be computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

(b) For taxes due prior to November 1, 1975, interest shall be computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

*Example:* An assessment is issued adjusting an item on a 1974 income tax return, the due date of such return being April 15, 1975. Interest will be applied at 6% per year from April 16, 1975 to October 31, 1975, and at 9% per year from November 1, 1975 to the due date for payment of the assessment notice.

(2) **INTEREST ON REFUNDS.** (a) Any refund of individual income or corporate franchise or income taxes shall include interest as follows:

1. If the tax being refunded is from a return which has a filing due date on or after November 1, 1975 interest shall be computed at the rate of 9% per year from the due date of the return to the date paid by the department.

2. If the tax being refunded is from a return which has a filing due date prior to November 1, 1975 interest shall be computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid by the department.

(b) However, for income and franchise taxes no interest shall be allowed if the refund is paid within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This shall apply to a refund of taxes resulting from an overpayment by declaration of estimated tax as well as from withheld taxes.

(3) **DELINQUENT TAXES.** Any individual income or corporate franchise or income tax delinquencies shall include interest at the rate of 1% per month from the date on which the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until such taxes are paid.

*Example:* A 1974 Wisconsin income tax return, which was due April 15, 1975, is filed with the Department in 1978 showing taxes due of \$200. Such delinquent taxes of \$200 shall bear interest at 1% per month from April 16, 1975, the date taxes became delinquent, to October 31, 1975, and at 1.5% per month from November 1, 1975 until such delinquency is paid.

(4) **EXTENSION PERIODS.** If an extension of time is granted for filing an individual income or a corporate franchise or income tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 6% per year during any extension period occurring prior to October 31, 1975 and at the rate of 9% per year during any extension period on or after November 1, 1975. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the

extension period, the taxes owing become delinquent and shall be subject to delinquent interest under sub. (3) from the end of the extension period until paid.

**Note:** This rule reflects the interpretation of the applicable statutes consistent with the November 30, 1977 decision of the Wisconsin Tax Appeals Commission in *Alan Marcuwitz et al. vs. Department of Revenue*.

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 2.89 Penalty for underpayment of estimated tax.** (ss. 71.21(11) and 71.22(8), Stats.) (1) PERIODS BEGINNING ON OR AFTER NOVEMBER 1, 1975. Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax attributable to periods beginning on or after November 1, 1975 shall be at the rate of 9% per year on the amount of underpayment for the period of underpayment.

(2) PERIODS BEGINNING PRIOR TO NOVEMBER 1, 1975. Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax attributable to periods prior to November 1, 1975 shall be at the rate of 6% per year for the period of underpayment prior to November 1, 1975, and at the rate of 9% per year beginning November 1, 1975, on the amount of underpayment for any remaining period of underpayment.

**Note:** This rule reflects the interpretation of the applicable statutes consistent with the November 30, 1977 decision of the Wisconsin Tax Appeals Commission in *Alan Marcuwitz et al. vs. Department of Revenue*.

**Example:** Taxpayer is subject to the addition to the tax for the taxable year 1975. For the period of underpayment beginning April 15, 1975, a rate of 6% per year is used from April 15, 1975 to November 1, 1975, and 9% thereafter. For the period of underpayment beginning June 15, 1975, a rate of 6% per year is used from June 15, 1975 to November 1, 1975 and at 9% thereafter. For the period of underpayment beginning September 15, 1975, a rate of 6% per year is used from September 15, 1975 to November 1, 1975 and at 9% thereafter. A rate of 9% per year is used for the fourth period of underpayment beginning January 15, 1976.

**History:** Cr. Register, December, 1978, No. 276, eff. 1-1-79.

**Tax 2.90 Withholding; wages.** (s. 71.19 Stats.) (1) The term "wages" means all remuneration for services performed by an employee for his employer unless specifically excepted under s. 71.19, 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 retirement pay, and supplemental unemployment benefits are wages within the meaning of the statute if paid as compensation for services performed by the employee for the employee's 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, s. 71.19 (1) (i), 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

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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 s. 71.02 (2) (b), 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, are excepted from withholding only if the tips are non-cash

tips or if the cash tips received during the course of a month are less than \$20.

(15) Withholding is not required: (a) Upon amounts paid to an employe by the employe's 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 internal revenue code, as defined in s. 71.02 (2) (b), Stats.

(b) When an employe certifies to an employer that the employe incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

**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; am. (2), (14) and (15), Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in subsection (2) hereof, amounts withheld pursuant to s. 71.20, 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 s. 71.10 (8) (a), 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.** (ss. 71.20(9) (e) and (14), 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.

(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

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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.** (ss. 71.19(1)(j) and 71.20(1), Stats.) (1) **GENERAL.** Section 71.20(1), 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 (s. 71.19(1)(j), Stats.).

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

**Tax 2.94 Tax sheltered annuities.** (s. 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 s. 71.03 (2) (d), 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 s. 71.05 (1) (b) 4, 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 s. 71.05 (1) (b) 4, 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 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 2.95 Reporting of installment sales.** (s. 71.02 (2) (b) and 71.07 (1), Stats.) (1) GENERAL PRINCIPLES. (a) *Installment sales.* Sales of real or personal property may be made under installment arrangements which provide for part or all of the sales price to be paid after the close of the tax year in which the sales are made. Under the installment method of reporting income, the gross profit from these sales may be prorated

over the period in which payments under the installment arrangement are received. Losses may not be reported under the installment method.

(b) *Sale of installment obligation.* If a taxpayer reports a sale on the installment method and later sells or disposes of the installment obligation (i.e., the taxpayer's right to the unpaid installments), a gain or loss from the transaction is usually recognized in the year of disposition of the installment obligation.

(2) **FEDERAL LAW.** (a) *Installment sales.* 1. Internal revenue code section 453 provides that a taxpayer may elect to use the installment method of reporting income for the following 3 types of installment sales: a. personal property regularly sold on the installment plan by dealers in personal property; b. casual or incidental sales of personal property not includable in inventory for a price more than \$1,000, if the payments received in the year of sale do not exceed 30% of the selling price; and c. sales of real estate if the payments received in the year of sale do not exceed 30% of the selling price. For purposes of the 30% limit, payments received in the year of sale include those made in cash and property, but generally do not include the purchaser's evidence of debt nor a mortgage already on the property except to the extent that the mortgage exceeds the seller's basis of the property.

2. Selling price includes the cash, promissory notes and fair market value of any property conveyed to the seller, and any debt or liability assumed or paid by the buyer.

(b) *Installment method.* 1. Taxable income from installment sales is determined by using a gross profit percentage. "Gross profit percentage" is the gross profit to be realized divided by the contract price.

2. Contract price is generally the amount the seller will receive, not reduced by selling expenses. If the property is not mortgaged, the contract price ordinarily equals the selling price. If the buyer assumes a mortgage, or takes the property subject to a mortgage that does not exceed the seller's basis of the property, the contract price equals the selling price less the amount of the mortgage. If the buyer assumes a mortgage, or takes the property subject to a mortgage that exceeds the seller's basis of the property, the excess of the mortgage over the basis must be included in the contract price; the seller has, in effect, recovered the entire basis plus an additional amount.

*Example:* In the current tax year, a taxpayer sold real property for \$10,000 (exclusive of interest). The selling expenses were \$200. In an earlier tax year, the seller had purchased the property for \$5,000. There was an existing mortgage on the property of \$6,000 which the buyer assumed. In addition, the buyer paid the seller a down payment of \$1,000 in the year of sale, and agreed to make installment payments over the following 2 years for the remainder of the contract price. Under the installment method of reporting income, the seller's taxable income in the year of sale is as follows:

Selling price of property		\$10,000
Selling expenses		<u>(200)</u>
Net selling price		9,800
Cost of property (seller's basis)		<u>(5,000)</u>
Gross profit		<u>\$ 4,800</u>
<i>Contract price:</i>		
Selling price of property	\$10,000	
Mortgage assumed by buyer	<u>(6,000)</u>	
Excess of mortgage over seller's basis (\$6,000 - \$5,000)	<u>1,000</u>	
Contract price	<u>\$ 5,000</u>	
Gross profit percentage ( $\$4,800 \div \$5,000$ )		96%
Payments received in year of sale ( $\$1,000$ cash + $\$1,000$ excess of mortgage over seller's basis)		\$ 2,000
Taxable income in year of sale ( $\$2,000 \times 96\%$ )		<u>\$ 1,920</u>

**Note:** The payments received in year of sale (\$2,000) were less than 30% of the selling price (\$3,000).

(c) *Disposition of obligation.* 1. Internal revenue code section 453 (d) provides that a gain or loss on the sale or disposition of an installment obligation generally must be reported in the year of disposition.

2. If the installment obligation is sold or exchanged, the gain or loss is the difference between the basis of the obligation and the amount realized by the seller. The basis of an installment obligation is the unpaid balance of the obligation less the income that would be reportable on the unpaid balance if the obligation were paid in full. If the installment obligation is disposed of otherwise than by a sale or exchange, the gain or loss is the difference between the basis of the obligation and its fair market value at the time of disposition.

3. If the property sold was a capital asset, the gain or loss from the disposition of the installment obligation is a capital gain or loss.

4. When real estate is sold on land contract, the seller's right to the unpaid installments becomes intangible personal property.

*Example:* A taxpayer sold real estate, acquired in an earlier year for \$600, on a land contract for \$1,000 (exclusive of interest) and elected to report the sale on the installment method. In the year of sale the seller received a \$100 down payment. In the following tax year, before the purchaser made any further payments, the seller sold the land contract ("LC") obligation for \$700. The seller's gain from the sale of the land contract obligation is computed as follows:

Selling price of land (also contract price)	\$1,000
Cost of land (seller's basis)	<u>(600)</u>
Gross profit	<u>\$ 400</u>
Gross profit percentage ( $\$400 \div \$1,000$ )	40%
Amount realized from sale of LC obligation	<u>\$ 700</u>
<i>Adjusted basis of LC obligation:</i>	
Unpaid balance of the LC obligation	\$ 900
Amount of income reportable if the balance were paid in full (40% of \$900)	<u>(360)</u>
Adjusted basis of LC obligation	<u>(540)</u>
Gain from sale of LC obligation	<u>\$ 160</u>

In the above example, if the land contract obligation had been sold for \$500, a loss would result computed as follows:

Amount realized from sale of LC obligation	\$ 500
Adjusted basis of LC obligation	<u>(540)</u>
Loss from sale of LC obligation	<u>\$ ( 40)</u>

(3) **SITUS OF INCOME.** (a) *Prior to 1975.* For taxable years prior to 1975, s. 71.07 (1), Stats., provided that for Wisconsin income taxation purposes, income or loss derived from the sale of real property or tangible personal property followed the situs of the property. Interest income and income or loss from the sale of intangible personal property followed the situs of the residence of the recipient.

(b) *1975 and thereafter.* Beginning with the 1975 taxable year and thereafter, s. 71.07 (1), Stats., provides that all income or loss of resident individuals shall follow the residence of the individual. A nonresident's income or loss derived from the sale of real property or tangible personal property follows the situs of the property. Interest income of a nonresident and income from the sale of intangible personal property follows the situs of the individual's residence.

(4) **TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF INTANGIBLE PERSONAL PROPERTY.** Upon the sale of intangible personal property reported under the installment method:

(a) *Resident seller.* If the seller is a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are taxable by Wisconsin.

(b) *Nonresident seller.* If the seller is not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are *not* taxable by Wisconsin.

(5) **TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY.** Upon the sale of real property or tangible personal property reported under the installment method:

(a) *Wisconsin property.* 1. If the property is located in Wisconsin and the seller is a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale is taxable by Wisconsin.

2. If the property is located in Wisconsin and the seller is not a Wisconsin resident, the portion of each installment payment that represents gain is taxable by Wisconsin. Interest income of a nonresident is *not* taxable by Wisconsin.

(b) *Out-of-state property.* 1. If the property is located outside of Wisconsin and the sale occurred prior to 1975: a. If the seller is a Wisconsin resident, the portion of each installment payment that represents gain is *not* taxable by Wisconsin regardless of the year in which received (see rule Tax 2.30). Interest income from the sale is taxable by Wisconsin.

b. If the seller is not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are *not* taxable by Wisconsin.

2. If the property is located outside of Wisconsin and the sale occurred in taxable year 1975 or thereafter: a. If the sale occurred while the seller was a Wisconsin resident: (i) If the seller is currently a Wisconsin resident, the portion of each installment payment that represents gain and

interest income from the sale are taxable by Wisconsin (see rule Tax 2.97 for computation of the gain or loss).

(ii) If the seller is currently not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are *not* taxable by Wisconsin.

b. If the sale occurred while the seller was not a Wisconsin resident:  
(i) If the seller is currently a resident, the portion of each installment payment that represents gain is *not* taxable by Wisconsin (see rule Tax 2.30). Interest income from the sale is taxable by Wisconsin.

(ii) If the seller is currently not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are *not* taxable by Wisconsin.

(6) **TAXATION OF PROCEEDS FROM SALE OF INSTALLMENT OBLIGATION.** An installment obligation (i.e., an individual's right to unpaid installments from the sale of property) is intangible personal property. Any gain or loss from the sale of an installment obligation follows the residence of the seller. Therefore, any gain or loss of a Wisconsin resident must be included in, or subtracted from, Wisconsin taxable income.

*Example:* In 1975, while an Iowa resident, a taxpayer sold Wisconsin real estate on a land contract and elected to report the sale on the installment method. The selling price of the land was \$2,000. In an earlier year the seller acquired the land for \$1,500. In the year of the sale the seller received a down payment of \$400. On January 1, 1976, the seller became a Wisconsin resident, and on June 30, 1976, the seller received an installment payment of \$400 and interest of \$100. On July 1, 1976, the seller sold the land contract ("LC") obligation for \$1,000. The seller's Wisconsin taxable income from these transactions is as follows:

**1975:**

Selling price of land (also contract price)	\$ 2,000
Cost of land (seller's basis)	<u>(1,500)</u>
Gross profit	<u>\$ 500</u>
Gross profit percentage ( $\$500 \div \$2,000$ )	25%
Payment received in 1975	\$ 400
Wisconsin taxable income ( $25\% \times \$400$ )	<u>\$ 100</u>

**1976:**

Amount of installment payment reportable as Wisconsin income ( $25\% \times \$400$ )	\$ 100
Interest income received	100
Amount realized from sale of LC obligation	<u>\$ 1,000</u>
Unpaid balance of the LC obligation	1,200
Amount of income reportable if the balance was paid in full ( $25\% \times$ $\$1,200$ )	<u>(300)</u>
Adjusted basis of LC obligation	<u>(900)</u>
Gain from sale of LC obligation	100
Wisconsin taxable income	<u>\$ 300</u>

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 2.955 Credit for income taxes paid to other states.** (s. 71.09(8), Stats.) (1) **DEFINITION.** In this rule, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) **CREDITS ALLOWABLE.** (a) For taxable years 1961 through 1974, except as provided in sub. (3), an income tax credit may be claimed by a  
Register, January, 1979, No. 277



Wisconsin resident individual for income tax paid to another state on income of the individual from personal services performed outside Wisconsin.

(b) For taxable years 1975 through 1977, except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate or trust for tax paid to another state on income of the individual, estate or trust from:

1. Personal services performed outside Wisconsin.
2. Business conducted in another state.
3. Rentals and royalties from real property or tangible personal property located in another state.
4. The operation of any farm, mine or quarry located in another state.
5. The sale of real property or tangible personal property located in another state.

(c) For taxable years 1978 and thereafter, except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate or trust for any net income tax paid to another state in the preceding taxable year upon income of the individual, estate or trust taxable by such state.

(3) CREDITS NOT ALLOWED. An income tax credit shall not be allowed for: (a) Income tax paid to Illinois, Indiana, Kentucky, Maryland, Michigan or Minnesota on personal service income earned in these states included under a reciprocity agreement (see Wis. Adm. Code section Tax 2.02).

(b) For taxable years prior to 1978, income tax paid to another state on income from intangibles as determined under Wisconsin law, such as income from interest, dividends, gambling or a limited partnership interest (*Sweitzer vs. Wisconsin Department of Revenue*, (1974) 65 Wis. (2d) 235, states that income from a limited partnership interest is considered income from an intangible for Wisconsin tax purposes).

(c) Income tax paid to another state on income not considered taxable income for Wisconsin tax purposes.

(d) Income tax paid to a city, village, town or foreign country.

(4) HOW TO CLAIM A CREDIT. The amount of income tax credit claimed shall be entered on the line entitled "Net income tax paid to other states" on side one of Wisconsin income tax returns Forms 1 and 1A. The credit shall not exceed the Wisconsin net tax. To verify the credit claimed, the following information shall be attached to Form 1 or 1A in the following situations: (a) If the credit is based entirely on tax withheld and a refund is due from the other state, attach a copy of the wage statement and that state's income tax return.

(b) If there is a tax due on the other state's return or if estimated tax payments were made to that state, attach proof of payment of such amounts along with a copy of the wage statement and that state's income tax return. Proof of payment is not required if either the tax due or estimated tax payments do not exceed \$10.

(5) **YEAR IN WHICH TO CLAIM INCOME TAX CREDIT.** The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out-of-state income is considered taxable Wisconsin income. For example, a Wisconsin resident receives income of \$4,000 in 1975 from rental property located in Iowa. Such person files a 1975 declaration of estimated tax of \$200 with Iowa, with \$150 of declaration payments being made in 1975 and the fourth quarter payment of \$50 being made in January 1976. The Iowa income of \$4,000 is reported as income on the 1975 Iowa and Wisconsin returns. The 1975 Iowa income tax return shows the following:

	1975 <u>Iowa Return</u>
Iowa Rental Income	\$ <u>4,000</u>
Iowa Net Tax (amount to be claimed as a credit on 1975 Wisconsin return)	\$ 185
Declaration Payments	\$ <u>200</u>
Refund	\$ <u>15</u>

The taxpayer may claim a "Credit for net income tax paid to other states" of \$185 on the 1975 Wisconsin return, even though a part of such tax was paid in 1976.

**History:** Cr. Register, December, 1978, No. 276, eff. 1-1-79.

**Tax 2.96 Extension of time to file corporation franchise or income tax returns.** (s. 71.10(5) (a), 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