

DEPARTMENT OF REVENUE

Tax 2

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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.

(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

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: