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 2.945 Spousal individual retirement contributions. (s. 71.02 (2) (b) 8, (d) and (e), Stats.) (1) PURPOSE. The purpose of this rule is to define the Wisconsin income tax treatment of a spousal individual retirement contribution.

(2) DEFINITIONS. In this rule (a) "Qualifying individual" means an individual to whom a deduction is allowable under section 219 (a) of the internal revenue code.

(b) "Qualifying individual retirement contribution" means contributions which are deductible under section 219 of the internal revenue code.

(c) "Spousal individual retirement contribution" means the amount allowable as a deduction under section 219 (c) of the internal revenue code.

(3) THE LAW. Under section 219 (c) of the internal revenue code, a qualifying individual may deduct, in addition to the amount allowable under section 219 (a) of the internal revenue code, an additional amount not exceeding $2,000 for contributions by or on behalf of the individual to an individual retirement plan established for the benefit of the individual's nonworking spouse, if the qualifying individual files a joint federal income tax return for the taxable year to which the contribution applies and the nonworking spouse has no compensation for the year. The total amount deductible on a joint return is limited to the lesser of $2,250 or the qualifying individual's earned income for the year. Under s. 71.02 (2) (b) 8, Stats., the amount of contributions to an individual retirement plan deductible by an individual on a Wisconsin income tax return is determined under the internal revenue code.

(4) DEDUCTION ALLOWABLE. (a) Spousal individual retirement contributions shall be deductible from gross income in determining Wisconsin adjusted gross income on an individual's Wisconsin income tax return.

(b) The Wisconsin statutes require each spouse to file a return and compute his or her Wisconsin taxable income or loss separately. Under this principle of separate determinations of taxable income, each spouse shall be allowed to deduct only the qualifying individual retirement contributions made to his or her individual retirement plan.

Note: The following examples illustrate the Wisconsin tax treatment of contributions to individual retirement plans for an individual and a nonworking spouse:

Example 1: Mr. X has earned income of $20,000 in 1982 and establishes individual retirement accounts for himself and his nonworking spouse, who received $500 of taxable interest income during 1982. Timely contributions totalling $2,000 were made to his account and $250 was contributed to his spouse's account for 1982. Mr. X may deduct a maximum of $2,000 on his 1982 Wisconsin income tax return and his wife may deduct the $250 contributed to her plan.

Example 2: Same facts as example 1 except $1,000 is contributed to Mr. X's retirement plan and $1,250 to his wife's plan. In this situation, Mr. X may deduct a maximum of $1,000 while $1,250 is deductible by his wife. Since Mrs. X received only $500 of taxable income (interest) in 1982, she does not receive a Wisconsin tax benefit for $750, the excess of the $1,250 retirement contribution to her plan over her taxable income.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

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		(200)
Net selling price		9,800
Cost of property (seller's basis)		(5,000)
Gross profit		$ 4,800
Contract price:		
Selling price of property	$10,000	
Mortgage assumed by buyer	(6,000)	
Excess of mortgage over seller's basis ($6,000 - $5,000)	1,000	
Contract price	$ 5,000	
Gross profit percentage		
($4,800 ÷ $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 x 96%)		$ 1,920

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)	(600)	
Gross profit	$ 400	
Gross profit percentage ($400 ÷ $1,000)	40%	
Amount realized from sale of LC obligation		$ 700
Adjusted basis of LC obligation:		
Unpaid balance of the LC obligation		$ 900
Amount of income reportable if the balance were paid in full (40% of $900)		(360)
Adjusted basis of LC obligation		(540)
Gain from sale of LC obligation		$ 160

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	(540)
Loss from sale of LC obligation	$ (40)

(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 substracted 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)		(1,500)
Gross profit		$ 500
Gross profit percentage ($500 ÷ $2,000)	25%	
Payment received in 1975		$ 400
Wisconsin taxable income (25% x $400)		$ 100

1976:

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

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 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 to be attached to Form 1 or 1A if either the tax due or estimated tax payments do not exceed $50.

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

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; am. (4) (b), Register, January, 1981, No. 301, eff. 2-1-81.

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