Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

Tax 2.01 Residence. (s. 71.01, Stats.) Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file form I-827, "Residence Questionnaire", with the Wisconsin department of revenue by attaching it to their Wisconsin income tax return for the year they claim to have changed residence, and shall furnish other information the department may require.

Note: Form I-827 may be obtained from the department at 4638 University Avenue, Madison, or from any other department of revenue office located throughout the state, or by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

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; r. (1), renum. (2) and am., Register, July, 1987, No. 379, eff. 8-1-87.

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

Computation of Income or Franchise Tax Payable After Sales Tax Credit

	1980	1981
a. Income (franchise) tax payable before sales tax credit	$ 1,000.00	$10,000.00
b. Sales tax credit of current year available (schedule below)	$ 3,846.15	$ 3,846.15
c. Current year's credit allowable	$ 1,000.00	$ 3,846.15
d. Carry forward of unused 1980 credit	$(2,846.15)	$ 2,846.15
e. Total credit allowable in 1981 (c + d)		$ 6,692.30
f. Income (franchise) tax payable after sales tax credit	$ -0-	$ 3,307.70

Computation of Sales Tax Credit Available

	Annual Total 1980 & 1981
Cost of fuel and electricity directly consumed in manufacturing in Wisconsin (including tax)	$100,000.00
Sales tax credit available in 1980 & 1981: $100,000 ÷ 1.04 = $96,153.85 × 4% =	$ 3,846.15 (1)

(1) An alternative method of computation, which produces the same result, is to divide $100,000 by 26.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (2) (a) r. (1) (d), (2) (b) and (3) (a), renum. (3) (b) and (c) to be (3) (a) and (b), cr. (4), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.12 Amended income and franchise tax returns. (1) GENERAL. (a) The department shall accept amended returns to correct Wisconsin income tax returns previously filed. Amended Wisconsin returns also shall be filed with the department if either amended federal returns are filed and the changes therein affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, or amended returns are filed with another state and a credit has been allowed against Wisconsin taxes for taxes paid to the state and the changes affect the amount of income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin returns shall be filed within 90 days after the date the amended federal returns or amended returns of other states are filed with those agencies.

Note: Refer to s. Tax 2.105 for additional information.

(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; am. (1) (a), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.13 Moving expenses. (s. 71.05 (1) (a)7 and (b)4, 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 s. 71.05 (1) (a)7, Stats., 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. Moving expenses may be deducted in arriving at federal adjusted gross income for federal income tax purposes. Under s. 71.05 (1) (a)7, Stats., in determining Wisconsin adjusted gross income an add modification shall be made for "moving expenses incurred to move from this state". This add modification applies when the taxpayer becomes domiciled in another state, i.e., becomes a nonresident for Wisconsin tax purposes, either on the day he or she moves to the other state or prior to the move. However, the add modification is not required if the taxpayer retains his or her Wisconsin domicile after moving to another state and continues to be subject to Wisconsin's taxing jurisdiction.

Note: The following example illustrates the add modification for moving expenses for a taxpayer moving from Wisconsin to New York when the taxpayer's Wisconsin domicile is not retained:

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	$18,000

*The $4,000 of moving expenses to New York is entered as an add modification on the Wisconsin income tax return, Form 1.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. (2), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.14 Aggregate personal exemptions. The aggregate personal exemptions allowable under s. 71.09 (6p) (a) and (b), 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.

Tax 2.15 Methods of accounting for corporations. (s. 71.11 (8), 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. (s. 71.11 (8) (b), Stats.) (1) GENERAL. (a) A change in the method of accounting by corporations shall be made under s. 71.11 (8) (b), 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."

(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 s. 71.11 (8) (b), 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.

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; am. (1) (a), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.165 Change in taxable year. (ss. 71.02 (1) (d) and (2) (k), and 71.10 (3m) and (16), Stats.). (1) DEFINITIONS. In this rule:

(a) "Calendar year" means a 12 month period ending on December 31.

(b) "Fiscal year" means a 12 month period ending on the last day of any month other than December 31.

(c) "Taxable year" or "income year" means a calendar year, a fiscal year or a short period of less than 12 months resulting from a change in reporting from a calendar to a fiscal, a fiscal to a calendar, or a fiscal to a different fiscal year and is the period for which the taxable income is reported.

(2) CORPORATIONS. (a) *General.* A new corporation may elect the taxable year on which it will report. A taxable year must end on the last day of a month and, if accounting records are kept on a 52-53 week period, the taxable year shall be considered to end on the last day of the month closest to the end of the 52-53 week period.

(b) *Change in taxable year.* A corporation may not change its taxable year without first obtaining approval from the department. The request to change shall be made in writing to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708 prior to the close of the proposed new taxable year. The request shall contain the following information:

1. Name and address of corporation.

2. Taxable year presently used.

3. Proposed taxable year.

4. Effective date of change.

5. Reason for requesting the change.

(c) *Computation of tax.* The income for the short taxable year shall be computed on an annual basis and the tax for the short taxable year shall be a fractional portion of the tax computed on such annual income. As an example, in changing from a calendar year to a fiscal year ending September 30, with net income for the 9 month period of $18,000, the tax on the income of the short taxable year may be computed as follows:

1. Multiply short period income by 12. $18,000 x 12 = $216,000

2. Divide by number of months in the short period to obtain annualized income. $216,000 ÷ 9 = $24,000

3. Compute the tax on the annualized income. Tax on $24,000 equals $1,676 (1977 rates).

4. Prorate this tax to obtain the tax for the short period. $1,676 x 9/12 = $1,257.

(3) PERSONS OTHER THAN CORPORATIONS. (a) *General.* A person other than a corporation is required to adopt the same taxable year for Wisconsin as for federal income tax purposes. The taxable year is established with the filing of the first income tax return.

(b) *Change in taxable year.* For federal purposes, approval is requested by filing federal Form 1128 on or before the 15th day of the second calendar month following the close of the short taxable year for which the return is required. The change is effected for Wisconsin purposes by at-

taching a copy of Form 1128 and the federal approval to the Wisconsin tax return for the short taxable year, which return is due on or before the 15th day of the 4th month after the end of the short taxable year.

(c) *Computation of tax.* The Wisconsin taxable income for the short taxable year shall be computed on an annual basis. For natural persons, the tax computed on the annualized income, reduced by the amount for personal exemptions, is multiplied by the number of months in the short taxable year and divided by 12. As an example, in changing from a calendar year to a fiscal year ending June 30, with Wisconsin taxable income for the 6 months of $14,000, and claiming 4 exemptions as of June 30, the tax on the income of the short taxable year may be computed as follows:

1. Multiply short period income by 12. $14,000 x 12 = $168,000

2. Divide by number of months in the short period to obtain annualized income. $168,000 ÷ 6 = $28,000

3. Compute the tax on the annualized income. Tax on $28,000 equals $2,577 (1977 tax rates).

4. Subtract personal exemptions. $2,577 - $80 = $2,497

5. Prorate this tax to obtain tax for the short period. $2,497 x 6/12 = $1,248.50.

For estates and trusts, the computation is the same except that step 4 ("Subtract personal exemptions") is omitted; in the example, the tax equals $1,288.50 ($2,577 x 6/12).

(4) PARTNERSHIPS. (a) *General.* A partnership is required to adopt the same taxable year for Wisconsin as for federal income tax purposes. If federal approval of the taxable year adopted for the first return is required, a copy of federal Form 1128 and approval shall be attached to the first Wisconsin return filed.

(b) *Change in taxable year.* If federal approval is required for a change in taxable year, a copy of the federal Form 1128 and the federal approval shall be attached to the Wisconsin partnership return for the short taxable year.

(c) *Computation of income.* Partnership income for the short taxable year shall be determined under the internal revenue code as defined under s. 71.02 (2) (b), Stats.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

Tax 2.17 Cash method of accounting for corporations. (s. 71.11 (8), 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. (s. 71.11 (8), 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 ac-

counting 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. (s. 71.11 (8), 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 reported 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 reported 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 s. 71.337, 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; am. (1), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies. (s. 71.11 (8), Stats.) (1) Except as otherwise provided in sub. (3), 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.

History: 1-2-56; correction in (1) made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379.

Tax 2.21 Accounting for incorporated contractors. (s. 71.11 (8), 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 ch. 71, 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, eff. 3-1-75.

Tax 2.22 Accounting for incorporated dealers in securities. (s. 71.11 (8), 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 2.24 Accounting for incorporated retail merchants. (s. 71.11 (8), 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. (s. 71.11 (8) and (9), 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 2 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. (s. 71.11 (9), Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of s. 71.11 (9), 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 sub. (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 franchise or income tax purposes, in addition to those regulations of the United States internal revenue service made generally applicable by sub. (3), 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.

(6) Except as provided in sub. (7), any corporation which has been computing its inventory for Wisconsin franchise or 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 franchise or 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 the timber over the adjusted basis thereof, may exclude from its inventory, for Wisconsin franchise or income tax purposes, the excess of the fair market value of the timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of revenue, include the excess in its inventory for Wisconsin franchise or income tax purposes subject to the conditions the 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; am. (5), (6) and (7), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.30 Property located outside Wisconsin—depreciation and sale. (s. 71.07 (1), Stats.) (1) DEFINITIONS. In this rule, "internal revenue code" means the internal code in effect for the taxable year specified by s. 71.02(2)(b), 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, s. 71.07 (1), 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."

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. (s. 71.07 (2), 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.

Tax 2.44 Permission to change basis of allocation. (s. 71.07 (2), 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 shall 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 shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708 before the end of the tax 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; am. Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.45 Apportionment in special cases. (s. 71.07 (5), Stats.) When the business of any person, other than an interstate professional sports club or "financial organization" or "public utility," as defined in s. 71.07 (2) (d), 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 s. 71.07 (2), 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; am. Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.46 Apportionment of business income of interstate air carriers. (s. 71.07 (2) (e), 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) (s. 71.07 (2) (e), 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. (s. 71.07 (2) (e), 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. (s. 71.07 (2) (e), 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 s. 71.07 (2) (b), Stats., and s. Tax 2.39 (4). "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 sub. (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 s. 71.07 (2) (d), Stats., except any type of insurance company.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; am. (1)(b), Register, July, 1978, No. 271, eff. 8-1-78.

Tax 2.50 Apportionment of net business income of interstate public utilities. (s. 71.07 (2) (e), Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except as provided in sub. (2), the business income of "public utilities", as defined in s. 71.07 (2) (d) 2, 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 s. 71.07 (2) (a), (b) and (c), Stats., and s. 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 ss. Tax 2.46, 2.47 and 2.48, respectively.

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

Tax 2.505 Apportionment of net business income of interstate professional sports clubs. (s. 71.07 (2), Stats.) The apportionable income of professional sports clubs engaged in income producing activities both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using an apportionment fraction composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined as follows:

(1) PROPERTY FACTOR. The property factor is a fraction as defined in s. 71.02 (2) (a), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.07 (2) (a), Stats., and s. Tax 2.39 (3). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) PAYROLL FACTOR. The payroll factor is a fraction as defined in s. 71.07 (2) (b), Stats. Compensation shall be reported as provided in s. 71.07 (2) (b), Stats., and s. Tax 2.39 (4). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) SALES FACTOR. The sales factor is a fraction as defined in s. 71.07 (2) (c), Stats. Sales shall be included in the factor in accordance with s. 71.07 (2) (c), Stats., s. Tax 2.39 and the following rules:

(a) *Gate receipts.* Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numerator of the sales fraction for taxpayers whose home facility is in Wisconsin shall include all gate receipts from games played in its home facility. The numerator of the sales fraction for taxpayers whose home facility is outside Wisconsin shall include the percentage of gate receipts received from games played in Wisconsin.

(b) *Radio and television receipts.* Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in Wisconsin in proportion to the number of games played in Wisconsin to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in Wisconsin if the games are played in Wisconsin.

(c) *Concession income and miscellaneous income.* Concession income is assigned to the state in which the concession is operated. Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the state in which the activity is conducted.

(d) *Player contracts, franchises, etc.* Income from player contract transactions, franchise fees, and other similar sources is regarded as intangible business income and shall be excluded from the numerator and the denominator of the sales fraction.

Note: This rule clarifies the department of revenue's policy and applies to all taxable years open to audit under s. 71.10 (10), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

Gross Income

Tax 2.51 Rent received by corporations from Wisconsin real estate. (s. 71.03 (1) (b), 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 s. 71.305, Stats., such distribution is not includable in gross income then, except as provided in s. 71.307 (2), 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 s. 71.305 (1), Stats., a part of the distribution is not includable in gross income (except as provided in s. 71.307 (2), 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 s. 71.305 (2), 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 s. 71.305 (1), 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 share-

holder 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. (s. 71.03 (1) (d), 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 renum. (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. (s. 71.03 (1) (d), 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. (s. 71.03 (1) (d), 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. (s. 71.03 (1) (c), 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 s. 71.07 (1), 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 2.69 Income from Wisconsin business. (ss. 71.01 and 71.07, 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. (s. 71.03 (1) (g), 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 s. 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 2.72 Exchanges of property by corporations generally. (s. 71.03 (1) (g), Stats.) (1) Except where otherwise specifically provided by ch. 71, Stats., 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 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 ch. 71, Stats., 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 s. 71.03 (5), Stats., 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. (s. 71.03 (5), 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. (s. 71.03 (1) (g) 3, 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) (a) For 1980 and preceding taxable years, this section does not apply when insurance money received on the conversion of Wisconsin assets is used in replacement outside of Wisconsin. In this case, the gain or loss shall be reported in the year of conversion.

(b) For 1981 and subsequent taxable years, this section does not apply when insurance money received on the conversion of nonbusiness assets located in Wisconsin is used in replacement with similar property outside of Wisconsin. Also, this section does not apply when insurance money received on the conversion of business assets located in Wisconsin is used in replacement with similar property outside of Wisconsin, and at the time of replacement, the taxpayer is not subject to taxation under ch. 71, Stats. In these cases the gain or loss shall be reported in the year of conversion.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (3), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.74 Gain or loss on disposition of property by corporations; adjustments to basis. (s. 71.03 (1) (g), 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) For 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 permitted for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable 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 allowedover 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 ch. 71, 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 ch. 71, 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; am. (4), Register, July, 1978, No. 271, eff. 8-1-78.

Tax 2.75 Recoveries by corporations. (s. 71.03 (1) (k), 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. (s. 71.03 (1) (k), 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. (s. 71.03 (1) (k), 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. (s. 71.03 (1) (k), 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 2.82 Nexus. (ss. 71.01 (1) and (2) and 71.10 (1), Stats.) (1) DEFINITIONS. In this rule:

(a) "Representative" does not include an independent contractor. A person may be considered a representative even though he or she may not be considered an employe for other purposes such as the withholding of income tax from commissions. If a person is subject to the direct control of the foreign corporation, he or she may *not* qualify as an independent contractor under P.L. 86-272. (*Herff Jones Company v. State Tax Commission,* Oregon Supreme Court, August 23, 1967, 430 P. 2d 998.)

(b) "Business location" includes a repair shop, parts department, purchasing office, employment office, warehouse, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employes or customers. A residence of an employe or representative is not ordinarily considered a business location of the employer unless the facts indicate otherwise. It could be considered a business location under one or more of the following conditions: a portion of the residence is used exclusively for the business of the employer, the employe is reimbursed or paid a flat fee for the use of this space by the employer; the employe's phone is listed in the yellow pages under the name of the employer; the employe uses supplies, equipment or samples furnished by the employer; or the space is used by the employe to interview prospective employes, hold sales meetings, or discuss business with customers.

(2) BACKGROUND. (a) Every domestic corporation (one incorporated under Wisconsin's laws), except those exempt under s. 71.01 (3) Stats., and every "licensed" foreign corporation (one not incorporated in Wisconsin) is required to file a complete corporation franchise/income tax return (Form 4 or 5) regardless of whether or not business was transacted.

(b) A foreign corporation is "licensed" if it has obtained a Certificate of Authority from the Wisconsin secretary of state to transact business in this state pursuant to s. 180.801, Stats. A "licensed" foreign corporation is presumed to be subject to Wisconsin franchise/income taxes.

(c) An unlicensed foreign corporation is subject to Wisconsin franchise/income taxes if it has "nexus" with Wisconsin. The purpose of this rule is to provide guidelines for determining what constitutes "nexus", that is, what business activities are needed for a foreign corporation to be subject to Wisconsin franchise/income taxes.

(3) FEDERAL LIMITATIONS ON TAXATION OF FOREIGN CORPORATIONS. (a) *Federal constitutional provisions.* 1. Article I, Section 8 of the U.S. Constitution grants congress the power to regulate commerce with foreign nations and among the several states. States are prohibited from levying a tax which imposes a burden on interstate or foreign commerce. However, this does not mean states may not impose any tax on interstate commerce. A state tax on net income from interstate commerce which is fairly attributable to the state is constitutional. (*Northwestern States Portland Cement Co. v. Minnesota; Williams v. Stockham Valves & Fittings, Inc.,* 358 U.S. 450, 79 S. Ct. 357.)

2. Section I of the 14th Amendment protects taxpayers within any class against discrimination and guarantees a remedy against illegal taxation.

(b) *Federal Public Law 86-272.* 1. Under Public Law 86-272, a state may not impose its franchise/income tax on a business selling tangible

personal property, if the *only* activity of that business is the solicitation of orders by its salesman or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be *limited* to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation under Public Law 86-272 is lost.

2. This law, enacted by congress in 1959, does not extend to:

a. Those businesses which sell services, real estate or intangibles in more than one state;

b. Domestic corporations; or

c. Foreign nation corporations, i.e., those not incorporated in the United States.

3. If the *only* activities in Wisconsin of a foreign corporation selling tangible personal property are those described below (a and b) such corporation is not subject to Wisconsin franchise/income taxes under P.L. 86-272:

a. Usual or frequent activity in Wisconsin by employes or representatives soliciting orders for tangible personal property which orders are sent outside this state for approval or rejection.

b. Solicitation activity by non-employe independent contractors, conducted through their own office or business location in Wisconsin.

(4) WHAT CONSTITUTES "NEXUS". (a) *Factors.* If a foreign corporation has one or more of the following activities in Wisconsin, it is considered to have "nexus" and shall be subject to Wisconsin franchise/income taxes:

1. Maintenance of any business location in Wisconsin, including any kind of office.

2. Ownership of real estate in Wisconsin.

3. Ownership of a stock of goods in a public warehouse or on consignment in Wisconsin.

4. Ownership of a stock of goods in the hands of a distributor or other non-employe representative in Wisconsin, if used to fill orders for the owner's account.

5. Usual or frequent activity in Wisconsin by employes or representatives soliciting orders with authority to accept them.

6. Usual or frequent activity in Wisconsin by employes or representatives engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, repair of equipment).

7. Operation of mobile stores in Wisconsin (such as trucks with driver-salespersons), regardless of frequency.

8. Miscellaneous other activities by employes or representatives in Wisconsin such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for customer personnel in the operation, repair and maintenance of the taxpayer's products.

9. Leasing of tangible property and licensing of intangible rights for use in Wisconsin.

10. The sale of other than tangible personal property such as real estate, services and intangibles in Wisconsin.

11. The performance of construction contracts and personal services contracts in Wisconsin.

(b) *How to obtain ruling.* The guidelines in par. (a) as to what activities constitute "nexus" should not be considered all-inclusive. A ruling may be requested about a particular foreign corporation as to whether it is subject to Wisconsin franchise/income taxes by writing to the Wisconsin Department of Revenue, Audit Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708.

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

Tax 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations. (ss. 71.02 (2) (a) and (b), 71.317 (3) and 71.333, Stats.) (1) To qualify for the benefits of section 333 of the internal revenue code in computing Wisconsin taxable income, a qualified electing shareholder, other than a corporate shareholder shall file with the department federal form 964 in accordance with the instructions contained thereon within 30 days of the adoption of the plan of liquidation.

(2) To qualify for the benefits of s. 71.333, Stats., a corporation, other than an excluded corporation, which is a qualified electing shareholder, must file with the department federal form 964 in accordance with the instructions contained thereon within 30 days of the adoption of the plan of liquidation.

(3) Another copy of the form 964 shall be attached to and made a part of the shareholder's income or franchise tax return for the taxable year in which the transfer of all the property under the liquidation occurs.

(4) Once made, an election cannot subsequently be changed.

(5) Written elections shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. (1), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.86 Income to corporations from cancellation of government contracts. (s. 71.03 (1) (k), Stats.) Amounts claimed under cancelled government contracts not reported in the return for the year in which claim therefor 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 Reduction of delinquent interest rate under s. 71.13 (1) (b), Stats. (s. 71.13 (1) (b), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) FACTORS FOR SECRETARY'S CONSIDERATION. In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) Any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

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 but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(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 1.5% per month from the date on which the taxes became delinquent until the taxes are 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 12% per year. 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 1: For unpaid non-delinquent taxes due prior to November 1, 1975, interest was 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.

2. For unpaid non-delinquent taxes due on or after November 1, 1975 and assessed by the Department of Revenue before August 1, 1981, interest was computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

3. Any individual income or corporate franchise or income taxes which were delinquent before November 1, 1975 were subject to delinquent interest at the rate of 1% per month from the date the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until paid.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1), (3) and (4), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.89 Penalty for underpayment of estimated tax. (ss. 71.21 (11) and 71.22 (8), Stats.) Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax shall be at the rate of 12% per year on the amount of underpayment for the period of underpayment.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; r. and recr. Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.90 Withholding; wages. (s. 71.19 Stats.) (1) The term "wages" means all remuneration for services performed by an employe 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 employe for the employe'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 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 sub. (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), (14), (16) and (22), Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. An employe who elects to have the same number of Wisconsin withholding exemptions as are allowable for federal 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 a different number of 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-4, "Employe's Wisconsin Withholding Exemption Certificate". 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, i.e., 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.

(3) (a) Effective April 1, 1979, an employe may enter into a written agreement with his or her employer to withhold a lesser amount of tax than indicated in the withholding tax tables, if the employe determines the lesser amount approximates the employe's anticipated income tax liability for the year. Form WT-4A, "Wisconsin Employe Withholding Agreement", shall be used for this purpose and a completed copy of the form shall be sent by the employe to the department within 10 days after it is filed with the employer. If the employe fails to notify the department within the required 10 days, he or she shall be subject to a penalty of $10, as provided by s. 71.20 (22) (c), Stats.

(b) The agreement between the employe and employer shall be renewed each year. For calendar year taxpayers, the agreement expires on April 30 of the year immediately following the year in which it was entered into. For fiscal year taxpayers, the agreement expires 4 months following the close of the fiscal year in which entered into. To renew the agreement, an employe shall provide a new form WT-4A to his or her employer and submit a copy of the completed form to the department as provided in par. (a). If a new form WT-4A is executed before the expiration dates described in this paragraph, it shall supersede the previous agreement.

(c) If the department determines that an agreement would result in an insufficient amount of tax being withheld, the department may void the agreement by notification to the employer and employe.

(d) Section 71.20 (16), Stats., provides that any employe who enters into an agreement with the intent to defeat or evade the proper withholding of tax, shall be subject to a penalty equal to the difference between the amount required to be withheld and the amount actually withheld for the period that the incorrect agreement was in effect.

(e) Under s. 71.20 (22) (e), Stats., any employe who willfully supplies an employer with false or fraudulent information regarding an agreement with the intent to defeat or evade the proper withholding of tax may be imprisoned not more than 6 months or fined not more than $500, plus the costs of prosecution, or both.

Note: Forms WT-4 and WT-4A may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) and (2), cr. (3), Register, September, 1983, No. 333, eff. 10-1-83.

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 2.935 Reduction of delinquent interest rate under s. 71.20 (5) (c), Stats. (s. 71.20 (5) (c), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the withholding taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) FACTORS FOR SECRETARY'S CONSIDERATION. In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

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,