

Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND
GROSS INCOME

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Tax 2.01 Residence. (s. 71.02, Stats.) Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file form I-827, "Residence Questionnaire", or the "Residence Questionnaire" which is a part of the 1NPR income tax form, 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 or form 1NPR may be obtained from the Department of Revenue 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, WI 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; am. Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.02 Reciprocity. (ss. 71.05 (2) and 71.64 (8), Stats.) (1) **PURPOSE.** This section explains the reciprocity agreements between Wisconsin and other states.

(2) **DEFINITIONS.** The following definitions pertain only to Wisconsin. Definitions of the same terms in other states may vary. In this section:

(a) "Personal service income" means all salaries, wages, commissions and fees earned by an employe and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Personal service income does not include income derived from activities involving the substantial use of capital or labor of others.

(b) "Resident" means a natural person who is domiciled in this state.

(3) **WISCONSIN LAW.** (a) Under s. 71.05 (2), Stats., 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 the personal service income, if the state of residence allows:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; or

2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on the personal service income.

(b) Under s. 71.64 (8), Stats., a Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement under sub. (4) need not withhold Wisconsin income tax from personal service income earned in Wisconsin by the nonresident.

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(4) AGREEMENTS WITH OTHER STATES. (a) Wisconsin has formal reciprocity agreements with:

1. Kentucky: for the years beginning on and after January 1, 1961.
2. Illinois: for the years beginning on and after January 1, 1971.
3. Michigan: for income earned after October 1, 1967 and years beginning on or after January 1, 1968.
4. Minnesota: for the years beginning on and after January 1, 1968.

(b) Wisconsin practices reciprocity with the following states on the basis of informal agreements and acquiescence by Wisconsin and the other state:

1. Indiana: since prior to 1960.
2. Maryland: since prior to 1960.

(5) EFFECT OF RECIPROCITY. (a) Personal service income included under reciprocity agreements is taxed by an employee's state of residence rather than by an employee's state of employment. Wisconsin will not tax personal service income earned in Wisconsin by residents of states with which Wisconsin has reciprocity and those states may not tax personal service income which a Wisconsin resident earns in their states, except as described in subs. (6), (7), (8) and (10).

(b) For personal service income included under reciprocity agreements, an employer need only withhold income tax for the state of residence of an employee.

(c) Federal law regulates withholding on wages earned by employees engaged in interstate transportation activities.

Note: Additional information on withholding on wages earned by employees engaged in interstate transportation activities may be obtained by writing the Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

(6) PROVISIONS OF AGREEMENT WITH ILLINOIS. (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to employes for personal services." However, the agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income, to lottery winnings, or to persons identified in pars. (c) and (d).

(b) The Illinois Income Tax Act, Article 15, section 1501 (a) (20), 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". Because of the differences in the definition of resident for Illinois and Wisconsin purposes, a person domiciled in Wisconsin may simultaneously be a resident of Illinois, or a person may be domiciled in Illinois but not be a resident of Illinois.

Example: A person is domiciled in Wisconsin and takes a job in Illinois. The person does not intend to give up his Wisconsin domicile, but instead intends to return to Wisconsin once his job in Illinois is completed (2 to 3 years). Assume that Illinois considers the person's stay in Illinois as other than temporary or transitory. Therefore, the person is a resident of Illinois. The person is also a resident of Wisconsin because he is still domiciled in Wisconsin.

Note: The term "temporary or transitory" as used in the definition of an Illinois resident set forth in sub. (6) (b) is not defined in either Illinois law or regulations. Therefore, whether

or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

(c) The reciprocity agreement with Illinois does not apply to any form of compensation described in par. (a) paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of this person is taxable by Wisconsin. However, a credit against Wisconsin income tax may be claimed for income tax paid to Illinois.

(d) An individual who is domiciled in Illinois but is not a resident of Illinois is subject to the Wisconsin income tax on income earned in Wisconsin.

(7) PROVISIONS OF AGREEMENT WITH MICHIGAN. The reciprocity agreement with Michigan is limited to income from "personal services, including salaries, wages or commissions". The agreement does not include income which Michigan considers to be "business income", such as fees of self-employed persons such as professionals.

(8) PROVISIONS OF AGREEMENTS WITH INDIANA AND KENTUCKY. The reciprocity agreements with the states of Indiana and Kentucky are limited to wages, salaries and commissions.

(9) PROVISIONS OF MARYLAND LAW. Although no formal agreement with Maryland exists, s. 291 of the Maryland statutes is comparable to s. 71.05 (2), Stats., in that a nonresident may exclude from Maryland taxation, the income from salaries, wages and compensation for personal services to the extent the state of residence of the taxpayer taxes income and accords similar treatment to Maryland residents.

(10) PROVISIONS OF AGREEMENT WITH MINNESOTA. (a) The reciprocity agreement with Minnesota is limited to income from personal services, including wages, salaries, tips, fees, commissions, bonuses, or similar earnings, provided the taxpayer personally renders the services. The reciprocity exclusion for personal service income does not apply where the personal or professional service income is earned as a part of a business operated by the taxpayer which has employees that do more than incidental duties for the business, or where there is the sale or delivery of goods which is more than an incidental part of the business. A partner's salary from a partnership where the selling of goods or services of the employee is more than incidental is subject to the reciprocity exclusion, but the partnership profits are not excluded. Distributions from a tax-sheltered annuity are also considered subject to the reciprocity exclusion.

(b) To qualify for the reciprocity exclusion, the Minnesota agreement requires the taxpayer to have a place of abode in Wisconsin, and the taxpayer is required to customarily return to it at least once a month.

(11) PROCEDURE FOR NONRESIDENTS. (a) Nonresident persons, other than residents of Minnesota, employed in Wisconsin and residing in a state with which Wisconsin has reciprocity shall file form W-220, "Nonresident Employee's Withholding Reciprocity Declaration" with their Wisconsin employers to be exempt from withholding of Wisconsin income taxes. Upon receipt of this form, Wisconsin employers may not withhold Wisconsin income tax from Wisconsin personal service income of the employee.

(b) Persons who are residents of Minnesota employed in Wisconsin shall file form W-222, "Statement of Minnesota Residency", with their Wisconsin employers to be exempt from withholding of Wisconsin income taxes. Form W-222 should be filed within 30 days of beginning employment in Wisconsin, changing to a new employer in Wisconsin, or establishing Minnesota residency while continuing to work in Wisconsin. Upon receipt of this form, Wisconsin employers may not withhold Wisconsin income tax from Wisconsin personal service income of the employee. To continue the exemption from year to year, a new form W-222 is required to be filed by January 31 of each year.

(c) The reciprocity exclusion does not apply to Wisconsin lottery winnings of nonresident persons.

(12) PROCEDURE FOR WISCONSIN RESIDENTS. (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity shall file form 1-ES, "Wisconsin Estimated Tax Voucher", with the Wisconsin department of revenue if their out-of-state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to make payments of estimated tax.

(b) Wisconsin residents may have their employers cease withholding the other state's income tax from their personal service income and may claim a refund from that state if income taxes are withheld from their personal service income after the effective date of a reciprocity agreement.

(c) Wisconsin residents earning personal service income in states where it is taxable by the other state may claim a credit on their Wisconsin income tax returns for net income taxes paid to these states.

Note: Refer to s. Tax 2.955 for information on the credit for tax paid to other states.

(13) DELINQUENT TAXES. Reciprocity agreements shall not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.91 (7), Stats.

Note: 1) Forms 1-ES, W-220 and W-222 and their instructions may be obtained free of charge by writing the Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

2) Out of state employers of Wisconsin residents wishing to withhold Wisconsin income tax from those employee's incomes may contact the department's Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

History: Cr. Register, April 1978, No. 268, eff. 5-1-78; r. and recr., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 2.03 Corporation returns. (ss. 71.24 (1), (1m) and (3), 71.365 (4) and (5) and 71.44 (1) (a) and (c), Stats.) (1) For the purpose of filing franchise or income tax returns, the secretary of revenue has designated the following forms for the use of corporations:

(a) Form 4. Corporation franchise or income tax return for the calendar or fiscal year. This return is to be used only by corporations reporting on the apportionment or separate accounting method.

(b) Form 4B. Apportionment data.

(c) Form 4BL. Computation of Wisconsin net business loss offset.

(d) Form 4C. Separate accounting data.

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- (e) Form 4-ES. Corporation estimated tax voucher.
- (f) Form 4H. Declaration of inactivity.
- (g) Form 4I. Return of income for insurance company.
- (h) Form 4T. Exempt organization business franchise or income tax return.
- (i) Form 4U. Underpayment of estimated tax by corporations.
- (j) Form 4X. Amended corporation franchise or income tax return.
- (k) Form 5. Corporation franchise or income tax return for the calendar or fiscal year. This return is to be used only by corporations whose entire net income is attributable to Wisconsin. It may not be used by tax-option (S) corporations or corporations which determine their Wisconsin net income by the apportionment or separate accounting method.
- (l) Form 5E. Election by an S corporation not to be treated as a tax-option corporation.
- (m) Schedule 5K-1. Tax-option (S) corporation shareholder's share of income, deductions, etc.
- (n) Form 5S. Tax-option (S) corporation franchise or income tax return.
- (o) Form 4466W. Application for quick refund of overpayment of estimated tax.
- (p) Form CU. Credit union declaration of exempt status.
- (q) Schedule CU-1. Credit union income computation schedule.
- (r) Schedule DC. Development zone credits.
- (s) Schedule FC. Farmland preservation credit.
- (t) Schedule R. Research credits.

(2) An officer of the corporation shall sign all returns required to be filed. If a return is prepared by someone other than an employe or officer of the corporation, the person or firm preparing the return shall also sign as preparer.

(3) All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the address specified by the department on the form or schedule or delivered to the department's audit bureau at 4638 University Avenue, Madison, Wisconsin.

Note: Blank forms may be obtained from the department at 4638 University Avenue, Madison, or by mail request to P. O. Box 8903, Madison, WI 53708.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. Register, September, 1983, No. 333, eff. 10-1-82; am. (1) (a), (c) and (d), renum. (1) (f) to (j) and (2) to be (1) (g) to (k) and (3) and am. (1) (h) and (k) and (3), cr. (1) (f), (l) to (p) and (2), Register, July, 1987, No. 379, eff. 8-1-87; r. and recr. (1), am. (3), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.04 Information returns and wage statements. (ss. 71.26 (3) (e), 71.65 (2), 71.70, 71.71 (2), 71.72 and 71.74 (4), Stats.) (1) DEFINITION.
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In this section, "person" means an individual, a trust, estate, partnership, association, or corporation.

(2) **COMPENSATION FOR SERVICES.** Under ss. 71.65 (2), 71.71 (2), and 71.72, Stats., all persons carrying on activities within this state, whether taxable or not under ch. 71, Stats., are required to file with the department of revenue, on federal form W-2 or W-2P or on Wisconsin form 9b or on other forms approved by the department, a statement of certain payments made within the preceding calendar year. For individuals who are residents of Wisconsin, the statement shall set forth the salaries, wages, bonuses, commissions, annuities, pensions, retirement pay, fees or other remuneration paid for services whether subject to withholding or not. For individuals who are nonresidents, the statement shall include all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, except retirement plan distributions identified in s. Tax 3.085 as being exempt from Wisconsin income tax. A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b. The following shall also apply with respect to compensation for services:

(a) All payments which are wages within the statutory definition under s. 71.63 (6), Stats., regardless of amount, shall be reported on form W-2.

(b) All payments which are not wages within the definition under s. 71.63 (6), Stats., but from which Wisconsin income tax has been withheld, shall be reported on form W-2 or W-2P.

(c) Payments of \$600 or more which are not within the statutory definition of wages under s. 71.63 (6), Stats., and from which no Wisconsin income tax has been withheld, shall be reported on a Wisconsin form 9b. However, if the payment was to an employe for whom a form W-2 is required under par. (a) or (b), the payment, regardless of amount, shall be included on form W-2.

(d) All statements required shall be filed by January 31. Forms W-2 or W-2P shall be mailed or delivered to the Department of Revenue at 4638 University Avenue, P.O. Box 8920, Madison, WI 53708. Form WT-7, Annual Reconciliation of Wisconsin Income Tax Withheld From Wages, shall accompany the wage statements submitted, if the employer is required to be registered to withhold Wisconsin income taxes from employe's wages. Corporations shall mail or deliver Wisconsin forms 9b or substitute forms to the Department of Revenue at 4638 University Avenue, P.O. Box 8908, Madison, WI 53708. Payors other than corporations shall mail or deliver Wisconsin forms 9b or substitute forms to the Department of Revenue at 4638 University Avenue, P.O. Box 59, Madison, WI 53785. A letter of transmittal identifying the sender shall accompany the forms 9b or substitute forms.

(e) Sections 71.65 (5) and 71.73 (2), Stats., permit a thirty-day extension of time to file the forms described in this subsection. A written request may be sent to the department at P.O. Box 8920, Madison, WI 53708 and to be effective shall be postmarked on or before the due date of the statements. The department's approval of the extension shall be attached to the statements when they are filed with the department.

(3) **RENTS AND ROYALTIES.** All persons making payments of rents and royalties of \$600 or more to individuals who are residents of Wisconsin,

regardless of where the property is located, and to nonresident individuals if the property is located in Wisconsin, shall file with the department of revenue, on form 9b or an approved substitute form, reporting the payments made in the preceding calendar year. The following shall also apply with respect to rents and royalties:

(a) A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b.

(b) Corporations shall file by March 15, by mailing or delivering the statements to the Department of Revenue at 4638 University Avenue, P.O. Box 8908, Madison, WI 53708. Payors other than corporations shall file by April 15, by mailing or delivering the statements to the Department of Revenue at 4638 University Avenue, P.O. Box 59, Madison, WI 53785.

(c) No extensions of time for filing forms 9b or substitute forms to report payments of rents or royalties shall be allowed.

(4) Items to be reported on forms W-2, W-2P, 9b, or substitute forms may be disallowed as deductions from gross income if not properly reported.

(5) Payors who participate in the combined federal/state filing program with the internal revenue service and report items required to be filed on a Wisconsin form 9b to the internal revenue service, are not required to file separate information returns for those items with the department of revenue.

Note: Under the combined federal/state filing program, the internal revenue service will forward information from the information returns to the department of revenue.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. (1), (3), (4) and (6), cr. (7), Register, September, 1983, No. 333, eff. 10-1-83; r. and recr. Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.05 Transfers of capital stock, information return. (s. 71.69, Stats.)

(1) All corporations doing business within this state, whether subject to the franchise or income tax or not, shall file with the department of revenue on or before March 15 of each year reports of transfers of capital stock, including disposals, by individuals who were residents of Wisconsin during the preceding calendar year.

(2) Transfers of capital stock shall be reported on Wisconsin form 8 or on other substitute forms approved by the department and shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1983, No. 333, eff. 10-1-83; am. Register, July, 1987, No. 379, eff. 8-1-87; r. and recr. Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.08 Returns of persons other than corporations. (ss. 71.03 (2), 71.20

(1) and 71.55 (3), Stats.) (1) For the purpose of filing income tax returns, the secretary of revenue has designated the following forms for the use of persons other than corporations:

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- (a) Form 1. (Long form). Return for all individuals who are full-year Wisconsin residents, whether married or single.
- (b) Form 1A. (Short form). Optional short form return for individuals who are married filing a joint return or who are single.
- (c) Form 1-ES. Estimated tax voucher for individuals, estates, and trusts.
- (d) Form 1NPR. Return for individuals who are nonresidents or part-year residents of Wisconsin.
- (e) Form 1X. Amended individual income tax return.
- (f) Form WI-Z. Optional short form return for single individuals.
- (g) Schedule 2440W. Disability income exclusion for individuals.
- (h) Schedule FC. Farmland preservation credit claim.
- (i) Schedule H. Homestead credit claim.
- (j) Schedule I. Adjustments to convert federal adjusted gross income to the amount allowable under the provisions of the internal revenue code applicable for Wisconsin purposes for the taxable year.
- (k) Schedule MT. Alternative minimum tax.
- (l) Schedule T. Transitional adjustments for individuals.
- (m) Schedule U. Underpayment of estimated tax by individuals and fiduciaries.
- (n) Schedule WD. Capital gains and losses for individuals.
- (o) Form 2. Return for trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. Guardians shall report on form 1, 1A, 1NPR, or WI-Z.
- (p) Schedule 2K-1. Beneficiary's share of income, deductions, etc.
- (q) Schedule WD (form 2). Capital gains and losses for fiduciaries.
- (r) Form 3. Return for partnerships and joint ventures.
- (s) Schedule 3K-1. Partner's share of income, deductions, etc.
- (t) Form 4T. Exempt organization business franchise or income tax return.

(2) Information returns required of persons other than corporations are specified in s. Tax 2.04.

(3) Returns required to be filed by persons other than corporations shall be filed by providing the information requested by the appropriate forms and schedules, signing the returns, and by delivering them to 4638 University Avenue, Madison, Wisconsin, or by mailing them to the address specified by the department on the form or schedule.

Note: Blank forms may be obtained by mail request to Wisconsin Department of Revenue, P. O. Box 8903, Madison, WI 53708.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75;

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am. (1), Register, November, 1977, No. 263, eff. 12-1-77; am. (3), Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (a) and (b), (2) and (3), renum. (1) (c) and (d) to be (1) (k) and (l) and am., cr. (1) (c) to (j), Register, July, 1987, No. 379, eff. 8-1-87; r. and recr. (1), am. (3) (intro.), r. (3) (a) to (c), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.085 Claim for refund on behalf of a deceased taxpayer. (s. 71.75 (10), Stats.) (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the refund exceeds \$100, the claimant shall file, with the income tax return, a completed form I-804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) Form I-804 does not have to be filed if the refund is claimed on a joint Wisconsin income tax return of the surviving spouse and the decedent. The surviving spouse shall write "filing as surviving spouse" in the signature area of the return. If someone other than the surviving spouse is the personal representative, the personal representative shall also sign the joint return.

(3) Forms required to be filed under sub. (1) shall be mailed to the Wisconsin Department of Revenue, P.O. Box 59, Madison, WI 53785.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1), Register, November, 1978, No. 275, eff. 12-1-78; am. (2), Register, September, 1983, No. 333, eff. 10-1-83; renum. (2) to be (3), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.09 Reproduction of income tax forms. (s. 71.10 (1) (intro.), (2) (b) and (3) (a), Stats.) Subject to this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions may be filed with the department in lieu of the corresponding official forms. The department may reject any form which is in whole or in part illegible.

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

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

(3) In the reproduction of tax forms, black ink may be substituted for colored ink.

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

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

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

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

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

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

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9-1-74; am. (intro.), (2), (6) (intro.) and (a), Register, November, 1977, No. 263, eff. 12-1-77; am. (3), Register, September, 1983, No. 333, eff. 10-1-83; correction in (5) made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379.

Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (s. 71.03 (5), Stats.) At the time of filing Wisconsin income tax returns by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year, including all schedules, statements, documents and computations which affect the computation of Wisconsin income, credits or penalties, shall be included and filed with the Wisconsin return. Copies of the short form federal returns 1040A and 1040EZ are not required to be filed if a Wisconsin form 1A or WI-Z is being filed for the same taxable year. If the federal return is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designed by the electronic filer shall be included and filed with the Wisconsin return.

History: Register, December, 1965, No. 120, eff. 1-1-66; am. Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.105 Notice by taxpayer of federal audit adjustments and amended returns. (ss. 71.75 (2), 71.76 and 71.77 (2) and (7), Stats.) (1) PURPOSE. This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin income or franchise tax purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(2) DEFINITION. In this rule, "taxpayer" includes individuals, estates, trusts and corporations.

(3) GENERAL. (a) Section 71.76, Stats., provides that a taxpayer shall report to the department changes made to a tax return by the internal revenue service, or file with the department amended Wisconsin income tax returns reporting any information contained in amended returns filed with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state.

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within 90 days of the date the department receives the taxpayer's report of federal adjustment or amended return described in par. (a). The limitations referred to in this paragraph do not apply to instances where the taxpayer files an incorrect income or franchise tax return with intent to defeat or evade the income or franchise tax assessment.

(4) TAXPAYER REQUIRED TO REPORT. (a) *Federal adjustments.* If a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin income or franchise tax payable, the taxpayer shall report such adjustments to the department within 90 days after they become final.

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1. Finality of federal adjustments. For the purpose of determining when federal adjustments to taxable income reported become final, the following shall be deemed a final determination:

a. Payment of any additional tax, not the subject of any other final determination described in subpar. b, c, d or e.

b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment. Federal form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", or 870-AD, "Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", are the forms prescribed for this purpose.

c. Expiration of the 90-day time period, or the 150-day period in the case of a notice addressed to a person outside the United States, within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within that time.

d. A closing agreement entered into with the internal revenue service under s. 7121 of the internal revenue code.

e. A decision by the United States tax court or a judgment, decree or other order by a court of competent jurisdiction which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. A court of competent jurisdiction includes a United States district court, a court of appeals, a court of claims, or the United States supreme court.

Note: Refer to the Note following this section for the time when the federal actions ordinarily become final.

2. Information to report to department. A copy of the final federal audit report issued by the internal revenue service shall be submitted to the department together with any other documents or schedules necessary to inform the department of the adjustments to taxable income as finally determined.

3. Agreement with adjustments. A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin income or franchise tax purposes unless a statement is included with the report to the department stating why the taxpayer believes that the adjustments are incorrect.

(b) *Amended returns.* If a taxpayer files an amended federal tax return and the changes on the amended federal tax return affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, an amended Wisconsin return reflecting the same changes shall be filed with the department. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

(c) *Where and how to submit report or amended return.* A taxpayer's report of federal adjustments or amended Wisconsin return shall be submitted to the department by mailing it to the Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708. The report of federal adjustments or amended Wisconsin return shall be clearly identified and it shall not be made a part of or attached to any other Wisconsin tax return.

(5) **TAXPAYER'S FAILURE TO REPORT OR FILE ADJUSTMENTS AND AMENDED WISCONSIN RETURNS.** (a) *Adjustments and amended returns relating to taxable year 1987 and thereafter.* If a taxpayer fails to report federal adjustments or the filing of an amended other state or federal return, relating to the taxable year 1987 and thereafter, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 4 years after discovery by the department.

Example. An individual taxpayer filed a 1987 Wisconsin income tax return on April 15, 1988. Adjustments were made by the internal revenue service to the 1987 federal income tax return which the taxpayer did not report to the department within 90 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on June 1, 1990. The department may issue an assessment for the adjustments any time on or before June 1, 1994.

(b) *Adjustments and amended returns relating to 1986 and prior taxable years.* 1. Adjustment became final or amended return filed after July 1, 1983. If a taxpayer fails to report federal adjustments which became final after July 1, 1983 and relate to 1986 or prior taxable years, or the filing of an amended other state or federal return filed after July 1, 1983 which relates to 1986 or prior taxable years, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed or within 2 years after the date when the federal determination of tax becomes final, whichever is later. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar year basis, is considered as filed on the last date prescribed by law under s. 71.77 (8), Stats.

2. Adjustment made and became final or amended return filed after May 4, 1976 and before July 2, 1983. If a taxpayer fails to report federal adjustments which were made and became final during the period of May 5, 1976 through July 1, 1983 or the filing of an amended other state or federal return during the period of May 5, 1976 through July 1, 1983, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed. A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar year basis, is considered as filed on the last date prescribed by law under s. 71.77 (8), Stats.

Examples. 1) A taxpayer filed a 1983 income tax return on April 15, 1984. The taxpayer filed an amended return with Ohio on January 1, 1985. The result of the amended return was a reduction in the net tax paid to Ohio on income also reported to Wisconsin. The taxpayer did not notify the department within 90 days of filing the amended Ohio return. The department has until April 15, 1994 to issue an assessment for the Ohio amended return's effect on the Wisconsin credit for taxes paid to other states.

2) An individual taxpayer filed a 1980 Wisconsin income tax return by April 15, 1981. Adjustments were made by the internal revenue service to the individual's 1980 federal in-

come tax return and the adjustments became final on July 1, 1982. The taxpayer either failed to notify the department of the adjustments or notified the department more than 90 days after they became final. The department of revenue may issue an assessment for the adjustments any time on or before April 15, 1991, 10 years from the due date of the 1980 Wisconsin return.

(6) **ASSESSMENTS AND REFUNDS BY DEPARTMENT.** If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after an amended return is filed with the internal revenue service or another state, the department may make an assessment or refund relating to the report or amended return as follows:

(a) *Assessments.* Under s. 71.77 (2), Stats., an assessment may be made within 4 years from the date the original Wisconsin income or franchise tax return was filed. However, under s. 71.77 (7) (a), Stats., if the taxpayer reported less than 75% of the correct income and the additional tax for the year exceeds \$100 for an individual return or a married filing separate return, or \$200 for a joint return, an assessment may be made within 6 years after the return was filed.

(b) *Refunds.* Under s. 71.75 (2), Stats., a refund may be made if claims are filed within 4 years of the unextended date the original Wisconsin income or franchise tax return was due.

(c) *Exceptions.* 1. An assessment may be made later than the 4 and 6 year periods mentioned in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report from the taxpayer of federal adjustments or an amended Wisconsin return. However, the assessment made after the expiration of the 4 and 6 year periods may only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department after the expiration of the 4-year period for filing claims for refund as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax liability, may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustment.

3. The 90-day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of the 90 days.

Examples. 1) Federal adjustments were made to an individual's 1983 federal income tax return; the adjustments became final on June 1, 1988. On August 15, 1988, within 90 days after the adjustments became final, the department received the taxpayer's report of the adjustments. Although the 4-year period provided by s. 71.11 (21) (bm), 1985 Stats., (renumbered s. 71.77 (2), 1987 Stats.) for making adjustments to the 1983 Wisconsin return expired on April 15, 1988, the department had until November 13, 1988, 90 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) A taxpayer filed an amended 1985 New York return on June 1, 1986. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 1, 1986. Under the 4-year assessment period in s. 71.77 (2) (formerly s. 71.11 (21) (bm)), Stats., the department has 4 years from April 15, 1986, the due date of the 1985 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(7) **PRIOR FIELD AUDIT BY DEPARTMENT.** If federal adjustments or changes on an amended return filed with the internal revenue service or

another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund may only relate to those federal adjustments or the changes on the amended return. Notice of the assessment or refund must be given to the taxpayer within 90 days of the date the department received the report of federal adjustment or an amended Wisconsin return from the taxpayer.

Note: 1) Decisions of the U.S. tax court and other courts ordinarily become final as follows:

a. If no appeal is made of a U.S. tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable small cases involving deficiencies of \$1,500 or less heard by the U.S. tax court under s. 7463 of the internal revenue code become final 90 days after they are entered.

b. Appealed decisions of the U.S. tax court become final as set forth in s. 7481 of the internal revenue code.

c. A decision of a U.S. district court normally becomes final if not appealed to the U.S. court of appeals within 60 days of the judgment, decree or order.

d. A decision of the U.S. court of claims or the U.S. court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the U.S. supreme court within 90 days of the judgment or decree.

e. A decision of the U.S. supreme court is normally final upon the expiration of a period of 25 days from the date such decision is rendered, if a motion for reconsideration or rehearing is not filed within that time.

2) In the case of *Bacon v. Wisconsin Department of Revenue*, Wis. Court of Appeals, No. 83-497, March 23, 1984, it was held that a federal assessment occurring prior to the effective date of s. 71.11 (21) (g) 2 and (21m), 1985 Stats., (May 5, 1976) relieves a taxpayer of notifying the department of the federal assessment in absence of legislative intent of retroactivity, regardless of when the assessment became final as a result of an appeal.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; correction in (3) (a) 1. a. made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379; r. (2), (4) and (5) (d); renum. (1), (3), (5) (a) to (c) and (6) to be (2), (4), (6) and (7) and am. (2), (4) (a) 1.b., c. and e, (b), (6) (a) to (c) and (7), cr. (1), (3) and (5), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.11 Credit for sales and use tax paid on fuel and electricity. (ss. 71.26 (2), 71.28 (3) and 71.34 (1) (e), Stats.) (1) DEFINITIONS. In this section:

(a) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities. However, fuel and electricity used directly in manufacturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

(b) "Manufacturing" has the meaning specified in s. 77.54 (6m), Stats., by virtue of s. 71.28 (3) (a) 1, Stats.

(c) "Paid" has the meaning specified in s. 71.22 (8), Stats.

(d) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. 71.28 (3) (a) 2, Stats.

(2) CREDIT ALLOWABLE. (a) Under s. 71.28 (3), Stats., a corporation may reduce its income or franchise tax liability for the year by an

amount equal to the Wisconsin state and county sales and use taxes it has paid on fuel and electricity consumed in manufacturing personal property within Wisconsin.

(b) If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(c) The credit is allowable for all Wisconsin and Wisconsin county sales and use taxes paid during the taxable year on fuel or electricity destined for manufacturing purposes, regardless of when the fuel or electricity was or is to be consumed.

Note: Refer to *Streets and Roads Construction Corporation v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. I-6239, July 28, 1981, and *Fort Howard Paper Company v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. I-8266, November 1, 1983.

(3) **CARRY FORWARD OF UNUSED CREDIT.** (a) If a corporation is entitled to a sales and use tax credit under s. 71.28 (3), Stats., the credit, to the extent not offset by the tax liability of the same year, may be offset against the tax liability of the subsequent year and each succeeding year up to a total of 15 years until the credit has been completely offset.

Note: The carry forward of the sales tax credit was increased from 5 to 15 years by 1985 Wis. Act 29, and the 15 year carry forward first applies to credits carried forward from the 1980 taxable year.

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

(4) **CREDIT INCLUDABLE IN NET INCOME.** Under s. 71.26 (2), Stats., the credit computed for sales and use taxes paid on fuel and electricity consumed in manufacturing under s. 71.28 (3), Stats., shall be included in net income for the tax year. Except for tax-option corporations, the entire credit computed for the tax year is includable in net income, even though the credit is not entirely used or no income or franchise tax liability exists. Under s. 71.34 (1) (e), Stats., tax-option corporations shall only include in net income the amount of credit computed under s. 71.28 (3), Stats., and used to offset the income or franchise tax liability of the current year.

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; am. (1) (intro.) and (3), renum. (1) (a) to (c) to be (1) (d), (b) and (a) and am., cr. (1) (c), r. and recr. (2) and (4), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.12 Amended income and franchise tax returns (ss. 71.74, 71.75 and 71.76, Stats.) (1) **GENERAL.** (a) The department shall accept amended returns to correct Wisconsin franchise or 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 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.

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Note: Refer to s. Tax 2.105 for additional information regarding amended Wisconsin returns required as a result of filing amended federal returns or amended returns of other states and amended Wisconsin returns required as a result of adjustments made to a federal return by the Internal Revenue Service.

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

(c) If an amended return shows a refund, it shall be filed within 4 years of the unextended due date of the original return. However, there are 2 exceptions, as follows:

1. A claim for refund of the tax paid as a result of an office audit or field audit may be filed within 2 years of the date the tax was assessed if no petition for redetermination was filed.

2. A claim for refund of the tax paid as a result of a federal audit adjustment may be filed within 90 days of the date on which the federal audit adjustment became final.

Note: Refer to s. Tax 2.105 (4) (a) 1 for information regarding when a federal audit adjustment is final.

(2) FORMS. Amended returns may be filed using form 1X for individuals and form 4X for corporations. Other forms may be used, but such forms shall be clearly marked "AMENDED RETURN" across the top of the first page.

Note: 1) The department accepts amended individual income tax and corporate franchise and income tax returns to allow taxpayers to correct overstatements or understatements of net income and computations of tax contained on their original, previously amended, or previously adjusted return.

2) Although the use of forms 1X and 4X 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; am. (1) (a) and (b), r. and recr. (1) (c) and (2), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.13 Moving expenses. (s. 71.05 (1) (a)7 and (b)4, 1985 Stats., and s. 71.07 (5), 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.

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Example: 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	<u>\$18,000</u>

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

(3) **APPLICABILITY.** As a result of 1987 Wis. Act 27 which updated the reference to the internal revenue code as amended to December 31, 1986, subs. (1) and (2) do not apply to taxable years 1987 or thereafter. Effective with taxable year 1987 and thereafter, the internal revenue code allows moving expenses as an itemized deduction rather than as a deduction in computing adjusted gross income; and for Wisconsin income tax purposes, under s. 71.07 (5), Stats., moving expenses except expenses to move from this state, are included in the computation of the itemized deduction credit.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. (2), Register, September, 1983, No. 333, eff. 10-1-83; Cr. (3), Register, February, 1990, No. 410, eff. 3-1-90; r. and recr. (3), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.14 Aggregate personal exemptions. (s. 71.09 (6p) (a) and (b), 1985 Stats.) For taxable years prior to 1986, 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; am. Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.15 Methods of accounting for corporations. (s. 71.11 (8), 1985 Stats.) (1) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may report 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.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; renum. to be (1) and am., cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.16 Change in method of accounting for corporations. (s. 71.11 (8) (b), 1985 Stats.) (1) **GENERAL.** (a) The computation of adjustments necessary for a change in the method of accounting by corporations shall be made under the provisions of s. 71.11 (8) (b), 1985 Stats.

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(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 changes 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), 1985 Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin franchise and income tax purposes.

(3) 1953 ACCOUNT BALANCES. (a) *Taxpayer-initiated change.* On a taxpayer-initiated change, the net 1953 account balances may 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 and income tax purposes.

Note: Wisconsin's treatment of transitional adjustments 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 s. 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 or reasons 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 showing the computation of adjustments to income for each year, which clearly indicate the manner in which it proposes to effect the change for Wisconsin franchise or income tax purposes;

7. A copy of the entry, its date and explanation, made on the books to accomplish the change or when no book entry is made, the reason for its absence; 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. The applications shall be in letter form with supporting schedules and data and mailed to: Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708.

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

(6) APPLICABILITY. As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

Note: 1) As to a change in method of accounting for a single item refer to *Ladish Co. v. Dept. of Revenue*, 69 Wis. 2d 723 (1975).

2) As to a change of method of accounting from cash to accrual basis refer to the decisions of the Wisconsin Tax Appeals Commission in *Streets and Roads Construction Corp. v. Dept. of Revenue*, Docket No. I-6239 (July 28, 1981) and *Wisconsin Railroad Services Corp. v. Dept. of Revenue*, Docket No. I-6813 (June 5, 1985).

3) Refer to ss. Tax 2.25, "Corporation accounting generally", and 2.26, "Last-in, first-out method of inventorying for corporations", for departmental 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; am. (1) (a), (c), (2), (3) (a), (4), (5) (a) (intro.), 3., 4., 6., 7., (b) 1. and 2., cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.165 Change in taxable year. (ss. 71.02 (1) (b) and (2) (h) and 71.10 (3m) and (16), 1985 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, WI 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. $\$18,000 \times 12 = \$216,000$
2. Divide by number of months in the short period to obtain annualized income. $\$216,000 \div 9 = \$24,000$
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. $\$1,676 \times 9/12 = \$1,257.$

(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 attaching 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. $\$14,000 \times 12 = \$168,000$
2. Divide by number of months in the short period to obtain annualized income. $\$168,000 \div 6 = \$28,000$

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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. $\$2,497 \times 6/12 = \$1,248.50$.

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 ($\$2,577 \times 6/12$).

(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.

(5) APPLICABILITY. As a result of 1989 Wis. Act 31 which generally federalized Wisconsin's treatment of taxable years, this section does not apply to taxable years beginning on or after August 1, 1988.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; cr. (5), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 2.19 Instalment method of accounting for corporations. (s. 71.11 (8), 1985 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 taxable year, may be reported on the instalment basis. On the instalment basis there shall be reported as income from the instalment sale in any taxable 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.

Note: Refer to *Castle Corporation vs. Wis. Dept. of Revenue*, 142 Wis. 2d 716 (1987).

(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. But the transfer of an instalment sale obligation by merger or consolidation pursuant to s. 71.368 (1) (a) 1, 1985 Stats., is not a distribution by the merged or consolidated corporation as long as the surviving or consolidated corporation continues to report the gain to the state.

Note: Refer to *Falls Communications, Inc. v. Wis. Dept. of Revenue*, 131 Wis. 2d 545 (1986). Register, June, 1991, No. 426

(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, 1985 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 taxable year in which the sale or exchange takes place.

(7) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

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; am. (1) to (3) and (6), cr. (7), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies. (s. 71.11 (8), 1985 Stats.) (1) Except as otherwise provided in sub. (2), acceptance corporations and dealers in commercial paper shall report the discount on the purchase of paper as income in the year of purchase.

(2) Acceptance corporations and dealers in commercial paper may elect to report their 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 the income are made in accordance with generally accepted accounting principles and practice. The election of or change to the deferred profit basis shall be made before the close of the year for which the return is made, and after having made the election or change, the deferred profit basis of reporting shall be adhered to in all subsequent periods. Those corporations which report their income on the accrual method are not required to obtain authorization from the department to change from the method under sub. (1) to the deferred profit basis if notice of this change is given to the department in writing before the close of the year in which the change is to be made.

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

(4) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; correction in (1) made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379; am. (1), renum. (2) and (3) to be (3) and (2) and am., cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.21 Accounting for incorporated contractors. (ss. 71.11 (8), 1985 Stats. and 71.25 (5), 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 taxable years, the percentage of completion basis may be used provided such basis clearly reflects the income taxable under ch. 71, Stats. Under the percentage of completion method, a portion of the total contract price is treated as sales for the current period. This portion may be determined by an engineer's or an architect's estimate or by another method which will clearly reflect the income realized to date. The difference between the sales thus determined and the actual cost incurred, adjusted for inventories of materials at the end of the year, is reported as gain or loss for the taxable year.

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

(3) The income derived from the performance of construction activities within Wisconsin by a nonresident contractor is attributable to Wisconsin and is subject to the Wisconsin franchise or income tax. If the operations in Wisconsin of the nonresident contractor are part of a unitary business, the apportionment method shall be used to determine Wisconsin income, and the separate accounting method may not be used without permission from the department.

(4) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

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; am. (1) and (2), r. and recr. (3), cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.22 Accounting for incorporated dealers in securities. (s. 71.11 (8), 1985 Stats.) (1) Dealers in securities shall report for franchise or income tax purposes on the accrual method of accounting.

(2) Inventories of securities held for sale shall be reported on a consistent basis conforming to that used in the trade or business.

(3) Securities held for investment purposes shall be reported at cost, and any increase or decrease in value shall be reported only at the time of sale.

(4) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; r. and recr. Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.24 Accounting for incorporated retail merchants. (s. 71.11 (8), 1985 Stats.) (1) The "retail method" of valuing inventories is acceptable when it is consistently followed and adequate records are kept. When a change is made to the retail method of valuing inventories from another method of valuing inventories, the difference between the beginning inventory, taken on the old basis, and the beginning inventory, taken on the basis of the "retail method," will constitute an increase or decrease in income for

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the year in which the change is made. Retail merchants shall report all other items of income and expense on the accrual method.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.25 Corporation accounting generally. (s. 71.11 (8) and (9), 1985 Stats.) (1) In a business requiring the use of inventories, income is properly computed by the accrual method of accounting. Inventories taken in accordance with the best accounting practice in the trade or business and used by the taxpayer to clearly reflect income are accepted.

(a) Except for other methods of computing inventory recognized in this chapter, the 2 most commonly used bases in valuing inventories are cost and lower of cost or market.

(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.

(3) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

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; am. (1) (intro.) and (a), cr. (3), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.26 "Last in, first out" method of computing inventory for corporations. (s. 71.11 (9), 1985 Stats.) Any corporation permitted or required to take inventories pursuant to s. 71.11 (9), 1985 Stats., may elect to compute its inventory in accordance with the method provided by section 472 of the internal revenue code, provided that:

(1) The same method of computing inventory is used in reporting income to the internal revenue service, and the inventories used in reporting income to the internal revenue service and to the department of revenue agree both as to computation and amounts except as provided in sub. (5).

(2) Except as otherwise provided in this section, the change to and the use of the last in, first out method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect to this method of computing inventory by the internal revenue service.

(3) A statement of election to use the last in, first out method shall be filed with the department of revenue in the same form as required by the internal revenue service, and 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.

(4) Except as provided in sub. (5), any corporation which has been computing its inventory for Wisconsin franchise or income tax purposes in accordance with s. 472 of the internal revenue code and which has been authorized or directed by the 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 taxable 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.

(5) Any corporation which has been authorized or directed by the 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 its adjusted basis, may exclude from its inventory, for Wisconsin franchise or income tax purposes, the excess of the fair market value of the timber over its adjusted basis, or may, with the consent of the department of revenue, include the excess in its inventory for Wisconsin franchise or income tax purposes subject to the conditions the department may prescribe.

(6) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

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; r. (1) and (5), renum. (2) to (4) and (6) and (7) to be (1) to (5) and am., cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.30 Property located outside Wisconsin — depreciation and sale. (ss. 71.05 (12) (a), (b) and (c), (15), (16), (17) and (18) and 71.04 (1) (a), Stats.) (1) SCOPE. This section applies only with respect to resident individuals, estates, and trusts.

(2) DEFINITION. In this section, "internal revenue code" means the internal revenue code in effect for the taxable year specified in s. 71.01 (6), Stats.

Example: For taxable year 1988, "internal revenue code" means the internal revenue code in effect on December 31, 1987.

(3) RESIDENT INDIVIDUALS, ESTATES, AND TRUSTS. Income or loss derived from property and business located outside Wisconsin by resident individuals, estates, and trusts, is taxable or deductible as appropriate under ch. 71, Stats. Except as provided in sub. (4), the basis for depreciation and for determining gain or loss on disposition of property for these taxpayers is the same as the basis determined under the internal revenue code, whether the property was acquired before becoming or while a resident of this state.

(4) EXCEPTIONS. (a) When an individual acquires a new residence, the adjusted basis of the new residence is not reduced for nonrecognized gain
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from the sale or exchange of an old residence located outside Wisconsin if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or
2. The sale or exchange of the old residence occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

(b) When an individual sells or exchanges a principal residence located outside Wisconsin and the nonrecognition of gain provisions do not apply, the adjusted basis of the residence sold or exchanged is not reduced for nonrecognized gain from any previous sale or exchange of a principal residence located outside Wisconsin if:

1. The previous sale or exchange occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or
2. The previous sale or exchange occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

Example: A taxpayer becomes a Wisconsin resident on July 1, 1988. Prior to becoming a Wisconsin resident the taxpayer had owned several different homes. Each time a new home was acquired, the federal nonrecognition of gain provisions applied with respect to the gain realized from the sale of the previous home. Upon becoming a Wisconsin resident, the taxpayer owned a home in Missouri with a federal adjusted basis of \$65,000 (\$95,000 cost, less \$30,000 of gains postponed from prior sales). The Missouri home was sold for \$97,000 in August 1988. The taxpayer decides not to purchase a new residence. The Wisconsin adjusted basis of the Missouri home is \$95,000.

(c) For residential real property and certain agricultural real property placed in service during taxable year 1986, depreciation and gain or loss on disposition of the property shall be computed under the internal revenue code in effect on December 31, 1980 unless:

1. The property is placed in service out-of-state by a taxpayer during taxable year 1986 before the taxpayer becomes a Wisconsin resident. In this case, the property's adjusted basis and depreciation are the same as the amounts allowable for federal tax purposes.

Example: A taxpayer becomes a Wisconsin resident on January 1, 1987. Prior to that date, the taxpayer is an Illinois resident. On July 1, 1986, the taxpayer purchases and places in service residential real property located in Illinois. On the taxpayer's 1987 Wisconsin return, the taxpayer's adjusted basis and depreciation on this property will be the same as the amounts shown on the taxpayer's 1987 federal return. The taxpayer does not have to recompute the basis of the property and depreciate it using one of the methods permitted under the December 31, 1980 Code.

2. The property located out-of-state is acquired in a transaction occurring in taxable year 1986 or thereafter where the basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor. The adjusted basis of the property on the date of the transfer is the same as the federal adjusted basis.

Example: A taxpayer is a Wisconsin resident. The taxpayer receives by gift on January 1, 1986, residential real property located in Illinois. The adjusted basis of the property to the donor, transferor, is \$200,000. In acquiring the property by gift, the taxpayer, transferee, receives the same adjusted basis in the property as the transferor. The Wisconsin adjusted basis will be the federal adjusted basis on January 1, 1986.

Note: 1) In the case of *Wisconsin Department of Revenue vs. Romain A. Howick*, 100 Wis. 2d 274 (1981), the Wisconsin supreme court held that for the purpose of determining a loss on a sale, the basis of property located outside Wisconsin acquired before the owner became a

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Wisconsin resident is the basis determined under the internal revenue code. In this section the same principle is applied to gains realized on the disposition of such property. This principle was codified into s. 71.05 (1) (m), Stats., by 1985 Wis. Act 261, effective for the earliest taxable year in respect to which additional assessments or refunds may be made. Section 71.05 (1) (n) and (o), Stats., was also created by 1985 Wis. Act 261 to provide exceptions with respect to a principal residence effective for the same period of time. Section 71.05 (l), (m), (n), and (o), Stats., was renumbered s. 71.05 (12) (a), (b), and (c), Stats., by 1987 Wis. Act 312.

2) Section 71.07 (1), Stats., was amended by Chapter 39, Laws of 1975, effective with the 1975 taxable year. Prior to the 1975 taxable year, income or loss derived from real property or tangible personal property followed the situs of the property from which derived. Section 71.07 (1), Stats., was renumbered ss. 71.04 (1) (a) and 71.362 (1), Stats., by 1987 Wis. Act 312.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. and recr. (3), Register, July, 1982, No. 319, eff. 8-1-82; r. (2), renum. (1) to be (2) and am., cr. (1) and (4), am. (3), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.31 Taxation of personal service income of nonresident professional athletes. (ss. 71.02, 71.04 (1) (a), (4) and (11), 71.23 (1), 71.25 (5), (6), (7), (8), (9) and (12) and 71.362 (1), Stats.). (1) DEFINITIONS. (a) In subs. (2), (3) and (4) (a) "duty days" means days during the regular playing season within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days. In sub. (4) (b) "duty days" means days during the postseason within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days.

(b) "Travel days" means days spent in the state (or other governmental jurisdiction) of destination, except that when the team performs on a travel day, the day shall be considered spent where the performance occurs.

(2) GENERAL. Wisconsin individual income tax is imposed on nonresident natural persons upon such income as is derived from the performance of personal services within Wisconsin. When a specific amount is received for personal services performed in Wisconsin, that amount shall be included in Wisconsin income. When compensation is received for personal services performed partly within and partly outside Wisconsin, the amount to be included in Wisconsin income shall be determined by an allocation of personal services performed in Wisconsin to total personal services on the basis that most correctly reflects the proper apportionment under the facts and circumstances of the particular case. In the absence of clear evidence to the contrary, allocations shall be made on the basis of time; that is, the compensation allocated to Wisconsin shall bear the same relation to total compensation as the number of days of performance of personal service within Wisconsin bears to the total number of days of performance of personal service for which compensation is received.

(3) METHOD OF ALLOCATION. (a) The allocation to Wisconsin of income earned from the performance of personal services by a nonresident professional athlete under a playing contract shall, as a general rule, be made on the basis of time according to a fraction, the denominator of which is the total number of duty days covered by the contract and the numerator of which is the number of those duty days spent in Wisconsin. For players not under contract, the denominator shall include the total number of duty days and the numerator shall include the number of those duty days spent in Wisconsin.

(b) Amounts paid for participation in training or exhibition games and any per diem payments made in connection therewith are earned at the location of the participation and are considered separately.

(4) TAXATION OF EARNINGS. (a) The fraction determined in sub. (3) (a) shall be applied to the total compensation received within a taxable year for the regular playing season, as well as to bonuses or other compensation received for that season without regard to when paid. The fraction shall also be applied to a bonus received for signing a contract. If bonuses are received prior to or following a year to which the playing contract pertained, the fraction determined for the year covered by the contract will control.

(b) If postseason games are played, the total number of duty days shall be the denominator and the number of those duty days spent in Wisconsin shall be the numerator of the fraction, and this fraction shall be applied to the compensation received within a taxable year for the postseason games.

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

Determination of Income from Multistate Operations

Tax 2.39 Apportionment method. (ss. 71.04 (4), (5), (6), (7), (9), (10) and (11) and 71.25 (5), (6), (7), (8), (9), (11) and (12), Stats.) (1) GENERAL. Except as provided in sub. (3) (a), any person, except resident individuals, resident estates and resident trusts, engaged in business both within and without Wisconsin shall report by the statutory apportionment method when the person's business in Wisconsin is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

Note: Refer to ss. 71.04 (4) and 71.25 (6), Stats.

(2) DEFINITIONS. In this section:

(a) "Apportionable income" has the meaning in s. 71.25 (5) (a), Stats.

(b) "Engaged in business within and without Wisconsin" means having business activity which is sufficient to create nexus in Wisconsin and at least one other state or foreign country.

(c) "Gross receipts" means gross sales less returns and allowances, plus service charges, freight, carrying charges or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales and use taxes, shall be included as part of the receipts if the taxes are passed on to the purchaser or included as part of the selling price of the product.

(d) "Nexus" means that a taxpayer's business activity in a state or foreign country is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. Nexus may exist even if a state or foreign country does not impose a tax on the taxpayer. Conversely, voluntary filing and paying income or franchise taxes when not required to do so, or paying a fee for qualification, organization or for the privilege of doing business in that state or foreign country does not, in itself, create nexus.

Note: Refer to s. Tax 2.82 for a description of factors which are recognized in determining whether nexus exists.

Examples: 1) State A imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the \$50 minimum tax, although it carries on no activities in State A. Corporation X does not have "nexus" in State A under these circumstances.

2) State B requires all nonresident corporations which qualify or register to do business in State B to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of \$50 and a maximum fee of \$500. Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State B also imposes a corporation income tax. Nonresident Corporation Y is qualified to do business in State B and pays the required fee to the Secretary of State but does not carry on any activities in State B other than utilizing its courts. Corporation Y does not have "nexus" in State B under these circumstances.

3) State C requires all nonresident corporations qualified or registered to do business in State C to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (1) outstanding capital stock, and (2) surplus and undivided profits. The fee or tax base attributable to State C is determined by a three-factor apportionment formula. Nonresident Corporation Z, which operates a plant in State C, pays the required fee or tax to the Secretary of State. Corporation Z by virtue of its operation of a plant in State C has "nexus" in State C.

4) State D imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation W files a return based upon its business activities in the state but the amount of computed liability is less than the minimum tax. Corporation W pays the minimum tax. Corporation W has "nexus" in State D under these circumstances.

5) Corporation U is actively engaged in manufacturing farm equipment in State E. State E imposes a net income tax but exempts corporations engaged in manufacturing farm equipment. Corporation U has "nexus" in State E under these circumstances.

6) Corporation V has a sales office and warehouse located in State F. State F doesn't impose a corporation franchise or income tax. Corporation V has "nexus" in State F.

(e) "Nonapportionable income" has the meaning in s. 71.25 (5) (b), Stats.

(f) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. A foreign country is not a state.

(3) **APPORTIONMENT FRACTION.** (a) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04 (8) and 71.25 (10), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04 (1) and (4) or 71.25 (5) (b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

1. If either the property factor or payroll factor is omitted, the other factor shall represent 33 $\frac{1}{3}$ % of the fraction and the sales factor shall represent 66 $\frac{2}{3}$ % of the fraction.

2. If the sales factor is omitted, the property factor and the payroll factor shall each represent 50% of the fraction.

Note: See ss. Tax 2.46, 2.47, 2.48, 2.49, 2.50 and 2.505 for special apportionment fractions of interstate air carriers, motor carriers, pipelines, finance companies, public utilities and professional sports clubs.

(b) The apportionment method may be used only if the taxpayer has nexus in Wisconsin and at least one other state or foreign country and its business within Wisconsin is an integral part of a unitary business.

Note: Refer to ss. 71.04 (4) and 71.25 (6), Stats.

(4) PROPERTY FACTOR. (a) *Numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented and used by the taxpayer in Wisconsin in the production of apportionable income during the tax period. The denominator shall include the average value of all of the real and tangible personal property located everywhere owned or rented and used by the taxpayer in the production of apportionable income during the tax period. Property in transit on the date or dates for determining its average value, as described in par. (f), shall be considered to be at its destination, for purposes of computing the property factor. The value of mobile or movable property such as construction equipment, trucks, airplanes or other equipment which is located within and without Wisconsin during the tax period shall be determined for purposes of the numerator of the factor on the basis of the ratio of time used, serviced and stored within Wisconsin to total time used, serviced and stored during the tax period. However, an automobile assigned to a traveling employe shall be included in the numerator of the factor if the employe's compensation is assigned to Wisconsin under the payroll factor.

Note: Refer to ss. 71.04 (5) and 71.25 (7), Stats.

(b) *Owned property.* Property owned by the taxpayer is valued at its original cost for purposes of computing the property factor. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes, prior to any adjustments, at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements to the property and partial disposition of the property, by reason of sale, exchange, abandonment or other means. If the original cost of property is unascertainable, the property shall be included in the factor at its fair market value as of the date of acquisition by the taxpayer. Any subsequent adjustments, other than depreciation or amortization, to net income which affect property, such as capitalizations of repairs and adjustments to inventory, shall also be included in the property factor. The original cost of depletable property such as mines, oil and gas wells and timber shall be reduced by any extraction to the extent that cost depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes. Pollution abatement equipment or waste treatment facilities written off as an expense under s. 71.04 (2b) and (2g), 1985-86 or prior years Stats., but still in use, shall be included at original cost.

Note: Refer to ss. 71.04 (5) (c) and 71.25 (7) (c), Stats.

(c) *Rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined at arm's length for purposes of computing the property factor. Net annual rental is the annual rental paid by the taxpayer, or allocated by the department pursuant to s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this definition of net annual rental may result in a negative value or clearly inaccurate valuation. In these exceptional instances, any other method which

will properly reflect the net annual rental value may be required by the department or may be requested by the taxpayer; however, in no case shall the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the rental value of the part of the property used by the taxpayer in the production of apportionable income bears to the total rental value of the same rental property.

(cm) *Annual rental.* In this subsection, annual rental:

1. Is the amount paid as rental for the property for a 12-month period. Where property is rented for less than a 12-month period, the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. Where a taxpayer has rented property for a term of 12 or more months and the tax period for which the property factor is being computed covers a period of less than 12 months, such as may be due to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized; however, if the rental term is for less than 12 months, the rent shall be adjusted accordingly.

2. Is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

a. Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities or janitor services. If a payment includes rent and other charges unsegregated, such as rental charges for public warehouses, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items.

3. Does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles or royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from the property, whether denominated as royalty, advanced royalty, rental, delay rental or otherwise.

Note: Refer to ss. 71.04 (5) (c) and 71.25 (7) (c), Stats.

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

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

under construction, the value of the property to the extent used shall be included in the property factor.

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

Note: Refer to ss. 71.04 (5) (d) and 71.25 (7) (d), Stats.

(5) PAYROLL FACTOR. (a) *Numerator; denominator.* The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income and the denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income. Compensation is paid in Wisconsin and included in the numerator if, as provided in ss. 71.04 (6) (b) and 71.25 (8) (b), Stats., one of the following applies:

1. The individual's service is performed entirely within Wisconsin.

Example: Corporation A has a manufacturing plant located in Wisconsin. The compensation of an Illinois resident who works at the Wisconsin manufacturing plant is included in the numerator of the payroll factor since the employee's service is performed entirely in Wisconsin.

2. The individual's service is performed within and without Wisconsin, but the service performed without Wisconsin is incidental to the individual's service within Wisconsin.

Example: Corporation B has its headquarters and a manufacturing plant in Wisconsin. Corporation B also has a manufacturing plant located in Indiana. The manager of the Wisconsin manufacturing plant spends two weeks during the tax year at the manufacturing plant located in Indiana training the new plant manager. The compensation of the Wisconsin plant manager is included in the numerator of the payroll factor because the service performed in Indiana is incidental to the service performed in Wisconsin.

3. A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin.

Example: Corporation C has a sales office located in Wisconsin. A salesperson working out of the Wisconsin office solicits sales in Wisconsin, Minnesota and Iowa. Since a portion of the salesperson's service is performed in Wisconsin and the salesperson's base of operations is in Wisconsin, the compensation of the salesperson is included in the numerator of the payroll factor.

4. A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

5. A portion of the service is performed within Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.

Example: Corporation E is headquartered in and has its sales office in Indiana and maintains inventory in Wisconsin. A Wisconsin resident salesperson solicits sales in Wisconsin and Minnesota. The compensation of the Wisconsin salesperson is included in the numerator of the payroll factor since a portion of the salesperson's service is performed in Wisconsin, the salesperson is a resident of Wisconsin and the salesperson is directed or controlled from Indiana but performs no services in Indiana.

6. The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Example: Corporation F has its sales office in Wisconsin. A salesperson resides in Nebraska and solicits sales in Nebraska and Kansas. Corporation F does not have nexus in Nebraska or Kansas. The salesperson returns to the Wisconsin sales office for two weeks each year for meetings and training. The compensation of the Nebraska salesperson is included in the numerator of the payroll factor since he is directed from an office in Wisconsin, returns to Wisconsin periodically for business purposes and Corporation F does not have nexus in Nebraska.

Note: Refer to ss. 71.04 (6) (a) and (b) and 71.25 (8) (a) and (b), Stats.

(b) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services in Wisconsin for at least 5 days during the year. The compensation of any one employe may not be split between 2 or more states during the year; however, this does not apply if the employe is transferred or changes positions during the year.

(c) *Compensation.* Compensation includes:

1. Wages, salaries, commissions and any other form of remuneration paid to employes for personal services including amounts contributed to a qualified cash or deferred arrangement under s. 401(k) of the internal revenue code on behalf of employes who have elected to participate in the plan. However, matching contributions to the trust by an employer under s. 401(k) of the internal revenue code are not included since the employes do not have a right to receive the matching contributions directly in cash.

2. The value of board, rent, housing, lodging and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll factor is computed. In the case of employes not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employes shall be made as though the employes are subject to the federal internal revenue code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., to a related corporation, as defined in s. 267 (f) (1) of the internal revenue code, as consideration for the performance of personal services. As provided in s. 71.25 (8) (d), Stats., the recipient of these fees may not include the compensation paid to its employes with respect to the personal services in either the numerator or denominator of its payroll factor and the situs of the fees is in Wisconsin if the services fulfill one of the requirements of par. (a). Except for these management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employe are excluded.

Examples: 1) Corporation A, headquartered in Illinois, owns 100% of the stock of Corporation B which is headquartered in Wisconsin. Employees of Corporation A perform all the accounting functions for Corporation B. For these services Corporation A charged \$30,000 of office payroll as management fees to Corporation B, which paid that amount to Corporation A. If the employees of Corporation A that performed the accounting services for Corporation B were based in Illinois and spent only part of their time in Wisconsin while performing these services, no portion of the \$30,000 is includable in the numerator of the payroll factor of Corporation B because the services do not meet the requirements of par. (a). The entire \$30,000 is includable in the denominator of the payroll factor of Corporation B. If Corporation A files a Wisconsin return on the apportionment basis, it may not include in its computation of the payroll factor the \$30,000 paid to its employees for services they performed for Corporation B.

2) Corporation C, headquartered in Wisconsin, owns 100% of the stock of Corporation D which is also headquartered in Wisconsin. Employees of Corporation C prepare all tax returns for Corporation D. For these services Corporation C charged \$20,000 of tax department payroll as management fees to Corporation D, which paid that amount to Corporation C. All of the services were performed in Wisconsin. The \$20,000 is included in both the numerator and denominator of the payroll factor of Corporation D. Corporation C may not include the \$20,000 in either the numerator or denominator of its payroll factor.

Note: Refer to ss. 71.04 (6) (d) and 71.25 (8) (d), Stats.

(d) *Excludable compensation.* Compensation paid to produce nonapportionable income or losses or income exempt from taxation under ch. 71, Stats., may not be included in the numerator or denominator of the payroll factor.

Note: Refer to ss. 71.04 (6) (c) and 71.25 (8) (c), Stats.

(6) SALES FACTOR. (a) *Numerator; denominator.* The numerator of the sales factor shall include the gross receipts from sales which are in Wisconsin in the production of apportionable income; and the denominator shall include all gross receipts from sales in the production of apportionable income.

Note: Refer to ss. 71.04 (7) and 71.25 (9), Stats.

(b) *Sales of tangible personal property attributable to Wisconsin.* 1. Gross receipts from the sales of tangible personal property, except sales to the federal government as described in subd. 4, are in Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin regardless of the f.o.b. point or other conditions of the sales. Some situations in which property is considered to be delivered or shipped to a purchaser within Wisconsin are if:

a. The property is picked up outside Wisconsin by a purchaser having a Wisconsin business location and the purchaser returns to Wisconsin with the property.

Example: Corporation B is a Minnesota brewer that sells beer to a Wisconsin purchaser to be picked up at the brewer's shipping dock in Minnesota. The purchaser is a beer distributor which used its own vehicle to pick up the beer and haul it back to Wisconsin. Corporation B is subject to the tax by the State of Wisconsin. These dock sales are assigned to Wisconsin in Corporation B's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's location is in Wisconsin and the product is shipped to Wisconsin. Therefore, Corporation B, for Wisconsin franchise tax purposes, will include the amount of this dock sale in both the numerator and the denominator of the sales factor.

Note: In *Pabst Brewing Co. v. Wisconsin Department of Revenue* (Ct. App. Dist. IV, 1986), 130 Wis. 2d 291, the taxpayer sold beer to an Illinois distributor who picked it up in its own truck at the taxpayer's Wisconsin shipping dock and hauled it to Illinois. The Court held that the sales were not Wisconsin sales, since the location of the purchaser, rather than the location of the pickup of the product, controlled the determination of where the sale was assigned for purposes of the sales factor. The Court noted that if the sales were assigned to Wisconsin, the method of delivery, a condition of the sale, would be the determinative, which is contrary to statute. These sales are referred to as "dock sales," which are those sales where a purchaser

uses its owned or rented vehicles or a common carrier it has made arrangements with to take delivery of the product at the seller-taxpayer's shipping dock.

b. The taxpayer, at the designation of the purchaser, or the purchaser delivers to or has the property shipped to a recipient other than the purchaser within Wisconsin.

Example: Corporation M is a Wisconsin manufacturer that sells plumbing ware to an Illinois wholesaler and retailer to be picked up at the manufacturer's shipping dock in Wisconsin. The purchaser has its corporate headquarters in Illinois. The purchaser uses its own vehicle to pick up plumbing ware and haul it to the job site of the purchaser's customer. The customer is a plumbing contractor that is working on a new motel being constructed in Madison, Wisconsin. These dock sales are assigned to Wisconsin in Corporation M's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's customer's location is in Wisconsin and the product is shipped to Wisconsin. The delivery to the plumbing contractor was at the designation of the purchaser and that is where the product was delivered. Therefore, Corporation M, for Wisconsin franchise tax purposes, is required to include the amount of this dock sale in both the numerator and the denominator of the sales factor.

c. The shipment by either the taxpayer or the purchaser terminates in Wisconsin, even though the property is subsequently transferred by the purchaser to another state.

Example: Corporation B has a Wisconsin manufacturing plant which makes engines for an Indiana based manufacturer. Title to the engines passes to the purchaser after the engines are tested. Corporation B, at the direction of the purchaser, ships the tested engines to a public warehouse in Wisconsin. The warehouse stores the engines until directed to ship them by the purchaser. These sales are included in the numerator of the sales factor for Corporation B since the public warehouse is considered to be a business location of the Indiana purchaser and the warehouse is located in Wisconsin.

d. The recipient is in Wisconsin, even though the property is ordered from outside Wisconsin.

Example: Corporation A manufactures batteries at a location in Wisconsin. It sells batteries to an Illinois retailer which operates stores nationwide. The purchaser orders the batteries from its Illinois location and directs Corporation A to ship the batteries to its warehouse in Wisconsin. These sales are included in the numerator of the sales factor since the batteries were shipped to a Wisconsin location.

e. The property is being shipped by a seller or purchaser from one state to a consignee in another state and is diverted while enroute to a purchaser in Wisconsin, or the designee of a purchaser who is in Wisconsin.

Example: Corporation X, a manufacturer located in Superior, Wisconsin, sells a portion of its manufactured product via a consignment arrangement with a retailer-consignee in Chicago, Illinois. Pursuant to an order from the Chicago consignee for additional inventory, Corporation X ships via its own trucks additional inventory of its product to Chicago. After entering Illinois but before reaching Chicago, the driver receives instructions from the consignee to deliver the entire load to a customer in Beloit, Wisconsin. Since the property was shipped to a purchaser in Wisconsin, the sale is attributable to Wisconsin and the gross receipts from the sale are included in both the numerator and denominator of Corporation X's sales factor.

2. If the taxpayer does not have nexus in the state of destination, the sale is attributed to Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin. The amount included in the numerator of the sales factor shall be at 50% of the sales. For purposes of this subdivision:

a. Sales are attributed to Wisconsin even though the taxpayer has a certificate of authority in the state of destination but the business activities in the destination state do not result in nexus based on the standards in s. Tax 2.82.

b. Sales are not attributed to Wisconsin if the taxpayer has a written opinion from the state of destination that the taxpayer has nexus in that Register, June, 1991, No. 426

state and the taxpayer is in agreement with the written opinion, even if the business activities in the destination state are not sufficient to create nexus under the standards of s. Tax 2.82.

c. Sales are not attributed to Wisconsin if the taxpayer is incorporated in the state of destination other than Wisconsin.

3. If a taxpayer's salesperson located in an office in Wisconsin makes a sale to a purchaser in another state in which the taxpayer does not have nexus and the property is not shipped or delivered from Wisconsin, the following rules apply:

a. If the taxpayer has nexus in the state from which the property is delivered or shipped, then the sale is in that state.

b. If the taxpayer does not have nexus in the state from which the property is delivered or shipped, then the sale is in Wisconsin and the amount included in the numerator of the sales factor shall be at 50% of the sale.

4. With respect to sales to the federal government:

a. For the taxable years beginning on or after January 1, 1989, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, in Wisconsin regardless of the f.o.b. point or other conditions of sale. For purposes of this section, only sales for which the federal government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the federal government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the federal government, do not constitute sales to the federal government.

b. For taxable years beginning on or after January 1, 1989, and before January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin. The amount included in the numerator of the sales factor shall be at 50% of the sale.

c. For taxable years beginning on or after January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin and the taxpayer does not have nexus in the destination state. The amount included in the numerator of the sales factor shall be 50% of the sale.

Note: For taxable years beginning prior to January 1, 1989, gross receipts from the sales of tangible personal property to the federal government, including its agencies and instrumentalities, are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin.

(c) *Sales other than sales of tangible personal property attributable to Wisconsin.* 1. Sections 71.04 (7) (d) and 71.25 (9) (d), Stats., contain provisions for including gross receipts from transactions other than sales of tangible personal property in the numerator of the sales factor.

2. Under ss. 71.04 (7) (d) and 71.25 (9) (d), Stats., gross receipts are attributed to Wisconsin if the income producing activity which gave rise to the receipts is performed wholly within Wisconsin. If the income producing activity is performed within and without Wisconsin, the receipts are attributed to Wisconsin in accordance with subd. 5.

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

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

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

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

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

4. For purposes of this paragraph, "costs of performing" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

5. Receipts from sales, other than sales of tangible personal property, are in Wisconsin if the income producing activity is performed wholly within Wisconsin. If the income producing activity is performed partly within and partly without Wisconsin, receipts shall be assigned to Wisconsin based upon the ratio of direct costs of performing the services in Wisconsin to the direct costs of performing the services in all states having jurisdiction to tax the business. The following are special rules for determining when receipts from certain income producing activities are in Wisconsin during the taxable year:

a. Gross receipts from the sale, lease, rental or other use of real property are in Wisconsin if the real property is located in Wisconsin.

b. Gross receipts from the rental, lease, licensing the use of or other use of tangible personal property shall be assigned to Wisconsin if the property is within Wisconsin during the entire period of rental, lease, license or other use. If the property is within and without Wisconsin during the period of rental, gross receipts attributable to Wisconsin shall be based upon the ratio which the time the property was used in Wisconsin bears to the total time the property was used in all states having jurisdiction to tax the business during each year. However, if mobile property such as automobiles and trailers is within and without Wisconsin during the period of rental, gross receipts shall be attributed to the situs where the property is customarily kept or garaged or, for property that is not customarily kept at any location, gross receipts shall be attributed to the situs where the property first comes into the lessee's possession.

c. Gross receipts from the performance of personal services are attributable to Wisconsin if the services are performed entirely in Wisconsin.

If the services are performed partly within and partly without Wisconsin, gross receipts shall be attributable to Wisconsin based upon the ratio which compensation and other direct costs of performing the services in Wisconsin bear to total compensation and other direct costs of performing the services in all states having jurisdiction to tax the business during the taxable year. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to Wisconsin if the compensation related to performing the services is allocated to Wisconsin by s. 71.04 (6) (b) or 71.25 (8) (b), Stats.

6. The provisions of this paragraph shall also apply to sales, other than sales of tangible personal property, to the federal government.

(7) **PARTNERSHIPS AND JOINT VENTURES.** A partnership or unincorporated joint venture is considered an extension of the partners or owners when the partners or owners have more than a passive ownership interest in the partnership or unincorporated joint venture. When this is the case, partnership or unincorporated joint venture income or loss shall retain its character as apportionable or nonapportionable income or loss and the partner's or owner's share of property, payroll and sales used to produce apportionable business income or loss shall be included in the partner's or owner's apportionment factors. If the ownership interest is passive, the partnership or unincorporated joint venture interest shall be an investment, with the apportionment factors being unaffected.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12-1-73; cr. (intro.), Register, January, 1978, No. 265, eff. 2-1-78; r. and recr. Register, June, 1991, No. 426, eff. 7-1-91.

Tax 2.40 Nonapportionable income. **History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (3m), Register, November, 1977, No. 263, eff. 12-1-77; r. Register, June, 1991, No. 426, eff. 7-1-91.

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, of-

fice 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, WI 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. 71.25 (12), Stats.) When the business of any person, other than an interstate professional sports club or "financial organization" or "public utility," as defined in s. 71.25 (10), 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 the person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in s. 71.25 (6), 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 another factor or other 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; am. Register, July, 1989, No. 403, eff. 8-1-89.

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;

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(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. 71.25 (10) (c), Stats.) (1) GENERAL. With respect to the imposition of Wisconsin franchise or income tax measured by or on net income, the income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the 3 factors in subs. (3), (4) and (5).

(2) DEFINITIONS. In this section:

(a) "Compensation" includes:

1. Wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

2. The value of board, rent, housing, lodging and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll

factor is computed. In the case of employes not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employes shall be made as though the employes are subject to the federal internal revenue code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., to a related corporation, as defined in s. 267 (f) (1) of the internal revenue code, as consideration for the performance of personal services. The recipient of these fees may not include the compensation paid to its employes with respect to the personal services in either the numerator or denominator of its payroll factor.

(b) "Traffic unit" means the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, or other appropriate measure of product.

(3) PROPERTY FACTOR. (a) *Numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned and used by the taxpayer in Wisconsin in the production of apportionable income during the tax period. The denominator shall include average value of all of the real and tangible personal property located everywhere owned and used by the taxpayer in the production of apportionable income during the tax period. Property in transit on the date or dates for determining its average value, as described in par. (e), shall be considered to be at its destination, for purposes of computing the property factor. The value of mobile or movable property such as construction equipment, trucks or airplanes which is located within and without Wisconsin during the tax period shall be determined for purposes of the numerator of the factor on the basis of a ratio of time used, serviced or stored within Wisconsin to total time used, serviced or stored during the tax period. However, an automobile assigned to a traveling employe shall be included in the numerator of the factor if the employe's compensation is assigned to Wisconsin under the payroll factor.

(b) *Valuation.* Property owned by the taxpayer is generally valued at its cost net of depreciation and write-offs as determined for Wisconsin franchise or income tax purposes. Any adjustments to net income which affect property, such as capitalizations of repairs, depreciation or amortization adjustments and adjustments to inventory, shall also be included in the property factor. The value of depletable property, such as mines, oil and gas wells and timber, shall be original cost reduced by any extraction to the extent that depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin franchise or income tax purposes. 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 the Wisconsin net cost cannot be ascertained, the department shall authorize or direct some other method of determining the property fraction that will produce an equitable result.

(c) *Leasehold improvements.* Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of

the lease. The original cost of leasehold improvements net of amortization shall be included in the factor.

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

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

(4) **PAYROLL FACTOR.** (a) *Numerator; denominator.* The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income. The denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income.

(b) *Compensation paid in Wisconsin.* Except as provided in par. (c), compensation is paid in Wisconsin if one of the following applies:

1. The individual's service is performed entirely within Wisconsin.

Example: Corporation A has a manufacturing plant located in Wisconsin. The compensation of an Illinois resident who works at the Wisconsin manufacturing plant is included in the numerator of the payroll factor since the employee's service is performed entirely in Wisconsin.

2. The individual's service is performed within and without Wisconsin, but the service performed without Wisconsin is incidental to the individual's service within Wisconsin.

Example: Corporation B has its headquarters and a manufacturing plant in Wisconsin. Corporation B also has a manufacturing plant located in Indiana. The manager of the Wisconsin manufacturing plant spends two weeks during the tax year at the manufacturing plant located in Indiana training the new plant manager. The compensation of the Wisconsin plant manager is included in the numerator of the payroll factor because the service performed in Indiana is incidental to the service performed in Wisconsin.

3. A portion of the service is performed within Wisconsin and the base of operations of the individual is in Wisconsin.

Example: Corporation C has a sales office located in Wisconsin. A salesperson working out of the Wisconsin office solicits sales in Wisconsin, Minnesota and Iowa. Since a portion of the salesperson's service is performed in Wisconsin and the salesperson's base of operations is in Wisconsin, the compensation of the salesperson is included in the numerator of the payroll factor.

4. A portion of the service is performed within Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

5. A portion of the service is performed within Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.

Example: Corporation E is headquartered in and has its sales office in Indiana and maintains inventory in Wisconsin. A Wisconsin resident salesperson solicits sales in Wisconsin and Minnesota. The compensation of the Wisconsin salesperson is included in the numerator of the payroll factor since a portion of the salesperson's service is performed in Wisconsin, the salesperson is a resident of Wisconsin, and the salesperson is directed or controlled from Indiana but performs no services in Indiana.

6. The individual is neither a resident of nor performs services in Wisconsin, but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Example: Corporation F has its sales office in Wisconsin. A salesperson resides in Nebraska and solicits sales in Nebraska and Kansas. Corporation F does not have nexus in Nebraska or Kansas. The salesperson returns to the Wisconsin sales office for two weeks each year for meetings and training. The compensation of the Nebraska salesperson is included in the numerator of the payroll factor since the salesperson is directed from an office in Wisconsin, returns to Wisconsin periodically for business purposes and Corporation F does not have nexus in Nebraska.

(c) *Management fee situs.* The situs of management or service fees described in sub. (2) (a) 3 is in Wisconsin to the extent the related corporation's employees performing the services meet one of the requirements in par. (b).

(d) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services for at least 5 days during the year. The compensation of any one employee may not be split between 2 or more states during the year; however, this does not apply if the employee is transferred or changes positions during the year.

(e) *Excluded compensation.* Compensation related to the operation, maintenance, protection or supervision of real or tangible and intangible personal property used in the production of nonapportionable income, and amounts paid to retired employees shall be excluded from both the numerator and the denominator of the payroll factor. Except for management or service fees paid to a related corporation, payments made to an independent contractor or any other person not properly classifiable as an employee are also excluded.

(f) *Elimination of factor.* In any case in which the company has no employees nor pays management or service fees to a related corporation, or in which the department determines that employees are not a substantial income producing factor, the department may order or permit the elimination of the payroll factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

(5) **TRAFFIC UNIT FACTOR.** The numerator shall be the total number of traffic units in Wisconsin during the tax period. The denominator shall be the total number of traffic units everywhere during the tax period.

History: Cr. Register, November, 1969, No. 167, eff. 12-1-69; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73; am. (1) (intro.), r. (1) (a), (b) and (c), r. and recr. (2), cr. (3), (4) and (5), Register, June, 1991, No. 426, eff. 7-1-91.

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. (ss. 71.04 (8) (c) and 71.25 (10) (c), Stats.) (1) Except as provided in sub. (2), the apportionable income of "public utilities", as defined in s. 71.04 (8) (b) or 71.25 (10) (b), 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. 71.04 (5), (6) and (7) or 71.25 (7), (8) and (9), Stats., and s. Tax 2.39.

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(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; am. (1), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.505 Apportionment of net business income of interstate professional sports clubs. (s. 71.25 (6), 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. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), 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. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), 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. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 (5) 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 numerator if the concession is operated within Wisconsin. Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the numerator if the activity is conducted within Wisconsin.

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

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; am. (1) to (3) (intro.), (c) and (d), Register, July, 1989, No. 403, eff. 8-1-89.

Gross Income

Tax 2.51 Rent received by corporations from Wisconsin real estate. (s. 71.03 (1) (b), 1985 Stats.) (1) 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.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; renum. to be (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.53 Stock dividends and stock rights received by corporations. (ss. 71.03 (1) (d) and (k), 71.305 and 71.307 (2), 1985 Stats.) (1) BASIS. If a shareholder receives new stock or stock rights as a distribution on old stock held before the distribution and under s. 71.305 (1), 1985 Stats., the distribution is not includable in gross income, then except as provided in s. 71.307 (2), 1985 Stats., the basis of the old 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 new stock or stock rights as a distribution on old stock held before the distribution, and under s. 71.305 (1), 1985 Stats., a part of the distribution is not includable in gross income, except as provided in s. 71.307 (2), 1985 Stats., the basis of the old 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 the distribution which is includable in gross income, pursuant to s. 71.305 (2), 1985 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 in this subsection will apply to the stock rights only if these rights are exercised or sold.

(2) EXCEPTION. Under s. 71.307 (2), 1985 Stats., the basis of rights to buy stock which is excluded from gross income under s. 71.305 (1), 1985 Stats., shall be zero if the fair market value of the 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 for all the rights received by the shareholder in a particular distribution and includes all the stock of the same class owned by the shareholder in the issuing corporation at the time of the distribution. The 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. This statement shall disclose the number of shares of the old stock owned by the shareholder on the date of distribution, the basis of these 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

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to the rights for which the election was made. Any shareholder making this 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.

(3) **APPLICABILITY.** As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. (1) (intro.), renum. (1) (a) to be (2) and am., cr. (3), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.56 Insurance proceeds received by corporations. (s. 71.03 (1) (d), 1985 Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is includable in income.

(2) Under an interest option clause in which all the principal proceeds are retained and interest is paid on the principal periodically, the interest is includable in income.

(3) Under an income option clause in which the principal proceeds and interest on the proceeds are paid in periodical instalments to the policy owner, the interest paid is includable in income.

(4) When, under an income option clause chosen by the beneficiary, payments are made to the beneficiary, the interest paid is includable in income.

(5) When, under an income option clause designated by the insured, payments are made to the beneficiary and the instalment payments are made under the insurance contract, no part of the payment is includable in income.

(6) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

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; am. (1) (intro.), renum. (1) (a) to (d) to be (2) to (5) and am., cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.57 Annuity payments received by corporations. (s. 71.03 (1) (k), 1985 Stats.) (1) **AMOUNTS INCLUDABLE IN INCOME.** Annuity payments under an endowment or annuity contract are income to the extent of any payment after the Wisconsin adjusted tax basis has been recovered. However, when the contract provides for the separation of the periodic payments into principal and interest, the interest so received is income when received.

(2) **APPLICABILITY.** As a result of 1987 Wis. Act 27 which generally federalized Wis. corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; renum. to be (1) and am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.60 Dividends on stock sold "short" by corporations. (s. 71.03 (1) (d), 1985 Stats.) (1) **DIVIDENDS PAID BEFORE DELIVERY.** When stock is sold "short" for later delivery and a dividend is paid before delivery, the purchaser, as owner of the borrowed stock, receives the dividend and shall include the dividend in taxable income. The amount credited to the lender of the stock and charged to the "short" seller is income upon

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which the lender is subject to tax. The amount charged to the "short" seller becomes part of the cost of the stock sold.

(2) **APPLICABILITY.** As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; renum. to be (1) and am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.63 Dividends accrued on stock. (s. 71.03 (1) (d), 1985 Stats.) (1) **AMOUNT INCLUDABLE IN INCOME.** In the case of stock purchased by a corporation between dividend dates, the entire amount of the future dividend when received is income to the purchaser and must be included in its income. The amount advanced by the purchaser to the seller in contemplation of the next dividend payment is an investment of capital and becomes part of the cost of the stock purchased.

(2) **APPLICABILITY.** As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; renum. to be (1) and am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.65 Interest received by corporations. (ss. 71.03 (1) (c), 1985 Stats., and 71.26 (2), 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 is subject to net income taxation, interest on federal obligations is not taxable, but interest on postal savings and federal tax refunds is taxable. 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.

(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 received.

(3) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (2) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1) and (2), cr. (3), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.70 Gain or loss on capital assets of corporations; basis of determining. (s. 71.03 (1) (g), 1985 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.

Note: Refer to s. Tax 2.19.

(2) The fair market value at January 1, 1911, shall 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 shall be clearly set forth in the franchise or income tax returns.

(3) 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.

Note: Refer to s. Tax 2.22.

(4) In determining the profit or loss on the sale of stock received as a stock dividend, the total Wisconsin adjusted tax basis 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.

(5) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1), (2) and (3) do not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. (1) (intro.), renum. (1) (a) to (c) to be (2) to (4) and am., cr. (5), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.72 Exchanges of property by corporations generally. (s. 71.03 (1) (g), 1985 Stats.) (1) Except when 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 be realized, and the fair market value shall 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, and in the event of future sale, the adjusted tax basis of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except when 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 adjusted tax basis 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 the sale being income. If the adjusted tax basis of the property exchanged is in excess of the fair market value of the property received in exchange, the excess shall be taken as the adjusted tax basis of the property received which has no determinable fair market value, no loss being recognized.

(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.

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(c) Exchanges of property held for productive use or investment pursuant to s. 71.03 (5), 1985 Stats.

(4) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

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; am. (1), (2) and (3) (c), cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.721 Exchanges of property held for productive use or investment by corporations. (s. 71.03 (5), 1985 Stats.) (1) Property held for productive use in a trade or business may be exchanged without recognition of gain or loss for property of a like kind held for investment as well as for property of a like kind held for productive use in a trade or business, and similarly, property held for investment may be exchanged without recognition of gain or loss 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.

Examples: 1) Unimproved real estate may be exchanged for unimproved real estate without recognition of gain or loss by a taxpayer not a dealer in real estate, because the properties are "like kind."

2) If unimproved real estate is exchanged for personal property, gain or loss is recognized, since the properties are not "like kind."

3) In an exchange of real estate for real estate by a dealer in real estate, gain or loss is recognized, since the property is part of its stock in trade.

Note: For taxable years prior to 1984, if the property transferred was located in Wisconsin, nonrecognition of gain or loss is only applicable if the property acquired was located in Wisconsin. For the taxable year 1984 and subsequent taxable years, s. 71.03 (5), 1985 Stats., was amended to remove the requirement that the replacement property be located in Wisconsin in order to qualify for nonrecognition of gain or loss.

(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, the assumption or acquisition in the amount of the liability shall be considered as money received by the taxpayer on the exchange.

(5) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

History: Cr. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1) and (4), cr. (5), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.73 Involuntary conversion by corporations. (s. 71.03 (1) (g) 3, 1985 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.

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(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.

(4) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1), (2) and (3) do not apply to taxable year 1987 or to taxable years thereafter.

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; cr. (4), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.75 Recoveries by corporations. (s. 71.03 (1) (k), 1985 Stats.) (1) Recoveries of items previously charged off as loss or as expense are income in the year of recovery.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.76 Refunds of taxes to corporations. (s. 71.03 (1) (k), 1985 Stats.) (1) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are includable in net income.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.80 Improvements on leased real estate, income to corporate lessor. (s. 71.03 (1) (k), 1985 Stats.) (1) If improvements are made on leased property and the life of such improvements extends beyond the terms of the lease, the lessor derives income at the expiration of the lease measured by the fair market value of the improvements at that time.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

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Tax 2.81 Damages received by corporations. (s. 71.03 (1) (k), 1985 Stats.) (1) Damages may result in income when recovered on account of injury to property or interference with property rights, when the amounts received as damages are in excess of the adjusted basis of the property destroyed. Damages, including punitive damages, recovered for libel of business reputation, breach of contract, or antitrust injury, are includable in income.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

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-employee 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, WI 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) (c) and (d), 71.317 (3) and 71.333, 1985 Stats.) (1) To qualify for the benefits of section 333 of the internal revenue code in computing Wisconsin net 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, 1985 Stats., a corporation, other than an excluded corporation, that is a qualified electing 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.

(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 may not subsequently be changed.

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

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(6) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter except if a corporation elects, under s. 3047 (1) (c) of the Act to apply to the transaction ss. 71.301 to 71.372, 1985 Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. (1), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2) and (4), cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.86 Income to corporations from cancellation of government contracts. (s. 71.03 (1) (k), 1985 Stats.) (1) Amounts claimed under cancelled government contracts not reported in the return for the year in which the claim was filed shall be included as income in the year in which the claim is allowed.

(2) As a result of 1987 Wis. Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

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, WI 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.

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(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. 71.03 (7), 71.24 (7), 71.44 (3), 71.82 (1) and (2) (a) and 71.90 (1), 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 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.

(3) **INTEREST ON REFUNDS.** (a) Any refund of individual income or corporate franchise or income taxes, where the tax being refunded is from a return which has a filing due date on or after November 1, 1975, shall include interest at the rate of 9% per year from the due date of the return to the date paid by the department, except as provided in par. (b).

(b) No interest may be allowed on income and franchise taxes if the refund is certified on a refund roll within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This treatment shall apply to a refund of taxes resulting from an overpayment of estimated tax as well as from withheld taxes.

(4) **INTEREST ON DEPOSIT OF CONTESTED TAXES.** Any refund of an amount deposited with the department pursuant to s. 71.90 (1), Stats., shall include interest at the rate of 9% per year from the date the funds were deposited to the date refunded, provided the funds being refunded are from a return which has a filing due date on or after November 1, 1975.

(5) **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. (2) from the end of the extension period until paid.

Note: 1) 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.

2) For any tax refunded from a return which had a filing due date prior to November 1, 1975, interest was 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.

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; renum. (2) to (4) to be (3), (2) and (5) and am., cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.90 Withholding; wages. (ss. 71.63 and 71.66 (3), Stats.) (1) The term "wages" means all remuneration for services performed by an employe for an employer unless specifically excepted under s. 71.63, 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. However, s. 71.63 (6) (i), Stats., excludes from wages 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 employe 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 the 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 the 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 an 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. 71.01 (6), 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 employes generally, are not considered as wages subject to withholding, if the 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 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. 71.01 (6), Stats.

(b) When, as provided by s. 71.66 (3), Stats., 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; am. (1), (4), (5), (8), (12), (13) and (15), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.91 Withholding; fiscal year taxpayers. (ss. 71.64, 71.65 (1), 71.67 and 71.71 (1), Stats.) (1) Except as provided in sub. (2), amounts withheld pursuant to ss. 71.64 and 71.67, Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in the calendar year. If more than one taxable year begins in a calendar year, the amount shall be allowed as a credit for the last taxable year beginning in that calendar year.

(2) Any employe who reports income for taxation to the state of Wisconsin on a taxable year other than the calendar year shall be allowed as a credit for the fiscal year amounts withheld by his or her employer in the fiscal year, provided the employer, on or before the end of the first month following the close of the fiscal year, shall voluntarily furnish the employe with 2 legible copies and the department of revenue with one legible copy of a written statement, adapted to the fiscal year, but otherwise consistent with the written statement referred to in ss. 71.65 (1) and

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71.71 (1), Stats., and the employe files a copy of the statement along with the fiscal year return.

History: Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.92 Withholding tax exemptions. (ss. 71.66 and 71.83 (1) (a) 5 and (b) 4 and (2) (a) 5, Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. The maximum number of federal exemptions allowable is computed by completing a federal form W-4, "Employee's Withholding Allowance Certificate." An employe claiming the same number of exemptions for both state and federal purposes is not required to complete a form WT-4, "Employee's Wisconsin Withholding Exemption Certificate." 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 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, "Employee's Wisconsin Withholding Exemption Certificate" which shows a claim for total exemption. 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 Wisconsin marital property laws for tax computation shall 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 Employee 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 is incomplete, incorrect, or 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, Register, June, 1991, No. 426

holding 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 employee 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, WI 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; am. (1), (2) and (3) (c), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.93 Withholding from wages of a deceased employe and from death benefit payments. (ss. 71.63 (6) (j) and 71.64 (1) (a), Stats.) (1) GENERAL. Section 71.64 (1) (a), 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 these 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, as provided in s. 71.63 (6) (j), Stats.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) and (3) (d), Register, July, 1989, No. 403, eff. 8-1-89.

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, WI 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.

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(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. 71.05 (1) (a), Stats.) (1) **GENERAL.**
(a) Payments for a tax-sheltered annuity purchased for an employee by a public school system or by an exempt educational, charitable or religious organization, which are excludable from the employee's gross income in the year of payment under s. 403 (b) of the internal revenue code, are also excludable in the year of payment for Wisconsin income tax purposes.

Note: The exclusion from gross income as provided in sub. (1) (a) is effective January 1, 1965, when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income. Payments prior to January 1, 1965, were taxable for Wisconsin income tax purposes.

(b) 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) **MILWAUKEE CITY AND COUNTY EMPLOYE AND STATE TEACHERS RETIREMENT SYSTEMS.** Normal retirement benefits received from systems enumerated in s. 71.05 (1) (a), Stats., are exempt as provided by that section. The exemption is limited to payments from the accounts of those persons who were members of any of the systems on December 31, 1963, or who were retired from any of the systems on or before December 31, 1963. However, benefits received from tax-sheltered annuity deposits described in sub. (1) administered by these systems do not qualify for the exclusion from Wisconsin taxable income provided by s. 71.05 (1) (a), Stats. Tax-sheltered annuity benefits shall be included in gross income for Wisconsin income tax purposes as they are for federal income tax purposes, except as provided in sub. (3).

Register, June, 1991, No. 426

(3) **STATE TEACHERS RETIREMENT SYSTEM.** (a) Tax-sheltered annuity benefits received by retired teachers on and after January 1, 1974, shall be included in taxable income. No subtraction modification from federal adjusted gross income may be allowed, except as provided in par. (b).

(b) 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 (6) (b) 3, Stats., shall be allowed for the tax-sheltered annuity benefits received on or after January 1, 1974, which are included in federal adjusted gross income and upon which the employe previously paid a Wisconsin income tax. The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax-sheltered annuity benefits excludable from Wisconsin taxable income because of receipt prior to January 1, 1974.

Examples: In each example below, assume the employe is a taxpayer who files tax returns on a calendar year basis.

1) An employe made a deposit of \$200 for the purchase of a tax-sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employe retires after December 31, 1973, a subtraction modification under s. 71.05 (6) (b) 3, Stats., is permitted for the first \$200 of tax-sheltered annuity benefits received. All subsequent benefits are taxable with no subtraction modification allowed.

2) An employe made a deposit of \$300 for the purchase of a tax-sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to January 1, 1974, and \$120 of the benefits received were not included in Wisconsin taxable income. A subtraction modification under s. 71.05 (6) (b) 3, Stats., is permitted for the next \$180 (\$300 - \$120) received after December 31, 1973. All subsequent benefits are taxable with no subtraction modification allowed.

3) An employe made a deposit of \$160 for the purchase of a tax-sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to January 1, 1974, and treated \$200 of the benefits as nontaxable for Wisconsin income tax purposes. All the benefits received after December 31, 1973, are taxable with no subtraction modification allowed.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. (1) (a) and (3) (b), renum. (1) (b), (c) and (3) (c) to be (1) (a), (b) and (3) (b) and am. (a) and (3) (b), am. (2) and (3) (a), Register, June, 1991, No. 426, eff. 7-1-91.

Tax 2.95 Reporting of instalment sales by natural persons and fiduciaries. (ss. 71.01 (6) and 71.04 (1) (a), Stats.) (1) **GENERAL.** The Wisconsin tax treatment of instalment sales by natural persons and fiduciaries is determined under the internal revenue code in effect under s. 71.01 (6), Stats. Instalment sales may be made of either real or personal property. Because for Wisconsin purposes, at the time of the sale, the seller may be either a resident or nonresident, and the property may be realty or personalty, tangible or intangible, and may be located within or without Wisconsin, special situations that are not addressed in the internal revenue code may arise which affect the reporting of the sale.

(2) **SITUS OF INCOME.** Under s. 71.04 (1) (a), Stats., all income or loss of resident individuals shall follow the residence of the individual. A nonresident's income or loss derived from the sale of real property or tangible personal property follows the situs of the property. Interest income of a nonresident and income from the sale of intangible personal property follows the individual's residence.

(3) **TAXATION OF PROCEEDS FROM INSTALMENT SALE OF INTANGIBLE PERSONAL PROPERTY.** (a) *Resident seller.* If the seller is a Wisconsin resident, the portions of each instalment payment that represent gain and

interest income from the sale which are received while the seller is a resident of this state are taxable by Wisconsin. If the resident seller abandons Wisconsin domicile and establishes residence in another state, neither the gain nor interest payments received while a nonresident is taxable by Wisconsin.

(b) *Nonresident seller.* If the seller is not a Wisconsin resident, the portions of each instalment payment that represent gain and interest income from the sale are not taxable by Wisconsin. If the seller subsequently becomes a Wisconsin resident after the sale, the portion of each instalment payment received after becoming a Wisconsin resident representing gain is not taxable by Wisconsin, but the portion representing interest on the instalment note is taxable by Wisconsin.

(4) TAXATION OF PROCEEDS FROM INSTALMENT SALE OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY. Upon the sale of real property or tangible personal property reported under the instalment method:

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

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

(b) *Out-of-state property.* For property located outside Wisconsin which is sold in taxable year 1975 or thereafter:

1. If the sale occurs while the seller is a Wisconsin resident and the seller is a Wisconsin resident at the time instalment payments are received, the portions of each of these instalment payments that represent gain and interest income from the sale are taxable by Wisconsin. However, if the seller no longer is a Wisconsin resident when instalment payments are received, the portions of each of these instalment payments that represent gain and interest income from the sale are not taxable by Wisconsin.

2. If the sale occurs while the seller is not a Wisconsin resident and the seller is a Wisconsin resident at the time instalment payments are received, the portion of each of the instalment payments that represents gain is not taxable by Wisconsin, but interest income from the sale is taxable. However, if the seller is not a Wisconsin resident at the time instalment payments are received, the portions of each of these instalment payments that represent gain and interest income from the sale are not taxable by Wisconsin.

Note: For taxable years prior to 1975, s. 71.07 (1), Stats., provided that for Wisconsin income taxation purposes, income or loss derived from the sale of real property or tangible personal property followed the situs of the property. Interest income and income or loss from the sale of intangible personal property followed the individual's residence. Therefore, if real property or tangible personal property which was located outside Wisconsin was sold on the instalment method prior to taxable year 1975:

1) The portion of each instalment payment that represents gain is not taxable by Wisconsin regardless of whether the seller is a resident or nonresident of Wisconsin at the time payments are received, regardless of whether the payments are received in 1975 or in any subsequent year.

2) The portion of each instalment payment that represents interest income is taxable by Wisconsin if the seller is a Wisconsin resident at the time payments are received. If the seller is a nonresident of Wisconsin at the time payments are received, the interest portion is not taxable by Wisconsin.

(5) **TAXATION OF PROCEEDS FROM SALE OF INSTALMENT OBLIGATION.** If the sale of an instalment obligation, i.e., an individual's right to unpaid instalments from the sale of property, occurs while the seller is a Wisconsin resident, gain or loss on the sale is taxable by Wisconsin. Internal revenue code s. 453B provides that any gain or loss resulting from the disposition of an instalment obligation shall be considered as resulting from the sale or exchange of the property in respect of which the instalment obligation was received. Therefore, if the sale of an instalment obligation occurs while the seller is not a Wisconsin resident, gain or loss on the sale is taxable by Wisconsin where the instalment obligation resulted from the sale of real property or tangible personal property located in Wisconsin.

Example: In 1990 an Illinois resident sells Wisconsin real estate for \$140,000. The adjusted basis of the property is \$70,000 which results in a gross profit percentage of 50%. The seller receives a down payment of \$40,000 and an instalment note of \$100,000 for the balance. In 1991, after receiving a \$60,000 payment on the principal plus interest of \$4,000, the instalment obligation is sold for \$45,000. The seller's Wisconsin taxable income from these transactions is as follows:

		Wisconsin Income
1990 - Selling price	\$140,000	
Wisconsin adjusted basis	<u>70,000</u>	
Gross profit	<u>\$ 70,000</u>	
Gross profit percent	50%	
Down payment received	\$ 40,000	
Profit reportable (50% x \$40,000)	20,000	\$ 20,000
Total Wisconsin Income		<u>\$ 20,000</u>
1991 - Payment on principal received	\$ 60,000	
Profit reportable (50% x \$60,000)	30,000	\$ 30,000
Interest received	4,000	-0-
Sale of instalment obligation:		
Selling price	45,000	
Less basis - unpaid balance of		
\$40,000 less unpaid profit due		
of \$20,000 (\$40,000 x 50%)	20,000	
Gain on sale of instalment obligation	25,000	<u>25,000</u>
(\$45,000 - \$20,000)		
Total Wisconsin Income		<u>\$ 55,000</u>

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (2) and (5) (b) 2.a. and b., am. (4) (a) and (b), (5) (b) 1.a., Register, September, 1983, No. 333, eff. 10-1-83; r. and recr. (1), r. (2), (3) (a), 5 (b) 1. (intro.), a. and b., renum. (3) (b) to be (2) and am., renum. (4) to be (3) and am., renum. (5) (intro.) (a) to be (4) (intro.) (a.), renum. (5) (b) 2 (intro.) a. and b. to be (4) (b) (intro.) 1. and 2. and am., renum. (6) to be (5) and am., Register, March, 1991, No. 423, eff. 4-1-91.

Tax 2.955 Credit for taxes paid to other states. (s. 71.07 (7), Stats.) (1) **DEFINITION.** In this section, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) **CREDITS ALLOWABLE.** (a) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate, or trust for any net minimum tax or income tax paid to another state upon income of the individual, estate or trust taxable by that state.

(b) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident shareholder in a tax-option (S) corporation for any net minimum tax, income tax, or franchise tax paid by that shareholder to another state on or measured by income of the tax-option (S) corporation.

(3) CREDITS NOT ALLOWED. An income tax credit shall not be allowed for:

(a) Income tax paid to Illinois, Indiana, Kentucky, Maryland, Michigan or Minnesota on personal service income earned in these states included under a reciprocity agreement.

Note: Refer to s. Tax 2.02 for information concerning reciprocity.

(b) Minimum tax or income tax paid to another state on income considered neither taxable income for Wisconsin tax purposes nor a tax preference item in the computation of the Wisconsin minimum tax.

(c) Minimum tax paid to a state which does not classify the minimum tax as an income tax.

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

(4) HOW TO CLAIM A CREDIT. The amount of income tax credit claimed shall be entered on the line provided for net income tax paid to other states on Wisconsin income tax return form 1 or form 1NPR. The credit may not exceed the Wisconsin net tax. To support the credit claimed, the following information shall be attached to form 1 or form 1NPR:

(a) For a Wisconsin resident individual, estate, or trust, attach copies of the other state's income tax return and the wage statements, if any, to the Wisconsin income tax return.

(b) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is recognized by the other state:

1. If a Wisconsin resident shareholder files an individual income tax return with that state, attach a copy of the other state's income tax return to the Wisconsin income tax return.

2. If the corporation files a combined or composite return with that state on behalf of its shareholders who are nonresidents of that state and pays the tax on their proportionate share of the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in sub. (4) (d).

3. If the corporation files a corporate income or franchise tax return with that state and pays tax on or measured by income earned there that is attributable to its shareholders who are nonresidents of that state, attach to the Wisconsin income tax return either a copy of the Wisconsin Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in sub. (4) (d).

(c) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is not recognized by the other state, if the corporation pays an income or franchise tax on or measured by the income earned there, attach to the Wisconsin income tax

return either a copy of the Wisconsin Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

(d) If the tax-option (S) corporation is not subject to Wisconsin's income or franchise tax, a Wisconsin resident shareholder shall attach to the Wisconsin income tax return a letter provided by the corporation in lieu of Wisconsin Schedule 5K-1 as required in sub. (4) (b) 2 and 3 and (c). The letter shall include a schedule showing the shareholder's proportionate share of the items of income taxable by that state, the adjusted gross income, and the net tax paid.

(5) YEAR IN WHICH TO CLAIM INCOME TAX CREDIT. The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out-of-state income is considered taxable Wisconsin income.

Example: A Wisconsin resident receives income of \$4,000 in 1988 from rental property located in Iowa. The person files a 1988 declaration of estimated tax of \$200 with Iowa, with \$150 of estimated tax payments being made in 1988 and the fourth quarter payment of \$50 being made in January 1989. The Iowa income of \$4,000 is reported as income on the 1988 Iowa and Wisconsin returns. The 1988 Iowa income tax return shows the following:

1988 Iowa Return	
Iowa Rental Income	\$ <u>4,000</u>
Iowa Net Tax (amount to be claimed as a credit on 1988 Wisconsin return)	\$ 185
Estimated Tax Payments	\$ 200
Refund	\$ <u>15</u>

The taxpayer may claim a credit for net income tax paid to other states of \$185 on the 1988 Wisconsin return, even though a part of the tax was paid in 1989.

Note: 1) Except as provided in notes 2), 3), and 4), Tax 2.955 is effective beginning with taxable year 1978.

2) Except as provided in note 3), the credit for minimum tax paid to another state is effective beginning with taxable year 1981.

3) The credit for taxes paid to another state on or measured by income of a tax-option (S) corporation is effective beginning with the tax-option (S) corporation's taxable year 1987, as enacted by 1987 Wis. Act 27.

4) The items required by sub. (4) to support the credit claimed are effective beginning with taxable year 1986. For 1985 and prior taxable years, the following items were required to support the credit claimed:

a) If the credit was based entirely on tax withheld and a refund was due from the other state, a copy of the wage statement and that state's income tax return was required to be attached.

b) If there was a tax due on the other state's return or if estimated tax payments were made to that state, proof of payment of those amounts along with copies of the wage statement and that state's income tax return were required to be attached. Proof of payment was not required to be attached to the Wisconsin income tax return if either the tax due or estimated tax payments did not exceed \$50.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (4) (b), Register, January, 1981, No. 301, eff. 2-1-81; r. (2) (a) and (b), (3) (b), am. (2) (c), (3) (d) and (4), renum. (3) (c) to be (3) (b), r. and recr. (5), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2), (3) (a) and (b), (4) (intro.), renum. (3) (ev) to be (3) (d), cr. (2) (b), (3) (c), (4) (c) and (d), r. and recr. (4) (a) and (b), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.956 Historic structure and rehabilitation of nondepreciable historic property credits. (ss. 71.07 (9m) and (9r), 71.28 (6) and (7) and 71.47 (5) and (6), Stats.) (1) PURPOSE. This section clarifies the phrase "first ap-

plies . . . for projects begun after December 31, 1988" as used in the initial applicability of s. 71.09 (12p) and (12q), Stats., as created by 1987 Wis. Acts 395 and 399, respectively. The initial applicability is provided in section 71 of Act 395 and in section 3203 (47) (mp) of Act 399.

(2) DEFINITION OF "BEGUN". In the initial applicability of s. 71.09 (12p) and (12q) Stats., the date a project is "begun" means the date on which the physical work of rehabilitation commences. The physical work of rehabilitation commences when actual construction, or destruction in preparation for construction, commences. The term "physical work of rehabilitation," however, does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration, such as placing boards over broken windows.

History: Emerg. cr. 12-28-88; cr. Register, June, 1989, No. 402, eff. 7-26-89.

Tax 2.96 Extensions of time to file corporation franchise or income tax returns. (ss. 71.24 (7) and 71.44 (3), Stats.) (1) GENERAL. Corporation franchise or income tax returns, forms 4, 5 and 5S are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year and form 4T is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted. The returns may be filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return.

(2) (a) *The 30-day or 6-month extension from department.* A request for a 30-day or 6-month extension, form IC-830, from the department shall be filed by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged when the extension request is returned to the taxpayer. The payment shall be processed by the department as an estimated tax payment.

(b) *The 6-month federal extension.* 1. A copy of federal extension form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 6-month extension provision for the Wisconsin return to be considered timely filed.

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay an estimated tax liability on or before the original due date of the franchise or income tax return. This may be done by attaching a remittance to a corporation estimated tax voucher, form 4-ES, and a copy of the federal extension, form 7004, and mailing them to the department of revenue.

(c) *Federal termination or refusal to grant extension.* If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before the date of termination fixed by the internal revenue service.

(3) INTEREST CHARGES AND LATE FILING FEES. (a) Any additional tax due with the complete return which is not paid by the original due date is subject to interest at 12% per year during the extension period and 1½%

per month from the end of the extension period until the date of payment.

(b) Any required installments of estimated tax unpaid as of the original due date of the return are subject to interest at 1½% per month until paid regardless of any extensions granted for filing the return.

(c) A corporation return filed after the extension period is subject to a \$10 late filing fee.

(4) **CONSOLIDATED RETURNS.** Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

(5) **DOMESTIC INTERNATIONAL SALES CORPORATIONS.** Since a domestic international sales corporation's (DISC's) federal annual information return, form 1120-IC-DISC, is not due for federal purposes until the 15th day of the 9th month following the end of the taxable year and the DISC's Wisconsin return, form 4 or 5, is due on or before the 15th day of the 3rd month following the end of the taxable year, a federal extension for a DISC cannot apply to the Wisconsin return. If a complete Wisconsin return cannot be filed by the due date, the corporation may obtain an extension from the department for a period not to exceed 6 months, if the extension is requested prior to the original due date of the return.

Note: Requests for extensions and related correspondence, documents or remittances shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1), (2) (a) and (c), (3) (a) and (c), (4) and (5), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2) (a) and (b), (4) and (5), r. (2) (c), renum. (2) (d) to be (2) (c), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.98 Disaster area losses. (ss. 71.01 (6) and 71.22 (4), Stats.) (1) (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used in a trade or business or for income-producing purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

(b) If a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, s. 165 (h) of the internal revenue code gives taxpayers the election to deduct the loss on the return for the current tax year or on the return for the immediately preceding tax year.

(2) (a) The Wisconsin income tax treatment is determined under the federal internal revenue code in effect under s. 71.22 (4), Stats., for corporations and s. 71.01 (6), Stats., for individuals.

(b) If a corporation or an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin form 4X may be used by corporations and Wisconsin form 1X may be used by individuals.

Note: 1) For taxable years prior to 1987, the Wisconsin corporation tax law was contained in ch. 71, Stats., and was not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the internal revenue code were not available to corporations for

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Wisconsin franchise and income tax purposes for those years. The amendment allowing disaster losses for corporations was enacted by 1987 Wis. Act 27.

2) Section 71.02 (2) (d), 1983 Stats., which defines "Wisconsin taxable income," was renumbered 71.02 (2) (me), 1985 Stats., and amended by 1985 Wis. Act 29, effective with 1986 individual income tax returns filed in taxable year 1987. This amendment is reflected in s. Tax 2.98. Section 71.02 (2) (me), 1985 Stats., was again renumbered, s. 71.01 (16), Stats., by 1987 Wis. Act 312. For 1985 and prior year income tax returns filed in 1986 and prior taxable years, disaster area losses from damage to property used for personal purposes were also allowed, as an itemized deduction, using the provisions in sub. (1) (b) and the individual treatment in sub. (2) (b).

3) As an example of Note 2) on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

Calumet	Iowa	Rock
Columbia	Jefferson	Sauk
Crawford	LaFayette	Sheboygan
Dane	Manitowoc	Vernon
Dodge	Milwaukee	Walworth
Fond du Lac	Ozaukee	Washington
Grant	Richland	Waukesha
Green		

An individual who sustained a casualty loss from this disaster in any of these 22 counties, regardless of where that individual resided, could have elected to deduct the loss on the individual's 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers, assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977. If the election was not made, the loss was deductible on the taxpayer's 1976 return.

4) Tax 2.98 explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law, however, it does not explain all the details regarding casualty losses. Internal Revenue Service Publication 549, entitled "Condemnations and Business Casualties and Thefts," may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources, and related casualty loss problems.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. (2), renum. (3) to be (2) and am. (2) (a)1. and (b), Register, September, 1983, No. 333, eff. 10-1-83; am. (1) (a), r. (2) (b), renum. (2) (a) 1. and 2. to be (2) (a) and (b) and am., Register, February, 1990, No. 410, eff. 3-1-90.