

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 either of the following:

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

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

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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

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 (1), (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.