

## 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 INPR 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 INPR 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.

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**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:

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 and after January 1, 1968.

4. Minnesota, for the years beginning on and after January 1, 1968.

(b) Wisconsin practices reciprocity with Indiana, since prior to 1960, on the basis of an informal agreement and acquiescence by Wisconsin and Indiana.

(5) **EFFECT OF RECIPROCITY.** (a) Personal service income included under reciprocity agreements is taxed by an employe's state of residence rather than by an employe'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 those states, except as described in subs. (6), (7), (8) and (9).

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

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 2.07 Earned income tax credit. (ss. 71.07 (9e) and 73.03 (48), Stats.)**

(1) **CRITERIA FOR PROVIDING INFORMATION.** The department has established the following criteria regarding the dissemination of information to the public concerning the federal and Wisconsin earned income tax credits:

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(a) Disseminate information to potential claimants in the most cost-effective manner possible.

(b) Disseminate information to the public through multiple channels to increase the probability that potential claimants will become aware of the earned income tax credits.

(c) Utilize volunteer tax preparers and community-based organizations that have personal contact with potential claimants, to provide earned income tax credit information and assistance.

(d) Clarify the relationship between federal and Wisconsin earned income tax credits and coordinate outreach efforts with the internal revenue service, or "IRS."

(e) Provide sufficient information to allow potential claimants to self-evaluate their eligibility for the earned income tax credits.

(f) Provide convenient ways for potential claimants to obtain additional information, assistance and forms.

(2) **METHODS OF PROVIDING INFORMATION.** Methods the department uses to disseminate information to the public concerning the federal and Wisconsin earned income tax credits include the following:

(a) Produce an informational flyer, distribute copies through appropriate organizations having regular contact with potential earned income tax credit claimants throughout the state, and have additional copies available for distribution upon request.

*Example:* Copies of the informational flyer may be distributed to members of the Wisconsin legislature or to various sites such as municipal buildings, community agencies, or job service centers.

(b) In conjunction with the IRS, when training volunteers who provide free tax-filing assistance throughout Wisconsin, include training to identify potential earned income tax credit claimants and to assist them in claiming both the federal and Wisconsin credits.

(c) Highlight the Wisconsin earned income tax credit in the Wisconsin individual income tax and homestead credit booklets.

(d) Mail camera-ready copies of earned income tax credit informational flyers to large Wisconsin employers, and request them to make and distribute copies of the flyer to their employees as appropriate.

(e) Work with the IRS in providing joint efforts to publicize both the federal and Wisconsin earned income tax credits.

*Example:* For the 1993 tax-filing season, the department and the IRS jointly utilized the IRS toll-free telephone information line, to provide callers with information about both the federal and Wisconsin earned income tax credits.

(f) Annually produce a report summarizing the level of participation in and level of benefits provided by the earned income tax credit program.

(g) Work with other state agencies, public utilities, and other organizations to distribute information about the federal and Wisconsin earned income tax credit programs.

*Note 1)* The federal earned income tax credit, provided under s. 32 of the internal revenue code, is available to eligible individuals and married couples filing a joint income tax return,

who have at least one qualifying child living with them. The federal credit consists of three parts, as follows:

a) A basic credit, computed based on the amount of adjusted gross income or earned income, and whether the individual or couple had one qualifying child or two or more qualifying children.

b) A health insurance credit, computed based on the amount of adjusted gross income or earned income, and the amount paid for health insurance that covered at least one qualifying child.

c) An extra credit for a child born during the taxable year, computed based on adjusted gross income or earned income.

2) The Wisconsin earned income tax credit is available under s. 71.07 (9 e), Stats., to full-year Wisconsin residents who are eligible to claim the federal earned income tax credit. The Wisconsin credit is computed as a percentage of the federal basic credit, dependent upon whether the individual or couple have one qualifying child, two qualifying children, or three or more qualifying children.

History: Cr. Register, November, 1993, No. 455, eff. 12-1-93.

**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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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. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.14 Aggregate personal exemptions. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.15 Methods of accounting for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.16 Change in method of accounting for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.165 Change in taxable year. History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; cr. (5), Register, June, 1991, No. 426, eff. 7-1-91; r. Register, November, 1993, No. 455, eff. 12-1-93.

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**Tax 2.19** Instalment method of accounting for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.20** Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.21** Accounting for incorporated contractors. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.22** Accounting for incorporated dealers in securities. History: 1-2-56; r. and recr. Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.24** Accounting for incorporated retail merchants. History: 1-2-56; am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.25** Corporation accounting generally. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.26** "Last in, first out" method of computing inventory for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**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 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

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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.

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2) Section 71.07 (1), Stats., was amended by Chapter 39, Laws of 1976, 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.** **History:** Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. Register, June, 1993, No. 450, eff. 7-1-93.

### 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

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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.

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(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.** History: 1-2-56; renum. to be (1), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.53 Stock dividends and stock rights received by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.56 Insurance proceeds received by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.57 Annuity payments received by corporations.** History: 1-2-56; renum. to be (1) and am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.60 Dividends on stock sold "short" by corporations.** History: 1-2-56; renum. to be (1) and am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.63 Dividends accrued on stock.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.65 Interest received by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.70 Gain or loss on capital assets of corporations; basis of determining.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.72 Exchanges of property by corporations generally.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.721 Exchanges of property held for productive use or investment by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.73 Involuntary conversion by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.75 Recoveries by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.76 Refunds of taxes to corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.80 Improvements on leased real estate, income to corporate lessor.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.81 Damages received by corporations.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

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

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

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

b. Domestic corporations; or

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

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

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

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

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

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

2. Ownership of real estate in Wisconsin.

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

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

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

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

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

8. Miscellaneous other activities by employes or representatives in Wisconsin such as credit investigations, collection of delinquent ac-

counts, 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; correction in (3) (b) 1. made under s. 13.93 (2m) (b) 5, Stats., Register, November, 1993, No. 455.

**Tax 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations.** History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. (1), Register, September, 1983, No. 383, eff. 10-1-83; am. (1), (2) and (4), cr. (6), Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

**Tax 2.86 Income to corporations from cancellation of government contracts.** 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

**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.

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(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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