

**CHAPTER 720.**

AN ACT to repeal 71.10 (10) (c), 71.11 (21) (f); to amend 71.04 (1) and (2), 71.05 (1), (2) and (13) (b), 71.08 (11), 71.09 (5), 71.10 (1), (2), (3) (a) and (12), 71.11 (20) (a), 71.12 (2), 71.13 (1); to repeal and recreate 71.07 (6), 71.08 (7), 71.11 (8), and to create 71.08 (4) (d) and 71.13 (4) (c) of the statutes, relating to making clarifications in the income tax law.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 71.04 (1) and (2) of the statutes are amended to read:

71.04 (1) Payments made within the year for wages, *salaries, commissions and bonuses* of employes and \* \* \* of officers if reasonable in amount, for services actually rendered in producing such income; provided, there be reported the name, address and amount paid each such employe or officer residing within this state to whom a compensation of \* \* \* \$800 or more shall have been paid during the assessment year.

(2) Other ordinary and necessary expenses \* \* \* actually paid within the year out of the income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation by use, wear and tear of property from which the income is derived and in the case of mines and \* \* \* *quarries* an allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or the equivalent of cash; and including also interest *and rent* paid during the year in the operation of the business from which its income is derived; provided, the \* \* \* *payor* reports the amount so paid, \* \* \* together with the names and addresses of the parties to whom interest *or rent* was paid in the manner provided in section 71.10 (1).

SECTION 2. 71.05 (1), (2) and (13) (b) of the statutes are amended to read:

71.05 (1) Payments made within the year for wages or other compensation, *if reasonable in amount*, for services actually rendered in carrying on the profession, occupation or business from which the income is derived. But no deductions shall be made for any amount paid for services actually rendered in the carrying on of the profession, occupation or business from which the income is derived unless there be reported the name and address and amount paid each person to whom a sum of \$700 or more shall have been paid for services during the assessment year. Except as provided in subsection (9) of this section, no deduction shall be allowed under this section for any amounts expended for personal, living or family expenses.

(2) The ordinary and necessary expenses actually paid within the year in carrying on the profession, occupation or business from which the income is derived, including a reasonable allowance for depreciation by use, wear and tear of the property from which the income is derived, and in the case of mines and quarries an allowance for depletion of ores and other natural deposits on the basis of their actual original cost in cash or the equivalent of cash. *Provided, however, that no deduction shall be allowed for rent paid unless the payor reports the amount so paid together with the names and addresses of the parties to whom rent was paid.*

(13) (b) The election by a taxpayer to take *his deductions on an itemized basis or to take* the optional standard deduction for any year shall be irrevocable. If the gross income as shown on the return is subsequently adjusted, the amount of the optional standard deduction shall be adjusted accordingly within the limits prescribed by paragraph (a).

SECTION 3. 71.07 (6) of the statutes is repealed and recreated to read:

71.07 (6) Liability to taxation for income which follows the residence of the recipient, in the case of persons other than corporations, who move into or out of the state within the year, shall be determined for such year on the basis of the income received (or accrued, if on the accrual basis) during the portion of the year that any such person was a resident of Wisconsin. The deductions for personal exemptions provided for in section 71.09 (6) shall be prorated on the basis of the time of residence within and without the state. The net income of such person assignable to the state for such year shall be used in determining the income subject to assessment under this chapter.

SECTION 4. 71.08 (4) (d) of the statutes is created to read:

71.08 (4) (d) If the decedent was a ward, the return of the administrator or executor for the year of death shall include all of the income includible in a return by a guardian during the portion of the year preceding the demise of deceased and also such other income as is includible in the return of an administrator or executor. If a personal exemption is allowable on a return by the guardian for the same income year, the same personal exemption shall be allowed on the return of the executor or administrator, and any tax paid by

he guardian shall be allowed as a credit against the tax payable by the executor or administrator.

SECTION 5. 71.08 (7) of the statutes is repealed and recreated to read:

71.08 (7) (a) *When guardians must report.* Guardians, whether natural or appointed, shall make returns of income to the assessor of incomes of the county in which their wards reside, which returns shall be made at the same time as returns of persons other than corporations are made, when the tax on the net income of the ward exceeds the personal exemption allowable to the guardian.

(b) *Net income to be reported.* The net income of the ward to be reported by the guardian shall be ascertained in the same manner as the income of other persons is ascertained, except that,

1. If the ward is under the age of 18 years, the earned income of the ward shall be excluded on the return of the guardian when such earned income is reported as taxable income and taxed to the parent or head of family pursuant to section 71.09 (6) (d).

2. Unearned income of the ward to the extent made available to and used by a parent in the discharge of his natural obligation to support the ward may be excluded in the guardian's return when such unearned income is reported by and taxed to the parent.

(c) *Personal exemption in guardianship cases.* The personal exemption allowable to the guardian shall be the same as would have been allowable to the ward had he made the return, except that, if the ward is actually supported by and dependent upon a natural person for his support so that such natural person is entitled to a personal exemption under subsections (c) or (d) of section 71.09 (6), the personal exemption otherwise allowable to the guardian shall be reduced by \$4.

SECTION 6. 71.08 (11) of the statutes is amended to read:

71.08 (11) An executor, administrator, guardian or trustee applying to a court having jurisdiction for a discharge from his trust and a final settlement of his accounts, before his application shall be granted, shall file with the assessor of incomes of the county in which the trust or estate is being administered \* \* \* *returns of income* received in his representative capacity \* \* \* *not previously filed and a return for the period* between the close of the preceding income year and the date of his application for discharge, and also \* \* \*, *in the case of an executor, administrator or guardian,* returns of income received by the deceased, *the ward or a prior guardian* during each of the years open to audit under section 71.11 (21) if such returns have not heretofore been filed. Upon the receipt of such returns, the assessor of incomes shall immediately determine the amount of taxes to become due and shall certify such amount to the court and the court shall thereupon enter an order directing the executor, administrator, trustee or guardian, as the case may be, to pay to the department of taxation the amount of tax, if any, found due by the assessor of incomes, and take his receipt therefor. The receipt of the department of taxation shall be evidence of the payment of the tax and shall be filed with the court before final distribution of the estate is ordered, and the executor, administrator, trustee or guardian is discharged. Any taxes found to be due from the estate for any of the years open to audit under section 71.11 (21) shall be assessed against and paid by the executor or administrator; any taxes found to be due after the executor or administrator is discharged, shall be assessed against and paid by the beneficiaries in the same ratio that their interest in the estate bears to the total estate.

SECTION 7. 71.09 (5) of the statutes is amended to read:

71.09 (5) (a) In assessing additional taxes interest shall be added to such taxes at the following rates per annum from the date on which such additional taxes if originally assessed would have become delinquent if unpaid, to the date on which such additional taxes when subsequently assessed will become delinquent if unpaid: 5 per cent on additional taxes assessed within the 4-year period provided by section 71.11 (21) (b); \* \* \* 5 per cent on additional taxes assessed within the period provided by section 71.11 (21) (g); and 5 per cent on additional taxes assessed pursuant to section 71.11 (21) (c).

(b) In crediting overpayments of income and surtaxes against underpayments or against taxes to be subsequently collected and in certifying refunds of such taxes interest shall be added at the following rates per annum from the date on which such taxes when assessed would have become delinquent if unpaid to the date on which such overpayment was certified on the \* \* \* *refund* roll; 5 per cent on credits and refunds made within the 4-year period provided by section 71.10 (10) (b) \* \* \*.

SECTION 8. 71.10 (1), (2) and (3) (a) of the statutes are amended to read:

71.10 (1) Every corporation, whether taxable under this chapter or not, shall furnish to the department of taxation a true and accurate statement, on or before March 15 of each year (except that returns for fiscal years ending on some other date than December 31, shall be furnished on or before the fifteenth day of the third month following the close of such fiscal year) in such manner and form and setting forth such facts as said department

shall deem necessary to enforce the provisions of this chapter. Such statement shall be \* \* \* subscribed by the president, vice president, or other principal officer and the treasurer, assistant treasurer or chief accounting officer of said corporation, and in the case of corporations in liquidation or in the hands of a receiver such return shall be \* \* \* subscribed by the person responsible for the conduct of the affairs of such corporation. All corporations doing business in this state shall also file with the department of taxation on or before March 15 of each year on forms prescribed by the department of taxation, a statement of such transfers of its capital stock as have been made by or to residents of this state during the preceding calendar year. Such schedule shall contain the name and address of the seller and the purchaser, date of transfer, and the number of shares of stock transferred; and such corporation shall also file with the department of taxation on or before March 15 of each year any information relative to payments made within the preceding calendar year to residents of this state of salaries, wages, fees, rents, royalties, interest, dividends and liquidating dividends in amounts and in the manner and forms prescribed by the department of taxation; provided such corporation may upon notifying the department of taxation report salaries, wages and fees on the accrual basis for the calendar year 1939 and thereafter.

(2) Every person other than a corporation, *who, during the year has gross receipts of \$4,000 or more, every person other than a corporation or a married individual who receives during the year a net income of \$800 or over, \* \* \* and every married person receiving any net income during the year when the combined net incomes of such married person and his or her spouse is \$1,600 or over,* must report the same on or before March 15 of each year, except that in case of a fiscal year other than the calendar year such report shall be made on or before the fifteenth day of the third month following the close of the fiscal year, in the manner and form prescribed by the department of taxation, to the assessor of incomes, whether notified to do so or not, and shall be subject to the same penalties for failure to report as those who receive notice; provided, however, that *any individual having a married status in only part of an income year shall so report within the time provided in this subsection whenever during the year he has gross receipts of \$4,000 or more or the tax on his net income exceeds the personal exemption to which he is entitled pursuant to section 71.09 (6) (e).* Nothing contained in this \* \* \* subsection shall preclude the assessor of incomes from requiring any person other than a corporation to file an income tax return when in the judgment of the assessor of incomes a return should be filed. *For the purposes of this subsection, "gross receipts" shall be as defined in section 71.09 (2m) (c).*

(3) (a) Every partnership shall furnish to the assessor of incomes a true and accurate statement, on or before March 15 of each year, except that returns for fiscal years ending on some other date than December 31, shall be furnished within 75 days after the last day of such fiscal year, in such manner and form and setting forth such facts as the department of taxation shall deem necessary to enforce the provisions of this chapter. Such statement shall be \* \* \* subscribed by one of the members of said partnership.

SECTION 9. 71.10 (10) (c) of the statutes is repealed.

SECTION 10. 71.10 (12) of the statutes is amended to read:

71.10 (12) When the reduction of income made as the result of the renegotiation or other adjustment of war contracts or subcontracts is subsequently determined to be excessive and such excessive reduction is rebated to the taxpayer by the federal government, the gross amount of the rebate is to be included as taxable income of the year to which the income reduction applies. Such rebate must be reported to the department of taxation by the taxpayer on or before the fifteenth day of the third month following the close of the income year in which the rebate was received. An assessment of additional income taxes based upon such rebate may be made by the department of taxation without interest within 2 years from the date on which the rebate was reported by the taxpayer, notwithstanding the limitations of section 71.11 (21) or other applicable statutes. Any federal income tax or excess profits tax paid upon the income resulting from the rebate shall be allowed as a deduction from income of the year following the year to which the renegotiation or other adjustment is applicable, subject however to the limitations provided by sections 71.04 (3a) and 71.05 (4a) as to the total amount of federal income tax or excess profits tax deductible, and a refund without interest may be made by reason of such deduction notwithstanding the limitations of sections 71.10 (10) (b) \* \* \* and 71.10 (10) (d).

SECTION 11. 71.11 (8) of the statutes is repealed and recreated to read:

71.11 (8) METHOD OF ACCOUNTING. The income and profits for the income year shall be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made

upon such basis and in such manner as in the opinion of the department of taxation does clearly reflect the income.

SECTION 12. 71.11 (20) (a) of the statutes is amended to read:

71.11 (20) (a) Whenever in the judgment of the department of taxation or assessor of incomes it is deemed advisable to verify any return directly from the books and records of any person, or from any other sources of information, the department of taxation or assessor of incomes may direct any return to be so verified. \* \* \*

SECTION 13. 71.11 (21) (f) of the statutes is repealed.

SECTION 14. 71.12 (2) of the statutes is amended to read:

71.12 (2) If the taxpayer requests a hearing, the additional tax or overpayment shall not be placed on the \* \* \* *assessment* roll until after hearing and determination of the tax by the board of tax appeals or disposition of the appeal pursuant to stipulation and order as provided in sections 73.01 (5) (a) and 73.03 (25). In the application for such hearing, filed pursuant to section 71.12 (1), the taxpayer may offer to deposit the entire amount of the additional taxes, together with interest thereon, with the state treasurer. If such offer to deposit is made, the department of taxation or assessor of incomes, as the case may be, shall issue a certificate to the state treasurer authorizing him to accept payment of such taxes together with interest thereon to the first day of the succeeding month and to give his receipt therefor. A copy of such certificate shall be mailed to the taxpayer who shall thereupon pay such taxes and interest to said treasurer within 30 days. A copy of the receipt of the state treasurer shall be filed with the department of taxation or assessor of incomes. The department of taxation or the assessor of incomes shall, upon final determination of the appeal, certify to the state treasurer the amount of the taxes as finally determined and shall direct him to apportion and pay to the proper county and town, city or village treasurers the amounts of such taxes, together with the interest thereon, to which the counties and the towns, cities or villages are entitled under section 71.14 and shall also direct the state treasurer to refund to the appellant any portion of such payment which shall have been found to have been illegally assessed, including the interest thereon. Such certificate shall specify the counties and the local taxing districts to which the tax is attributable under section 71.14. The state treasurer shall make the payments directed by such certificate within 30 days after receipt thereof. Taxes paid to the state treasurer under the provision of this subsection shall be subject to the interest provided by sections 71.09 (5) and 71.13 (2) only to the extent of the interest accrued on said taxes prior to the first day of the month succeeding the application for hearing. Payments made by the state treasurer to the county and town, city or village treasurers shall not include interest which may have been earned during the time that the funds were in the hands of the state treasurer. Any portion of the amount paid to the state treasurer which is refunded to the taxpayer shall bear interest at the rate of 5 per cent per annum during the time that the funds were in the hands of the state treasurer.

SECTION 15. 71.13 (1) of the statutes is amended to read:

71.13 (1) Income taxes shall become delinquent if not paid when due as provided in section 71.10 (9), *provided, however, that in case the initial payment is not made as required by section 71.10 (9) (a) or (b), the entire unpaid balance shall be considered as delinquent from the due date of the initial payment*, and when delinquent shall be subject to a penalty of 2 per cent on the amount of the tax and interest at the rate of one per cent per month until paid, and the department of taxation shall immediately proceed to collect the same. For the purpose of such collection the department of taxation or its duly authorized agent shall have the same powers as conferred by law upon the county treasurer, county clerk, sheriff and district attorney.

SECTION 16. 71.13 (4) (e) of the statutes is created to read:

71.13 (4) (e) Delinquent income taxes, and interest and penalty thereon, resulting from assessments pursuant to subsections (4) or (5) of section 71.11 or from assessments by virtue of disallowance of claimed deductions for failure to file information reports relating thereto, as required by this chapter, may be compromised by the department of taxation when such action is fair and equitable under the circumstances.

Approved August 3, 1951.