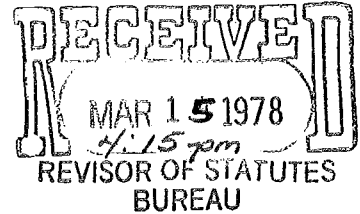


Tax 2, 11

CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE)



TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Dennis J. Conta, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on March 13, 1978.

These rules relate to the following:

- 1) Reciprocity (income tax).
- 2) Change in method of accounting for corporations (income tax).
- 3) Hospitals, clinics and medical professions (sales and use tax).
- 4) Agents, consignees, lienors and brokers (sales and use tax).

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 201 East Washington Avenue in the city of Madison, this 13th day of March, 1978.

Dennis J. Conta

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES


Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a) and 227.014(2), Wis. Stats., the Department hereby adopts the following 4 rules as shown on the attached copy.

- 1) Section Tax 2.02, "Reciprocity".
- 2) Section Tax 2.16, "Change in method of accounting for corporations".
- 3) Section Tax 11.17, "Hospitals, clinics and medical professions".
- 4) Section Tax 11.55, "Agents, consignees, lienors and brokers".

The rules contained herein shall take effect on May 1, 1978.

Dated this 13th day of March, 1978.

DEPARTMENT OF REVENUE
BY:

A handwritten signature in black ink, appearing to read "Dennis J. Conta", written over a horizontal line.

Dennis J. Conta
Secretary of Revenue

RECIPROCITY

Section Tax 2.02 of the Wis. Adm. Code is adopted to read:

Tax 2.02 Reciprocity. (Section 71.03(2)(c), Wis. Stats.)

(1) GENERAL. (a) In this rule, "residence" and "resident" are synonymous with "domicile" and "domiciliary", respectively, except when referring to the reciprocity agreement with Illinois. A person may be a resident of Illinois while domiciled in Wisconsin or a person may be domiciled in Illinois but not be a resident of Illinois. The Illinois Income Tax Act defines a resident as "an individual (i) who is in this state for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year".

(b) Income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on such personal service income if that state allows:

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

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

(c) A Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement need not withhold Wisconsin income tax from personal service income earned in Wisconsin by such nonresidents.

(2) PERSONAL SERVICE INCOME DEFINED. Income from personal services includes 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. Income from personal services does not include income derived from activities involving the substantial use of capital or labor of others.

(3) CURRENT RECIPROCITY. (a) Wisconsin currently practices some form of income tax reciprocity with Illinois, Indiana, Kentucky, Maryland, Michigan and Minnesota. Formal agreements have been signed with Illinois, Kentucky, Michigan and Minnesota. Reciprocity with Indiana and Maryland is based on informal agreements and acquiescence by both states.

(b) Wisconsin's formal reciprocity agreements are effective for the following years: 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.

(e) The informal agreements with Indiana and Maryland have been in effect since prior to 1960.

(4) EFFECT OF RECIPROCITY. (a) Personal service income included under reciprocity agreements shall be taxed by an employe's state of residence rather than by an employe's state of employment. Wisconsin shall not tax personal service income earned in Wisconsin by a resident of states with which Wisconsin has reciprocity and such states shall not tax personal service income which a Wisconsin resident earns in their states, except as described in subs. (5) and (6).

(b) An employer need only withhold income tax for the state of residence of an employe. However, federal law regulates withholding on wages earned by employes engaged in interstate transportation activities. (Additional information may be obtained by contacting the Wisconsin department of revenue, compliance section, P.O. Box 8902, Madison, Wisconsin 53708.

(5) 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" (emphasis added). The agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income.

(b) The agreement does not apply to compensation 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 such a person is taxable by Wisconsin. However, a credit may be claimed for income tax paid to Illinois on personal service income earned outside Wisconsin.

(c) 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.

(6) 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.

(7) PROCEDURE FOR NONRESIDENTS. Nonresident persons employed in Wisconsin and residing in a state with which Wisconsin has reciprocity may file Form W-220 ("Nonresident Employe's Withholding Reciprocity Declaration") with their Wisconsin employers. Upon receipt of this form, Wisconsin employers shall not withhold Wisconsin income tax from Wisconsin personal service income of such employes.

(8) PROCEDURE FOR WISCONSIN RESIDENTS. (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity (as well as those employed in other states) shall file Form 1-ES ("Wisconsin Declaration of Estimated Tax") 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 file a declaration.

(b) Such 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 such state if income taxes are withheld from such 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 tax returns for net income taxes paid to such states.

(9) DELINQUENT TAXES. Reciprocal agreements shall not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under section 71.135, Wis. Stats.

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

Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from such employe's incomes may contact the department's compliance bureau, P.O. Box 8902, Madison, Wisconsin 53708.

The term "temporary or transitory" as used in the definition of an Illinois resident set forth in subsection (1) 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.

CHANGE IN METHOD OF ACCOUNTING FOR CORPORATIONS

Section Tax 2.16 of the Wis. Adm. Code is repealed and recreated to read:

Tax 2.16 Change in method of accounting for corporations.

(Section 71.11(8)(b), Wis. Stats.) (1) GENERAL. (a) A change in the method of accounting by corporations shall be made under section 71.11(8)(b), Wis. Stats., which reads as follows: "In computing a corporation's taxable income for any taxable year, commencing after December 31, 1953, if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply, and except that this rule shall not modify or change the rule as to federal income and excess profits taxes set forth in s. 71.02(1)(c)."

(b) A change in a corporation's method of accounting may involve an overall change of the entire accounting system or it may involve only a single item.

(c) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department. Applications for such change shall be made in the manner described in sub. (5).

(d) In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

(2) CHANGE IN METHOD OF ACCOUNTING FOR SINGLE ITEMS. Any change in the accounting treatment of a single item, if "material", is deemed a change in the method of accounting under section 71.11(8)(b), Wis. Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin franchise/income tax purposes.

(3) 1953 ACCOUNT BALANCES. (a) Taxpayer-initiated change. On a taxpayer-initiated change, the net 1953 account balances shall not be allowed as an offset in the year of change.

(b) Department initiated change. 1. On a department-initiated change, the net 1953 balances shall be allowed as an offset in the year of change in accordance with the internal revenue code and federal regulations.

2. Net 1953 account balances shall be computed by the taxpayer and adequately supported by its accounting records in order for them to be allowed as offsets in the year of change.

3. No offset is available for taxpayers incorporated after December 31, 1953 or in connection with changes involving LIFO inventories.

(c) Paragraphs (a) and (b) shall apply to all tax years open to assessment or refund.

(4) TRANSITIONAL ADJUSTMENTS. The entire impact of a change in method of accounting shall be reflected in net income of the year of change for Wisconsin franchise/income tax purposes, thereby resulting in a doubling up of income and/or deductions in that year. (This represents a significant difference from the federal treatment which, in general, permits a 10-year amortization of the net transitional adjustment at the beginning of the year of change.)

(5) APPLICATION FOR CHANGE IN METHOD OF ACCOUNTING. (a) Applications to use the LIFO inventory method and subsequent changes in inventory accounting method shall be filed with the department pursuant to rule Tax 2.26. All other applications shall contain the following:

1. Nature of the taxpayer's business;
2. The method of accounting used in keeping its books;
3. The reason(s) for requesting the change;
4. A legible copy of federal Form 3115, "Application for Change in Accounting Method";
5. Legible copies of all subsequent correspondence with the internal revenue service pertaining to such application;
6. A statement, and whenever possible a schedule, which clearly indicate the manner in which it proposes to effect the change for Wisconsin franchise/income tax purposes;
7. A copy of the entry, its date and explanation, made on the books to accomplish the change. (When no book entry is made, the reason for its absence shall be stated.); and
8. Any other pertinent information.

(b) 1. Applications shall be filed before the end of the taxable year for which the change is to be effective. Such applications shall be in letter form with supporting schedules and data and mailed to: Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708.

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

NOTE: See *Ladish Co. v. Dept. of Revenue* (1975), 69 Wis. 2d 723, concerning a change in method of accounting for a single item.

Rules Tax 2.25, "Corporation accounting generally" and 2.26, "'Last in, first out' method of inventorying for corporations" describe department interpretations with respect to methods of accounting for inventories.

HOSPITALS, CLINICS AND MEDICAL PROFESSIONS

Section Tax 11.17 of the Wis. Adm. Code is adopted to read:

Tax 11.17 Hospitals, clinics and medical professions. (Sections 77.51(21), (22) and (22m), 77.52(2)(a)1 and 77.54(14), (20)(c)4 and (22), Wis. Stats.) (1) GENERAL. (a) Although professional personnel in hospitals and clinics and other members of medical professions (i.e., physicians, surgeons, oculists, optometrists and podiatrists) regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such property is an incident of a service rather than a retail sale of such property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54(14)(b), Wis. Stats., specifically provides an exemption for medicines furnished by a licensed physician, surgeon or podiatrist to that person's patient for medical treatment. Section 77.54(22), Wis. Stats., provides an exemption for medical appliances and prosthetic devices. The scope of these exemptions is set forth in rules Tax 11.08, 11.09 and 11.45.

(2) PURCHASES BY HOSPITALS. Purchases by hospitals are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54(9a), Wis. Stats. Each is issued a Certificate of Exempt Status ("C.E.S.") by the department. When purchasing goods and services a hospital can furnish its C.E.S. number to its supplier, and the supplier may make sales of every type of tangible personal property or services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS.
(a) Purchases made by medical clinics and physicians are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list must be furnished to patients at the direction of a physician, surgeon or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of such health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions,

<u>Taxable</u>	<u>Exempt</u>
Adhesive tape	*Artificial eyes and limbs
Alcoholic beverages	Bone pins and plates
Bandages, gauze and cotton	*Crutches and wheel chairs
Bed pans	*Dietary foods
Beds and linens	*Disposable syringes containing insulin
Compresses and dressings	Dye
Cosmetics	*Hearing aids and parts
Deodorants and disinfectants	Medical oxygen
Diaphragms	Medicines
Distilled water	*Needles and syringes used by
Enema kits	diabetics (effective November 19, 1975)
Instruments	Oral contraceptives
Laboratory equipment and supplies	Pacemakers
Medical equipment	Prescription drugs
Office equipment and supplies	Prophylactics
Oxygen tanks	Rubbing alcohol
Paper products	Suppositories
Printed material	Sutures
Rib belts and supports	Vaccines
Soda water beverages	Vaginal creams and jellies
Soap	Vitamins
Splints and cast materials	
Uniforms and gowns	
X-ray film and machines	

(4) SALES BY HOSPITALS, HOSPITAL AUXILIARIES AND CLINICS.

(a) The gross receipts from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for medical services or rooms.
2. Hospitals' sales of meals, food, food products and beverages to patients, staff or visitors.

(b) The gross receipts from the sales of the following are taxable: 1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.
3. Sales of tangible personal property or taxable service by a clinic, which sales are not directly related to the rendition of medical services.
4. Sales of meals and other tangible personal property by an organization affiliated with a hospital (e.g., if a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, gross receipts from this business are taxable).

(5) HOSPITAL DEFINITION. Section 50.33(1), Wis. Stats., provides the definition of hospital which is to be used for sales tax purposes.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, unless otherwise noted in the rule.

AGENTS, CONSIGNEES, LIENORS AND BROKERS

Section Tax 11.55 of the Wis. Adm. Code is adopted to read:

Tax 11.55 Agents, consignees, lienors and brokers. (Section 77.51 (4g) (f), (7) and (8), Wis. Stats.) (1) UNDISCLOSED PRINCIPAL. A person who has possession of personal property owned by an unknown or undisclosed principal and has the power to transfer title to that property to a third person, and who exercises that power, is a retailer whose gross receipts are subject to the tax.

(2) DISCLOSED PRINCIPAL. (a) Gross receipts from the sale of tangible personal property made by a person with possession of the property, who is acting for a known or disclosed principal, are taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property. If the principal fails to pay the tax, the agent may be liable for it.

(b) A principal shall be deemed disclosed to a purchaser only when the evidence shows that the identity of the principal is made known to the purchaser at the time of the sale, and when the name and address of the principal appear on the books and records of the agent.

(3) ENFORCEMENT OF LIENS. Pawnbrokers, storage persons and others selling tangible personal property to enforce a lien are retailers with respect to such sales and tax applies to the gross receipts from such sales.

(4) REPOSSESSIONS. Repossessions of tangible personal property by a seller from a purchaser when the only consideration is cancellation of the purchaser's obligation to pay for the property is not a taxable transaction. However, sales at retail of repossessed property (e.g., by finance companies, insurance companies, banks and other financial institutions) are taxable sales.

NOTE: The interpretations in this rule are effective under the general sales and use tax law effective September 1, 1969.