

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

Tax 2.01	Residence (p. 8)	Tax 2.26	"Last in, first out" method of inventorying for corporations (p. 23)
Tax 2.02	Reciprocity (p. 8)	Tax 2.30	Property located outside Wisconsin—depreciation and sale (p. 25)
Tax 2.03	Corporation returns (p. 10)	Tax 2.39	Apportionment method (p. 27)
Tax 2.04	Information returns; forms WT-9, 9b and 9x for corporations (p. 11)	Tax 2.40	Nonapportionable income (p. 33)
Tax 2.045	Information returns; forms 9c for employers of nonresident entertainers, entertainment corporations or athletes (p. 12)	Tax 2.41	Separate accounting method (p. 34)
Tax 2.05	Information returns; forms 8 for corporations (p. 12)	Tax 2.42	Apportionment method (p. 34)
Tax 2.06	Information returns required of partnerships and persons other than corporations (p. 12)	Tax 2.43	Nonapportionable income (p. 35)
Tax 2.07	Income tax returns of dissolved corporations (p. 13)	Tax 2.44	Permission to change basis of allocation (p. 36)
Tax 2.08	Returns of persons other than corporations (p. 13)	Tax 2.45	Apportionment in special cases (p. 36)
Tax 2.085	Claim for refund on behalf of a deceased taxpayer (p. 14)	Tax 2.46	Apportionment of business income of interstate air carriers (p. 36)
Tax 2.09	Reproduction of income tax forms (p. 14)	Tax 2.47	Apportionment of net business income of interstate motor carriers of property (p. 37)
Tax 2.10	Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns (p. 15)	Tax 2.48	Apportionment of net business incomes of interstate pipeline companies (p. 37)
Tax 2.105	Notice by taxpayer of federal audit adjustments and amended returns (p. 15)	Tax 2.49	Apportionment of net business incomes of interstate finance companies (p. 38)
Tax 2.11	Credit for sales and use tax paid on fuel and electricity (p. 16-2)	Tax 2.50	Apportionment of net business incomes of interstate public utilities (p. 39)
Tax 2.12	Amended income and franchise tax returns (p. 17)	Tax 2.51	Rent received by corporations from Wisconsin real estate (p. 39)
Tax 2.13	Moving expenses (p. 17)	Tax 2.53	Stock dividends and stock rights received by corporations (p. 39)
Tax 2.14	Aggregate personal exemptions (p. 19)	Tax 2.56	Insurance proceeds received by corporations (p. 40)
Tax 2.15	Methods of accounting for corporations (p. 19)	Tax 2.57	Annuity payments received by corporations (p. 40)
Tax 2.16	Change in method of accounting for corporations (p. 19)	Tax 2.60	Dividends on stock sold "short" by corporations (p. 40)
Tax 2.165	Change in taxable year (p. 21)	Tax 2.61	Building and loan dividends on instalment shares received by corporations (p. 41)
Tax 2.17	Cash method of accounting for corporations (p. 22-1)	Tax 2.63	Dividends accrued on stock (p. 41)
Tax 2.18	Accrual method of accounting for corporations (p. 22-1)	Tax 2.65	Interest received by corporations (p. 41)
Tax 2.19	Instalment method of accounting for corporations (p. 22-1)	Tax 2.69	Income from Wisconsin business (p. 41)
Tax 2.20	Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies (p. 22-2)	Tax 2.70	Gain or loss on capital assets of corporations; basis of determining (p. 41)
Tax 2.21	Accounting for incorporated contractors (p. 22-2)	Tax 2.72	Exchanges of property by corporations generally (p. 42)
Tax 2.22	Accounting for incorporated dealers in securities (p. 23)	Tax 2.721	Exchanges of property held for productive use or investment by corporations (p. 43)
Tax 2.24	Accounting for incorporated retail merchants (p. 23)	Tax 2.73	Involuntary conversion by corporations (p. 43)
Tax 2.25	Corporation accounting generally (p. 23)		

8 WISCONSIN ADMINISTRATIVE CODE

Tax 2.74	Gain or loss on disposition of property by corporations; adjustments to basis (p. 43)	Tax 2.935	Reduction of delinquent interest rate under s. 71.20 (5) (c), Stats. (p. 50-4)
Tax 2.75	Recoveries by corporations (p. 45)	Tax 2.94	Tax sheltered annuities (p. 50-5)
Tax 2.76	Refunds of taxes to corporations (p. 45)	Tax 2.95	Reporting of installment sales (p. 50-6)
Tax 2.80	Improvements on leased real estate, income to corporate lessor (p. 45)	Tax 2.955	Credit for income taxes paid to other states (p. 50-10)
Tax 2.81	Damages received by corporations (p. 45)	Tax 2.96	Extension of time to file corporation franchise or income tax returns (p. 50-11)
Tax 2.82	Nexus (p. 46)	Tax 2.97	Sale of constant basis assets acquired prior to becoming a Wisconsin resident (p. 51)
Tax 2.83	Requirements for written elections as to recognition of gain in certain corporation liquidations (p. 48)	Tax 2.98	Disaster area losses (p. 54)
Tax 2.86	Income to corporations from cancellation of government contracts (p. 48)	Tax 2.99	Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974 (p. 57)
Tax 2.87	Reduction of delinquent interest rate under s. 71.13 (1) (b), Stats. (p. 49)	Tax 2.991	Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975 (p. 60)
Tax 2.88	Interest rates (p. 49)	Tax 2.992	Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976. (p. 68-1)
Tax 2.89	Penalty for underpayment of estimated tax (p. 50)		
Tax 2.90	Withholding; wages (p. 50-1)		
Tax 2.91	Withholding; fiscal year taxpayers (p. 50-2)		
Tax 2.92	Withholding tax exemptions (p. 50-3)		
Tax 2.93	Withholding from wages of a deceased employe and from death benefit payments (p. 50-3)		

**Tax 2.01 Residence.** (s. 71.01, Stats.) (1) The residence of a wife is that of her husband unless there is affirmative evidence to the contrary or unless the husband and wife are permanently separated. The residence of a minor child, unless emancipated, is that of its father, or of the mother, if the father is deceased.

(2) Individuals claiming a change of residence (domicile) from Wisconsin to another state shall file a "declaration of residence" with the Central Audit section of the Department of Revenue by delivery to 4638 University Avenue, Madison, Wisconsin, or by mailing to P. O. Box 8906, Madison, Wisconsin 53708, and shall furnish such other information as the department may require.

**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.

**Tax 2.02 Reciprocity.** (s. 71.03 (2) (c), 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

DEPARTMENT OF REVENUE

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Original Cost	Fair Market Value At Time Wiscon. Residency Estab.	Federal Adjusted Basis At Time Residency Estab.	Depreciation Allowed Or Allowable While A Wisconsin Resident	Federal Adjusted Basis At Time Of Sale	Selling Price	Federal Gain or Loss	Wisconsin Gain Loss
\$ 10,000	\$ 15,000	\$ 5,000	\$ 700	\$ 4,300	\$ 20,000	\$ 15,700	\$ 5,700
10,000	4,000	5,000	700	4,300	20,000	15,700	15,700
10,000	25,000	5,000	700	4,300	20,000	15,700	-
10,000	4,000	5,000	700	4,300	1,000	(3,300)	(2,300)
10,000	15,000	5,000	700	4,300	4,000	(300)	(300)
10,000	4,000	5,000	700	4,300	3,500	(800)	-

a \$20,000 (col.6) less 14,300 (col. 2 less col. 4) = \$5,700 gain.

b \$20,000 (col. 6) less 4,300 (col. 5) = \$15,700 gain.

c \$20,000 (col. 6) less 4,300 (col. 5) = \$15,700 gain; \$20,000 (col. 6) less 24,300 (col. 2 less col. 4) = \$4,300 therefore, no gain or loss is reportable for Wisconsin purposes.

d \$1,000 (col. 6) less 3,300 (col. 2 less col. 4) = \$2,300 loss.

e \$4,000 (col. 6) less 4,300 (col. 5) = \$300 loss.

f \$3,500 (col. 6) less 4,300 (col. 5) = \$800 loss; \$3,500 (col. 6) less 3,300 (col. 2 less col. 4) = \$200 therefore, no gain or loss is reportable for Wisconsin purposes.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

**DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS**

**Tax 2.39 Apportionment method. (Section 71.07 (2), Wis. Stats.)**

Any person doing business both in and outside this state shall report by the statutory apportionment method when the person's business in this state is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

(1) For the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, the factors used in the apportionment method for all businesses except "financial organizations" and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., are the property factor, the payroll factor and the sales factor. Property, payroll or sales related to the production of nonapportionable income under section 71.07 (1), Wis. Stats., shall not be included in either the numerator or the denominator of any of the apportionment factors.

(1m) Beginning with calendar year 1974, or corresponding fiscal year, and thereafter, in lieu of the equally weighted 3-factor apportionment fraction based on property, payroll and sales, there shall be used 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. If one of these factors is omitted pursuant to section 71.07 (3), Wis. Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

(a) If either the property factor or payroll factor is omitted, the other of such factors shall represent 33 1/3% of the fraction and the sales factor shall represent 66 2/3% of the fraction.

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

(2) In order to use the apportionment method the taxpayer must have income from business activity subject to taxation by this state and at least one other state or foreign country. Income from business activity includes only business (apportionable) income. As used in this rule a taxpayer is subject to taxation or taxable in a state or foreign country if the state or foreign country has jurisdiction to impose an income tax or a franchise tax measured by net income.

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

(b) *Property factor; owned property.* Property owned by the taxpayer is valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes.

(c) *Property factor; rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined as at arm's length. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this may result in a negative value or clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the taxpayer, but in no case shall the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the value of the part of the property used by the taxpayer bears to the total value of the same rental property. The "annual rental" is the amount paid as rental for the property for a 12 month period. Where property is rented for less than a 12 month period, the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall be adjusted accordingly. Annual rent is the actual sum of money or other

(2) If the leasing of tangible personal property represents a substantial source of business (apportionable) income, in addition to the "gross receipts" described in subsection (1) (a), the department may authorize or direct the use of any other method to effect an equitable apportionment of the taxpayer's income.

(3) The term "finance company" means any "financial organization" defined in section 71.07 (2) (d), Wis. Stats., except any type of insurance company.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73; am. (1) (b), Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 2.50 Apportionment of net business income of interstate public utilities.** (Section 71.07 (2) (e), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except as provided in subsection (2) below, the business income of "public utilities", as defined in section 71.07 (2) (d) 2, Wis. Stats., operating within and without Wisconsin, shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the 3 ratios provided in subsections 71.07 (2) (a), (b) and (c), Wis. Stats., and Wis. Adm. Code section Tax 2.39.

(2) The apportionable income of interstate air carriers, interstate motor carriers and interstate pipeline companies shall be apportioned to Wisconsin as provided in Wis. Adm. Code sections Tax 2.46, Tax 2.47 and Tax 2.48, respectively.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73.

## GROSS INCOME

**Tax 2.51 Rent received by corporations from Wisconsin real estate.** (Section 71.03 (1) (b), Wis. Stats.) Rentals must be included in the gross income when they accrue or are actually received by the taxpayer, depending upon the method of accounting used in reporting income. Rentals which have not actually been received in cash will be treated as received if available to or subject to the disposal of the landlord.

**Tax 2.53 Stock dividends and stock rights received by corporations.** (1) If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305, Wis. Stats., such distribution is not includable in gross income then, except as provided in section 71.307 (2), Wis. Stats., the basis of the stock with respect to which the distribution was made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution. If a shareholder receives stock or stock rights as a distribution on stock previously held and under section 71.305 (1), Wis. Stats., a part of the distribution is not includable in gross income (except as provided in 71.307 (2), Wis. Stats.), the basis of the stock with respect to which the distribution is made shall be allocated between the old and new stocks or rights in proportion to the fair market values of each on the date of distribution without regard to the fair market value of any part of such distribution which is includable in gross income pursuant to section 71.305 (2), Wis. Stats. The date of distribution in each case shall be the date the stock or the rights are actually distributed to the stockholder and not the record date. The general rule will apply with respect to stock rights only if such rights are exercised or sold.

(a) *Exception.* The basis of rights to buy stock which are excluded from gross income under section 71.305 (1) Wis. Stats., shall be zero if the fair market value of such rights on the date of distribution is less than 15% of the fair market value of the old stock on that date, unless the shareholder elects to allocate part of the basis of the old stock to the rights. The election shall be made by a shareholder with respect to all the rights received by him in a particular distribution in respect of all the stock of the same class owned by him in the issuing corporation at the time of such distribution. Such election to allocate basis to rights shall be in the form of a statement attached to the shareholder's return for the year in which the rights are received. Such statement shall disclose the number of shares of the old stock by the shareholder on the date of distribution, the basis of such shares, and the fair market value of the old shares and of the rights on the date of distribution. This election, once made, shall be irrevocable with respect to the rights for which the election was made. Any shareholder making such an election shall retain a copy of the election and of the return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

**Tax 2.56 Insurance proceeds received by corporations.** (Section 71.03 (1) (d), Wis. Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is taxable income.

(a) Under an interest option clause under which all the principal proceeds are retained and interest paid thereon periodically, the interest is taxable income.

(b) Under an income option under which the principal proceeds and interest thereon are paid in periodical instalments to the policy owner, the interest so paid is taxable income.

(c) When, under the same option, payments are made to the beneficiary (the option having been selected by the beneficiary), the interest so paid is taxable income.

(d) When, under the same option, payments are made to the beneficiary (the option having been designated by the insured), the instalment payments are made under the insurance contract, and no part of the payment is taxable income.

**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.

**Tax 2.57 Annuity payments received by corporations.** Annuity payments under an endowment or annuity contract are income to the extent of any payment after the income tax cost (aggregate premiums or consideration) has been recovered. However, when the contract provides for the separation of the periodic payments into principal and interest, the interest so received is taxable when received.

**Tax 2.60 Dividends on stock sold "short" by corporations.** (Section 71.03 (1) (d), Wis. Stats.) When stock is sold "short" for later delivery, the purchaser receives the dividend, since he is the owner of the borrowed stock, and the amount credited to the lender of the stock and charged to the "short" seller is income upon which the lender is subject to tax. The amount charged to the "short" seller becomes part of the cost of the stock sold.