

CR 89-10


CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF REVENUE )

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to income and franchise taxation was duly approved and adopted by this department on April 3, 1990.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 3rd day of April, 1990.

  
Mark D. Bugher  
Secretary of Revenue

MDB:VLG:lc  
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March 16, 1990

7-1-90

ORDER OF THE DEPARTMENT OF REVENUE  
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal Tax 3.10 and 3.47; to renumber and amend Tax 3.37, 3.81(1) and (2), 3.91(1) and (2), 3.92, 3.93 and 3.94(2) and (3); to amend Tax 3.08, 3.37(title), 3.38, 3.81(title), 3.91(title), 3.94(title) and (1); to repeal and recreate Tax 3.03, 3.12 and 3.54; and to create Tax 3.08, (4), (5) and (6), 3.37(2), 3.38(3), 3.81(1) and (3), 3.91(1) and (4) and 3.94(2), relating to income and franchise taxation.

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Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c), Stats.

Statutes interpreted: ss. 71.04, 71.041, 71.046 and 71.23, 1985 Stats., and ss. 70.375, 70.40(3), 70.41(1) and (3), 70.415(3), 70.42(3), 70.421(3), 70.425, 71.22(4), 71.26(2) and (3)(j), 71.30(4), 71.75, 71.80(18), 71.88(1), 77.59(4) and (6) and 77.61(14), Stats.

SECTION 1. Tax 3.03 clarifies the deduction from gross income allowed to corporations for dividends received. In repealing and recreating this section the following revisions are made:

- 1) "Purpose" and "Definition" subsections are added for clarity.
- 2) Portions of the former Tax 3.03 are incorporated in the recreated rule: Paragraphs (b) and (c) of subsection (3) which explain how 50% or more of the income or loss of the payor corporation should be determined and which provide that the determination shall be made by the department, are restatements of the long-standing positions stated in the former Tax 3.03. In addition, subsection (6), which provides that dividend income must be included in gross income in full, is a restatement of the long-standing position specified in the former Tax 3.03.
- 3) Obsolete portions of the former Tax 3.03 and a provision covered by another administrative rule have been repealed.
- 4) Paragraph (a) of subsection (3) which restates s. 71.26(3)(j), Stats., regarding the payor's Wisconsin activity requirements, has been added for understandability and completeness.
- 5) Subsections (4) and (5)(a) were added to recognize the creation of s. 71.04(4)(b), 1985 Stats., by Ch. 221, Laws of 1979, the creation of s. 71.04(4) (intro.), 1985 Stats., by Ch. 20, Laws of 1981, the amendment of s. 71.04(4)(b), 1985 Stats., by 1983 Wisconsin Act 27, and the repeal of s. 71.04(4), 1985 Stats., and the creation of s. 71.02(1)(bg)11, Stats., by 1987 Wisconsin Act 27 (renumbered s. 71.26(3)(j) by 1987 Wisconsin Act 312), which allow a deduction for dividends received from a corporation which is owned at least 80% by the recipient corporation.
- 6) Subsection (5)(b) was added to reflect the long-standing interpretation that a deduction for a dividend received may not exceed the dividend amount included in gross income for the year.

7) Subsection (5)(c) regarding reducing the deduction for dividends received by foreign taxes paid on those dividends recognizes the creation of s. 71.04(4)(c), 1985 Stats., by 1985 Wisconsin Act 29.

SECTIONS 2 and 3. Tax 3.08, relating to the deductibility of retirement payments made by corporations, is amended to recognize s. 71.041, 1985 Stats., which was created by 1983 Wisconsin Act 405 to allow a deduction for payments made by the due date of the tax return, and to reflect the long-standing treatment of refunds of excess contributions or overpayments made to deferred benefit plans or upon termination of an overfunded plan. Minor changes have been made to clarify sentences and correct grammar. Subsection (6) is created to recognize the federalization of the corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTION 4. Subsection (1) of Tax 3.10, relating to the deductibility of commissions, travel and entertainment expenses of corporations is repealed and recreated as Tax 3.54(2)(b) and (c) in SECTION 12. This consolidates miscellaneous expense provisions in one rule (Tax 3.54). Subsection (2) of Tax 3.10 is repealed since it repeats the language in s. 71.04(2)(b)1, 1985 Stats.

SECTION 5. Tax 3.12 regarding losses from wash sales is revised to define the term "wash sale," to clarify that dealers in securities include dealers in stocks, to clarify that the holding period for wash sales is a 61-day period, and to explain that a disallowed loss is added to the cost basis of the new stock or securities. Unnecessary language has been deleted. Subsection (5) is created to recognize the federalization of the corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTION 6. Tax 3.37(title), relating to the depletion of mineral deposits, is amended to reflect the correct statutory reference.

SECTION 7. Tax 3.37 is renumbered subsection (1) and clarified to specify that the tax cost per unit is the franchise tax cost per unit or the income tax cost, as appropriate.

SECTIONS 8 and 11. Tax 3.37(2) and 3.38(4) are created to recognize the federalization of the corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTION 9. Tax 3.38(title) is amended to provide the correct statutory reference.

SECTION 10. Tax 3.38(intro), (1) and (2), regarding the depletion allowance for lead, zinc and copper, are renumbered and amended to explain the provisions of s. 71.046(1m) and (2), 1985 Stats., which phase out the deduction over a 10-year period. New subsections (2) and (3) are amended to specify that verification must be submitted to the department only when requested and that the prospecting for ore must be in Wisconsin. Grammar has been corrected, unnecessary words deleted and statutory references clarified.

SECTION 12. Tax 3.47, relating to the deductibility of legal expenses and fines, is repealed and recreated as Tax 3.54(1)(d) and (2)(a) in SECTION 12. This consolidates miscellaneous expense provisions in one rule (Tax 3.54).

SECTION 13. Tax 3.54, relating to miscellaneous expenses of corporations, has been consolidated with Tax 3.10 and 3.47 (both repealed under this Order in SECTIONS 4 and 11). Subsection (1)(a) and (b) restate provisions of the old Tax 3.54. Subsection (1)(c) is added to recognize a long-standing policy that the cost of issuing a stock dividend is a capital expenditure rather than a currently deductible business expense. Subsections (1)(d) and (2)(a) restate provisions of the old Tax 3.47, and are expanded to include penalties as nondeductible pursuant to the decision in Rice Lake Creamery Company, 3 WTBA 42. Subsection (2)(b) and (c) restate provisions of the old Tax 3.10. Subsection (3) is created to recognize the federalization of the corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTIONS 14, 15 and 16. Tax 3.81 relates to the deductibility or offset of occupational taxes paid by corporations. Subsection (1) is added for completeness and restates the statutes, or in the case of the occupational taxes on mining of metallic minerals and on owners of domestic mink, specifies the department's policy that the taxes are deductible. Subsection (2) is amended to update and clarify language, and to delete unnecessary language. Subsection (3) is created to recognize the federalization of the corporate franchise and income tax law by 1987 Wisconsin Act 27.

SECTIONS 17, 18, 19, 20 and 21. Tax 3.91, regarding a petition for redetermination, is amended to add a scope paragraph; correct statutory references; recognize Ch. 221, Laws of 1979 which increases the appeal period from 30 days to 60 days; recognize s. 71.88(1), Stats., which provides that the amount of contested taxes, interest and penalty may be deposited with the department and that admitted portions of assessments may be paid; recognize the provisions of s. 71.80(18) and 77.61(14), Stats., regarding the filing deadline; clarify grammar and add subsection titles; and to consolidate the rule with Tax 3.92 and 3.93 (both renumbered as part of Tax 3.91 by this Order).

SECTIONS 22, 23 and 24. Tax 3.94, relating to claims for refund, is amended to specify the format of the claim which is actually being used, clarify and update grammar, add titles for subsections, and to recognize the provisions of ss. 71.80(18) and 77.61(14), Stats., regarding timely filing of the claim.

SECTION 1. Tax 3.03 is repealed and recreated to read:

Tax 3.03 DIVIDENDS RECEIVED DEDUCTION - CORPORATIONS. (ss. 71.22(4), 71.26(2) and (3)(j)) (1) PURPOSE. This section clarifies the deduction from gross income allowed to corporations for dividends received. Dividends may be deductible due to the payor's business activity in Wisconsin, explained in sub. (3), or due to the recipient's ownership of the payor corporation, explained in sub. (4).

(2) DEFINITION. "Dividends received" means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under ch. 71, Stats.

Note to Revisor: Insert the following note after (2).

Note: Refer to s. 71.26(3)(j), Stats.

(3) DIVIDENDS DEDUCTIBLE DUE TO PAYOR'S WISCONSIN ACTIVITY. (a) A corporation may deduct from gross income all dividends received from a payor corporation, if the payor corporation:

1. Is subject to the Wisconsin income or franchise tax laws.
2. Filed all Wisconsin income or franchise tax returns required by law.
3. Was not entitled to deduct the dividends from gross income in computing its net income or loss for Wisconsin income or franchise tax purposes.
4. Had used 50% or more of its net income or loss, after adjustment for tax purposes, for the year preceding the payment of the dividends in computing taxable income under ch. 71, Stats., or in the case of franchise taxpayers, net income used as a measure of the franchise tax.

(b) In determining whether 50% or more of the net income or loss of the payor corporation for the year preceding the payment of the dividends was used in computing taxable income under ch. 71, Stats., or in the case of franchise taxpayers, net income used as a measure of the franchise tax, a payor corporation:

1. Which was subject to the franchise tax in the year preceding the payment of the dividends shall include interest income from the federal government and its instrumentalities.
2. Which was subject to the income tax in the year preceding the payment of the dividends may not include interest income from the federal government and its instrumentalities.

Note to Revisor: Insert the following note after sub. (3).

Note: Refer to s. 71.26(3)(j), Stats.

(4) DIVIDENDS DEDUCTIBLE DUE TO OWNERSHIP. A corporation may deduct from gross income 100% of the dividends received from a payor corporation during a taxable year if both of the following occur:

(a) The dividends are paid on common stock of the payor corporation.

(b) The corporation receiving the dividends owns directly or indirectly during the entire taxable year in which the dividends are received at least 80% of the total combined voting stock of the payor corporation.

Note to Revisor: Insert the following note after sub. (4).

Note: 1. Refer to s. 71.26(3)(j), Stats.

2. Only cash dividends were deductible by the recipient in taxable years 1980 through 1986. This limitation was eliminated by 1987 Wisconsin Act 27.

3. For the taxable years 1980 through 1983 the deduction under sub. (4) was limited to 50% of the dividends received.

4. For the taxable year 1984 the deduction under sub. (4) was limited to 75% of the dividends received.

5. For the taxable years 1985 and thereafter the deduction under sub. (4) equals 100% of the dividends received.

(5) LIMITATIONS ON DEDUCTION. (a) If dividends received from a corporation qualify for deduction under both subs. (3) and (4), only one of the deductions may be claimed.

(b) The deduction under sub. (3) or sub. (4) may not exceed the dividend received and included in gross income for a taxable year.

(c) Dividends received shall be reduced by foreign taxes paid on those dividends and claimed as a deduction.

Note: Subsection (5)(c) is effective for the 1985 taxable year and thereafter.

(6) DIVIDENDS INCLUDABLE IN GROSS INCOME. All dividend income shall be included in full in gross income on the income or franchise tax return of the recipient, whether or not certain dividends are deductible.

SECTION 2. Tax 3.08 is amended to read:

TAX 3.08(title) RETIREMENT AND PROFIT-SHARING PAYMENTS BY CORPORATIONS.  
(ss. 71.04 and 71.041, 1985 Stats.) (1) ~~Retirement-payments~~ Payments by corporations directly to retired officers or employes or to their families or dependents, ~~to be~~ are deductible from gross income ~~must~~ if the payments:

- (a) Qualify as ordinary and necessary ~~expense~~ expenses.
- (b) Be Are made pursuant to a retirement plan agreement.
- (c) Be Are reasonable in amount.
- (d) Have been reported on informational returns when required by s. Tax 2.04 ~~or-Tax-2-06~~.

(2) Credits to a retirement ~~reserves~~ reserve are not deductible, but actual retirement payments made and charged against ~~such-reserves~~ the reserve may be deductible in the year made.

~~(2)~~ (3) Payments by corporations to an employee retirement or profit-sharing trust are deductible if:

- (a) ~~Such~~ The payments qualify as ordinary and necessary ~~expense~~ expenses.
- (b) The trust is an irrevocable trust and no part of its funds may revert to the employer except as provided in sub. (5).
- (c) Payments to the trust are made in accordance with an established policy or agreement.
- (d) The trust is established for the benefit of officers or employees.
- (e) ~~Such~~ The payments are reasonable in amount.
- (f) The payments are made by the last day of the taxable year in which the deduction is claimed, or as described in sub. (4).

SECTION 3. Tax 3.08(4), (5) and (6) are created to read:

Tax 3.08(4) Payments that are made on or before the due date, including extensions, of the corporation's Wisconsin franchise or income tax return are deemed to have been made on the last day of the taxable year for which that return is filed, if the payments:

- (a) Are deductible under section 404 of the internal revenue code.
- (b) Are to plans that meet the requirements of section 401 of the internal revenue code.

Note: Refer to s. 71.041, 1985 Stats. Section 71.041, 1985 Stats., was created by 1983 Wisconsin Act 405 and applies retroactively to plan years beginning after September 2, 1974.

(5) The refund of excess contributions or overpayments made to a deferred benefit plan or upon termination of an overfunded defined benefit plan is includable in income in the year in which it is returned, provided the contribution resulted in a tax benefit in the prior year or years.

(6) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) to (5) do not apply to taxable year 1987 or to taxable years thereafter.

SECTION 4. Tax 3.10 is repealed.

SECTION 5. Tax 3.12 is repealed and recreated to read:

Tax 3.12 LOSSES ON ACCOUNT OF WASH SALES BY CORPORATIONS. (s. 71.04(7), 1985 Stats.) (1) In this section "wash sale" means any loss from the sale or disposition of stock or securities where it appears that within 30 days before or after the date of such sale or other disposition the taxpayer has acquired, otherwise than by bequest or inheritance, or has entered into a contract or option to acquire substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition. No deduction shall be allowed for a wash sale.

(2) In the case of a corporation which is a dealer in stock or securities, losses from wash sales are deductible if the sale or other disposition is made in the ordinary course of the dealer's business.

(3) The 30-day periods before or after a wash sale cover a 61-day period starting 30 days before the date of sale or disposition and ending 30 days after that date.

(4) Any loss on the sale or disposition of old stock or securities which is disallowed under s. 71.04(7), 1985 Stats., shall be added to the cost basis of the new stock or securities.

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(5) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 6. Tax 3.37(title) is amended to read.

Tax 3.37(title) DEPLETION OF MINERAL DEPOSITS BY CORPORATIONS.

(s. 71.04(2), 1985 Stats.)

SECTION 7. Tax 3.37 is renumbered Tax 3.37(1) and amended to read:

Tax 3.37(1) The computation of the allowance for depletion of mineral deposits for a given year shall be based upon the number of units of ore or other deposits extracted during the year and the franchise or income tax cost per unit.

SECTION 8. Tax 3.37(2) is created to read:

Tax 3.37(2) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

SECTION 9. Tax 3.38(title) is amended to read:

Tax 3.38(title) DEPLETION ALLOWANCE TO INCORPORATED MINES AND MILLS PRODUCING OR FINISHING ORES OF LEAD, ZINC, COPPER OR OTHER METALS EXCEPT IRON.

(s. 71.046, 1985 Stats.)

SECTION 10. Tax 3.38(intro), (1) and (2) are renumbered Tax 3.37(1), (2) and (3) and amended to read:

Tax 3.38(1) ~~Section 71.046, created by chapter 370, Laws of 1947 and amended by chapter 438, Laws of 1953, provides for a~~ A deduction of prescribed percentages of gross income from sales of the ore or ore products of lead, zinc, copper or other mines, ~~(except iron mines),~~ and of mills finishing the products of ~~such~~ the mines for the smelter is allowed for Wisconsin tax purposes.

(2) This depletion deduction may be taken only if the saving in tax due to ~~such~~ the deduction is used by the taxpayer in prospecting for ore in Wisconsin and duly verified proof ~~thereof~~ of the proper use of the savings is furnished to the department of revenue when requested.

(3) Only expenditures in prospecting for ore made ~~during or~~ within 12 months after the close of the year for which the depletion deduction is taken will serve to fulfill the requirement that the tax savings ~~be so~~ are used as required. Unless proof of the expenditure is furnished ~~within 24 months after the close of the income year for which the deduction for depletion was made,~~ when requested the taxpayer will be subject to an additional assessment based on the disallowance of the deduction taken.

SECTION 11. Tax 3.38(3) is created to read:

Tax 3.38(3) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

Note: Under ss. 71.046(1m) and (2), 1985 Stats., the depletion deduction allowance is phased out over a ten year period. Beginning with the taxable year 1977 the depletion allowance computed under s. 71.046(1), 1985 Stats., is reduced by 10% per year and subject to a limitation based on a percentage of net income as follows:

<u>Taxable Year</u>	<u>Percent of amount computed under s. 71.046(1) allowed as a depletion deduction</u>	<u>Maximum percent of net income allowed as a depletion deduction</u>
1976	100%	50%
1977	90%	45%
1978	80%	40%
1979	70%	35%
1980	60%	30%
1981	50%	25%
1982	40%	20%
1983	30%	15%
1984	20%	10%
1985	10%	5%
1986	0%	0%

SECTION 12. Tax 3.47 is repealed.

SECTION 13. Tax 3.54 is repealed and recreated to read:

Tax 3.54 MISCELLANEOUS EXPENSES - CORPORATIONS. (ss. 71.04(1) and (2) and s. 71.23, 1985 Stats.) (1) Miscellaneous expenses which are not deductible in arriving at net income include the following:

- (a) Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employees, unless reported as compensation paid on federal form W-2 or Wisconsin form 9b.
- (b) Political contributions.
- (c) Expenditures incurred in the issuance of a stock dividend. These expenditures are capital expenditures not subject to depreciation or amortization.
- (d) Fines or penalties for violations of law.

Note: In the case of Rice Lake Creamery vs. Wisconsin Department of Revenue, 3 WBTA 42, the Wisconsin Board of Tax Appeals held that "Penalties or fines imposed by law for infractions or violations of law, or duly promulgated regulations having the force of law, cannot be viewed as items of business expense for which the legislature intended offset to be made against gross income of a taxpayer."

(2) Miscellaneous expenses which are deductible in arriving at net income include the following:

- (a) Legal expenses incurred in connection with the operation of a taxpayer's business, except the legal expenses incurred in connection with a business activity conducted in violation of the law.
- (b) Commissions, lump sum and per diem allowances for travel, entertainment and other expenses, or allowances for use of automobiles, if the items are reported on federal form W-2 or Wisconsin form 9b.
- (c) Reimbursement of amounts actually expended by officers, employees or others for ordinary and necessary expenses of the corporation.

(3) As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

SECTION 14. Tax 3.81(title) is amended to read:

Tax 3.81(title) OCCUPATIONAL TAXES PAID BY CORPORATIONS. (s. 71.04(3), 1985 Stats., and ss. 70.375, 70.40(3), 70.41(1) and (3), 70.415(3), 70.42(3), 70.421(3), and 70.425, Stats.)

SECTION 15. Tax 3.81(1) and (2) are renumbered Tax 3.81(2)(a) and (b) and amended to read:

Tax 3.81(2)(title) OFFSET FOR OCCUPATIONAL TAXES PAID ON GRAIN STORAGE. (a) Occupational taxes on grain storage under s. 70.41, Stats., are paid due on or before December 15th to the treasurer of the town, village or city where the elevator, or warehouse or dock of the taxpayer is located ~~on or before December 15th each year.~~ The taxpayer may present his a receipt showing payment of such the occupational tax to the department of revenue as ~~so much~~ cash in payment of ~~normal~~ franchise or income tax assessed against ~~him~~ the taxpayer in the following year on the tax roll for the same district. If the ~~normal~~ franchise or income tax ~~on this roll~~ assessed exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. ~~All surtaxes must be paid in cash.~~

(b) If the taxpayer neglects to present ~~his~~ the occupational tax receipt at the proper time and pays ~~his~~ the entire ~~normal~~ franchise or income tax in cash, ~~he~~ the taxpayer cannot present the receipt at a later date and secure a refund of the ~~normal~~ franchise or income tax paid. A taxpayer cannot tender in payment of an additional ~~normal~~ franchise or income tax assessed at a later date an occupational tax receipt that might have been used had the proper franchise or income tax assessment been made in the first place. If the occupational tax

receipt tendered in payment of a ~~normal~~ franchise or income tax exceeds the ~~normal~~ franchise or income tax, such the excess cannot be applied in payment of additional ~~normal~~ franchise or income tax for the same year assessed at a later date. Occupational tax receipts issued in one taxing district cannot be offset against normal franchise or income tax appearing on the roll for another district.

SECTION 16. Tax 3.81(1) and (3) are created to read:

Tax 3.81(1) DEDUCTIBLE FROM GROSS INCOME. The following occupational taxes are deductible from gross income as personal property taxes are deductible under s. 71.04(3), 1985 Stats.:

- (a) On net proceeds from mining of metallic minerals under s. 70.375, Stats.
- (b) On iron ore concentrates under s. 70.40, Stats.
- (c) On scrap iron, scrap steel and all other steel under s. 70.415, Stats.
- (d) On coal under s. 70.42, Stats.
- (e) On petroleum and petroleum products refined in this state under s. 70.421, Stats.
- (f) On owners of domestic mink under s. 70.425, Stats.

(3) APPLICABILITY. As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

SECTION 17. Tax 3.91(title) is amended to read:

Tax 3.91(title) PETITION FOR REDETERMINATION. (ss. 71.80(18), 71.88(1), 77.59(6) and 77.61(14), Stats.)

SECTION 18. Tax 3.91(1) and (2) are renumbered Tax 3.91(2) and (3) and amended to read:

Tax 3.91(2)(title) FORMAT OF THE PETITION. The petition for redetermination specified in ss. 71.88(1), ~~71.12(1)~~, ~~71.09(7)(k)~~ and 77.59(6), Stats., shall be written, preferably typed, on only one side of plain white paper not more than April 21, 1986

8½ inches wide by 11 inches long and shall be filed in duplicate. It shall set forth clearly and concisely the specific grievances to the assessment, refund or ~~to parts thereof~~ denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative.

(3)(title) FILING DEADLINE. A petition for redetermination shall be filed within 60 days after receipt of a notice of additional assessment, refund or denial of refund. A petition for redetermination is not "filed" within the proper statutory ~~30-day~~ 60-day time period unless it is actually received within the ~~30-day~~ 60-day period, or unless it is mailed in a properly addressed envelope, with postage prepaid, ~~which~~ the envelope is postmarked before midnight of the ~~thirtieth~~ sixtieth ~~day of the period provided in ss. 71.12(1), 71.09(7)(k) and 77.59(6), Stats.~~ and the petition is actually received by the department within 5 days of the prescribed sixtieth day date.

Note to Revisor: Insert the following note after sub. (3).

Note: Refer to ss. 71.80(18), 71.88(1), 77.59(6) and 77.61(14), Stats.

SECTION 19. Tax 3.91(1) and (4) are created to read:

Tax 3.91 (1) SCOPE. A person feeling aggrieved by a notice of additional assessment of income, franchise, sales, use, withholding or gift tax, by a notice of reduced homestead, farmland preservation or other credits, or by a notice of refund or denial of refund may petition the department of revenue for redetermination. This section describes the administrative provisions related to the petition for department redetermination.

Tax 3.91 (4)(a) DEPOSIT. Any person who files a petition for redetermination may elect to deposit the amount of additional assessment, including interest and penalty, with the department of revenue at any time before the department makes its redetermination. Any deposited amount which is later refunded will bear interest at the statutory rate.

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(b) PAYMENT. A person may also pay any portion of the assessment admitted to be correct together with interest to date of payment. However, the payment shall be considered an admission that that portion of the assessment is correct. The admitted portion that is paid may not be recovered in an appeal or in any other action or proceeding.

SECTION 20. Tax 3.92 is renumbered Tax 3.91(5) and amended to read:

Tax 3.91 (5)(title) INFORMAL CONFERENCE. ~~The~~ A taxpayer may request in ~~its~~ a petition for redetermination or at any time before the department of revenue has acted ~~thereon~~ on the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. ~~Any such~~ The conference ~~will~~ shall be held at a time and place determined by the department.

SECTION 21. Tax 3.93 is renumbered Tax 3.91(6) and amended to read:

Tax 3.91(6)(title) CLOSING STIPULATIONS. If the informal conference specified in sub. (5) results in an agreement as to facts and issues and the applicable law, ~~applicable thereto~~ the taxpayer and the department of revenue may enter into a closing stipulation.

SECTION 22. Tax 3.94(title) and (1) are amended to read:

Tax 3.94 (title) CLAIMS FOR REFUND. (ss. 71.30(4), 71.75, 71.80(18), 77.59(4) and 77.61(14), Stats.) (1)(title) TIMELY FILING. Claims for refund may be filed as provided in s. ~~71.10(10)~~ 71.75 or 77.59(4), Stats., ~~and shall be in the same form as petitions for redetermination under s. 3.91.~~ A claim for refund is ~~not~~ "filed" within the proper time to meet the requirements of ss. ~~71.10(10)~~ 71.75 and 77.59(4), Stats., ~~unless if~~ unless if it is actually in the possession of the department prior to the expiration of the limitation period ~~provided in s. 71.10(10) or 77.59(4), Stats.~~, or ~~unless if~~ unless if it is mailed in a properly addressed envelope, with postage prepaid, which envelope is postmarked before midnight of the last day of the limitation period and is received by the department within 5 days after the last day of the limitation period.

SECTION 23. Tax 3.94(2) and (3) are renumbered Tax 3.94(3)(a) and (b) and amended to read:

Tax 3.94(3)(title) RENEGOTIATION OF GOVERNMENT CONTRACTS. (a) ~~Under s. 71.10(11) Stats., the~~ The reduction of income resulting from renegotiation or price redetermination of any defense contract or subcontract is allowable as a deduction from income of the year in which ~~sueh~~ the income was reported for taxation. A claim for refund filed under this subsection ~~must~~ shall be accompanied by a verified ~~or photographed~~ copy of the renegotiation agreement or price determination. No interest is payable on ~~sueh~~ the refund.

(b) When by reason of the allowance of amortization of war facilities over a period shorter than computed in arriving at the original renegotiation adjustment, or for any other reason, a portion of the profits originally determined to be excessive are rebated to the taxpayer by the federal government, ~~sueh~~ the rebate is to be treated as a further renegotiation adjustment, and should be allocated back to the year of the income which was adjusted. Where a refund of Wisconsin income taxes (due to renegotiation) has previously been made, the additional taxes payable by reason of a renegotiation rebate are to be assessed without interest for the reason that ~~sueh~~ the taxes constitute a return to the state of a portion of the previous refund.

Note: 1. Refer to s. 71.30(4), Stats.

2. Forms 1X, 4X and ST-12X may be obtained by writing to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

SECTION 24. Tax 3.94(2) is created to read:

Tax 3.94 (2) FORMAT OF CLAIM. The claim for refund shall be in writing, indicate the reporting period for which the overpayment was made and contain a statement setting forth the specific grounds upon which the claim is based. Amended return forms, form 1X for individual income tax, form 4X for corporation



franchise or income tax, or form ST-12X for sales and use tax, may be used.

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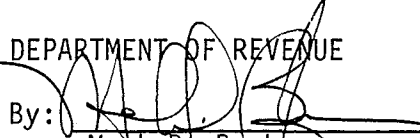
This rule order shall take effect on the first day of the month following publication as provided in s. 227.22(2)(intro.), Wis. Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: April 3, 1990

DEPARTMENT OF REVENUE

By:   
Mark D. Bugher  
Secretary of Revenue

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Revisor of Statutes  
Bureau

FISCAL ESTIMATE

AD-MBA-23 (Rev. 10/86)

1987 Session

LRB or Bill No./Adm. Rule No.

Tax 3

Amendment No. if Applicable

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

Subject

Intercompany Dividend Deduction and Other Matters

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs -- May Be Possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive
  - Mandatory
- 2.  Decrease Costs
  - Permissive
  - Mandatory

- 3.  Increase Revenues
  - Permissive
  - Mandatory
- 4.  Decrease Revenues
  - Permissive
  - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
  - Villages
  - Cities
  - Counties
  - Others \_\_\_\_\_

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule changes will not have a significant effect on state tax revenues. They are intended to clarify application of new and existing tax laws, implement certain court decisions and remove obsolete language from the administrative code. Any possible fiscal impacts were taken into account at the time related legislative and judicial actions occurred.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue  
John Tuohy, 266-7817

Authorized Signature/Telephone No. 266-2700

*Stephen M. Deuss*

Date

5/25/88

FISCAL ESTIMATE WORKSHEET

1987 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Tax 3

Amendment No.

AD-MBA-22(Rev. 10/86)

Subject

Intercorporate Dividend Deduction and Other Matters

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs: Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).

Annualized Costs	Annualized fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
Salaries and Fringes	\$ -	\$ +
Staff Support Costs	-	+
Other State Costs	-	+
Local Assistance	-	+
Aids to Individuals or Organizations	-	+
<b>TOTAL State Costs by Category</b>	\$ -	\$ +
<b>B. State Costs by Source of Funds</b>		
GPR	\$ -	\$ +
FED	-	+
PRO/PRS	-	+
SEG/SEG-S	-	+
<b>C. FTE Position Changes</b>	Increased Pos. + ( )	Decreased Pos. - ( )
<b>III. State Revenues</b> -Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	Decreased Rev.	Increased Rev.
GPR Taxes	\$ -	\$ +
GPR Earned	-	+
FED	-	+
PRO/PRS	-	+
SEG/SEG-S	-	+
<b>TOTAL State Revenues</b>	\$ -	\$ +

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+	-	Total Revenues	+	-
<b>NET Impact on State Funds</b>	\$ (+) or (-)	None	<b>NET Impact on Local Funds</b>	\$ (+) or (-)	None

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue

Authorized Signature/Telephone No. 266-2700

*Robert A. ...*

Date  
5/25/88



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

**Tommy G. Thompson**  
Governor

**Mark D. Bugar**  
Secretary of Revenue

April 3, 1990

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APR 4 1990

Revisor of Statutes  
Bureau

Gary L. Poulson  
Assistant Revisor  
30 West Mifflin Street, Suite 702  
Madison, Wisconsin 53703

Re: Clearinghouse Rule 89-10

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to income and franchise taxation .

These materials are filed with you pursuant to s. 227.20 (1), Wis. Stats.

Sincerely,

Mark D. Bugar  
Secretary of Revenue

MDB:VLG:1c  
LEG/MO20750D

Enclosure

cc: Douglas J. LaFollette, Secretary of State  
Prentice Hall, Inc.  
Commerce Clearinghouse, Inc.



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466

**Tommy G. Thompson**  
Governor

**Mark D. Bugher**  
Secretary of Revenue

April 3, 1990

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APR 4 1990

Revisor of Statutes  
Bureau

Douglas LaFollette  
Secretary of State  
30 West Mifflin Street, 10th Floor  
Madison, WI 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 89-10.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

Mark D. Bugher  
Secretary of Revenue

MDB:VLG:lc  
LEG/M020750E

Enclosure

cc: Revisor of Statutes