

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

The Wisconsin Department of Revenue adopts an order to repeal Tax 1.10(2)(b), 2.06, 2.08(3)(a), (b), and (c), 2.30(2), 2.69, and 2.89; to renumber 2.955(3)(c); to renumber and amend Tax 2.30(1); to amend Tax 1.06, 1.10(title), (1), (2)(title) and (a) and (3), 2.03(title) and (3), 2.08(title) and (3)(intro.), 2.10, 2.13(title), 2.30(title) and (3), 2.955(1), (2), (3)(a) and (b) and (4)(intro.), 3.085(title), (1) and (2) and 3.096(title) and (1); to repeal and recreate Tax 2.03(1), 2.04, 2.08(1) and 2.955(4)(a) and (b); and create Tax 2.13(3), 2.30(1) and (4) and 2.955(2)(b), (3)(c) and (4)(c) and (d) relating to income and franchise taxation, including various administrative issues, income tax deductions, returns and credit for tax paid to other states.

Analysis by the Department of Revenue

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

Statutes interpreted: 71.03(2) and (5), 71.04(1)(a), 71.05(6)(b)(12), (15), (16), (17) and (19), 71.07(7), 71.20(1), 71.24(1), (1m) and (3), 71.26(3)(e), 71.365(4) and (5), 71.44(1)(a) and (c), 71.55(3), 71.65(2) and (3)(a), 71.70, 71.71(2), 71.72, 71.74(4) and 78.84, Stats.; 71.05(1)(a)7 and (b)4, 1985 Stats.

SECTION 1. Tax 1.06 is amended to provide that federal income tax regulations apply to corporations. This is as a result of the creation of s. 71.02(1)(bg), Stats., by 1987 Wisconsin Act 27 (s. 71.26(3) after renumbering by 1987 Wisconsin Act 312), which provides that the Internal Revenue Code, with exceptions, is the starting point in determining Wisconsin taxable income of corporations.

SECTION 2 and 4. Tax 1.10(title), (1), and (2)(a) are amended to include reference to estimated tax vouchers and sales and use tax returns that are handled through a depository bank. A change has also been made to subs. (2) and (3) to account for the fact that the department's Collection Section has been renamed the Revenue Accounting Section.

SECTION 3. Subsection (2)(b) is repealed as the procedures it lists are out-of-date and incomplete and current procedures are set forth in contracts which have been negotiated with the state's depository bank.

SECTIONS 5 through 7. Tax 2.03 provides a listing of corporation franchise or income tax forms. The (title) is amended as a result of 1987 Wisconsin Act 312 which renumbered the statutes. Sub. (1) is repealed and recreated to include new forms and to update the titles of other forms. Sub. (3) is amended to delete mailing addresses as mailing addresses are specified on the forms.

SECTION 8. Tax 2.04 relates to the filing of information returns. Several amendments have been enacted to Chapter 71 which affect Rule Tax 2.04: 1987 Wisconsin Act 312 renumbered the statutes; 1987 Wisconsin Act 27 repealed s. 71.04, Stats., and relocated the information return requirements in s. 71.02(1)(bg)5 (now s. 71.26(3)(e)), Stats.; 1985 Wisconsin Act 29 renumbered certain statutes; 1987 Wisconsin Act 27 eliminated the reporting requirements for interest and dividends; and 1985 Wisconsin Act 261 increased the filing requirements to \$600 for payments of rents and royalties. Because the filing requirements are

the same for corporations, partnerships, and persons other than corporations, section Tax 2.06, which relates to information returns, is repealed (see Section 9) and the information is consolidated into section Tax 2.04.

SECTION 9. Tax 2.06 is repealed as much of the information return requirements are the same for corporations and persons other than corporation. This information can now be found in section Tax 2.04 (see Section 8).

SECTION 10 through 13. Tax 2.08 provides a listing of forms to be used by persons other than corporations in filing income tax returns. The (title) is amended as a result of 1987 Wisconsin Act 312 which renumbered the statutes. Sub. (1) is repealed and recreated to include new forms, update form titles, and delete obsolete forms. Sub. (3) is amended to delete the addresses for filing forms. Mailing addresses are specified by the department on the appropriate forms and schedules.

SECTION 14. Beginning with the income tax forms for 1980, taxpayers have been instructed that the federal Schedule A does not have to be attached to the Wisconsin return if itemized deductions are not claimed for Wisconsin purposes. Section Tax 2.10 is amended to reflect the position that only the federal schedules that affect the computation of Wisconsin income or credits must be attached to the Wisconsin return. In addition since the rule was written, taxpayers may file Form 1040EZ for federal tax purposes. Rule Tax 2.10 is amended to reflect the department's position that a copy of the federal Form 1040A or Form 1040EZ does not have to be filed with the Wisconsin return if a Wisconsin Form 1A or Form WI-Z is being filed for the same taxable year. Because taxpayers are permitted to file their federal returns electronically, section Tax 2.10 is amended to provide that copies of the electronic material shall be filed with the Wisconsin return. The amendment also eliminates obsolete language.

SECTIONS 15 and 16. Tax 2.13 is revised to reference the title to the 1985 statutes and to cap the rule as a result of allowing moving expenses as an itemized deduction credit rather than as an adjustment to income, effective for taxable year 1987.

SECTIONS 17 to 22. Tax 2.30 is revised to conform wording to proper drafting format; to state that this section applies only to resident individuals, estates, and trusts; to change statutory references to the renumbered statutes as affected by 1987 Wisconsin Act 312; and to update the code with respect to law changes. The law changes are in ss. 71.05(1)(m), (n), and (o), Stats. (1985-86), as created by 1985 Wisconsin Act 261. The revisions to these statutes provide that Wisconsin uses the basis determined under the Internal Revenue Code for determining depreciation and gains or losses on sales of property located outside Wisconsin, acquired before the owner became a Wisconsin resident or before the estate or trust became subject to Wisconsin taxation, with certain exceptions, which are specified.

SECTION 23. Tax 2.69 is repealed as the information is no longer accurate. Pertinent information is already provided in section Tax 2.82.

SECTION 24. Tax 2.89 is repealed, as it is obsolete because of several statutory changes regarding the underpayment penalty, including reclassifying the underpayment penalty as interest.

SECTIONS 25 to 32. Tax 2.955 is revised to update the rule with respect to law changes, including sub. (2)(b) which provides that tax-option (S) corporation shareholders may qualify to claim credit for taxes paid to other states on or measured by the corporation's income as enacted by 1987 Wisconsin Act 27; to include reference to credit for minimum tax paid to other states where applicable; to update the requirements for information to support the credit claimed; to reference the proper Wisconsin income tax forms on which the credit may be claimed; and to conform wording to proper drafting format.

SECTION 33. Tax 3.085 is amended to include discussion of qualified cash or deferred arrangements, distributions of which are retirement plan distributions and exempt from Wisconsin taxation when received by a nonresident even though such distributions are attributable to personal services performed in Wisconsin. The (title) is amended as a result of 1987 Wisconsin Act 312 which renumbered the statutes.

SECTION 34. Tax 3.096(title), (1) and (3) are amended for the following reasons:

(1) Section 71.02(2)(f), Stats., was repealed by 1985 Wisconsin Act 29. This section allowed for the deduction of itemized deductions (e.g., interest) in computing Wisconsin taxable income. The deductions were replaced with a tax credit effective for taxable years 1986 and thereafter. Therefore, for individuals, after the 1985 taxable year, "related expenses" as described in this rule which were always itemized deductions for individuals could no longer be deducted in computing Wisconsin taxable income. This was further clarified by an amendment to s. 71.05(1)(b)1 by 1987 Wisconsin Act 27 which removed the term "related expenses." As such the rule only applies to fiduciaries which may still deduct related expenses in computing Wisconsin taxable income.

(2) As a result of removing the words "related expenses" from s. 71.05(1)(b)1, effective for taxable year 1987, fiduciaries were no longer required to reduce exempt interest and dividend income by related expenses. This was corrected by an amendment to s. 71.05(1)(b)1 by 1987 Wisconsin Act 399 effective for the taxable year 1988 and thereafter. The amendment provided that exempt interest and dividend income subtracted has to be reduced by related expenses. Related expenses should be applied proportionately to distributable and nondistributable exempt interest and dividend income as required by statute.

(3) The (title) is amended as a result of 1987 Wisconsin Act 312 which renumbered the statutes.

SECTION 1. Tax 1.06 is amended to read:

Tax 1.06(title) APPLICATION OF FEDERAL INCOME TAX REGULATIONS. To the extent that any provision of the internal revenue code has application in the determination of Wisconsin taxable income, Wisconsin net income, Wisconsin income or franchise tax or Wisconsin minimum tax or alternative minimum tax of persons other than corporations any natural person, fiduciary or corporation, including tax-option (S) corporations, any United States treasury regulation interpreting the provision shall be deemed a tax rule of the Wisconsin Administrative Code.

March 16, 1990

Note to Revisor: Insert the following Note at the end of Tax 1.06:

Note: Federalization of the computation of Wisconsin gross income for individuals and fiduciaries was provided by Chapter 163, Laws of 1965, effective for taxable year 1965 and thereafter. Federalization of the computation of Wisconsin net income of a corporation was provided by 1987 Wisconsin Act 27, effective for taxable year 1987 and thereafter.

SECTION 2. Tax 1.10(title), (1) and (2)(title) and (a) are amended to read:

Tax 1.10(title) DEPOSITORY BANK REQUIREMENTS FOR ESTIMATED TAX VOUCHERS, SALES AND USE TAX RETURNS, AND WITHHOLDING, MOTOR FUEL, GENERAL AVIATION FUEL AND SPECIAL FUEL TAX DEPOSIT REPORTS. (ss. 71.65(3)(a) and 78.84, Stats.) (1) DAILY PROCESSING OF DOCUMENTS. Screening and processing of deposit reports, returns, and vouchers shall be done daily on the date received in accordance with specific procedures provided by the department.

(2)(title) DOCUMENTS RECEIVED WITH PROPER PAYMENT. ~~(a)~~ The depository bank shall inscribe the date received, amount of payment and a consecutively assigned validation number upon each deposit report ~~received which is accompanied by payment in the amount of the stated tax liability,~~ return, or voucher. That same information shall be inscribed on the payment. The deposits received and validated for each day shall be combined into a single deposit to the account of the state treasurer. The processed ~~deposit reports~~ documents shall be kept in sequence within batches for each business day. The batches for each business day shall be sent daily by special courier to the department's ~~collection~~ revenue accounting section in Madison. A validation tape and batch card shall accompany each batch, and each day's transmittal shall include a separate recapitulation sheet for ~~withholding tax and a separate recapitulation sheet for motor fuel, general aviation fuel and special fuel taxes and a~~ each tax program. A copy of the combined daily deposit slip shall also be included in each day's transmittal.

March 16, 1990

SECTION 3. Tax 1.10(2)(b) is repealed.

SECTION 4. Tax 1.10(3) is amended to read:

Tax 1.10(3) EXCEPTIONS. Nonprocessable documents or remittances, or both, as described in writing to the depository bank by the department's ~~collection~~ revenue accounting section, shall be exceptions to the treatment provided in sub. (1) and shall not be validated. Instead, they shall be sent to the department's ~~collection~~ revenue accounting section with the envelopes in which they were received.

SECTION 5. Tax 2.03 (title) is amended to read:

Tax 2.03 (title) CORPORATION RETURNS. (ss. 71.24(1), (1m), and (3), 71.365(4) and (5), and 71.44(1)(a) and (c), Stats.)

SECTION 6. Tax 2.03(1) is repealed and recreated to read:

Tax 2.03(1) For the purpose of filing franchise or income tax returns, the secretary of revenue has designated the following forms for the use of corporations:

(a) Form 4. Corporation franchise or income tax return for the calendar or fiscal year. This return is to be used only by corporations reporting on the apportionment or separate accounting method.

(b) Form 4B. Apportionment data.

(c) Form 4BL. Computation of Wisconsin net business loss offset.

(d) Form 4C. Separate accounting data.

(e) Form 4-ES. Corporation estimated tax voucher.

(f) Form 4H. Declaration of inactivity.

(g) Form 4I. Return of income for insurance company.

(h) Form 4T. Exempt organization business franchise or income tax return.

(i) Form 4U. Underpayment of estimated tax by corporations.

(j) Form 4X. Amended corporation franchise or income tax return.

(k) Form 5. Corporation franchise or income tax return for the calendar or fiscal year. This return is to be used only by corporations whose entire net income is attributable to Wisconsin. It may not be used by tax-option (S) corporations or corporations which determine their Wisconsin net income by the apportionment or separate accounting method.

(l) Form 5E. Election by an S corporation not to be treated as a tax-option corporation.

(m) Schedule 5K-1. Tax-option (S) corporation shareholder's share of income, deductions, etc.

(n) Form 5S. Tax-option (S) corporation franchise or income tax return.

(o) Form 4466W. Application for quick refund of overpayment of estimated tax.

(p) Form CU. Credit union declaration of exempt status.

(q) Schedule CU-1. Credit union income computation schedule.

(r) Schedule DC. Development zone credits.

(s) Schedule FC. Farmland preservation credit.

(t) Schedule R. Research credits.

SECTION 7. Tax 2.03(3) is amended to read:

Tax 2.03(3) All returns, statements, schedules and information required to be filed or furnished by corporations, ~~except Form 4-ES,~~ shall be mailed to the ~~Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708~~ address specified by the department on the form or schedule or delivered to the department's audit bureau at 4638 University Avenue, Madison, Wisconsin. ~~Form 4-ES shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8912, Madison, Wisconsin 53708.~~

SECTION 8. Tax 2.04 is repealed and recreated to read:

Tax 2.04 INFORMATION RETURNS AND WAGE STATEMENTS. (ss. 71.26(3)(e), 71.65(2), 71.70, 71.71(2), 71.72, and 71.74(4), Stats.) (1) DEFINITION. In this

section, "person" means an individual, a trust, estate, partnership, association, or corporation.

(2) COMPENSATION FOR SERVICES. Under ss. 71.65(2), 71.71(2), and 71.72, Stats., all persons carrying on activities within this state, whether taxable or not under ch. 71, Stats., are required to file with the department of revenue, on federal form W-2 or W-2P or on Wisconsin form 9b or on other forms approved by the department, a statement of certain payments made within the preceding calendar year. For individuals who are residents of Wisconsin, the statement shall set forth the salaries, wages, bonuses, commissions, annuities, pensions, retirement pay, fees or other remuneration paid for services whether subject to withholding or not. For individuals who are nonresidents, the statement shall include all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, except retirement plan distributions identified in s. Tax 3.085 as being exempt from Wisconsin income tax. A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b. The following shall also apply with respect to compensation for services:

(a) All payments which are wages within the statutory definition under s. 71.63(6), Stats., regardless of amount, shall be reported on form W-2.

(b) All payments which are not wages within the definition under s. 71.63(6), Stats., but from which Wisconsin income tax has been withheld, shall be reported on form W-2 or W-2P.

(c) Payments of \$600 or more which are not within the statutory definition of wages under s. 71.63(6), Stats., and from which no Wisconsin income tax has been withheld, shall be reported on a Wisconsin form 9b. However, if the payment was to an employe for whom a form W-2 is required under par. (a) or (b), the payment, regardless of amount, shall be included on form W-2.

(d) All statements required shall be filed by January 31. Forms W-2 or W-2P shall be mailed or delivered to the Department of Revenue at 4638 University Avenue, P. O. Box 8920, Madison, Wisconsin 53708. Form WT-7, Annual Reconciliation of Wisconsin Income Tax Withheld From Wages, shall accompany the wage statements submitted, if the employer is required to be registered to withhold Wisconsin income taxes from employe's wages. Corporations shall mail or deliver Wisconsin forms 9b or substitute forms to the Department of Revenue at 4638 University Avenue, P. O. Box 8908, Madison, Wisconsin 53708. Payors other than corporations shall mail or deliver Wisconsin forms 9b or substitute forms to the Department of Revenue at 4638 University Avenue, P. O. Box 59, Madison, Wisconsin 53785. A letter of transmittal identifying the sender shall accompany the forms 9b or substitute forms.

(e) Sections 71.65(5) and 71.73(2), Stats., permit a thirty-day extension of time to file the forms described in this subsection. A written request may be sent to the department at P. O. Box 8920, Madison, Wisconsin 53708 and to be effective shall be postmarked on or before the due date of the statements. The department's approval of the extension shall be attached to the statements when they are filed with the department.

(3) RENTS AND ROYALTIES. All persons making payments of rents and royalties of \$600 or more to individuals who are residents of Wisconsin, regardless of where the property is located, and to nonresident individuals if the property is located in Wisconsin, shall file with the department of revenue, on form 9b or an approved substitute form, reporting the payments made in the preceding calendar year. The following shall also apply with respect to rents and royalties:

(a) A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b.

(b) Corporations shall file by March 15, by mailing or delivering the statements to the Department of Revenue at 4638 University Avenue, P. O. Box 8908, Madison, Wisconsin 53708. Payors other than corporations shall file by March 16, 1990

April 15, by mailing or delivering the statements to the Department of Revenue at 4638 University Avenue, P. O. Box 59, Madison, Wisconsin 53785.

(c) No extensions of time for filing forms 9b or substitute forms to report payments of rents or royalties shall be allowed.

(4) Items to be reported on forms W-2, W-2P, 9b, or substitute forms may be disallowed as deductions from gross income if not properly reported.

(5) Payors who participate in the combined federal/state filing program with the internal revenue service and report items required to be filed on a Wisconsin form 9b to the internal revenue service, are not required to file separate information returns for those items with the department of revenue.

Note: Under the combined federal/state filing program, the internal revenue service will forward information from the information returns to the department of revenue.

SECTION 9. Tax 2.06 is repealed.

SECTION 10. Tax 2.08(title) is amended to read:

Tax 2.08(title) RETURNS OF PERSONS OTHER THAN CORPORATIONS. (ss. 71.03(2), 71.20(1), and 71.55(3), Stats.)

SECTION 11. Tax 2.08(1) is repealed and recreated to read:

Tax 2.08(1) For the purpose of filing income tax returns, the secretary of revenue has designated the following forms for the use of persons other than corporations:

(a) Form 1. (Long form). Return for all individuals who are full-year Wisconsin residents, whether married or single.

(b) Form 1A. (Short form). Optional short form return for individuals who are married filing a joint return or who are single.

(c) Form 1-ES. Estimated tax voucher for individuals, estates, and trusts.

(d) Form 1NPR. Return for individuals who are nonresidents or part-year residents of Wisconsin.

(e) Form 1X. Amended individual income tax return.

(f) Form WI-Z. Optional short form return for single individuals.

(g) Schedule 2440W. Disability income exclusion for individuals.

(h) Schedule FC. Farmland preservation credit claim.

(i) Schedule H. Homestead credit claim.

(j) Schedule I. Adjustments to convert federal adjusted gross income to the amount allowable under the provisions of the internal revenue code applicable for Wisconsin purposes for the taxable year.

(k) Schedule MT. Alternative minimum tax.

(l) Schedule T. Transitional adjustments for individuals.

(m) Schedule U. Underpayment of estimated tax by individuals and fiduciaries.

(n) Schedule WD. Capital gains and losses for individuals.

(o) Form 2. Return for trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. Guardians shall report on form 1, 1A, 1NPR, or WI-Z.

(p) Schedule 2K-1. Beneficiary's share of income, deductions, etc.

(q) Schedule WD (form 2). Capital gains and losses for fiduciaries.

(r) Form 3. Return for partnerships and joint ventures.

(s) Schedule 3K-1. Partner's share of income, deductions, etc.

(t) Form 4T. Exempt organization business franchise or income tax return.

SECTION 12. Tax 2.08(3)(intro.) is amended to read:

Tax 2.08(3) (intro.) Returns required to be filed by persons other than corporations shall be filed by providing the information requested by the appropriate forms and schedules, signing the returns, and by delivering them to 4638 University Avenue, Madison, Wisconsin, or by mailing them to the following address: specified by the department on the form or schedule.

SECTION 13. Tax 2.08(3)(a), (b), and (c) are repealed.

SECTION 14. Tax 2.10 is amended to read:

Tax 2.10 COPIES OF FEDERAL RETURNS, STATEMENTS, SCHEDULES, DOCUMENTS, ETC. TO BE FILED WITH WISCONSIN RETURNS. (s. 71.03(5), Stats.) ~~It is deemed necessary for the administration of the tax imposed by ch. 71, Stats., that at~~ At the time of filing Wisconsin income tax returns for the taxable year 1965 and for taxable years thereafter by partnerships and persons other than corporations, a complete copy of the federal income tax return for the same taxable year ~~{, including all schedules, statements, documents and computations}~~ which affect the computation of Wisconsin income, credits or penalties, should shall be included and filed with the Wisconsin return. ~~Accordingly, such complete copies of federal income tax returns are directed to be so filed except copies~~ Copies of the short form federal return returns ~~which, at the time of adoption of this rule is designated as federal form 1040A and 1040EZ are not required to be filed if a Wisconsin Form 1A or WI-Z is being filed for the same taxable year. If the federal return is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designed by the electronic filer shall be included and filed with the Wisconsin return.~~

SECTION 15. Tax 2.13(title) is amended to read:

Tax 2.13(title) MOVING EXPENSES. (s. 71.05(1)(a)7 and (b)4, 1985 Stats., and s. 71.07(5), Stats.)

SECTION 16. Tax 2.13(3) is created to read:

Tax 2.13(3) APPLICABILITY. As a result of 1987 Wisconsin Act 27 which updated the reference to the internal revenue code as amended to December 31, 1986, subs. (1) and (2) do not apply to taxable years 1987 or thereafter. Effective with taxable year 1987 and thereafter, the internal revenue code

allows moving expenses as an itemized deduction rather than as a deduction in computing adjusted gross income; and for Wisconsin income tax purposes, under s. 71.07(5), Stats., moving expenses except expenses to move from this state, are included in the computation of the itemized deduction credit.

SECTION 17. Tax 2.30(title) is amended to read:

Tax 2.30 (title) PROPERTY LOCATED OUTSIDE WISCONSIN - DEPRECIATION AND SALE.
(ss. 71.05(12)(a), (b), and (c), (15), (16), (17), and (18), and 71.04(1)(a), Stats.)

SECTION 18. Tax 2.30(1) is renumbered (2) and amended to read:

Tax 2.30(2)(title) DEFINITION. In this ~~rule~~ section, "internal revenue code" means the internal revenue code in effect for the taxable year specified by in s. ~~71.02(2)(b)~~ 71.01(6), Stats., ~~and "federal-adjusted-basis" means those amounts determined under such code. For example, for the taxable year 1976 "internal revenue code" means the federal-internal-revenue-code-in-effect-on-December-31, 1975.~~

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

Example: For taxable year 1988, "internal revenue code" means the internal revenue code in effect on December 31, 1987.

SECTION 19. Tax 2.30(1) is created to read:

Tax 2.30(1)(title) SCOPE. This section applies only with respect to resident individuals, estates, and trusts.

SECTION 20. Tax 2.30(2) is repealed.

SECTION 21. Tax 2.30(3) is amended to read:

Tax 2.30(3)(title) RESIDENT INDIVIDUALS, ESTATES, AND TRUSTS. ~~For tax-year 1975-and-thereafter,-income~~ Income or loss derived from property and business located outside Wisconsin, ~~received~~ by resident individuals, estates, and trusts, is taxable. ~~The~~ or deductible as appropriate under ch. 71, Stats. Except as

provided in sub. (4), the basis for depreciation and for determining gain or loss on disposition of property for ~~such~~ these taxpayers is the same as the basis determined under the internal revenue code, whether the property was acquired before becoming or while a resident of this state.

SECTION 22. Tax 2.30(4) is created to read:

Tax 2.30(4)(title) EXCEPTIONS. (a) When an individual acquires a new residence, the adjusted basis of the new residence is not reduced for nonrecognized gain from the sale or exchange of an old residence located outside Wisconsin if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or
2. The sale or exchange of the old residence occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

(b) When an individual sells or exchanges a principal residence located outside Wisconsin and the nonrecognition of gain provisions do not apply, the adjusted basis of the residence sold or exchanged is not reduced for nonrecognized gain from any previous sale or exchange of a principal residence located outside Wisconsin if:

1. The previous sale or exchange occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or
2. The previous sale or exchange occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

Note: Example: A taxpayer becomes a Wisconsin resident on July 1, 1988. Prior to becoming a Wisconsin resident the taxpayer had owned several different homes. Each time a new home was acquired, the federal nonrecognition of gain provisions applied with respect to the gain realized from the sale of the previous home. Upon becoming a Wisconsin resident, the taxpayer owned a home in Missouri with a federal adjusted basis of \$65,000 (\$95,000 cost, less \$30,000 of gains postponed from prior sales). The Missouri home was sold for \$97,000 in August 1988. The taxpayer decides not to purchase a new residence. The Wisconsin adjusted basis of the Missouri home is \$95,000.

(c) For residential real property and certain agricultural real property placed in service during taxable year 1986, depreciation and gain or loss on disposition of the property shall be computed under the internal revenue code in effect on December 31, 1980 unless:

1. The property is placed in service out-of-state by a taxpayer during taxable year 1986 before the taxpayer becomes a Wisconsin resident. In this case, the property's adjusted basis and depreciation are the same as the amounts allowable for federal tax purposes.

Note: Example: A taxpayer becomes a Wisconsin resident on January 1, 1987. Prior to that date, the taxpayer is an Illinois resident. On July 1, 1986, the taxpayer purchases and places in service residential real property located in Illinois. On the taxpayer's 1987 Wisconsin return, the taxpayer's adjusted basis and depreciation on this property will be the same as the amounts shown on the taxpayer's 1987 federal return. The taxpayer does not have to recompute the basis of the property and depreciate it using one of the methods permitted under the December 31, 1980 Code.

2. The property located out-of-state is acquired in a transaction occurring in taxable year 1986 or thereafter where the basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor. The adjusted basis of the property on the date of the transfer is the same as the federal adjusted basis.

Note: Example: A taxpayer is a Wisconsin resident. The taxpayer receives by gift on January 1, 1986, residential real property located in Illinois. The adjusted basis of the property to the donor, transferor, is \$200,000. In acquiring the property by gift, the taxpayer, transferee, receives the same adjusted basis in the property as the transferor. The Wisconsin adjusted basis will be the federal adjusted basis on January 1, 1986.

Note to Revisor: The following note should be substituted for the note currently following Tax 2.30:

Note: 1) In the case of Wisconsin Department of Revenue vs. Romain A. Howick, 100 Wis. 2d 274 (1981), the Wisconsin supreme court held that for the purpose of determining a loss on a sale, the basis of property located outside Wisconsin acquired before the owner became a Wisconsin resident is the basis determined under the internal revenue code. In this section the same principle is applied to gains realized on the disposition of such property. This principle was codified into s. 71.05(1)(m), Stats., by 1985 Wisconsin Act 261, effective for the earliest taxable year in respect to which additional assessments or refunds may be made. Sections 71.05(1)(n) and (o), Stats., were also created by

1985 Wisconsin Act 261 to provide exceptions with respect to a principal residence effective for the same period of time. Sections 71.05(1)(m), (n), and (o), Stats., were renumbered ss. 71.05(12)(a), (b), and (c), Stats., by 1987 Wisconsin Act 312.

2) Section 71.07(1), Stats., was amended by Chapter 39, Laws of 1975, effective with the 1975 taxable year. Prior to the 1975 taxable year, income or loss derived from real property or tangible personal property followed the situs of the property from which derived. Section 71.07(1), Stats., was renumbered ss. 71.04(1)(a) and 71.362(1), Stats., by 1987 Wisconsin Act 312.

SECTION 23. Tax 2.69 is repealed.

SECTION 24. Tax 2.89 is repealed.

SECTION 25. Tax 2.955(title), (1) and (2) are amended to read:

Tax 2.955(title) CREDIT FOR TAXES PAID TO OTHER STATES. (s. 71.07(7), Stats.) (1) DEFINITION. In this ~~rule~~ section, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) CREDITS ALLOWABLE. (a) For-taxable-years-1978-and-thereafter,-except Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate, or trust for any net minimum tax or income tax paid to another state upon income of the individual, estate, or trust taxable by ~~such~~ that state.

SECTION 26. Tax 2.955(2)(b) is created to read:

Tax 2.955(2)(b) Except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident shareholder in a tax-option (S) corporation for any net minimum tax, income tax, or franchise tax paid by that shareholder to another state on or measured by income of the tax-option (S) corporation.

SECTION 27. Tax 2.955(3)(a) and (b) are amended to read:

Tax 2.955(3)(a) Income tax paid to Illinois, Indiana, Kentucky, Maryland, Michigan, or Minnesota on personal service income earned in these states included under a reciprocity agreement ~~{see-s.-Tax-2.02}~~.

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

Note: Refer to s. Tax 2.02 for information concerning reciprocity.

(b) ~~Income~~ Minimum tax or income tax paid to another state on income ~~not~~ considered neither taxable income for Wisconsin tax purposes nor a tax preference item in the computation of the Wisconsin minimum tax.

SECTION 28. Tax 2.955(3)(c) is renumbered (3)(d).

SECTION 29. Tax 2.955(3)(c) is created to read:

Tax 2.955(3)(c) Minimum tax paid to a state which does not classify the minimum tax as an income tax.

SECTION 30. Tax 2.955(4)(intro.) is amended to read:

Tax 2.955(4)(intro.) HOW TO CLAIM A CREDIT. The amount of income tax credit claimed shall be entered on the line ~~entitled-~~ "Net provided for net income tax paid to other states" on Wisconsin income tax return form 1 or form 1NPR. The credit ~~shall~~ may not exceed the Wisconsin net tax. To ~~verify~~ support the credit claimed, the following information shall be attached to ~~Form 1 or 1A in the following situations~~ form 1 or form 1NPR:

SECTION 31. Tax 2.955(4)(a) and (b) are repealed and recreated to read:

Tax 2.955(4)(a) For a Wisconsin resident individual, estate, or trust, attach copies of the other state's income tax return and the wage statements, if any, to the Wisconsin income tax return.

(b) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is recognized by the other state:

1. If a Wisconsin resident shareholder files an individual income tax return with that state, attach a copy of the other state's income tax return to the Wisconsin income tax return.

2. If the corporation files a combined or composite return with that state on behalf of its shareholders who are nonresidents of that state and pays the tax on their proportionate share of the income earned there, attach to the Wisconsin

income tax return either a copy of the Wisconsin Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in sub. (4)(d).

3. If the corporation files a corporate income or franchise tax return with that state and pays tax on or measured by income earned there that is attributable to its shareholders who are nonresidents of that state, attach to the Wisconsin income tax return either a copy of the Wisconsin Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in sub. (4)(d).

SECTION 32. Tax 2.955(4)(c) and (d) are created to read:

Tax 2.955(4)(c) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is not recognized by the other state, if the corporation pays an income or franchise tax on or measured by the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

(d) If the tax-option (S) corporation is not subject to Wisconsin's income or franchise tax, a Wisconsin resident shareholder shall attach to the Wisconsin income tax return a letter provided by the corporation in lieu of Wisconsin Schedule 5K-1 as required in sub. (4)(b)2 and 3 and (c). The letter shall include a schedule showing the shareholder's proportionate share of the items of income taxable by that state, the adjusted gross income, and the net tax paid.

Note to Revisor: The "Note" following sub. (5) should be replaced with the following:

Example: An example of the time for claiming the credit referred to in sub. (5) follows:

A Wisconsin resident receives income of \$4,000 in 1988 from rental property located in Iowa. The person files a 1988 declaration of estimated tax of \$200 with Iowa, with \$150 of estimated tax payments being made in 1988 and the fourth

quarter payment of \$50 being made in January 1989. The Iowa income of \$4,000 is reported as income on the 1988 Iowa and Wisconsin returns. The 1988 Iowa income tax return shows the following:

1988 Iowa Return

Iowa Rental Income	<u>\$ 4,000</u>
Iowa Net Tax (amount to be claimed as a credit on 1988 Wisconsin return)	\$ 185
Estimated Tax Payments	<u>\$ 200</u>
Refund	<u>\$ 15</u>

The taxpayer may claim a credit for net income tax paid to other states of \$185 on the 1988 Wisconsin return, even though a part of the tax was paid in 1989.

Note to Revisor: The following "Note" should be added at the end of Tax 2.955:

Note: 1) Except as provided in notes 2), 3), and 4), Tax 2.955 is effective beginning with taxable year 1978.

2) Except as provided in note 3), the credit for minimum tax paid to another state is effective beginning with taxable year 1981.

3) The credit for taxes paid to another state on or measured by income of a tax-option (S) corporation is effective beginning with the tax-option (S) corporation's taxable year 1987, as enacted by 1987 Wisconsin Act 27.

4) The items required by sub. (4) to support the credit claimed are effective beginning with taxable year 1986. For 1985 and prior taxable years, the following items were required to support the credit claimed:

a) If the credit was based entirely on tax withheld and a refund was due from the other state, a copy of the wage statement and that state's income tax return was required to be attached.

b) If there was a tax due on the other state's return or if estimated tax payments were made to that state, proof of payment of those amounts along with copies of the wage statement and that state's income tax return were required to be attached. Proof of payment was not required to be attached to the Wisconsin income tax return if either the tax due or estimated tax payments did not exceed \$50.

SECTION 33. Tax 3.085(title), (1) and (2) are amended to read:

Tax 3.085(title) RETIREMENT PLAN DISTRIBUTIONS. (s. 71.04(1)(a), Stats.)

(1) NONRESIDENTS. Employe annuity, pension, profit-sharing or stock bonus plan distributions~~(,~~ including self-employed retirement plan distributions), and distributions from qualified deferred compensation plans under sections 401(k), 403(b) and 457 of the internal revenue code received by a person while a

nonresident of Wisconsin shall be exempt from the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed in Wisconsin.

(2) RESIDENTS. Employee annuity, pension, profit-sharing or stock bonus plan distributions (including self-employed retirement plan distributions), and distributions from qualified deferred compensation plans under sections 401(k), 403(b) and 457 of the internal revenue code received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin.

SECTION 34. Tax 3.096(title) and (1) are amended to read:

Tax 3.096(title) INTEREST PAID ON MONEY BORROWED TO PURCHASE EXEMPT GOVERNMENT SECURITIES. (s. 71.05(6)(b)1, Stats.) (1) Any amount of distributable and nondistributable interest or dividend income which is by federal law exempt from the Wisconsin income tax shall be reduced by any related expense before it is claimed as a subtraction modification on a Wisconsin fiduciary income tax return.

Note to Revisor: Delete the note that follows this rule and replace it with the following:

Note: 1) For taxable year 1987, the subtraction modification for the amount of distributable and nondistributable exempt interest and dividend income did not have to be reduced by related expenses before it was claimed on a Wisconsin fiduciary return as a result of amendment to s. 71.05(1)(b)1 by 1987 Wis. Act 27.

2) For taxable years prior to 1986, individual taxpayers were required to reduce the amount of interest or dividend income which was by law exempt from Wisconsin income tax by any related expense before the income was claimed as a subtraction modification on a Wisconsin individual income tax return if the related expense was deducted in computing Wisconsin taxable income.

Example A: U.S. bond interest exempt from Wisconsin income tax.	\$ 600
Interest which was paid on funds used to acquire exempt securities and which was claimed as an itemized deduction.	<u>400</u>
Subtraction modification.	<u>\$ 200</u>
Example B: U.S. bond interest exempt from Wisconsin income tax.	\$ 400
Interest paid to acquire the exempt securities which was claimed as an itemized deduction.	<u>600</u>
Subtraction modification.	<u>\$ 0</u>
Example C: U.S. bond interest exempt from Wisconsin income tax.	\$ 400
Interest paid to acquire the exempt securities but not claimed as an itemized deduction.	<u>600</u>
Subtraction modification.	<u>\$ 400</u>

The rules contained in this Order shall take effect on the first day of the first month following publication as provided in s. 227.22(2)(intro.), 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

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Revisor of Statutes
Bureau

RPT/M020759D

March 16, 1990

LRB or Bill No./Adm. Rule No.
 Tax Rules 1.06 - 3.096
 Amendment No. if Applicable

FISCAL ESTIMATE
 DOA-2048 (R 10/88)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
 Changes to Tax Rules 1.06 - 3.096

Fiscal Effect

State: No State Fiscal Effect

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

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

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

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

Tax Rule 1.06 is revised to reflect the applicability of federal income tax regulations due to the federalization of the state corporate income and franchise tax in 1987 Wis. Act 27. Certain rules are revised to reflect current tax forms and procedures for making payments and filing returns. Rules relating to credits for taxes paid to other states and certain other items are updated to reflect law changes. These rule changes should have no effect on state tax revenues.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
 Wisconsin Department of Revenue
 John Tuohy, 266-7817

Authorized Signature/Telephone No. 266-2700

Margaret M. Denis

Date

6/9/89

FISCAL ESTIMATE WORKSHEET

1989 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R 10/88) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
Tax Rules 1.06-3.096	

Subject

Changes to Tax Rules 1.06 - 3.096

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

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

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	+	-

NET Impact on State Funds \$ (+) or None (-)

NET Impact on Local Funds \$ (+) or None (-)

Agency/Prepared by: (Name & Phone No.)
 Wisconsin Department of Revenue
 John Tuohy, 266-7817

Authorized Signature/Telephone No.
 266-2700

Signature Date 4/9/89



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

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

Re: Clearinghouse Rule 89-103

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. Bugher
Secretary of Revenue

MDB:VLG:lc
LEG/M020750J

Enclosure

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

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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

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 89-103.

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

Sincerely,

Mark D. Bugher
Secretary of Revenue

MDB:VLG:1c
LEG/M020750K

Enclosure

cc: Revisor of Statutes

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APR 4 1990

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Bureau