

(2) The phrase "of a like kind" has reference to the nature or character of the property and not its grade or quality. One kind or class of property may not be exchanged tax free for property of a different kind or class.

(3) A leasehold interest in land cannot be exchanged tax free for a fee title unless the lease has 30 years or more to run.

(4) Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

(5) Section 71.03 (6) does not apply to trade-in of non-business property, such as an automobile used solely for personal purposes.

History: Cr. Register, February, 1958, No. 26, eff. 3-1-58.

Tax 2.73 Involuntary conversion. (Section 71.03 (1) (g), Wis. Stats.) (1) In all cases of gain on involuntary conversion where such gain is not recognized for income tax purposes, the property acquired in the replacement is deemed to take the place of the property destroyed for purposes of depreciation, depletion and profit or loss on subsequent sale or other disposition.

(2) In all cases of involuntary conversion which result in losses, such losses are allowable in the year in which the conversion takes place.

(3) This section does not apply when insurance money received on the conversion of Wisconsin assets is used in replacement outside of Wisconsin. In such case, the gain or loss must be reported in the year of conversion.

Tax 2.74 Gain or Loss on Disposition of Property; Adjustments to Basis (Section 71.03 (1) (g), Wis. Stats.). (1) In determining gain or loss disposition of property on or after August 1, 1963 the cost or other basis shall be decreased for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion by the greater of the following 2 amounts:

(a) The amount allowed as deductions in computing taxable income, to the extent resulting in a reduction of the taxpayer's income taxes, or

(b) The amount allowable for the years involved.

(2) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, write-offs and depletion shall be made on the basis of the facts reasonably known to exist at the end of the taxable year. A taxpayer is not permitted to take advantage in a later year of his prior failure to take any such allowance or his taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the taxpayer has consistently taken proper deductions under one method, the amount allowable for such prior years shall not be increased even though a greater amount would have been allowable under another proper method.

(3) If the taxpayer has not taken a depreciation deduction either in the taxable year or for any prior taxable year, adjustments to

basis of the property for depreciation allowable shall be determined by using the straight line method of depreciation.

(4) With respect to the calendar year 1964 and corresponding fiscal years and thereafter, if the taxpayer with respect to any property has taken a deduction for depreciation properly under one of the methods provided in section 71.04 (13) (b) or 71.05 (16) (b), Wis. Stats., for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable in such case will be the deduction under the method which was used by the taxpayer with respect to that property.

(5) The amount allowed which resulted in a reduction of the taxpayer's taxes is hereinafter referred to as the "tax-benefit amount allowed." For the purpose of determining whether the tax-benefit amount allowed exceeded the amount allowable, a determination must be made of that portion of the excess of the amount allowed over the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such case the reduction in basis required would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent of the remainder of such excess. In such a case the reduction in basis required would be the amount of the tax-benefit amount allowed.

(6) For the purpose of determining the tax-benefit amount allowed, the only adjustments made in determining whether there would be an increase in tax shall be those resulting from the disallowance of the amount allowed. The taxable years for which the determination is made shall be the taxable year for which the deduction was allowed and any other taxable year which would be affected by the disallowance of such deduction. Examples of such other taxable years are taxable years to which there was a carry-over of a net business loss for the taxable year for which the deduction was allowed. In determining whether the disallowance of any part of the deduction would not have resulted in an increase in any tax previously determined, proper adjustment must be made for previous determinations under chapter 71, Wis. Stats.

(7) If a determination must be made with respect to several properties for each of which the amount allowed for the taxable year exceeded the amount allowable, the tax benefit amount allowed with respect to each of such properties shall be an allocated portion of the tax-benefit amount allowed determined by reference to the sum of the amounts allowed and the sum of the amounts allowable with respect to such several properties.

(8) In the case of property held by a partnership or trust the computation of the tax-benefit amount allowed shall take into account the tax benefit of the partners or beneficiaries, as the case may be, from the deduction by the partnership or trust of the amount allowed to the partnership or the trust. For this purpose, the determination of the amount allowed which resulted in a tax benefit to the partners or beneficiaries shall be made in the same manner as that provided above with respect to the taxes of the person holding the property.

(9) A taxpayer seeking to limit the adjustment to basis to the tax benefit amount allowed for any period, in lieu of the amount allowed, must establish the tax benefit amount allowed. A failure of adequate proof as to the tax benefit amount allowed with respect to one period does not preclude the taxpayer from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

(10) The amount allowable for prior periods is determined under the law applicable to such prior periods.

(11) Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization and depletion to the extent actually sustained in respect of (a) any period during which the taxpayer was engaged in business entirely outside of Wisconsin, or (b) any period during which the property was held by a person or organization not subject to income taxation under chapter 71, Wis. Stats. The amount actually sustained is that amount charged off on the books of the taxpayer where such amount is considered by the commissioner to be reasonable. Otherwise the amount actually sustained will be the amount that would have been allowed as a deduction had the taxpayer been subject to income tax during those periods, determined by the straight line method.

History: Cr. Register, February, 1965, No. 110, eff. 3-1-65.

Tax 2.75 Recoveries. (Section 71.03 (1) (1), Wis. Stats.) Recoveries of items previously charged off as loss or as expense (including recoveries through health and accident insurance or otherwise of payments deducted pursuant to section 71.05 (9), Wis. Stats.), are taxable income in the year of recovery.

Tax 2.76 Refunds of taxes. (Section 71.03 (1) (1), Wis. Stats.) Refunds of federal, state or local taxes together with interest thereon which were allowed as deductions from gross income in previous years are taxable income.

Tax 2.77 Strike benefits. (Section 71.03 (1) (1), Wis. Stats.) Members of a labor organization who receive benefits from a union while on strike realize taxable income in the amount of the benefits received. Dues and strike assessments paid to labor unions are deductible from income.

Tax 2.78 Merchandise taken from stock for personal use. (Section 71.03 (1) (1), Wis. Stats.) Merchants who consume a portion of their stock of goods held for sale must report as income the cost value of the merchandise consumed.

Tax 2.79 Prizes. (Section 71.03 (1) (1), Wis. Stats.) A prize won is taxable income when received. Any expenses incurred in connection with winning a prize are deductible from the amount received.

Tax 2.80 Improvements on leased real estate, income to lessor. (Section 71.03 (1) (1), Wis. Stats.) If improvements are made on leased property and the life of such improvements extends beyond the terms of the lease, the lessor derives taxable income at the expiration of the lease, the amount of which is represented by the fair market value of the improvements at the time.

Tax 2.81 Damages received. (Section 71.03 (1) (1), Wis. Stats.) Damages may result in taxable income when recovered on account of injury to property, interference with property rights or breach of contract, when the amounts received as damages are in excess of the income tax cost of the property destroyed. Damages recovered for libel of business reputation are taxable income. Damages received for personal injury, assault and battery, sickness, alienation of affections, breach of promise, surrender of custody of minor child and similar personal damages are not taxable income.

Tax 2.82 Mileage received. (Section 71.03 (1) (1), Wis. Stats.) The excess of mileage received over actual expenditures is taxable income.

Tax 2.83 Per diem allowances received. (Section 71.03 (1) (1), Wis. Stats.) The excess of per diem allowances received over actual expenditures is taxable income.

Tax 2.84 Life insurance premium paid for officers and employes. (Section 71.03 (1) (1), Wis. Stats.) Life insurance premiums paid for officers and employes where such officers or employes are the insured are taxable income to them in the amount of the premiums paid. However, such premiums paid do not constitute taxable income to officers and employes in the case of non-permanent group insurance.

Tax 2.85 Accommodations furnished, as part of compensation. (Section 71.03 (1) (1), Wis. Stats.) The reasonable value of accommodations furnished to officers or employes as part of their compensation, such as board and lodging to hotel managers, and use of residences furnished to clergymen, teachers, public employes and household servants, is taxable income.

Tax 2.86 Income from cancellation of government contracts. (Section 71.03 (1) (1), Wis. Stats.) Compensation under cancelled government contracts not reported in the return for the year in which claim therefor was filed must be included as income in the year in which such claim is allowed.

Tax 2.87 Contributions for line extension. (Section 71.03 (1) (1), Wis. Stats.) Amounts received by a public utility from its customers in consideration of the extension of its service lines are taxable income. If and when such amounts are subsequently refunded, they are valid deductions in the year of refund.

Tax 2.90 Withholding; wages. (Section 71.19 Wis. Stats.) (1) The term 'wages' means all remuneration for services performed by an employe for his employer unless specifically excepted under section 71.19, Wis. Stats.