

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

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**Tax 2.01 Residence.** (Section 71.01, Wis. Stats.) (1) The residence of a wife is that of her husband unless there is affirmative evidence to

the contrary or unless the husband and wife are permanently separated. The residence of a minor child, unless emancipated, is that of its father, or of the mother, if the father is deceased.

(2) Individuals claiming a change of residence (domicile) from Wisconsin to another state shall file a "declaration of residence" with the Central Audit section of the Department of Taxation by delivery to 4638 University Avenue, Madison, Wisconsin, or by mailing to Post Office Box 80, Madison, Wisconsin 53701, and shall furnish such other information as the department may require.

**History:** 1-2-56; r. (1); renum. (2) to be (1); renum. (3) to be (2) and am., Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.02 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.021 History:** Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.03 Corporation returns.** For the purpose of filing franchise or income tax returns, the tax commissioner has designated the following forms for the use of corporations:

Form 4. Return of income for the calendar or fiscal year.

Form 4A. Balance sheets as of beginning and end of taxable year; analysis of surplus account; reconciliation of book income with net income reported.

Form 4B. Apportionment data (when applicable to the corporation).

Form 4C. Separate accounting data (when applicable to the corporation).

All returns, statements, schedules and information required to be filed or furnished by corporations shall be mailed to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivered to the Corporation Section at 4638 University Avenue, Madison, Wisconsin.

**Note:** Blank forms may be obtained from the department at the Processing Center, 4638 University Avenue, Madison, or by mail request to P. O. Box 98, Madison, Wisconsin 53701.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.04 Information returns; forms WT-9, 9b and 9X for corporations.** (Sections 71.04 (1) and (2), 71.10 (1), (8m) and (8n) Wis. Stats.). All corporations carrying on activities within this state, whether taxable or not under this chapter, shall file with the department of taxation, on or before January 31 of each year on forms WT-9 or 9b statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, provided that salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in section 71.19 (1) Wis. Stats. Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax

Withheld from Wages) should accompany forms WT-9. Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments to residents and non-residents of Wisconsin of rents and royalties on property in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b. The forms herein referred to must be filed on the date indicated regardless of the fact that the corporation keeps its records on a fiscal year other than the calendar year. No one of interest, dividends, rents or royalties needs to be reported if it is less than \$100.00. Each corporation must file with forms 8 or 9b, forms 9X showing the number of reports made on forms 8 or 9b. (See also Wis. Adm. Code section Tax 2.05). Items required to be reported on forms WT-9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof. *lem*

*Note:* Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin 53701.

(Corporations failing to file forms WT-9 or 9b as prescribed by law shall be subject to fine of not less than \$50.00 nor more than \$500.00. See section 71.11 (45), Wis. Stats.)

*History:* 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and rec., Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.05 Information returns, forms 8 for corporations.** (Section 71.10 (1), Wis. Stats.) All corporations doing business within this state, whether subject to the franchise or income tax or not, are required to file with the department of taxation by mailing to the Corporation Section of the Wisconsin Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701 or delivery to the Corporation Section at The Wisconsin Taxation Building, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8 as prescribed by the tax commissioner, statements of such transfers of capital stock as have been made by residents of Wisconsin during the preceding calendar year. *lm*

*Note:* Blank forms may be obtained by mail request addressed to Wisconsin Department of Taxation, Corporation Section, P. O. Box 98, Madison, Wisconsin, 53701.

(Corporations failing to file such statements shall be subject to a fine of not less than \$50 or more than \$500. See section 71.11 (45), Wis. Stats.)

*History:* 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.06 Information returns required of partnerships and persons other than corporations.** (Sections 71.10 (8m) and 71.10 (8n), 71.10 (15) and 71.11 (25), Wis. Stats.) Informational returns reporting remuneration paid for services, whether or not within the definition of "wages" in section 71.19 (1), Wis. Stats., must be filed on or before January 31 of each year on forms WT-9 or 9b. Form WT-7 (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages) should accompany forms WT-9. Informational returns reporting other items such as interest paid or rent paid must be filed on or before April 15 of each year on forms 9b. Items required to be reported on informational returns will be disallowed as deductions from gross income if not properly reported. Such returns should be mailed to the Department of Taxation, P. O. Box 59, *lm*

Madison, Wisconsin 53701 or delivered at The Wisconsin Taxation Building, 4638 University Avenue, Madison.

*Note:* Blank forms may be obtained by writing the Department of Taxation, Central Processing Center, P. O. Box 58, Madison, Wisconsin 53701 4638 University Avenue.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.07 Income tax returns of dissolved corporations.** (Section 71.10 (1), Wis. Stats.) The officers of a corporation which has been dissolved during the income year must file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The final return must indicate the disposition of all corporate assets.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.08 Returns of persons other than corporations.** (1) For the purpose of filing income tax returns, the commissioner of taxation has designated the following forms for the use of persons other than corporations:

Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.

Form 1A. (Short form).

Form 2. For trustees, executors, administrators, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on form 1).

Form 3. For partnerships and joint ventures.

(2) Information returns required of persons other than corporations are specified in Wis. Adm. Code sections Tax 2.06 and Tax 3.63. See also Tax 3.07.

(3) Returns required to be filed by persons other than corporations shall be filed by mailing to P. O. Box 59, Madison, Wisconsin 53701, or delivery to Processing Center, Department of Taxation, Madison.

*Note:* Blank forms may be obtained by mail request to Wisconsin Department of Taxation, Processing Center, P. O. Box 58, Madison, Wisconsin 53701.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; r. and recr., Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.09 Reproduction of forms.** Subject to the conditions set forth under this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions filed with the department in lieu of the corresponding official forms:

(1) The reproductions must be made by photo-offset, photo-engraving or by some similar photographic process. They may be reproduced on one side or both sides of the paper.

(2) The reproductions must be on paper of substantially the same color, weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may not, therefore, be reproduced on white paper.

(3) Since all of the official forms are printed in black ink, such printing must be reproduced in black.

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(4) The size of the reproductions, both as to dimensions of the paper and image reproduced thereon, must be the same as that of the official form.

(5) Except for returns executed by fiduciaries as provided in (6) below, all signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

(6) A fiduciary or his agent may use a facsimile signature in filing a tax return on form 2, subject to the following conditions:

(a) Each group of returns forwarded to the department shall be accompanied by a letter signed by the person authorized to sign such returns declaring, under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by him to sign the returns filed and that such signature was affixed to the returns by him or at his direction. The letter shall also list each return by name and identifying number.

(b) A signed copy of the letter must be retained by the person filing the returns and must be available for inspection by the department.

(c) Where the returns are reproduced by photocopying or similar reproductive methods, the facsimile signature must be affixed subsequent to the reproduction process.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; am. (5) and cr. (6), Register, August, 1974, No. 224, eff. 9-1-74.

**Tax 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns.** (Section 71.10 (6), Wis. Stats.) It is deemed necessary for the administration of the tax imposed by chapter 71, Wis. Stats., that 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) should 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 of the short form federal return which, at the time of adoption of this rule is designated as federal form 1040A.

**History:** Cr. Register, December, 1965, No. 120, eff. 1-1-66.

**Tax 2.11 Tax table** (Section 71.09 (3), Wis. Stats., applicable to the calendar year 1966 and corresponding fiscal years, and subsequent years).

To find your gross normal tax read down income columns until you find the line covering the net taxable income:

If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is	If Net Taxable Income Is		Gross Tax Is
At Least	But Less Than		At Least	But Less Than		At Least	But Less Than		At Least	But Less Than	
\$ 0	\$ 50	\$ .70	\$3,720	\$3,760	\$119.60	\$6,270	\$6,300	\$245.70	\$8,325	\$8,350	\$377.80
50	100	2.00	3,760	3,800	121.30	6,300	6,330	247.50	8,350	8,375	379.60
100	150	3.40	3,800	3,840	122.90	6,330	6,360	249.20	8,375	8,400	381.40
150	200	4.70	3,840	3,880	124.60	6,360	6,390	250.90	8,400	8,425	383.20
200	250	6.00	3,880	3,920	126.30	6,390	6,420	252.60	8,425	8,450	385.00
250	300	7.40	3,920	3,960	128.00	6,420	6,450	254.30	8,450	8,475	386.80
300	350	8.80	3,960	4,000	129.70	6,450	6,480	256.00	8,475	8,500	388.60
350	400	10.10	4,000	4,035	131.30	6,480	6,510	257.70	8,500	8,525	390.40
400	450	11.50	4,035	4,070	133.00	6,510	6,540	259.40	8,525	8,550	392.20
450	500	12.80	4,070	4,105	134.60	6,540	6,570	261.10	8,550	8,575	394.00
500	550	14.20	4,105	4,140	136.30	6,570	6,600	262.80	8,575	8,600	395.80
550	600	15.50	4,140	4,175	137.90	6,600	6,630	264.60	8,600	8,625	397.60
600	650	16.90	4,175	4,210	139.50	6,630	6,660	266.30	8,625	8,650	399.40
650	700	18.20	4,210	4,245	141.20	6,660	6,690	268.00	8,650	8,675	401.20
700	750	19.60	4,245	4,280	142.80	6,690	6,720	269.70	8,675	8,700	403.00
750	800	20.90	4,280	4,315	144.50	6,720	6,750	271.40	8,700	8,725	404.80
800	850	22.30	4,315	4,350	146.10	6,750	6,780	273.10	8,725	8,750	406.60
850	900	23.60	4,350	4,385	147.80	6,780	6,810	274.80	8,750	8,775	408.40
900	950	25.00	4,385	4,420	149.40	6,810	6,840	276.50	8,775	8,800	410.20
950	1,000	26.30	4,420	4,455	151.10	6,840	6,870	278.20	8,800	8,825	412.00
1,000	1,050	27.70	4,455	4,490	152.70	6,870	6,900	279.90	8,825	8,850	413.80
1,050	1,100	29.20	4,490	4,525	154.40	6,900	6,930	281.70	8,850	8,875	415.60
1,100	1,150	30.70	4,525	4,560	156.00	6,930	6,960	283.40	8,875	8,900	417.40
1,150	1,200	32.20	4,560	4,595	157.60	6,960	6,990	284.80	8,900	8,925	419.20
1,200	1,250	33.60	4,595	4,630	159.30	6,990	7,000	285.90	8,925	8,950	421.00
1,250	1,300	35.10	4,630	4,665	160.90	7,000	7,025	287.30	8,950	8,975	422.80
1,300	1,350	36.60	4,665	4,700	162.60	7,025	7,050	289.00	8,975	9,000	424.60
1,350	1,400	38.10	4,700	4,735	164.20	7,050	7,075	290.70	9,000	9,025	426.30
1,400	1,450	39.50	4,735	4,770	165.90	7,075	7,100	292.40	9,025	9,040	427.80
1,450	1,500	41.00	4,770	4,805	167.50	7,100	7,125	294.00	9,040	9,060	429.40
1,500	1,550	42.50	4,805	4,840	169.20	7,125	7,150	295.70	9,060	9,080	430.90
1,550	1,600	44.00	4,840	4,875	170.80	7,150	7,175	297.40	9,080	9,100	432.40
1,600	1,650	45.40	4,875	4,910	172.40	7,175	7,200	299.10	9,100	9,120	434.00
1,650	1,700	46.90	4,910	4,945	174.10	7,200	7,225	300.70	9,120	9,140	435.50
1,700	1,750	48.40	4,945	4,980	175.70	7,225	7,250	302.40	9,140	9,160	437.10
1,750	1,800	49.90	4,980	5,010	177.30	7,250	7,275	304.10	9,160	9,180	438.60
1,800	1,850	51.30	5,010	5,040	178.80	7,275	7,300	305.80	9,180	9,200	440.10
1,850	1,900	52.80	5,040	5,070	180.40	7,300	7,325	307.40	9,200	9,220	441.70
1,900	1,950	54.30	5,070	5,100	181.90	7,325	7,350	309.10	9,220	9,240	443.20
1,950	2,000	55.80	5,100	5,130	183.50	7,350	7,375	310.80	9,240	9,260	444.80
2,000	2,050	57.30	5,130	5,160	185.00	7,375	7,400	312.50	9,260	9,280	446.30
2,050	2,100	58.90	5,160	5,190	186.60	7,400	7,425	314.10	9,280	9,300	447.80
2,100	2,150	60.50	5,190	5,220	188.20	7,425	7,450	315.80	9,300	9,320	449.40
2,150	2,200	62.10	5,220	5,250	189.70	7,450	7,475	317.50	9,320	9,340	450.90
2,200	2,250	63.70	5,250	5,280	191.30	7,475	7,500	319.20	9,340	9,360	452.50
2,250	2,300	65.30	5,280	5,310	192.80	7,500	7,525	320.80	9,360	9,380	454.00
2,300	2,350	66.90	5,310	5,340	194.40	7,525	7,550	322.50	9,380	9,400	455.50
2,350	2,400	68.50	5,340	5,370	196.00	7,550	7,575	324.20	9,400	9,420	457.10
2,400	2,450	70.10	5,370	5,400	197.50	7,575	7,600	325.90	9,420	9,440	458.60
2,450	2,500	71.70	5,400	5,430	199.10	7,600	7,625	327.50	9,440	9,460	460.20
2,500	2,550	73.30	5,430	5,460	200.60	7,625	7,650	329.20	9,460	9,480	461.70
2,550	2,600	74.90	5,460	5,490	202.20	7,650	7,675	330.90	9,480	9,500	463.20
2,600	2,650	76.50	5,490	5,520	203.80	7,675	7,700	332.60	9,500	9,520	464.80
2,650	2,700	78.10	5,520	5,550	205.30	7,700	7,725	334.20	9,520	9,540	466.30
2,700	2,750	79.70	5,550	5,580	206.90	7,725	7,750	335.90	9,540	9,560	467.90
2,750	2,800	81.30	5,580	5,610	208.40	7,750	7,775	337.60	9,560	9,580	469.40
2,800	2,850	82.90	5,610	5,640	210.00	7,775	7,800	339.30	9,580	9,600	470.90
2,850	2,900	84.50	5,640	5,670	211.60	7,800	7,825	340.90	9,600	9,620	472.50
2,900	2,950	86.10	5,670	5,700	213.10	7,825	7,850	342.60	9,620	9,640	474.00
2,950	3,000	87.70	5,700	5,730	214.70	7,850	7,875	344.30	9,640	9,660	475.60
3,000	3,040	89.30	5,730	5,760	216.20	7,875	7,900	346.00	9,660	9,680	477.10
3,040	3,080	91.00	5,760	5,790	217.80	7,900	7,925	347.60	9,680	9,700	478.60
3,080	3,120	92.70	5,790	5,820	219.40	7,925	7,950	349.30	9,700	9,720	480.20
3,120	3,160	94.40	5,820	5,850	220.90	7,950	7,975	351.00	9,720	9,740	481.70
3,160	3,200	96.10	5,850	5,880	222.50	7,975	8,000	352.70	9,740	9,760	483.30
3,200	3,240	97.70	5,880	5,910	224.00	8,000	8,025	354.40	9,760	9,780	484.80
3,240	3,280	99.40	5,910	5,940	225.60	8,025	8,050	356.20	9,780	9,800	486.30
3,280	3,320	101.10	5,940	5,970	227.20	8,050	8,075	358.00	9,800	9,820	487.90
3,320	3,360	102.80	5,970	6,000	228.70	8,075	8,100	359.80	9,820	9,840	489.40
3,360	3,400	104.50	6,000	6,030	230.40	8,100	8,125	361.60	9,840	9,860	491.00
3,400	3,440	106.10	6,030	6,060	232.10	8,125	8,150	363.40	9,860	9,880	492.50
3,440	3,480	107.80	6,060	6,090	233.80	8,150	8,175	365.20	9,880	9,900	494.00
3,480	3,520	109.50	6,090	6,120	235.50	8,175	8,200	367.00	9,900	9,920	495.60
3,520	3,560	111.20	6,120	6,150	237.20	8,200	8,225	368.80	9,920	9,940	497.10
3,560	3,600	112.90	6,150	6,180	238.90	8,225	8,250	370.60	9,940	9,960	498.70
3,600	3,640	114.50	6,180	6,210	240.60	8,250	8,275	372.40	9,960	9,980	500.20

DEPARTMENT OF REVENUE

TAX ON INCOMES OF \$10,000 AND OVER

IF NET TAXABLE INCOME IS		GROSS TAX IS	
At least	But less than	This amt. + this % on excess over	
\$10,000 —	\$11,000.....	\$502.50 plus	8.2% — \$10,000
11,000 —	12,000.....	584.50 plus	8.7% — 11,000
12,000 —	13,000.....	671.50 plus	9.2% — 12,000
13,000 —	14,000.....	763.50 plus	9.7% — 13,000
14,000 —	.....	860.50 plus	10.0% — 14,000

**History:** Cr. Register, January, 1960, No. 49, eff. 2-1-60; r. and recr. Register, May, 1964, No. 101; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, December, 1966, No. 132, eff. 1-1-67.

**Tax 2.14 Aggregate personal exemption of husband and wife.** The aggregate personal exemption allowable to a husband and wife pursuant to section 71.09 (6) (a), Wis. Stats., when each files a return, may be divided between them according to their choice.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, February, 1960, No. 50, eff. 3-1-60; r. and recr., Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.15 Methods of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may return its income in accordance with the method of accounting regularly employed in keeping its books. If no method of accounting is regularly employed or if the method employed does not clearly reflect the income, the department of taxation may prescribe the method to be used. A method of accounting will not be regarded as clearly reflecting the income unless all items of gross income and all deductions are treated with reasonable consistency.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.16 Changes in method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department of taxation. Applications for such change must set forth clearly the nature of the business, the method of accounting used in keeping the books, and the reasons for changing the method of reporting. In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.17 Cash method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) The use of the cash method of accounting and reporting does not properly reflect taxable income in cases where, at the end of the taxable year, the records reflect accounts receivable, accounts payable, or inventories.

**Tax 2.18 Accrual method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.) In all cases in which the production, purchase or sale of merchandise of any kind is an income producing factor, inventories are necessary, and no accounting method in regard to purchases and sales will correctly reflect the income except the accrual

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method. Special methods of accounting employed in special trades or businesses may, with the written approval of the department of taxation, be used in reporting income.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

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**Tax 2.19 Installment method of accounting for corporations.** (Section 71.11 (8), Wis. Stats.). (1) Subject to the approval of the department of taxation, a sale or other disposition by a corporation of real property, or a casual sale or other casual disposition of personal property (other than personal property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year) for a price exceeding \$1000, may be returned on the installment basis in the case of a sale or other disposition in an income year beginning on or after January 1, 1967, provided that in the income year of the sale or other disposition there are no payments or the payments (exclusive of evidences of indebtedness of the purchaser) do not exceed 30% of the selling price. On the installment basis there shall be returned as income from the installment sale in any income year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(2) Use of the installment method, in each instance, shall be conditional upon the implied agreement of the corporation to take into income in any year in which it distributes the installment obligation, the unreported balance of gain on the installment sale or exchange.

(3) The installment method shall not be permitted with respect to any installment sale or exchange made subsequent to adoption of a plan of liquidation to which section 71.337, Wis. Stats., applies.

(4) Corporations regularly engaged in the business of selling personal property and keeping records on the installment basis will be required to report for franchise or income tax purposes on the accrual basis.

(5) The expenses incident to each installment sale or exchange must be deferred on the same basis that the profit arising from the sale or exchange is deferred.

(6) When property is sold or exchanged on the installment basis at a loss, the loss may not be deferred beyond the income year in which the sale or exchange takes place.

**History:** 1-2-56; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967.

**Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies.** (Section 71.11 (8), Wis. Stats.) (1) Except as otherwise provided in subsection (3) hereof, acceptance corporations and dealers in commercial paper must report the discount on the purchase of paper as income in the year of such purchase.

(2) Where the records of such acceptance corporations and dealers in commercial paper are kept upon the deferred profit basis, schedules should be attached to the tax returns clearly setting forth the unrealized profit accounts and reconciling the income and surplus per books with the taxable net income.

(3) Acceptance corporations and dealers in commercial paper may elect to report their taxable income on the deferred profit basis, pro-



vided that their books and records are kept on that basis and provided further that both the deferment of income and the expenses incurred in producing said income is made in accordance with accepted accounting principles and practice. The election to so report must be made before the close of the year for which the return is made, and after having made such election the deferred profit basis of reporting must be adhered to in all subsequent periods.

**Tax 2.21 Accounting for incorporated contractors.** (Section 71.11 (8), Wis. Stats.) (1) The general rules for reporting income on the accrual basis apply to incorporated contractors except that, in the case of contracts upon which work is performed in 2 or more consecutive income years, the percentage of completion basis may be used provided such basis clearly reflects the income taxable under chapter 71, Wis. Stats.

(a) Under this method of accounting at the close of the taxable year, a portion of the total contract price is treated as sales for the current period, such portion being based upon the percentage of completion, as determined by an engineer's or an architect's estimate or such other records as will most clearly reflect the income realized to date. By this method the difference between the sales thus determined and the total cost applicable to the sales is treated as taxable income.

(2) The profit on jobs taken on a cost plus basis and uncompleted at the close of a taxable year should be computed in accordance with the terms of the contract and reported at that time, and cannot be deferred until the year in which the contract is completed.

(3) The income derived from construction contracts performed in Wisconsin is taxable. Records must be kept which will permit of a proper distribution of the tax paid on such income between taxation districts. Data must be submitted with the tax return indicating the basis for the distribution of the tax between taxation districts.

**History:** 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.22 Accounting for incorporated dealers in securities.** (Section 71.11 (8), Wis. Stats.) The income of dealers in securities can be properly reflected for income tax purposes only by use of the accrual method of accounting. As securities constitute the stock in trade, the inventories thereof must be taken consistently on a uniform basis conforming to that used in the trade or business.

**Tax 2.23 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.24 Accounting for incorporated retail merchants.** (Section 71.11 (8), Wis. Stats.) The "retail method" of treating inventories properly reflects the taxable income and will be acceptable when it is consistently followed and adequate records are kept. The difference between the inventory taken on the old basis and the inventory taken on the basis of the "retail method" will constitute taxable income or deductible expense for the year in which the change is made. Retail merchants should report all other items of income and expense upon the ordinary accrual method.

**Tax 2.25 Corporation accounting generally.** (Sections 71.11 (8) and 71.11 (9), Wis. Stats.) (1) In a business requiring the use of inventories, the income therefrom generally can be properly reflected by

use of the accrual method of accounting, and inventories taken in accordance with the best accounting practice in the trade or business and used by the taxpayer to show his financial position can be accepted.

(a) Except as other methods of inventorying are recognized in these rules, the two most commonly used bases in valuing inventories are 1. cost and 2. cost or market, whichever is lower.

*m* (b) Whether the cost or the lower of cost or market basis of valuing inventories is used, the basis adopted must be applied with reasonable consistency to the entire inventory, and no change from one basis to the other will be permitted without written permission from the department of taxation.

(2) Inventories and inventory records must be preserved as a part of the accounting records of the taxpayer and available for examination and verification.

**History:** 1-2-56; am. (1) (b), Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.26 "Last in, first out" method of inventorying for corporations.** (Section 71.11 (9), Wis. Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of section 71.11 (9), Wis. Stats., may elect with respect to those goods specified in its application and properly subject to inventory to compute its inventory in accordance with the method provided by section 472 of the United States internal revenue code, provided that:

(1) The first inventory which may be computed on said basis is the closing inventory for the taxable year 1940.

(2) The same basis of inventorying is used in reporting income for taxation to the United States bureau of internal revenue, and that the inventories used in reporting income to the United States bureau of internal revenue and to the Wisconsin department of taxation agree both as to computation and amounts except as provided in subsection (7).

*m* (3) Except as herein otherwise provided, the change to and the use of such method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect thereto by the United States bureau of internal revenue.

*Feb. Reg. 7-2-80* (4) An application to use such method must be filed with the Wisconsin department of taxation in substantially the same form as required by the bureau of internal revenue, and the same shall be filed with the return for the taxable year in which the change is to be made effective. The opening inventory for the period in which the election to change is exercised shall be taken on the basis previously accepted and approved.

(5) There shall be applicable for Wisconsin income tax purposes, in addition to those regulations of the United States bureau of internal revenue made generally applicable by subsection (3) hereof, that regulation, authorized by section 1321 of the internal revenue code, concerning involuntary liquidation and replacement of inventories, except, however, that income adjustments for the difference between the replacement cost and the original inventory cost of the base stock inventory liquidated shall be made to the net income of the year in which the replacement is made instead of to the net income for the year of liquidation. ( (5) effective June 5, 1946).

(6) Except as provided in subsection (7), any corporation which has been computing its inventory for Wisconsin income tax purposes in accordance with section 472 of the United States internal revenue code and which has been authorized or directed by the United States commissioner of internal revenue to change its method of inventory valuation for federal income tax purposes shall also change its method of inventory valuation for Wisconsin income tax purposes. To correlate its Wisconsin basis with the federal basis, the opening inventory for the income year in which the change is made shall be reported on the basis previously accepted and approved whereas the closing inventory shall be on the new method of valuation. No adjustment is to be made to the closing inventory of the preceding taxable year. Notice of the change in method shall be filed with the return on which it is effective and shall be supported by a copy of the authorization or order to change inventory method for federal income tax purposes.

(7) Any corporation which has been authorized or directed by the United States Commissioner of Internal Revenue to treat the cutting of timber as a sale or exchange of timber for purposes of computing its federal income tax liability and has included in its inventory for federal income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, may exclude from its inventory, for Wisconsin income tax purposes, the excess of the fair market value of such timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of taxation, include such excess in its inventory for Wisconsin income tax purposes subject to such conditions as said department may prescribe.

**History:** 1-2-56; am. (2) and (6), and cr. (7), Register, March, 1960, No. 51, eff. 4-1-60; am. intro. par., (6) and (7), Register, March, 1966, No. 123, eff. 4-1-66.

## DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS

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

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

(1m) Beginning with calendar year 1974, or corresponding fiscal year, and thereafter, in lieu of the equally weighted 3-factor apportionment fraction based on property, payroll and sales, there shall be used an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. If one of these factors is omitted pursuant to section 71.07 (3), Wis. Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

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

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

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

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

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

(c) *Property factor; rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined as at arm's length. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this may result in a negative value or clearly inaccurate valuation. In those instances any other method which will properly reflect the value may be required by the department or may be requested by the taxpayer, but in no case shall the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the value of the part of the property used by the taxpayer bears to the total value of the same rental property. The "annual rental" is the amount paid

as rental for the property for a 12 month period. Where property is rented for less than a 12 month period, the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall be adjusted accordingly. Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property, and includes: 1. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items. "Annual rental" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(d) *Property factor; leasehold improvements.* Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of leasehold improvements shall be included in the factor.

(e) *Property factor; construction in progress.* Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used by the taxpayer in the regular course of his trade or business. If the property is partially used by the taxpayer in the regular course of his trade or business while under construction, the value of the property to the extent used shall be included in the property factor.

(f) *Property factor; averaging property values.* As a general rule the "average value" of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department of revenue may require or allow the averaging of monthly values during the tax period if reasonably required to properly reflect the average value of the taxpayer's property. Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period, or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(4) **PAYROLL FACTOR; WHAT IS COMPENSATION.** The term "compensation" includes wages, salaries, commissions and any other form of remuneration paid to employes for personal services. Compensation includes the value of board, rent, housing, lodging, and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the federal internal revenue code. In the case

of employees not subject to the federal internal revenue code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal internal revenue code. Compensation includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employees with respect to such personal services in either the numerator or denominator of its payroll factor. Except for such management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

(5) (a) *Sales factor; sales made in general business operations.*

1. For the purposes of the sales factor, the term "sales" means generally all gross receipts derived by a taxpayer from transactions and activities in the course of its regular trade or business operations which produce business (apportionable) income.

2. In the case of a taxpayer whose business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

(b) *Sales factor; sales made in other types of business activity.*

As applied to a taxpayer engaged in business activity other than or in addition to the manufacturing and selling or purchasing and reselling of property, "sales" includes the gross receipts from the taxpayer's business activity.

1. If the business activity consists of providing services, such as the operation of an advertising agency or the performance of equipment service contracts or the performance of research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

2. If the business activity consists of performing cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts includes the taxpayer's reimbursed cost plus the fee.

3. If the business activity is the renting of real or tangible personal property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

4. If the business activity is the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(c) *Sales factor; what sales of tangible personal property are in this state.* 1. Gross receipts from the sales of tangible personal prop-

erty (except sales to the United States Government: see Tax 2.39 (5) (d)) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale, or if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of destination.

2. Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is in this state, even though the property is ordered from outside this state.

3. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

4. The term "purchaser within this state" shall include a recipient other than the purchaser if the taxpayer, at the designation of the purchaser, delivers to or has the property shipped to such a recipient within this state.

5. When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, or the designee of a purchaser who is in this state, the sale is in this state.

6. If the taxpayer is not taxable in the state of destination for lack of sufficient nexus or by operation of Public Law 86-272, 15 U.S.C.A., Section 381-385, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

7. If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchasers, the following rules apply:

a. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

b. If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

(d) *Sales factor; sales to the United States Government.* Gross receipts from the sales of tangible personal property to the United States Government, including its agencies and instrumentalities, are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the United States Government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(e) *Sales factor; numerator.* The numerator of the sales factor will include the gross receipts from sales which are attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(f) *Sales factor; numerator; sales other than sales of tangible personal property.* 1. In General: Section 71.07 (2) (c) 3, Wis. Stats., contains provisions for including gross receipts from transac-

tions other than sales of tangible personal property in the numerator of the sales factor.

2. Under this section gross receipts are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. If the income producing activity is performed within and without this state such receipts are attributed to this state in accordance with Subdivision 5 of this paragraph.

3. Income producing activity; defined. The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes but is not limited to the following:

a. The rendering of personal services by employes or the utilization of tangible and intangible property by the taxpayer in performing a service.

b. The sale, rental, leasing, or licensing the use of or other use of real property.

c. The rental, leasing, licensing the use of or other use of tangible personal property.

d. The sale, licensing the use of or other use of intangible personal property such as patents, copyrights, trademarks, trade names, etc.

4. Costs of performance; defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

5. Application. a. Receipts from sales, other than sales of tangible personal property, are in this state if the income producing activity is performed wholly within this state. If the income producing activity is performed partly within and partly without this state, receipts shall be assigned to this state based upon the ratio of direct costs of performing such services in this state to the direct costs of performing such services in all states having jurisdiction to tax such business.

b. The following are special rules for determining when receipts from the income producing activities described below are in this state during the taxable year:

(i) Gross receipts from the sale, lease, rental or other use of real property are in this state if the real property is located in this state.

(ii) Gross receipts from the rental, lease, licensing the use or other use of tangible personal property shall be assigned to this state if the property is within this state during the entire period of rental, lease, license or other use. If the property is within and without this state during such year, gross receipts attributable to this state shall be based upon the ratio which the time the property was used in this state bears to the total time the property was used in all states having jurisdiction to tax such business during such year.

(iii) Gross receipts from the performance of personal services are attributable to this state if the services are performed entirely in this state. If the services are performed partly within and partly without his state, gross receipts shall be attributable to this state based upon the ratio which compensation and other direct costs of performing such services in this state bear to total compensation and other direct



costs of performing such services in all states having jurisdiction to tax such business. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to this state if the compensation related to performing such services is allocated to this state by section 71.07 (2) (b) 4, Wis. Stats.

c. The provisions of sections Tax 2.39 (5) (b) 2 and (5) (f) shall also apply to sales, other than sales of tangible personal property, to the United States Government.

(6) "BUSINESS (APPORTIONABLE) INCOME" DEFINED. "Business (apportionable) income" is income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(7) "STATE" DEFINED. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

**History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12-1-73.

**Tax 2.40 Nonapportionable income.** (Section 71.07 (1) and (2), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. Directly related expenses must be deducted in full, whereas expenses related to both business income and nonapportionable income shall be prorated in a manner which fairly distributes the deduction between such incomes.

(2) For all businesses which apportion their income to Wisconsin, other than "financial organizations" and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., nonapportionable dividends and interest received which follow the residence of the recipient shall first be reduced by deductible dividends received, and the balance shall be limited to the amount by which total apportionable and nonapportionable interest and non-deductible dividends received exceeds the sum of the expenses related thereto and deductible interest paid. If the latter sum exceeds such total interest and non-deductible dividends received, no deduction from total net income can be made for nonapportionable interest and dividends received. In no event can dividends and interest received which follow the residence of the recipient exceed the total amount of such nonapportionable interest and dividends received.

(3) For "financial organizations" (except insurance companies) and "public utilities" as defined in Section 71.07 (2) (d), Wis. Stats., dividends and interest received which follow the residence of the recipient must be reduced by related expenses and deductible dividends received. Interest paid and deductible is deemed to be related expense in an amount determined by multiplying the total of such interest paid by a fraction, the numerator of which is the average tax basis of the intangible property producing, or capable of producing, such income and the denominator of which is the depreciated average tax basis of the total property owned and used in the production of all income during the year. This paragraph shall also apply to all other businesses not covered by (2) above.

(4) Total nonapportionable income or loss and Wisconsin non-apportionable income or loss must be adjusted for federal income taxes if federal income taxes are deductible in determining total company net income.

(5) The total net income or loss of the business must be adjusted to eliminate all of the net nonapportionable income or loss to determine the apportionable income or loss to which the apportionment percentage is applied. The resulting income or loss apportioned to Wisconsin must then be adjusted to include the Wisconsin net non-apportionable income or loss.

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

**Tax 2.41 Separate accounting method.** (Section 71.07 (2), Wis. Stats.) (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: The ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business. Federal income taxes are based upon income and should, therefore, be allocated to Wisconsin business on the basis of income. Federal income taxes are deductible only on the cash basis, and the allocation to Wisconsin business for any year, therefore, must be based upon the ratio of income within Wisconsin to the total income of the year on which the federal income taxes are assessed, even though that ratio differs from the ratio of the year in which the taxes are actually paid.

(a) The relationship of the general overhead items to Wisconsin operations will determine whether the home office income and expense should be allocated to the Wisconsin business. Such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation. All expenses connected with the interest, dividends and rentals realized from investments such as the above are not subject to allocation but must be applied against the investment income. The taxability of the net investment income depends upon the situs of the investment property or the residence of the recipient.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58.

**Tax 2.42 Apportionment method.** (Section 71.07 (2), Wis. Stats.) Any person engaged in business within and without the state must report by the statutory apportionment method when the business of such person within the state is an integral part of a unitary business, unless the department of taxation expressly permits reporting on a different basis. The factors used in the apportionment method are as follows:

(1) Tangible property includes land, buildings, machinery and equipment, inventories and other tangible personal property actually owned and used in producing apportionable income. Tangible property

which is used in producing nonapportionable or nontaxable income cannot be included in the property factor. The value at which tangible property should be included in the apportionment factor is the average of the beginning and close of year values on a comparable basis within and without the state. If the average at the beginning and end of the year does not fairly represent the average of the property owned during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

(2) The cost of manufacturing, collecting, assembling or processing within Wisconsin must be determined in all cases in the same manner and under the same rules as the cost for the entire business within and without Wisconsin is determined. When a product is partially completed outside of the state and then shipped into the state for further processing or completion, only the labor and manufacturing expense incurred from the time that the product is brought into the state becomes a part of the cost within Wisconsin, and the total material used in manufacturing both within and without the state shall be allocated on some equitable basis such as the ratio of direct labor and manufacturing expense within Wisconsin to the total thereof. Unless inconsistent with the best accounting practice in the trade or business, amounts realized on the sale of scrap produced in the manufacturing process shall be treated as a recovery of, and in reduction of, cost of manufacturing, for purposes of the cost of manufacturing factor.

(3) Sales are made in Wisconsin if made through or by offices, agencies or branches located within the state, regardless of the location of the purchaser. Sales made by a foreign corporation to customers in Wisconsin through the medium of solicitors or traveling salesmen are not Wisconsin sales unless such salesmen are identified with offices, agencies or branches located within Wisconsin. Sales made by a sales office in Wisconsin to customers located outside of Wisconsin are Wisconsin sales for purposes of apportionment. Goods sold through a sales office in Wisconsin may be shipped direct from a factory located outside the state to a customer located outside the state and still be Wisconsin sales. Goods sold through a sales office located outside of the state without the intervention of any Wisconsin office, branch or agency but shipped from a factory located in Wisconsin to a Wisconsin customer are not Wisconsin sales. As used in section 71.07 (2) (c), Wis. Stats., and in this regulation, the term "sales" shall extend to and include by-product sales, but shall not include scrap sales treated as a reduction of cost of manufacturing pursuant to subsection (2) hereof.

(4) This rule is superseded by Wis. Adm. Code section Tax 2.39 with respect to the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter.

**History:** 1-2-56; am. (2) and (3), Register, January, 1968, No. 145, eff. 2-1-68; cr. (4), Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.43 Nonapportionable income. (Section 71.07 (2), Wis. Stats.)**

(1) The expenses related to nonapportionable income must be deducted therefrom to determine the net nonapportionable income. In the case of dividends and interest received which follows the residence of the recipient, only the excess of the amounts received over the sum

of interest paid and dividends deducted plus other related expenses can be considered as nonapportionable income. If the interest paid, deductible dividends received and related expenses exceed the total interest and dividends received, no deduction from total net income can be made for nonapportionable interest and dividends. All of the nonapportionable income must be deducted from the total net income of the business to determine the apportionable income to which the apportionment percentage is applied. Any nonapportionable income attributable to Wisconsin must be added to the apportionable income allocated to Wisconsin to determine the total Wisconsin net income.

(2) This rule is superseded by Wis. Adm. Code section Tax 2.40 with respect to the reporting of income for the purposes of franchise or income taxation in the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter.

**History:** 1-2-56; r. (1) (a), Register, August, 1960, No. 56, eff. 8-1-60; cr. (2), Register, August, 1973, No. 212, eff. 9-1-73.

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**Tax 2.44 Permission to change basis of allocation.** (Section 71.07 (2) Wis. Stats.) Except when income must be reported on the apportionment basis, permission to make a change either from separate accounting to apportionment, or vice versa, must be obtained in writing from the commissioner of taxation upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application must be filed before the end of the income year for which the change is desired.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 2.45 Apportionment in special cases.** (Section 71.07 (5), Wis. Stats.) When the business of any person, other than a "financial organization" or "public utility," as defined in section 71.07 (2) (d), Wis. Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of such person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in section 71.07 (2), Wis. Stats., (or by separate accounting in view of the unitary nature of the business), the department will substitute in the place of some or all of the statutory apportionment factors such other factor or factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation, the taxpayer, at the time of the assessment, will be apprised of the factors used in the formula adopted.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.46 Apportionment of business income of interstate air carriers.** (Section 71.07 (2) (e), Wis. Stats.) The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios: (1) The ratio which the aircraft arrivals and departures within this state scheduled by such carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period; provided that in the case of nonscheduled operations all arrivals and departures shall be substi-

tuted for scheduled arrivals and departures; (2) The ratio which the revenue tons handled by such carrier at airports within this state during the calendar or fiscal year bears to the total revenue tons handled at airports within and without this state during the same period; (3) The ratio which such air carrier's originating revenue within this state for the calendar or fiscal year bears to the total originating revenue within and without this state for the same period.

**History:** Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.47 Apportionment of net business income of interstate motor carriers of property.** (1) (Section 71.07 (2) (e), Wis. Stats.) The apportionable income of an interstate motor carrier of property, doing business in Wisconsin, shall be apportioned to Wisconsin, on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of the gross receipts from carriage of property first acquired for carriage in Wisconsin to the total gross receipts from carriage of property everywhere;

(b) The ratio of ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

(2) Whenever gross receipts' data is not available, the department may authorize or direct substitution of a similar factor (e.g. gross tonnage) and whenever ton mile data is not available the department may similarly authorize substitution of a similar factor (e.g. revenue miles).

(3) For purposes of this regulation a "ton mile" reflects the movement of one ton of freight for the distance of one mile.

(4) This regulation shall not apply to mercantile or manufacturing businesses which engage in some interstate hauling as an incident of such mercantile or manufacturing businesses.

(5) This regulation shall apply with respect to the determination of income tax or franchise tax liability for any income year open to assessment or refund on the effective date hereof.

**History:** Cr. Register, April, 1966, No. 124, eff. 5-1-66; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.48 Apportionment of net business incomes of interstate pipeline companies.** (Section 71.07 (2) (e), Wis. Stats.) (1) With respect to the imposition of the Wisconsin income or franchise tax on or measured by income of the calendar year 1969, or corresponding fiscal year, and thereafter, the apportionable income of a pipeline company operating within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 3 ratios:

(a) The ratio of tangible property owned, and used by the taxpayer in Wisconsin to produce apportionable income, to the total of such property owned and used by him to produce apportionable income everywhere. The amount of such property for purposes of both the numerator and denominator shall be Wisconsin income tax net cost. In any case in which the property factor is distorted by reason of the taxpayer depreciating property in Wisconsin by a method different from that used to depreciate property outside Wisconsin, or in any case in which Wisconsin income tax net cost cannot be ascertained, the department may authorize or direct such

other method of determining the property fraction as will produce an equitable result.

(b) The ratio of traffic units (e.g. barrel miles, cubic foot miles or other appropriate measure of product movement) in Wisconsin to the total of such units everywhere.

(c) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere. An employe shall be deemed located in Wisconsin if his services are performed entirely within Wisconsin, or if services performed without the state are incidental to services within Wisconsin, or if some of the service is performed in Wisconsin and the base of operations is in Wisconsin, or if there is no base of operations and the place from which the service is directed and controlled is in Wisconsin, or if the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. Compensation paid to retired employes shall be excluded from both the numerator and the denominator.

(2) In any case in which the company has no employes or in which the department determines that employes are not a substantial income producing factor, it may order or permit the elimination of the compensation factor and the use of the arithmetical average of the other 2 factors to arrive at the Wisconsin apportionment percentage.

**History:** Cr. Register, November, 1969, No. 167, eff. 12-1-69; am. (intro.), Register, August, 1973, No. 212, eff. 9-1-73.

**Tax 2.49 Apportionment of net business incomes of interstate finance companies.** (Section 71.07 (2) (e), Wis. Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and thereafter, the business (apportionable) income of a finance company engaged in business within and without Wisconsin shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 ratios:

(a) The ratio of gross receipts in Wisconsin to the total gross receipts everywhere. "Gross receipts" includes all business income associated with the lending of money in the normal course of business such as interest, discounts, finance charges or fees and service charges or fees. Gains from sales of assets, charges to a related corporation for personal services of employes and miscellaneous income are not includable in "gross receipts" for the purpose of computing this factor. "Gross receipts" will be assigned as income to this state if the transaction producing the income was principally negotiated in this state.

(b) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere, determined in accordance with the provisions of section 71.07 (2) (b), Wis. Stats., and Wis. Adm. Code section Tax 2.39 (2). "Compensation paid to employes" includes deductible management or service fees paid to a related corporation directly or indirectly for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor.

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

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

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

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

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

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

### **GROSS INCOME**

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

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

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

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

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

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

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

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

**History:** 1-2-56, r. (1), (3) (b), (3) (c) and (3) (d) and renum. (2) to be (1) and (3) (a) to be (1) (d), Register, March, 1966, No. 123, eff. 4-1-66.



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

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

**Tax 2.61 Building and loan dividends on instalment shares received by corporations.** (1) An amount (dividend) credited to shareholders of a building and loan association has a taxable status as income for the year of the credit to the extent of the amount available to the shareholder.

(2) An amount (dividend) received by such shareholder at maturity of his share in excess of the accumulated amounts so reported as income shall be treated as income in the year of such receipt.

**Tax 2.63 Dividends accrued on stock.** (Section 71.03 (1) (d), Wis. Stats.) In the case of stock purchased by a corporation between dividend dates, the entire amount of the dividend is income to the vendee and must be included in its income when received. The amount advanced by the vendee to the vendor in contemplation of the next dividend payment is an investment of capital.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.65 Interest received by corporations.** (Section 71.03 (1) (c), Wis. Stats.) (1) In general, all interest is includable in the income by which the franchise tax is measured, including interest received on monies invested in obligations of the United States government and its instrumentalities and agencies. If a corporation is not subject to the franchise tax, but subject to net income taxation, interest on federal obligations is not taxable, but interest on postal savings and federal tax refunds is taxable to corporations subject to net income taxation. Profit or loss on the sale or other disposition of federal obligations is a taxable gain or deductible loss for purposes of both the franchise tax measured by net income and the net income tax. (See Section 71.07 (1) Wis. Stats. for situs of interest income).

(2) Interest is deemed to be received when accrued or received in cash, depending upon the method of accounting used by the taxpayer corporation. Interest becomes taxable to a corporation reporting on a cash basis when it is made available to it. Coupons on bonds which are due but have not been cashed are considered as received provided that the cash for payment of the coupons is available. Accrued interest paid on bonds purchased between interest payment dates shall be treated as a deduction from the interest thereon received.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.67 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.69 Income from Wisconsin business.** (Sections 71.01 and 71.07, Wis. Stats.) All of the income realized from business carried on in Wisconsin is taxable. The fact that a person or corporation is licensed to do business in Wisconsin is evidence that it is doing business in the state, within the meaning of this chapter. However, a person or corporation may be doing business in this state within the meaning of this chapter even though not licensed. In all cases of doubt the complete facts should be reported to the commissioner of taxation for determination.

**History:** 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.70 Gain or loss on capital assets of corporations; basis of determining.** (Section 71.03 (1) (g), Wis. Stats.) (1) Profits or losses resulting from the sale or other disposition of capital assets are ordinarily taxable income or deductible losses for the year in which the sale or other disposition takes place. In certain cases of real estate sales involving deferred payments, the profit may be treated as not wholly realized in the year of sale and may be deferred in accordance with the terms of payment. (See Wis. Adm. Code section Tax 2.71)

(a) The fair market value at January 1, 1911 must be determined in the light of the facts and circumstances known as of that date. In the absence of competent evidence to the contrary, cost less depreciation sustained to January 1, 1911 will be considered the fair market value as of that date. The method of arriving at the January 1, 1911 value must be clearly set forth in the income tax returns.

(b) Stocks, bonds and other securities are considered as capital assets when held by a person other than a dealer in securities. The profit or loss on sale or other disposition of securities is, therefore, determined in the same manner and on the same basis as that used for other capital assets.

(c) In determining the profit or loss on the sale of stock received as a stock dividend subsequent to January 1, 1926, the total income tax cost of the original shares on which the dividend was declared is allocated to the new and old shares with due regard to the fair market value of the new and old shares at the date of the dividend.

**Tax 2.71 History:** 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; r. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967.

**Tax 2.72 Exchanges of property by corporations generally.** (Section 71.03 (1) (g), Wis. Stats.) (1) Except where otherwise specifically provided by chapter 71, where property is exchanged for other property which has a fair market value, a taxable gain or deductible loss may result, and such fair market value must be treated as the price realized for the property exchanged and the cost price of the property received, for purposes of future sale. When the property received in exchange has no determinable market value, the property received takes the place of the property exchanged, and no profit or loss is recognized. In the event of future sale in such case, the income tax cost of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except where otherwise specifically provided by chapter 71, where property of two different kinds is received in exchange for property, one kind having a determinable fair market value and the other no determinable fair market value, the gain is measured by the

excess of the fair market value of the property received over the income tax cost of the property exchanged. The property received which has no determinable fair market value is considered as having no cost in case of future sale, the entire proceeds of such sale being taxable income. If the income tax cost of the property exchanged is in excess of the fair market value of the property received in exchange, such excess shall be taken as the income tax cost of the property received which has no determinable fair market value, no loss being recognized in such cases.

(3) Taxable gain or deductible loss must be computed when used working assets such as automobiles and machinery were traded in on the purchase price of new assets of a like kind in all cases in which the exchange occurred in a taxable year ending prior to December 31, 1957. The only exception to this rule occurs in the case of a taxpayer who has been permitted or required to use a composite rate of depreciation. (For the handling of such exchanges occurring in taxable years ending on and after December 31, 1957, when both the property exchanged and the property received have a situs in Wisconsin, see section 71.03 (6) Wis. Stats.)

(4) In general there are 4 types of exchanges upon which exemption from tax may be claimed:

(a) Exchanges made pursuant to a plan of reorganization.

(b) Exchanges in which the property received in trade has no determinable market value.

(c) Exchanges of property held for productive use or investment pursuant to section 71.03 (5) when the exchange occurred in a taxable year ended on or after December 31, 1957.

**History:** 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. (4) (c) and renum. (4) (d) to be (4) (c) and am., Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.721 Exchanges of property held for productive use or investment by corporations.** (Section 71.03 (5), Wis. Stats.)

(1) Property held for productive use in trade or business may be exchanged tax free for property of a like kind held for investment as well as for property of a like kind held for productive use in trade or business, and, similarly, property held for investment may be exchanged tax free for property of a like kind held for productive use in trade or business as well as for property of a like kind held for investment.

(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.

**History:** Cr. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.73 Involuntary conversion by corporations.** (Section 71.03 (1) (g), Wis. Stats.) (1) In all cases of gain on involuntary conversion where such gain is not recognized for franchise or 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.74 Gain or loss on disposition of property by corporations; adjustments to basis.** (Section 71.03<sup>1</sup>(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 corporation'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 corporation is not permitted to take advantage in a later year of its prior failure to take any such allowance or its taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the corporation 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 corporation 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 corporation with respect to any property has taken a deduction for depreciation properly under one of the methods provided in section 71.04 (13) (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 corporation with respect to that property.

(5) The amount allowed which resulted in a reduction of the corporation'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) A corporation 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 corporation from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available.

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

(10) 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 corporation 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 corporation 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 corporation 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; am. (1) (a), (2), (3), (4), (5), and r. (8), renum. (9) to be (8) and am., renum. (10) to be (9) and (11) to be (10) and am., Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.75 Recoveries by corporations.** (Section 71.03 (1) (k), Wis. Stats.) Recoveries of items previously charged off as loss or as expense are taxable income in the year of recovery.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.76 Refunds of taxes to corporations.** (Section 71.03 (1) (k), 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.77 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.78 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.79 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.80 Improvements on leased real estate, income to corporate lessor.** (Section 71.03 (1) (k), 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.81 Damages received by corporations.** (Section 71.03 (1) (k), 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.82 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.83 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.84 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.85 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.86 Income to corporations from cancellation of government contracts.** (Section 71.03 (1) (k), Wis. Stats.) Amounts claimed 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 2.87 Contributions for line extension.** (Section 71.03 (1) (k), Wis. Stats.) Amounts received by a public utility corporation 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.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**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.

(2) The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales, commissions on insurance premiums, pensions and retired pay are wages

within the meaning of the statute if paid as compensation for services performed by the employe for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may be paid on the basis of piecework, or a percentage of the profits, and may be paid hourly, daily, weekly, monthly or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as, for example, stocks, bonds or other forms of property. (See however section 71.19 (1) (i), Wis. Stats., relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business). If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employes its own stock as remuneration for services rendered by the employe, the amount of such remuneration is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employe no longer exists between the person in whose employ the services were performed and the individual who performed them.

(6) In general, pensions and retired pay are wages subject to withholding. So called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

(7) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(8) Amounts of so-called "vacation allowances" paid to an employe constitutes wages. Thus the salary of an employe on vacation, paid notwithstanding his absence from work, constitutes wages.

(9) Any payments made by an employer to an employe on account of dismissal, that is, involuntary separation from the service of the employer, constitutes wages regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments.

(10) Any amount deducted by an employer from the remuneration of an employe is considered to be a part of the employe's remuneration and is considered to be paid to the employe as remuneration at the time the deduction is made. It is immaterial that any act or law requires or permits such deductions.

(11) The term "wages" includes the amount paid by an employer on behalf of an employe, without deduction from the remuneration of or other reimbursement from the employe, on account of any tax imposed upon the employe by any taxing authority.

(12) The value of any meals or lodging furnished to an employe by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employe under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. Stats.

(13) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases) furnished or offered by an employer to his employes generally, are not considered as wages subject to withholding, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment or efficiency of his employes.

(14) Tips or gratuities paid directly to an employe by a customer of an employer, and not accounted for by the employe to the employer, are not subject to withholding.

(15) Withholding is not required upon amounts paid to an employe by his employer under a wage continuation plan for a period during which the employe is absent from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the provisions of the internal revenue code, as defined in section 71.02 (2) (b), Wis. Stats.

**History:** Cr. Register, January, 1963, No. 85, eff. 2-1-63; r. and recr. (12), cr. (15), Register, March, 1966, No. 123 eff. 4-1-66.

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in paragraph (2) hereof, amounts withheld pursuant to section 71.20, Wis. Stats., in any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(2) Any employe who reports his income for taxation to the state of Wisconsin on an income year other than the calendar year shall be allowed as a credit for any such fiscal year amounts withheld by his employer in such fiscal year provided his employer, on or before the end of the first month following the close of such fiscal year, shall voluntarily furnish such employe with 2 legible copies and the department of taxation with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in section 71.10 (8) (a), Wis. Stats., and the employe files a copy of such statement along with his fiscal year return.

**History:** Cr. Register, March, 1963, No. 87, eff. 4-1-63.



## Chapter Tax 3

## INCOME TAXATION, DEDUCTIONS FROM GROSS INCOME, EXCLUSIONS AND EXEMPTIONS, ETC.

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**Tax 3.01 Rents paid by corporations.** (Section 71.04 (2), Wis. Stats.) Rents paid on property used in producing taxable income are deductible from gross income. The cost of leaseholds, acquired for cash or property, represents rent paid in advance and as such is deductible from gross income in equal amounts over the life of the leaseholds. Taxes paid by the lessee for the lessor are to be treated as additional rent paid and are a deductible expense.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.03 Dividends received, deductibility of.** (Section 71.04 (4), Wis. Stats.) (1) In determining whether 50% or more of the net income or loss for the preceding year of the corporation paying the dividend was used in computing taxable income, if the corporation paying the dividend was subject to the franchise tax measured by net

income, interest income from the federal government and its instrumentalities must be included but deductible dividends must be disregarded. If the corporation paying the dividend was subject to the net income tax, non-taxable interest from the federal government or its instrumentalities and deductible dividends must both be disregarded.

(2) When a corporation keeps its records on the basis of a fiscal year ending not later than June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending within the calendar year when such dividends are paid. When a corporation keeps its records on the basis of a fiscal year ending subsequent to June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending in the year prior to the calendar year when such dividends are paid.

(3) All dividends must be reported in full on the income tax return of the person receiving them, regardless of the deductibility of certain dividends received by corporations. Corporate taxpayers should deduct such dividends as they believe to be deductible. Whether or not the dividends are deductible will be determined in accordance with the records on file with the department of taxation, and proper adjustment will be made.

(4) All corporations doing business within Wisconsin must report the dividends paid to residents of Wisconsin on forms 9b. (See Wis. Adm. Code section Tax 2.04)✓

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.05 Profit-sharing distributions by corporations.** (Section 71.04 (1), Wis. Stats.) (1) Payments made to officers and employes for services rendered under the terms of a profit-sharing agreement, in lieu of or in addition to fixed salaries or other compensation, are proper deductions from gross income. Payments made to the stockholders of a corporation who are not actively engaged in the business are not allowable deductions. If profit-sharing distributions are based on stock holdings, they will be treated as dividends and, therefore, are not allowable deductions.

(a) The form or method of fixing compensation is not decisive as to the deductibility thereof. If payments are made pursuant to a profit-sharing agreement entered into between employer and employe before services are rendered, which is not influenced by any consideration on the part of the employer other than that of securing the services of the employe on fair and advantageous terms, they will be allowable as deductions from gross income even though in the actual working out of the contract such payments may prove to be greater than the amounts which would ordinarily be paid.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.06 Compensation paid by corporations in capital stock.** (Section 71.04 (1)✓ Wis. Stats.) Payments of salaries, wages and other compensation in the capital stock of a corporation for services actually rendered are deductible to the extent of the fair market value of such stock.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.07 Bonuses and retroactive wage adjustments paid by corporations.** (Section 71.04 (1), Wis. Stats.) Bonuses for services actually rendered but not based upon a prearranged bonus agreement or established policy are allowable when actually paid, provided such payments when added to the stipulated salaries or other compensation do not exceed a reasonable compensation for the services rendered. Bonuses paid to employes and others which do not have in them the element of compensation or are excessive in comparison to the services rendered are not deductible from gross income. Christmas bonuses, if paid as additional compensation, are proper deductions from gross income if included on forms WT-9 or 9b as a part of the compensation paid.

Retroactive wage adjustments, if reasonable in amount, may be taken as a deduction from gross income in the year in which they are finally determined to be payable. Such adjustments are to be reported on forms WT-9 or 9b.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.08 Retirement and profit sharing payments by corporations.** (Section 71.04, Wis. Stats.) (1) Retirement payments to retired officers or employes or to their families or dependents, to be deductible from gross income must:

- (a) Qualify as ordinary and necessary expense.
- (b) Be made pursuant to a retirement plan agreement.
- (c) Be reasonable in amount.
- (d) Have been reported on informational returns when required by Wis. Adm. Code sections Tax 2.04 or Tax 2.06.

Credits to retirement reserves are not deductible, but actual retirement payments made and charged against such reserves may be deductible in the year made.

(2) Payments to an employe retirement or profit sharing trust are deductible if:

- (a) Such payments qualify as ordinary and necessary expense.
- (b) The trust is an irrevocable trust and no part of its funds may revert to the employer.
- (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 employes.
- (e) Such payments are reasonable in amount.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.10 Salesmen's and officers' commissions, travel and entertainment expense of corporations.** (Section 71.04 (1), Wis. Stats.) Commissions, lump sum and per diem allowances for travel, entertainment and other expenses, or allowances for use of automobiles, are deductible from gross income, provided that such items are reported on form WT-9 or 9b. Reimbursement of amounts actually expended by officers, employes or others for the benefit of a taxpayer are deductible if it is proven that the amounts thus reimbursed were actually so expended.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.11 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

Register, May, 1971, No. 185

**Tax 3.12 Losses on account of wash sales by corporations.** (Section 71.04 (7), Wis. Stats.) The provision for the disallowance of losses from so-called "wash sales" is not applicable to dealers in securities or to persons who continually deal in securities on the stock market and who do not retain possession of their securities for any substantial period of time.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.14 Losses from bad debts by corporations.** (Section 71.04 (7), Wis. Stats.) (1) Where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction.

(2) Bad debts arising from items of income are not deductible unless the items in question have been reported for taxation. For example, bad debts arising from unpaid rents and similar items of taxable income will not be allowed as a deduction unless the income such items represent has been included in the return of income for the year for which the deduction as a bad debt is sought to be made or for a previous year.

(3) Any amount subsequently received on account of a bad debt previously allowed as a deduction for income tax purposes, must be included in gross income for the taxable year in which received.

(4) There should accompany the return a statement of facts substantiating any deduction claimed for bad debts.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.16 Losses by corporations on involuntary conversion.** (Section 71.04 (7), Wis. Stats.) In all cases of involuntary conversion which result in losses, such losses are deductible in the year in which the conversion takes place.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.17 Corporation losses, miscellaneous.** (Section 71.04 (7), Wis. Stats.) (1) Premiums paid on bonds purchased are part of the cost of such bonds, and no portion of such premiums will be allowed as deductions from gross income until the bonds are sold or redeemed.

(2) Losses sustained from illegal transactions are not deductible.

(3) Anticipated losses set up on the books through reserves for contingencies, etc., are not deductible.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.20 Interest paid by corporations.** (Section 71.04 (2), Wis. Stats.) Interest paid on money borrowed by a corporation to purchase its own capital stock is not deductible.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.22 Real estate and personal property taxes of corporations.** (Section 71.04 (3), Wis. Stats.) (1) No accrual for Wisconsin real or personal property taxes may be deducted on any return for a fiscal year ending prior to November 30. Accrual of real or personal property taxes levied in other states is governed by the laws of such states.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.23 Federal income and excess profits taxes of corporations.** (Sections 71.04 (3) and 71.04 (3a), Wis. Stats.) The limitation provided in subsections 71.04 (3a), Wis. Stats., is based upon the income which is being reported and not upon the income upon which the federal tax sought to be deducted was paid.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.24 Corporation taxes, miscellaneous.** (Section 71.04 (3), Wis. Stats.) (1) Import or tariff duties and business, license, privilege, excise and stamp taxes, are deductible if incurred in connection with the operation of the taxpayer's trade or business.

(2) Fees or taxes paid in connection with the organization of corporations, or the increase of capital stock after organization, are not deductible in the year of payment. Such fees and taxes are part of the organization expense and must be capitalized. (See Tax 3.44)

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.28 Depreciation, basis for allowance to corporations.** (Section 71.04 (2), Wis. Stats.) (1) After depreciation to the extent of 100% of the cost or other tax basis of the depreciable assets has been allowed, no further deduction will be permitted.

(2) Land is not subject to a deduction for depreciation.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.29 History:** 1-2-56; r. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 3.30 Depreciation and amortization, leasehold improvements: corporations.** (Section 71.04 (2), Wis. Stats.) (1) Buildings erected on leased land and equipment or improvements permanently attached to leased property, title to which passes to the lessor, the physical life of which is less than the term of the lease, should be written off by the lessee through depreciation charges over the depreciable life of the property, regardless of the term of the lease. In case the life of the property extends beyond the term of the lease, the tax cost of the property normally should be written off over the term of the lease. If a lease is renewed before the end of the amortization period, the lessee must write off the unamortized leasehold improvements as of the date of renewal over the remaining life of the property or the term of the lease, whichever is shorter. In cases in which the lease contains an unexercised option of renewal, the matter of amortizing the tax cost over the term of the original lease plus the renewal period or periods, depends upon the facts in the particular case. When the facts show with reasonable certainty that the lease will be renewed, the tax cost of improvements should be amortized over the term of the original lease plus the term of the renewal period or periods, except in cases where the physical life of the property would be less than such combined terms.

(2) When on termination of the lease the lessor has reported the fair market value of the improvements made by the lessee as taxable income as required by Wis. Adm. Code section Tax 2.80, the lessor is entitled to deduct, beginning with the date of acquisition of title to the improvements, a pro rata amount of depreciation based upon the estimated remaining life of the depreciable property.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.31 Depreciation of personal property of corporations.** (Section 71.04 (2), Wis. Stats.) The depreciation of personal property that is used partly for business and partly for personal purposes, such as automobiles, will be allowed only to the extent that such property is used directly in the production of taxable income.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.32 Depreciation rates for corporations.** (Section 71.04 (2), Wis. Stats.) (1) Fixed rates of depreciation that may be used for tax purposes are not prescribed by the tax commissioner. The rates used by taxpayers should be based on their own experience or the experience of the industry or trade in which they are engaged, as modified by circumstances peculiar to the taxpayer.

(2) Rates of depreciation once established must be adhered to unless conditions warrant a change. If changes in rates are deemed necessary, such changes must be fully explained in the returns in which the changes first appear.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.35 Depletion, basis for allowance to corporations.** (Section 71.04 (2), Wis. Stats.) The capital sum recoverable through depletion allowances is the tax cost of the depletable property. In the absence of competent evidence to the contrary, it will be assumed that the fair market value at January 1, 1911, is represented by the actual cost less depletion sustained to that date. No depletion is deductible on property acquired subsequent to January 1, 1911, the cost of which was deducted as current expense at the time of purchase and allowed for income tax purposes. After depletion of the tax cost to the extent of 100% has been allowed, no further deduction is permissible.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.36 Depletion of timber by corporations.** (Section 71.04 (2), Wis. Stats.) The computation of the allowance for depletion of timber for a given year shall be based upon the number of units of timber cut during the year and the tax cost of each unit. The unit cost is determined by dividing the sum of the tax cost at the beginning of the taxable period and the additions at cost during the period by the sum of the units on hand at the beginning of the taxable period and the number of units acquired during such period.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.37 Depletion of mineral deposits by corporations.** (Section 71.04 (2), Wis. Stats.) 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 income tax cost per unit.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron.** (Section 71.046) Section 71.046 created by chapter 370, laws of 1947 and amended by chapter 438, laws of 1953, provides for 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 mines for the smelter.

(1) This depletion deduction may be taken only if the saving in tax due to such deduction is used by the taxpayer in prospecting for ore and duly verified proof thereof is furnished the department of taxation.

(2) 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 used. Unless proof of expenditure is furnished within 24 months after the close of the income year for which the deduction for depletion was made, the taxpayer will be subject to an additional assessment based on the disallowance of the deduction taken.

**History:** 1-2-56; am. (1); Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 3.39 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.42 Amortization of defense facilities—corporations.** (Section 71.04 (2a), Wis. Stats.) (1) Any person who, in lieu of the allowance for depreciation for any taxable year or part thereof beginning after December 31, 1949, elects to take amortization of any emergency facility as provided in section 71.04 (2a); Wis. Stats., must file written notice of such election with the corporation section of the Department of Taxation, P. O. Box 98, Madison, Wisconsin 53701, within the time provided by law, and with such notice, must file a copy of the certificate of necessity for such emergency facility issued by the appropriate federal certifying authority, together with a copy of the "Appendix A—Summary Sheet" filed by such person in support of his or its application for said certificate of necessity. Additional data need not be submitted except upon specific request of the department.

(2) Once a taxpayer has fulfilled the conditions for an election to deduct amortization of an emergency facility, such election shall be deemed in effect in subsequent income years or parts thereof, consistent with the applicable statutes, unless or until terminated by operation of law or by prior written notice by the taxpayer to the department.

**History:** 1-2-56; r. and recr. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.44 Organization and financing expenses—corporations.** (Section 71.04 (7), Wis. Stats.) (1) Expenses in connection with the organization or reorganization of a business enterprise, such as fees for incorporating, attorneys', accountants' and appraisers' charges, and commissions and other expenses in the issuance or sale of capital stock, are properly capitalized when incurred or paid. Such expenses are not deductible from gross income until the business for which the expenses were incurred is abandoned and the business organization itself, or, in the case of reorganization, the successor to the business organization, has been dissolved, or has completely wound up its affairs, whichever is later.

(2) This rule, insofar as it relates to "organizational expenditures" as defined in section 71.04 (2d) (b) as enacted in chapter 390, laws of 1969, is superseded by section 71.04 (2d) with respect to such expenditures paid or incurred on or after February 19, 1970 and in a taxable year beginning after December 31, 1969.

**History:** 1-2-56 am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, August, 1970, No. 176, eff. 9-1-70.

**Tax 3.45 Bond premium, discount and expense—corporations.** (Section 71.04 (2), Wis. Stats.) If bonds are issued at a discount or

premium, the net amount of such discount or premium should be amortized over the life of the bonds. If bonds are retired at a price in excess of or less than the issuing price, the profit or loss resulting is taxable income or deductible expense in the year in which such bonds are retired, provided proper adjustment is made for the discount or premium previously reflected in income and in all cases bond expense should be amortized over the life of the bonds. If a bond issue is refunded with another bond issue before the first issue matures, any unamortized discount or expense that is applicable to the first issue must be deducted as current expense in the year that the refinancing takes place and any unamortized premium must be taken up as income in such year.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.47 Legal expenses and fines—corporations.** (Section 71.04 (2), Wis. Stats.) Legal expenses incurred in connection with the operation of a taxpayer's business are proper deductions, unless such business is conducted in violation of law. Fines are not deductible.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.49 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.51 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.52 Automobile expenses—corporations.** (Section 71.04 (2), Wis. Stats.) If an automobile is used exclusively for business purposes, the actual expenses of operation, including gasoline, oil, license fees, insurance premiums and depreciation, are deductible from gross income. If the automobile is used partly for business and partly for personal purposes, the expenses of operation, including gasoline, oil, license fees, insurance premiums, depreciation, chauffeur's salary, etc., may be apportioned on the basis of the mileage devoted to business and personal uses, and the amount allocated to business purposes will constitute an allowable deduction from the taxable income derived therefrom.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.53 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.54 Miscellaneous expenses not deductible—corporations.** (Section 71.04 (2), Wis. Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following: Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employes, unless reported as compensation paid on form WT-9 or form 9b; dues to fraternal orders, social clubs and luncheon clubs.

**History:** 1-2-56; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.55 Donations and contributions—corporations.** (Section 71.04 (5), Wis. Stats.) (1) Contributions by corporations may be deducted only if the recipient is operating within Wisconsin.

(2) No deductions for contributions, donations or gifts is allowable if the income tax return of the taxpayer before deducting such contributions, donations or gifts shows a loss.

(3) Deductions for contributions, donations or gifts are not allowable unless the name and address of each recipient and the amount



given each recipient is listed in the income tax return of the taxpayer.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.61 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.62 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.63 History:** 1-2-56; am. (1), Register, September, 1964, No. 105, eff. 10-1-64; am. (2), Register, December, 1964, No. 108, eff. 1-1-65; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.64 History:** 1-2-56; r. Register September, 1964, No. 105, eff. 10-1-64.

**Tax 3.71 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.72 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.73 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.74 History:** 1-2-56; r. Register, March, 1966, No. 123, eff. 4-1-66.

## MISCELLANEOUS

**Tax 3.81 Offset of occupational taxes paid against normal franchise or income taxes.** (Sections 70.41 (1), (3) and 70.42 (1), (3), Wis. Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The taxpayer may present his receipt showing payment of such tax to the department of taxation as so much cash in payment of normal franchise or income tax assessed against him in the following year on the tax roll for the same district. If the normal franchise or income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.

(2) If the taxpayer neglects to present his occupational tax receipt at the proper time and pays his entire normal franchise or income tax in cash, he 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 income tax, such 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.

**History:** 1-2-56; am. (1), Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.82 Evasion of tax through affiliated interests.** (Section 71.11 (7) (a) and (b), Wis. Stats.) In administering this section the department of taxation will apply the statute as interpreted by the following cases:

- (1) Cliffs Chemical Co. v. Tax Commission, 193 W 295
- (2) Buick Motor Co. v. Milwaukee, 43 F (2d) 385
- (3) Curtis Companies v. Tax Commission, 214 W 85
- (4) Palmolive Co. v. Conway, 37 F (2d) 114; 43 F (2d) 226; 56 F (2d) 83

(5) *Burroughs Adding Machine Co. v. Tax Commission*, 237 W 423

(6) *Northern States Power Co. v. Tax Commission*, 237 W 423

**Tax 3.83 History:** 1-2-56; r. Register, February, 1958, No. 26, eff. 3-1-58.

### **ASSESSMENT, ABATEMENT AND REFUND PROCEDURE**

**Tax 3.91 Application for abatement.** (Sections 71.10 (13) and 71.12 (1), Wis. Stats.) (1) The application for abatement specified in section 71.12 (1), Wis. Stats., must be written, preferably on typewriter, on only one side of plain white paper not more than 8½ inches wide by 11 inches long and must be filed in duplicate. It must set forth clearly and concisely the specific grievances to the additional assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every application must be signed by the taxpayer or by his duly authorized representative.

(2) An application for abatement is not "filed" within the proper time to meet the requirements of section 71.12 (1), Wis. Stats., unless it is actually received within the 30-day period, or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the thirtieth day of the period provided in section 71.12 (1), Wis. Stats., and actually received by the department of taxation within 5 days of such 30-day period.

**Tax 3.92 Informal conference.** The taxpayer may request in said application, or at any time before the department of taxation has acted thereon, an informal conference at which the facts and issues involved in the assessment may be discussed. Any such conference will be held at a time and place determined by the department.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 3.93 Closing stipulations.** If the informal conference results in an agreement as to facts and issues and the law applicable thereto the taxpayer and the department of taxation may enter into a closing stipulation.

**History:** 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64.

**Tax 3.94 Claims for refund.** (1) Claims for refund may be filed as provided in section 71.10 (10), Wis. Stats., and shall be in the same form as applications for abatement under Wis. Adm. Code section Tax 3.91. A claim for refund is not "filed" within the proper time to meet the requirements of section 71.10 (10), Wis. Stats., unless it is actually in the possession of the department of taxation prior to the expiration of the limitation period provided in section 71.10 (10), Wis. Stats., or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day of said limitation period, and actually received by the department of taxation within 5 days of said limitation period.

(2) Under section 71.10 (11), Wis. Stats., 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 such income was reported for taxation. A claim for

refund filed under this subsection must be accompanied by a verified or photographed copy of the renegotiation agreement or price redetermination. No interest is payable on such refund.

(3) 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, such 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 such taxes constitute a return to the state of a portion of the previous refund.

**History:** 1-2-56; am. (1) and (2), Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, May, 1966, No. 125, eff. 6-1-66.