

## Chapter Tax 3

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

Tax 3.01	Rents paid by corporations	Tax 3.32	Depreciation rates for corporations
Tax 3.03	Dividends received, deductibility of	Tax 3.35	Depletion, basis for allowance to corporations
Tax 3.05	Profit-sharing distributions by corporations	Tax 3.36	Depletion of timber by corporations
Tax 3.06	Compensation paid by corporations in capital stock	Tax 3.37	Depletion of mineral deposits by corporations
Tax 3.07	Bonuses and retroactive wage adjustments paid by corporations	Tax 3.38	Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron
Tax 3.08	Retirement and profit sharing payments by corporations	Tax 3.42	Amortization of defense facilities—corporations
Tax 3.09	Exempt compensation of military personnel	Tax 3.44	Organization and financing expenses—corporations
Tax 3.095	Income tax status of interest and dividends from municipal and federal obligations received by individuals and fiduciaries	Tax 3.45	Bond premium, discount and expense—corporations
Tax 3.10	Salesmen's and officers' commissions, travel and entertainment expense of corporations	Tax 3.47	Legal expenses and fines — corporations
Tax 3.12	Losses on account of wash sales by corporations	Tax 3.52	Automobile expenses — corporations
Tax 3.14	Losses from bad debts by corporations	Tax 3.54	Miscellaneous expenses not deductible—corporations
Tax 3.16	Losses by corporations on involuntary conversion	Tax 3.55	Donations and contributions corporations
Tax 3.17	Corporation losses, miscellaneous	Tax 3.61	Mobile home monthly parking permit fees
Tax 3.20	Interest paid by corporations	Tax 3.81	Offset of occupational taxes paid against normal franchise or income taxes
Tax 3.22	Real estate and personal property taxes of corporations	Tax 3.82	Evasion of tax through affiliated interests
Tax 3.23	Federal income and excess profits taxes of corporations	Tax 3.91	Application for abatement
Tax 3.24	Corporation taxes, miscellaneous	Tax 3.92	Informal conference
Tax 3.28	Depreciation, basis for allowance to corporations	Tax 3.93	Closing stipulations
Tax 3.30	Depreciation and amortization, leasehold improvements: corporations	Tax 3.94	Claims for refund
Tax 3.31	Depreciation of personal property of corporations	Tax 3.096	Interest paid on money borrowed to purchase exempt government securities
		Tax 3.098	Railroad retirement supplemental annuities

**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

Register, January, 1977, No. 253

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 revenue 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; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 3.05 Profit-sharing distributions by corporations.** (section 71.04 (1), Wis. Stats.) (1) Payments made to officers and employees 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 employee 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 employee 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.

Register, January, 1977, No. 253

(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.

**Tax 3.096 Interest paid on money borrowed to purchase exempt government securities** (section 71.05 (1) (b) 1, Wis. Stats.).

(1) Any amount of interest or dividend income which is by federal law exempt from the Wisconsin income tax shall be reduced by any related expense before it is claimed as a subtraction modification on a Wisconsin income tax return.

(2) Interest expense is a "related expense" if it is incurred to purchase securities producing exempt interest or dividend income and if it is deducted in computing Wisconsin taxable income.

(3) Interest expense is not a "related expense" if it is incurred to purchase securities producing exempt interest or dividend income but is not deducted in computing Wisconsin taxable income (for example, because the taxpayer elects the standard rather than to itemize deductions).

**Note:** The following examples illustrate the proper treatment of the interest expense described in this rule:

<i>Example A:</i>	U.S. bond interest exempt from Wisconsin income tax.	\$ 600
	Interest which was paid on funds used to acquire exempt securities and which was claimed as an itemized deduction.	<u>400</u>
	Subtraction modification.	<u>\$ 200</u>
<i>Example B:</i>	U.S. bond interest exempt from Wisconsin income tax.	\$ 400
	Interest paid to acquire the exempt securities which was claimed as an itemized deduction.	<u>600</u>
	Subtraction modification.	<u>\$ 0</u>

Register, January, 1977, No. 253

<i>Example C:</i>	U.S. bond interest exempt from Wisconsin income tax.	\$ 400
	Interest paid to acquire the exempt securities but <i>not</i> claimed as an itemized deduction	<u>600</u>
	Subtraction modification	<u>\$ 400</u>

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 3.098 Railroad retirement supplemental annuities.** (section 71.05 (1) (b) 4, Wis. Stats.). Railroad retirement supplemental annuities paid under 45 U.S.C.A. s. 228c are exempt from the Wisconsin taxable income of their recipients.

**Note:** The Railroad Retirement Act (45 U.S.C.A. s. 428L) provides that, "Notwithstanding any other law of the United States, or of any State . . . no annuity or pension payment shall be . . . subject to any tax. . ."

Another provision of the Act (45 U.S.C.A. s. 228c (j) (3)), however, relates specifically to supplemental Retirement Annuities paid in amounts between \$45 and \$70 per month, and qualifies the above provision by stating "The provisions of Section 228L of this title shall not operate to exclude the supplemental annuities herein provided for from income taxable pursuant to the Federal income tax provisions of Title 26."

While such supplemental annuities are taxable for federal income tax purposes, 45 U.S.C.A. s. 228 (c) (j) 3 continues to prohibit states from taxing the payments. As the supplemental annuity must be reported for federal income tax purposes, a Wisconsin taxpayer may make a modification to federal adjusted gross income to remove such income from Wisconsin adjusted gross income.

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.