Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND GROSS INCOME

Tax 2.01 Residence. (Section 71.01, Wis. Stats.) (1) Income of teachers, traveling salesmen, federal employes or officials, and others whose profession or occupation necessitates temporary absence from their residence for five months or more of the income year is taxable in Wisconsin if residence is maintained in this state, regardless of their place of employment.

(2) 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.

(3) Individuals claiming a change of residence from Wisconsin to another state shall file a "declaration of residence" with the assessor of incomes for the district in which the return for the preceding income year was filed and furnish such other information as the assessor may require.

Tax 2.02 Income year. (Section 71.01, Wis. Stats.) The term "income year" shall mean the calendar year or the corresponding fiscal year upon which basis the net income is computed. In cases where a fractional part of a year is made the basis for computing net income, such period is considered the "income year."

Tax 2.03 Corporation returns. For the purpose of filing 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 filed with the department of taxation at its offices in the State Office Building at Madison.

Note: Blank forms may be obtained from the department at the State Office Building address.

Tax 2.04 Information returns; forms 9, 9b and 9x for corporations. (Sections 71.04 (1) and (2) and 71.10 (1), Wis. Stats.) All corporations doing business within this state, whether subject to the income tax or not, shall file with the department of taxation at its office in the State Office Building at Madison on or before March 15 of each year on Forms 9 as prescribed by the tax commissioner, statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, retirement pay and fees. 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 same time and place on Forms 9b. These forms must be filed by March 15 of each year regardless of the fact that the corporation keeps its records on a fiscal year basis. Salaries, wages, bonuses, retirement pay, fees and other compensation paid to an employee or officer (active or retired) need not be reported if they aggregate less than $600.00; and no one of interest, dividends, rents or royalties needs be reported if it is less than $100.00. Each corporation must file with forms 8, 9 or 9b, form 9x showing the number of reports made on forms 8, 9 and 9b. (See also Tax 2.05) Items required to be reported on Forms 9 or 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

Note: Blank forms may be obtained from the department at the State Office Building address.

(Corporations failing to file Forms 9 or 9b as prescribed by law shall be subject to a 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.

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 income tax or not, are required to file with the department of taxation at its offices in the State Office Building at Madison 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.

Note: Blank forms may be obtained from the department at the State Office Building address.

(Corporations failing to file such statements shall be subject to a fine of not less than $50 nor more than $500. (See section 71.11 (45), Wis. Stats.)

Tax 2.06 Information returns for individuals. (Sections 71.05 (1), 71.05 (2) and 71.05 (3), Wis. Stats.) Reports of payments made by individuals may be made a part of the income tax return or may be made on forms 9 and 9b. The items referred to in the statutes will be disallowed as deductions from gross income if not properly reported.

Note: Blank forms may be obtained from the office of the assessor of incomes in which the reports are required to be filed.

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

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 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.

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 except married women.
Form 1a	Optional (short) form for all individuals with adjusted gross income of less than $5,000.00 except married women.
Form 1B	For persons having a business or profession.
Form 1-Fc	For farmers on the cash basis.
Form 1-Fi	For farmers on an inventory or accrual basis.
Form 1W	For wives having separate incomes.
Form 1Wa	Optional (short) form for married women with adjusted gross income of less than $5,000.00. (Form 1B, 1-Fc or 1-Fi is filed with Form 1, 1W, 1Wa or 1a)
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 Tax 2.06 and Tax 3.63. See also Tax 3.07.

(3) All returns, reports, statements and information required to be filed, furnished or reported by natural persons or partnerships, shall be filed in the office of the assessor of incomes for the district in which the natural person resides, or in which the partnership has its principal business office. Natural persons who are not residents of this state shall file with the assessor of incomes from whose district

they derive income from business therein transacted or property therein located, and when they derive income from more than one district, they shall consistently file in the office of the assessor of incomes for one of such districts unless notified by the department of taxation to file with the assessor of another district.

Note: Blank forms may be obtained from the office of the assessor of incomes in which the returns are required to be filed.

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

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 1-Fc, 1-Fi, 1W, 1Wa, 2 and 3 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.

(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) All signatures required on returns which are filed with the department must be original, affixed subsequent to the reproduction process.

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

Tax 2.10 Optional tax table (see page 9).

Tax 2.14 Separate income tax returns for husband and wife. If husband and wife each has a gross income of $600.00 or more or if each has some net income when their combined net income is $1,400.00 or more, each must file a separate return. (See Amerpohl vs Tax Commission, 225 Wis. 62.) The aggregate personal exemption of $14.00 allowable when each files a return may be divided between the two according to their choice.

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

Tax 2.15 Methods of accounting. (Section 71.11 (8), Wis. Stats.) No uniform method of accounting can be prescribed for all taxpayers, and the law contemplates that each taxpayer may return his income in accordance with the method of accounting regularly employed in keeping his 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.

Tax 2.16 Changes in method of accounting. (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 tax commissioner or the assessor of incomes, as the case may be. 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,

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DETERMINATION OF INCOME FROM MULTISTATE OPERATIONS

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.

(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.

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.

(a) Gains and losses on sale or discard of working assets such as machinery and automobiles are ordinarily considered to be adjustments of depreciation and are treated as apportionable.

Tax 2.44 Permission to change basis of allocation of income. (Section 71.07 (2), Wis. Stats.) (1) 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 tax commissioner or the assessor of incomes upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income.

(a) Such application must be filed before the end of the income year for which the change is desired.

Tax 2.72 Exchanges of property 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 residences pursuant to Section 71.03 (5).

(d) Exchanges of property held for productive use or investment pursuant to Section 71.03 (6) 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.

Tax 2.721 Exchanges of property held for productive use or investment. (Section 71.03 (6), 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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