

## Chapter Tax 3

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

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**Tax 3.01 Rents paid.** (Sections 71.04 (2) and 71.05 (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.

**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, nontaxable income from United States interest and deductible dividends must be disregarded.

(3) If the decedent was a member of a partnership his distributive share of the partnership profits for the period from the beginning of the partnership's fiscal year to the date of death, whether distributed or not, must be included as income in the return of the fiduciary for the year of death.

**Tax 3.72 Executors and administrators, income received after final account.** (Section 71.08, Wis. Stats.) When an executor or administrator receives income after he has filed his final account but before the court has accepted such report and the estate has been distributed, the executor or administrator will be treated as agent for the persons entitled to receive the income and such persons will include the income in their personal income tax returns.

**Tax 3.73 Trustees, when taxable period covered by a trust differs from distributee's taxable period.** (Section 71.08 (8), Wis. Stats.) If the taxable year of a beneficiary is different from the taxable year of the trust, the amount which the distributee shall include in computing his net income shall be based upon the net income of the trust for its taxable year ending within the taxable year of the beneficiary.

**Tax 3.74 Trustees, separate trusts, each taxed as an entity.** (Section 71.08 (8), Wis. Stats.) When the same trustee is designated in a will to administer several trusts, the accumulated income of each trust is taxable as a separate entity and the income of the several trusts is not to be combined.

#### MISCELLANEOUS

**Tax 3.81 Offset of occupational taxes paid against normal 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 or assessor of incomes as so much cash in payment of normal income tax assessed against him in the following year on the tax roll for the same district. If the normal 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 income tax in cash, he cannot present the receipt at a later date and secure a refund of the normal income tax paid. A taxpayer cannot tender in payment of an additional normal income tax assessed at a later date an occupational tax receipt that might have been used had the proper income tax assessment been made in the first place. If the occupational tax receipt tendered in payment of a normal income tax exceeds the normal income tax, such excess cannot be applied in payment of additional normal income tax for the same year assessed at a later date. Occupational tax receipts issued in one taxing district cannot be offset against normal income tax appearing on the roll for another district.

**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 Proration of 20% surtax.**

**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