

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 Revenue 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. Am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.03 Corporation returns. For the purpose of filing franchise or income tax returns, the secretary of revenue 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).

Form 5. Optional return of income for the calendar or fiscal year (to be used only by corporations whose entire net income is taxable in Wisconsin).

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 Revenue, 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 4638 University Avenue, Madison, or by mail request to P. O. Box 58, 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, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 2.04 Information returns; forms WT-9, 9b, and 9X for corporations. (sections 71.04 (1) and 71.10 (1), (8m) and (8n), Wis. Stats.) (1) All corporations carrying on activities within this state, whether taxable or not under chapter 71, Wis. Stats., shall file with the department of revenue, on or before January 31 of each year on forms WT-9 or 9b or on such other forms as may be approved by the department, 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.

(2) 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.

(3) Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9.

(4) Statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments of all rents and royalties on property regardless of location, and payments to residents and non-residents of Wisconsin of rents and royalties on property located in Wisconsin shall be filed at the place hereinbefore referred to on or before March 15 of each year on forms 9b or other approved forms. The forms must be filed on the date indicated even if the corporation keeps its records on a fiscal year other than a calendar year.

(5) Payments of interest, dividends, rents or royalties of less than \$100 to any one individual need not be reported.

(6) Each corporation must file with forms 8, 9b or approved substitute forms, forms 9X showing the number of reports made on forms 8, 9b or approved substitute forms. (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.

Note: (1) Section 71.07 was amended in 1975 to make all income of resident individuals, estates and trusts taxable.

(2) This rule will permit the use of approved substitute forms in lieu of official forms.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64, am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77.

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 revenue by mailing to the Corporation Section of the Wisconsin Department of Revenue, P. O. Box 98, Madison, Wisconsin 53701 or delivery to the Corporation Section, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8 as prescribed by the secretary of revenue, 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 by mail request addressed to Wisconsin Department of Revenue, P. O. Box 58, 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, am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.06 Information returns required of partnerships and persons other than corporations. (sections 71.10 (8m), (8n) and (15) and 71.11 (25), Wis. Stats.) Information 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, 9b or on such other form as may be approved by the department. Form WT-7 (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) should accompany forms WT-9 or other approved forms. 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 or on such other form as may be approved by the department. 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 Revenue, P. O. Box 59, Madison, Wisconsin 53701 or delivered at 4638 University Avenue, Madison.

Note: Amended to permit the filing of approved substitute forms in lieu of official forms.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; r. and recr. Register, September, 1964, No. 105, 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 2.07 Income tax returns of liquidated or dissolved corporations. (section 71.10 (1), Wis. Stats.) The officers of a corporation which has been liquidated or dissolved during the income year shall file a corporate franchise or income tax return for such year and for any year thereafter in which there is corporate income. The franchise tax applies only to those corporations that are actually doing business in Wisconsin after the close of the period covered by the franchise tax return. Corporations which cease to do business in the income year covered by the return must file an income tax return to account for their final operation. A corporation which has liquidated or dissolved during the income year shall include the following information in its final return:

- (1) A copy of its plan of liquidation or reorganization.
- (2) The section of chapter 71 under which it liquidated or reorganized.
- (3) The disposition of the assets. If the assets were sold, indicate the selling price, adjusted cost basis at the time of sale, gain or loss realized on the sale and the date of the sale.
- (4) A list of the shareholders, their addresses and the amount received by each shareholder from the distribution or distributions. (The list should be submitted in addition to the required Forms 9b).
- (5) The date of the final distribution.

Note: The information specified in this rule is necessary for the audit of the final return of a corporation.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, September, 1977, No. 261, eff. 10-1-77.

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

- (a) Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.
- (b) Form 1A. (Short form).
- (c) Form 2. For trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on Form 1).
- (d) Form 3. For partnerships and joint ventures.

(2) Information returns required of persons other than corporations are specified in Wis. Adm. Code section Tax 2.06. 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 4638 University Avenue, Madison.

Note: Blank forms may be obtained by mail request to Wisconsin Department of Revenue, 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; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1), Register, November, 1977, No. 263, eff. 12-1-77.

Tax 2.085 Claim for refund on behalf of a deceased taxpayer. (Section 71.10 (10), Wis. Stats.) (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the refund exceeds \$50, the claimant shall file, with the income tax return, a completed form I-804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) Forms required to be filed under subsection (1) shall be mailed to the Department of Revenue, P.O. Box 80, Madison, Wisconsin 53701.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76.

Tax 2.09 Reproduction of income tax forms. Subject to this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions may be filed with the department in lieu of the corresponding official forms. The department may reject any form which is in whole or in part illegible.

(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 weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may 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) 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 the fiduciary's 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 the person to sign the returns filed and that such signature was affixed to

the returns by the person or at the person's 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; am. (intro.), (2), (6) (intro.) and (a), Register, November, 1977, No. 263, eff. 12-1-77.

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

Tax 2.11 Tax table. **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; am. Register, February, 1975, No. 230, eff. 3-1-75; r. Register, September, 1977, No. 261, eff. 10-1-77.

Tax 2.12 Amended income and franchise tax returns. (1) **WHEN SHALL BE FILED.** (a) The department shall accept amended returns to correct Wisconsin income tax returns previously filed.

(b) Because an amended return is not the original return, it shall not begin or extend the statute of limitation periods for the assessment of additional tax or the claim of a refund.

(c) If an amended return shows a refund, it shall be filed within 4 years of the due date of the original return. However, a claim for a refund of the tax assessed by an office audit shall be filed within 2 years of the date assessed if no petition for redetermination was filed and if the year is not closed by field audit.

(2) **FORMS.** (a) The following forms may be used for filing an amended return:

1. Form 1X for individuals.
2. Form 4X for corporations.

(b) If forms other than those specified in par. (a) are used to amend a tax return, such forms shall be clearly marked across the top of the first page "AMENDED RETURN."

Register, November, 1977, No. 263

Note: The department accepts amended individual income tax, corporate income tax, and franchise tax returns to allow taxpayers to correct overstatements or understatements of net income and computations of tax contained on their original return.

Forms 1X and 4X are similar in format and use to Forms 1040X and 1120X, the amended U.S. individual and corporate returns. Although the use of these 2 state forms is not mandatory, the department prefers that they be used. They are designed to simplify the filing and expedite the processing of the information. Copies may be obtained from any Wisconsin department of revenue office.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76.

Tax 2.14 Aggregate personal exemptions. The aggregate personal exemptions allowable under section 71.09 (6p) (a) and (b), Wis. Stats., when each files a return, may be divided between husband and wife 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; am. Register, November, 1977, No. 263, eff. 12-1-77.

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

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 revenue. 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. A change in the accounting treatment of a material item is considered a change in accounting method in this paragraph.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, November, 1977, No. 263, eff. 12-1-77.

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

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75.

Tax 2.19 Instalment method of accounting for corporations. (section 71.11 (8), Wis. Stats.). (1) Subject to the approval of the department of revenue, 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 instalment 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 instalment basis there shall be returned as income from the instalment sale in any income year that proportion of the instalment 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 instalment 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 instalment obligation, the unreported balance of gain on the instalment sale or exchange.

(3) The instalment method shall not be permitted with respect to any instalment 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 instalment basis will be required to report for franchise or income tax purposes on the accrual basis.

(5) The expenses incident to each instalment 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 instalment 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; am. Register, February, 1975, No. 230, eff. 3-1-75.

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, provided 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

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(2) An employe who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employe provides his or her employer with a completed Form WT-4E ("Exemption from Withholding of Wisconsin Income Tax"). For this purpose, a tax liability is "incurred" if the employe had for the preceding year or anticipates for the current year a net Wisconsin income tax due (gross tax less personal exemptions on a Wisconsin return). If an employe is married, the net tax of the employe's spouse shall not be considered in determining if the employe may claim this exemption.

Note: Forms WT-4 and WT-4E may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 58, Madison, Wisconsin 53701.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.