

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

Tax 2.01	Residence (p. 10)	Tax 2.26	"Last in, first out" method of inventorying for corporations (p. 33)
Tax 2.02	Reciprocity (p. 10)	Tax 2.30	Property located outside Wisconsin—depreciation and sale (p. 34)
Tax 2.03	Corporation returns (p. 13)	Tax 2.31	Taxation of personal service income of nonresident professional athletes (p. 35)
Tax 2.04	Information returns and wage statements (p. 14)	Tax 2.39	Apportionment method (p. 36)
Tax 2.05	Information returns; forms 8 for corporations (p. 15)	Tax 2.40	Nonapportionable income (p. 42)
Tax 2.06	Information returns required of partnerships and persons other than corporations (p. 15)	Tax 2.41	Separate accounting method (p. 43)
Tax 2.07	Income tax returns of dissolved corporations (p. 15)	Tax 2.44	Permission to change basis of allocation (p. 44)
Tax 2.08	Returns of persons other than corporations (p. 16)	Tax 2.45	Apportionment in special cases (p. 44)
Tax 2.081	Indexed income tax rate schedule (p. 17)	Tax 2.46	Apportionment of business income of interstate air carriers (p. 44)
Tax 2.085	Claim for refund on behalf of a deceased taxpayer (p. 19)	Tax 2.47	Apportionment of net business income of interstate motor carriers of property (p. 45)
Tax 2.09	Reproduction of income tax forms (p. 19)	Tax 2.48	Apportionment of net business incomes of interstate pipeline companies (p. 45)
Tax 2.10	Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns (p. 20)	Tax 2.49	Apportionment of net business incomes of interstate finance companies (p. 46)
Tax 2.105	Notice by taxpayer of federal audit adjustments and amended returns (p. 20)	Tax 2.50	Apportionment of net business incomes of interstate public utilities (p. 47)
Tax 2.11	Credit for sales and use tax paid on fuel and electricity (p. 24)	Tax 2.505	Apportionment of net business income of interstate professional sports clubs (p. 47)
Tax 2.12	Amended income and franchise tax returns (p. 25)	Tax 2.51	Rent received by corporations from Wisconsin real estate (p. 48)
Tax 2.13	Moving expenses (p. 26)	Tax 2.53	Stock dividends and stock rights received by corporations (p. 48)
Tax 2.14	Aggregate personal exemptions (p. 26)	Tax 2.56	Insurance proceeds received by corporations (p. 49)
Tax 2.15	Methods of accounting for corporations (p. 27)	Tax 2.57	Annuity payments received by corporations (p. 49)
Tax 2.16	Change in method of accounting for corporations (p. 27)	Tax 2.60	Dividends on stock sold "short" by corporations (p. 49)
Tax 2.165	Change in taxable year (p. 28)	Tax 2.61	Building and loan dividends on instalment shares received by corporations (p. 49)
Tax 2.17	Cash method of accounting for corporations (p. 30)	Tax 2.63	Dividends accrued on stock (p. 49)
Tax 2.18	Accrual method of accounting for corporations (p. 30)	Tax 2.65	Interest received by corporations (p. 50)
Tax 2.19	Instalment method of accounting for corporations (p. 31)	Tax 2.69	Income from Wisconsin business (p. 50)
Tax 2.20	Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies (p. 31)	Tax 2.70	Gain or loss on capital assets of corporations; basis of determining (p. 50)
Tax 2.21	Accounting for incorporated contractors (p. 32)		
Tax 2.22	Accounting for incorporated dealers in securities (p. 32)		
Tax 2.24	Accounting for incorporated retail merchants (p. 32)		
Tax 2.25	Corporation accounting generally (p. 32)		

## Tax 2

Tax 2.72	Exchanges of property by corporations generally (p. 51)	Tax 2.88	Interest rates (p. 58)
Tax 2.721	Exchanges of property held for productive use or investment by corporations (p. 51)	Tax 2.89	Penalty for underpayment of estimated tax (p. 59)
Tax 2.73	Involuntary conversion by corporations (p. 52)	Tax 2.90	Withholding; wages (p. 59)
Tax 2.74	Gain or loss on disposition of property by corporations; adjustments to basis (p. 52)	Tax 2.91	Withholding; fiscal year taxpayers (p. 61)
Tax 2.75	Recoveries by corporations (p. 54)	Tax 2.92	Withholding tax exemptions (p. 61)
Tax 2.76	Refunds of taxes to corporations (p. 54)	Tax 2.93	Withholding from wages of a deceased employe and from death benefit payments (p. 62)
Tax 2.80	Improvements on leased real estate, income to corporate lessor (p. 54)	Tax 2.935	Reduction of delinquent interest rate under s. 71.20 (5) (c), Stats. (p. 63)
Tax 2.81	Damages received by corporations (p. 54)	Tax 2.94	Tax sheltered annuities (p. 64)
Tax 2.82	Nexus (p. 54)	Tax 2.945	Spousal individual retirement contributions (p. 65)
Tax 2.83	Requirements for written elections as to recognition of gain in certain corporation liquidations (p. 57)	Tax 2.95	Reporting of installment sales by natural persons and fiduciaries (p. 66)
Tax 2.86	Income to corporations from cancellation of government contracts (p. 57)	Tax 2.955	Credit for income taxes paid to other states (p. 68)
Tax 2.87	Reduction of delinquent interest rate under s. 71.13 (1) (b), Stats. (p. 57)	Tax 2.96	Extension of time to file corporation franchise or income tax returns (p. 69)
		Tax 2.98	Disaster area losses (p. 71)

**Tax 2.01 Residence.** (s. 71.01, Stats.) Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file form I-827, "Residence Questionnaire", with the Wisconsin department of revenue by attaching it to their Wisconsin income tax return for the year they claim to have changed residence, and shall furnish other information the department may require.

Note: Form I-827 may be obtained from the department at 4638 University Avenue, Madison, or from any other department of revenue office located throughout the state, or by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

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, 1976, No. 230, eff. 3-1-76; r. (1), renum. (2) and am., Register, July, 1987, No. 379, eff. 8-1-87.

**Tax 2.02 Reciprocity.** (s. 71.03(2)(c), Stats.) (1)GENERAL. (a) In this rule, "residence" and "resident" are synonymous with "domicile" and "domiciliary", respectively, except when referring to the reciprocity agreement with Illinois. A person may be a resident of Illinois while domiciled in Wisconsin or a person may be domiciled in Illinois but not be a resident of Illinois. The Illinois Income Tax Act defines a resident as "an individual (i) who is in this state for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this state but is absent from the state for a temporary or transitory purpose during the taxable year".

(b) Income earned by a nonresident individual for performing personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent the individual's state of residence imposes an income tax on such personal service income if that state allows:

1. A similar exclusion for personal service income earned by individuals domiciled in Wisconsin while working in that state; or

Register, July, 1987, No. 379

2. A credit against the tax imposed by that state on the personal service income equal to the Wisconsin tax on such income.

(c) A Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement need not withhold Wisconsin income tax from personal service income earned in Wisconsin by such nonresidents.

(2) **PERSONAL SERVICE INCOME DEFINED.** Income from personal services includes all salaries, wages, commissions and fees earned by an employe and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Income from personal services does not include income derived from activities involving the substantial use of capital or labor of others.

(3) **CURRENT RECIPROCITY.** (a) Wisconsin currently practices some form of income tax reciprocity with Illinois, Indiana, Kentucky, Maryland, Michigan and Minnesota. Formal agreements have been signed with Illinois, Kentucky, Michigan and Minnesota. Reciprocity with Indiana and Maryland is based on informal agreements and acquiescence by both states.

(b) Wisconsin's formal reciprocity agreements are effective for the following years:

1. Kentucky: for the years beginning on and after January 1, 1961.
2. Illinois: for the years beginning on and after January 1, 1971.
3. Michigan: for income earned after October 1, 1967 and years beginning on or after January 1, 1968.
4. Minnesota: for the years beginning on and after January 1, 1968.

(e) The informal agreements with Indiana and Maryland have been in effect since prior to 1960.

(4) **EFFECT OF RECIPROCITY.** (a) Personal service income included under reciprocity agreements shall be taxed by an employe's state of residence rather than by an employe's state of employment. Wisconsin shall not tax personal service income earned in Wisconsin by a resident of states with which Wisconsin has reciprocity and such states shall not tax personal service income which a Wisconsin resident earns in their states, except as described in subs. (5) and (6).

(b) An employer need only withhold income tax for the state of residence of an employe. However, federal law regulates withholding on wages earned by employes engaged in interstate transportation activities. (Additional information may be obtained by contacting the Wisconsin department of revenue, compliance section, P.O. Box 8902, Madison, Wisconsin 53708.

(5) **PROVISIONS OF AGREEMENT WITH ILLINOIS.** (a) The reciprocity agreement with Illinois is limited to "wages, salaries, commissions, and any other form of remuneration paid to employes for personal services" (emphasis added). The agreement does not extend to fees of lawyers, accountants and other self-employed persons deriving personal service income.

## Tax 2

(b) The agreement does not apply to compensation paid on or after January 1, 1974 to any individual who, at the time of payment, is simultaneously a resident of Illinois and a domiciliary of Wisconsin. All income of such a person is taxable by Wisconsin. However, a credit may be claimed for income tax paid to Illinois on personal service income earned outside Wisconsin.

(c) An individual who is domiciled in Illinois but is not a resident of Illinois is subject to the Wisconsin income tax on income earned in Wisconsin.

(6) PROVISIONS OF AGREEMENT WITH MICHIGAN. The reciprocity agreement with Michigan is limited to income from "personal services, including salaries, wages or commissions". The agreement does not include income which Michigan considers to be "business income", such as fees of self-employed persons such as professionals.

(7) PROCEDURE FOR NONRESIDENTS. Nonresident persons employed in Wisconsin and residing in a state with which Wisconsin has reciprocity may file Form W-220 ("Nonresident Employee's Withholding Reciprocity Declaration") with their Wisconsin employers. Upon receipt of this form, Wisconsin employers shall not withhold Wisconsin income tax from Wisconsin personal service income of such employes.

(8) PROCEDURE FOR WISCONSIN RESIDENTS. (a) Wisconsin residents employed in a state with which Wisconsin has reciprocity (as well as those employed in other states) shall file Form 1-ES ("Wisconsin Declaration of Estimated Tax") with the Wisconsin department of revenue if their out-of-state employers do not withhold Wisconsin income tax from their personal service income and if they will have a sufficient Wisconsin tax liability to be required to file a declaration.

(b) Such Wisconsin residents may have their employers cease withholding the other state's income tax from their personal service income and may claim a refund from such state if income taxes are withheld from such income after the effective date of a reciprocity agreement.

(c) Wisconsin residents earning personal service income in states where it is taxable by the other state may claim a credit on their Wisconsin tax returns for net income taxes paid to such states.

(9) DELINQUENT TAXES. Reciprocal agreements shall not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.135, Stats.

Note: Forms 1-ES and W-220 and their instructions may be obtained by writing the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from such employes' incomes may contact the department's compliance bureau, P.O. Box 8902, Madison, Wisconsin 53708.

The term "temporary or transitory" as used in the definition of an Illinois resident set forth in sub. (1) is not defined in either Illinois law or regulations. Therefore, whether or not the purpose for which an individual is in, or is absent from, Illinois is temporary or transitory in character depends upon the facts and circumstances of each particular case.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.  
Register, July, 1987, No. 379

**Tax 2.03 Corporation returns.** (s. 71.10 (1) and (3), Stats.) (1) For the purpose of filing franchise or income tax returns, the secretary of revenue has designated the following forms for the use of corporations:

(a) Form 4. Corporation franchise or income tax return for the calendar or fiscal year.

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

(c) Form 4B. Apportionment data.

(d) Form 4C. Separate accounting data.

(e) Form 4-ES. Declaration of estimated tax by corporations.

(f) Form 4H. Declaration of inactivity.

(g) Form 4I. Return of income for insurance company.

(h) Form 4S. Shareholders' tax-option (S) corporation modifications or share of income or loss.

(i) Form 4U. Underpayment of estimated tax by corporations.

(j) Form 4X. Amended corporation franchise or income tax return.

(k) Form 5. Optional corporation franchise or income tax return for the calendar or fiscal year. This return is to be used only by corporations whose entire net income is attributable to Wisconsin or by those reporting on the apportionment method. It may not be used by tax-option (S) corporations or corporations which determine their Wisconsin net income by the separate accounting method.

(l) Form BL. Computation of Wisconsin net business loss offset for non-apportionment filers.

(m) Form CU. Credit union declaration of exempt status.

(n) Schedule CU-1. Credit union income computation schedule.

(o) Schedule FC. Farmland preservation credit.

(p) Schedule R. Research credits.

(2) An officer of the corporation shall sign all returns required to be filed. If a return is prepared by someone other than an employe or officer of the corporation, the person or firm preparing the return shall also sign as preparer.

(3) All returns, statements, schedules and information required to be filed or furnished by corporations, except Form 4-ES, shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708 or delivered to the department's audit bureau at 4638 University Avenue, Madison, Wisconsin. Form 4-ES shall be mailed to the

Wisconsin Department of Revenue, P.O. Box 8912, Madison, Wisconsin 53708.

Note: Blank forms may be obtained from the department at 4638 University Avenue, Madison, or by mail request to P. O. Box 8903, Madison, Wisconsin 53708.

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; am. Register, September, 1983, No. 333, eff. 10-1-82; am. (1) (a), (c) and (d), renum. (1) (f) to (j) and (2) to be (1) (g) to (k) and (3) and am. (1) (h) and (k) and (3), cr. (1) (f), (l) to (p) and (2), Register, July, 1987, No. 379, eff. 8-1-87.

**Tax 2.04 Information returns and wage statements.** (ss. 71.04 (1) and 71.10 (1), (8m) and (8n), Stats.) (1) All corporations carrying on activities within this state, whether taxable or not under ch. 71, Stats., shall file with the department of revenue, on or before January 31 of each year on federal form W-2 or Wisconsin form 9b or on other forms 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. A copy of federal form 1087 or 1099, as appropriate, may be filed in lieu of Wisconsin form 9b.

(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 s. 71.19 (1), Stats.

(3) Form WT-7, Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages, shall accompany the wage statements submitted.

(4) Except as provided in sub. (7), 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 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) Items required to be reported on wage statements or forms 9b may be disallowed as deductions from the corporation's gross income upon failure to make proper report thereof.

(7) Corporations which elect to file a combined federal and state information return with the internal revenue service reporting items enumerated in sub. (4) will not be required to file a separate information return with the Wisconsin department of revenue. Under the combined federal Register, July, 1987, No. 379

and state reporting system, the internal revenue service will forward this information to the department of revenue.

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; am. (1), (3), (4) and (6), cr. (7), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.05 Information returns, forms 8 for corporations.** (s. 71.10 (1), 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 Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708 or delivery to the audit bureau, 4638 University Avenue, Madison, Wisconsin on or before March 15 of each year on forms 8, or other forms approved by the department, reports of transfers of capital stock 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 8903, Madison, Wisconsin, 53708.

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, 1983, No. 333, eff. 10-1-83; am. Register, July, 1987, No. 379, eff. 8-1-87.

**Tax 2.06 Information returns required of partnerships and persons other than corporations.** (ss. 71.10 (8m), (8n) and (15) and 71.11 (25), Stats.) (1) **COMPENSATION FOR SERVICES.** Information returns reporting remuneration paid for services, whether or not within the definition of "wages" in s. 71.19 (1), Stats., shall be filed on or before January 31 of each year on federal form W-2 or Wisconsin form 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", shall accompany wage statements submitted. These forms shall be mailed to the Wisconsin Department of Revenue, P.O. Box 34, Madison, Wisconsin 53786 or delivered to the department at 4638 University Avenue, Madison.

(2) **OTHER INCOME.** Informational returns reporting other items, including interest paid or rent paid, shall be filed on or before April 15 of each year on Wisconsin forms 9b or on other forms approved by the department. Items required to be reported on informational returns shall be disallowed as deductions from gross income if not properly reported. These returns shall be mailed to the Wisconsin Department of Revenue, P.O. Box 59, Madison, Wisconsin 53785 or delivered to the department at 4638 University Avenue, Madison.

(3) **EXCEPTION.** Payers who elect to file a combined federal and state information return with the internal revenue service reporting items enumerated in sub. (2) are not required to file a separate Wisconsin form 9b with the department, as described in s. Tax 2.04 (7).

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; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.07 Income tax returns of liquidated or dissolved corporations.** (s. 71.10 (1), 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 corpo-

Register, July, 1987, No. 379

## Tax 2

rations 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 ch. 71, Stats., 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.** (ss. 71.09 (7) (i) and 71.10 (2) and (3), Stats.) (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. (Long form). Return for all individuals, whether married or single.
- (b) Form 1A. (Short form). Optional short form return for all individuals, whether married or single.
- (c) Form 1-ES. Declaration of estimated tax by individuals.
- (d) Form 1X. Amended individual income tax return.
- (e) Schedule 244OW. Disability income exclusion for individuals.
- (f) Schedule FC. Farmland preservation credit claim.
- (g) Schedule I. Adjustments to convert federal adjusted gross income to the amount allowable under the provisions of the internal revenue code applicable for Wisconsin purposes for the taxable year.
- (h) Schedule R. Research credits claim.
- (i) Schedule T. Transitional adjustments for individuals.
- (j) Schedule U. Underpayment of estimated tax by individuals.
- (k) Form 2. Return for trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. Guardians should report on form 1.
- (l) Form 3. Return for partnerships and joint ventures.

Register, July, 1987, No. 379

(2) Information returns required of persons other than corporations are specified in s. Tax 2.04.

(3) Returns required to be filed by persons other than corporations shall be filed by providing the information requested by the appropriate forms and schedules, signing the returns, and by delivering them to 4638 University Avenue, Madison, Wisconsin, or by mailing them to the following address:

(a) If tax is due, P.O. Box 268, Madison, Wisconsin 53790.

(b) If a refund is payable or no amount is due, P.O. Box 59, Madison, Wisconsin 53785.

(c) If returns are those required to be filed by fiduciaries, P.O. Box 8904, Madison, Wisconsin 53708.

Note: Blank forms may be obtained by mail request to Wisconsin Department of Revenue, P. O. Box 8903, Madison, Wisconsin 53708.

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; am. (3), Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (a) and (b), (2) and (3), renum. (1) (c) and (d) to be (1) (k) and (l) and am., cr. (1) (c) to (j), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 2.081 Indexed income tax rate schedule. (s. 71.09 (1b) and (2), Stats.) (1) THE LAW. (a) Section 71.09 (1b), Stats., prescribes the tax rates to be applied to taxable income in determining the tax to be assessed, levied and collected upon the taxable incomes of all persons other than corporations for the taxable year 1979.

(b) Section 71.09 (2), Stats., provides that "Commencing with calendar year 1980 and corresponding fiscal years and thereafter, the dollar amounts in sub. (1b) shall be changed to reflect the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the current year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the previous year, as determined by the U.S. department of labor, but in no case shall the amounts be increased by more than 10%. The revised amounts shall be rounded to the nearest whole number divisible by 100, and in no case shall be reduced below the amount appearing in sub. (1b) on February 28, 1979. The department of revenue shall annually adopt by rule any changes in dollar amounts required under this subsection, and incorporate them in the income tax forms and instructions."

(2) INDEXED INCOME TAX RATE SCHEDULE FOR THE 1980 TAXABLE YEAR. (a) The consumer price index, all urban consumers, U.S. city average increased from 216.6 for June 1979 to 247.6 for June 1980, a 14.3% increase. Therefore, the dollar amounts set forth in s. 71.09 (1b), Stats., shall be increased by 10%, the maximum increase allowable under s. 71.09 (2), Stats., for the 1980 taxable year.

(b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the 1980 taxable year shall be computed at the following rates:

## Tax 2

## WISCONSIN NET TAXABLE INCOME

Exceeding	Not Exceeding	Tax Rate
\$ 0	\$ 3,300	3.4%
\$ 3,300	\$ 6,600	5.2%
\$ 6,600	\$ 9,900	7.0%
\$ 9,900	\$13,200	8.2%
\$13,200	\$16,500	8.7%
\$16,500	\$22,000	9.1%
\$22,000	\$44,000	9.5%
Over \$44,000		10.0%

(3) INDEXED INCOME TAX RATE SCHEDULE FOR THE 1981 TAXABLE YEAR. (a) The consumer price index, all urban consumers, U.S. city average increased from 247.6 for June 1980 to 271.3 for June 1981, a 9.6% increase. Therefore, the dollar amounts set forth in sub. (2), shall be increased by 9.6% as required by s. 71.09 (2), Stats., for the 1981 taxable year.

(b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the 1981 taxable year shall be computed at the following rates:

## WISCONSIN NET TAXABLE INCOME

Exceeding	Not Exceeding	Tax Rate
\$ 0	\$ 3,600	3.4%
\$ 3,600	\$ 7,200	5.2%
\$ 7,200	\$10,900	7.0%
\$10,900	\$14,500	8.2%
\$14,500	\$18,100	8.7%
\$18,100	\$24,100	9.1%
\$24,100	\$48,200	9.5%
Over \$48,200		10.0%

(4) INDEXED INCOME TAX RATE SCHEDULE FOR THE 1982 TAXABLE YEAR. (a) The consumer price index, all urban consumers, U.S. city average increased from 271.3 for June 1981 to 290.6 for June 1982, a 7.1% increase. Therefore, the dollar amounts set forth in sub. (3), shall be increased by 7.1% as required by s. 71.09 (2), Stats., for the 1982 taxable year.

(b) The tax to be assessed, levied and collected upon taxable incomes of all persons other than corporations for the 1982 taxable year shall be computed at the following rates:

## WISCONSIN NET TAXABLE INCOME

Exceeding	Not Exceeding	Tax Rate
\$ 0	\$ 3,900	3.4%
\$ 3,900	\$ 7,700	5.2%
\$ 7,700	\$11,700	7.0%
\$11,700	\$15,500	8.2%
\$15,500	\$19,400	8.7%
\$19,400	\$25,800	9.1%
\$25,800	\$51,600	9.5%
Over \$51,600		10.0%

History: Emerg. cr. eff. 10-16-80; cr. Register, April, 1981, No. 304, eff. 5-1-81; cr. (3), Register, December, 1981, No. 312, eff. 1-1-82; cr. (4), Register, December, 1982, No. 324, eff. 1-1-83.

**Tax 2.085 Claim for refund on behalf of a deceased taxpayer.** (s. 71.10 (10), Stats.) (1) If a refund of Wisconsin income taxes is due a deceased taxpayer and if the refund exceeds \$100, the claimant shall file, with the income tax return, a completed form 1-804, entitled "Claim for Decedent's Wisconsin Income Tax Refund".

(2) Forms required to be filed under sub. (1) shall be mailed to the Wisconsin Department of Revenue, P.O. Box 59, Madison, Wisconsin 53785.

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1), Register, November, 1978, No. 275, eff. 12-1-78; am. (2), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.09 Reproduction of income tax forms.** (s. 71.10 (1) (intro.), (2) (b) and (3) (a), Stats.) 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) In the reproduction of tax forms, black ink may be substituted for colored ink.

(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 sub. (6), 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 ap-

Register, July, 1987, No. 379

## Tax 2

pearing 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; am. (3), Register, September, 1983, No. 333, eff. 10-1-83; correction in (6) made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379.

**Tax 2.10** Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns. (s. 71.10 (6), Stats.) It is deemed necessary for the administration of the tax imposed by ch. 71, 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 2.105** Notice by taxpayer of federal audit adjustments and amended returns. (s. 71.10 (10) (bn) and 71.11 (21) (bm) and (g) and (21m), Stats.) (1) DEFINITION. In this rule, "taxpayer" includes individuals, estates, trusts and corporations.

(2) STATUTES. (a) Section 71.11 (21m), Stats., (effective May 5, 1976), provides that a taxpayer shall in certain instances as described in sub. (3) report to the department changes made to a tax return by the internal revenue service or file with the department amended Wisconsin returns reporting any information contained in amended returns filed with the internal revenue service or with another state.

(b) Section 71.11 (21) (g)2, Stats., (effective May 5, 1976), provides that regardless of any other limitations in ch. 71, Stats., the department may issue an assessment or refund if it gives notice thereof to the taxpayer "within 90 days of the date on which the department receives a report from the taxpayer under sub. (21m) or within such other period specified in a written agreement entered into prior to the expiration of such 90 days by the taxpayer and the department. If the taxpayer does not report to the department as required under sub. (21m), the department may make an assessment against the taxpayer after discovery by the department of the requirement of such reports within 10 years after the date on which the tax return is filed. This 10-year time limitation shall not apply to assessments made under par. (c)."

Register, July, 1987, No. 379

(3) **TAXPAYER REQUIRED TO REPORT.** (a) *Federal adjustments.* If a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin income or franchise tax payable, the taxpayer shall report such adjustments to the department within 90 days after they become final.

1. **Finality of federal adjustments.** For the purpose of determining when federal adjustments to taxable income reported become final, the following shall be deemed a final determination:

a. Payment of any additional tax, not the subject of any other final determination described in subpar. b, c, d or e.

b. An agreement entered into with the internal revenue service waiving restrictions on the assessment and collection of a deficiency and accepting an overassessment (ordinarily federal Form 870 or 870-AD, both entitled "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", is used for this purpose).

c. Expiration of the 90-day time period (150-day period in the case of a notice addressed to a person outside the United States) within which a petition for redetermination may be filed with the United States tax court with respect to a statutory notice of deficiency issued by the internal revenue service, if a petition is not filed with that court within such time.

d. A closing agreement entered into with the internal revenue service under section 7121 of the internal revenue code.

e. A decision by the United States tax court or a judgment, decree or other order by a court of competent jurisdiction (e.g., a United States district court, court of appeals, court of claims or the United States supreme court) which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. See the note following this rule for the time when such actions ordinarily become final.

2. **Information to report to department.** A copy of the final federal audit report issued by the internal revenue service shall be submitted to the department together with any other documents or schedules necessary to inform the department of the adjustments to taxable income as finally determined.

3. **Agreement with adjustments.** A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin income or franchise tax purposes unless a statement is included with the report to the department stating why the taxpayer believes that the adjustments are incorrect.

(b) *Amended returns.* If a taxpayer files an amended federal tax return and the changes therein affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, an amended Wisconsin return reflecting the same changes shall be filed with the department. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin return shall be filed within 90 days after

the date the amended return is filed with the internal revenue service or other state.

(c) *Where and how to submit report or amended return.* A taxpayer's report of federal adjustments or amended Wisconsin return shall be submitted to the department by mailing it to the Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, Wisconsin 53708. The report of federal adjustments or amended Wisconsin return shall be clearly identified and it shall not be made a part of or attached to any other Wisconsin tax return.

(4) **TAXPAYER'S FAILURE TO REPORT OR FILE AMENDED WISCONSIN RETURN.** (a) If a taxpayer fails to report federal adjustments or the filing of an amended other state or federal return within the required 90-day period, the department may assess additional Wisconsin income or franchise tax relating to such adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed. (A return filed before the last date prescribed by law, commonly April 15 for an individual reporting on a calendar year basis, is considered as filed on such last day. Section 71.11 (21) (h), Stats.)

(b) *Example.* Assume that an individual taxpayer filed a 1974 Wisconsin income tax return by April 15, 1975; that adjustments were made by the internal revenue service to the individual's 1974 federal income tax return; that the adjustments became final on July 1, 1976; and that the taxpayer either failed to notify the department of such adjustments or notified the department more than 90 days after they became final. The department of revenue may issue an assessment for such adjustments any time on or before April 15, 1985 (i.e., within 10 years of the due date of the 1974 Wisconsin return).

(5) **ASSESSMENTS AND REFUNDS BY DEPARTMENT.** If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after an amended return is filed with the internal revenue service or another state, the department may make an assessment or refund relating to such report or amended return as follows:

(a) *Assessments.* An assessment may be made within 4 years from the date the original Wisconsin income or franchise tax return was filed. (s. 71.11 (21) (bm), Stats.) However, if the taxpayer reported less than 75% of the correct income and the additional tax for such year exceeds \$100, an assessment may be made within 6 years after the return was filed. (s. 71.11 (21) (g)1, Stats.)

(b) *Refunds.* A refund may be made if claims are filed within 4 years of the date the original Wisconsin income or franchise tax return was filed. (s. 71.10 (10) (bn), Stats.)

(c) *Exceptions.* 1. An assessment may be made later than the 4 and 6 year periods mentioned in par. (a) if notice of the assessment is given to the taxpayer within 90 days of the date the department receives a timely report from the taxpayer of federal adjustments or an amended Wisconsin return. However, such an assessment made after the expiration of the 4 and 6 year periods may only relate to those federal adjustments or the changes on the amended Wisconsin return.

2. If a taxpayer reports federal adjustments to the department or files with the department an amended Wisconsin return after the expiration

of the 4-year period for filing claims for refund as described in par. (b), a refund may still be made if notice of the refund is given to the taxpayer within 90 days of the date the department received a timely report of the federal adjustment or an amended Wisconsin return from the taxpayer.

3. The 90-day period for the department's giving notice of an assessment or issuing a refund may be extended if a written agreement is entered into by the department and the taxpayer prior to the expiration of such 90 days.

(d) *Examples.* 1. Assume that federal adjustments were made to an individual's 1971 federal income tax return; that the adjustments became final on June 1, 1976; and that on August 15, 1976 (within 90 days after such adjustments became final) the department received the taxpayer's report of the adjustments. Although the 4-year period provided by s. 71.11 (21) (bm), Stats., for making adjustments to the 1971 Wisconsin return expired on April 15, 1976, the department had until November 13, 1976 to give notice of an assessment to the taxpayer (November 13 was 90 days after the date the department received a report of the adjustments).

2. Assume that a taxpayer filed an amended 1975 New York return on June 1, 1976; and that an amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 1, 1976. Under the 4-year assessment period in s. 71.11 (21) (bm), Stats., the department has 4 years from April 15, 1976 (due date of 1975 return) in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(6) **PRIOR FIELD AUDIT BY DEPARTMENT.** If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and such field audit has been finalized, an assessment or refund nevertheless may be made. However, such an assessment or refund may only relate to those federal adjustments or the changes on such amended return. Notice of the assessment or refund must be given to the taxpayer within 90 days of the date the department received the report of federal adjustment or an amended Wisconsin return from the taxpayer.

Note: Decisions of the United States tax court and other courts *ordinarily* become final as follows:

1. If no appeal is made of a United States tax court decision, it becomes final upon expiration of a period of 90 days after the decision is entered. Decisions in unappealable small cases involving deficiencies of \$1,500 or less heard by the United States tax court under section 7463 of the internal revenue code become final 90 days after they are entered.

2. Appealed decisions of the United States tax court become final as set forth in section 7481 of the internal revenue code.

3. A decision of a United States district court normally becomes final if not appealed to the United States court of appeals within 60 days of the judgment, decree or order.

4. A decision of the United States court of claims or the United States court of appeals normally becomes final unless an appeal or a petition for certiorari is filed with the United States supreme court within 90 days of the judgment or decree.

## Tax 2

5. A decision of the United States supreme court is normally final upon the expiration of a period of 25 days from the date such decision is rendered, if a motion for reconsideration or rehearing is not filed within such time.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; correction in (3) (a) 1. a. made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379.

**Tax 2.11 Credit for sales and use tax paid on fuel and electricity.** (ss. 71.04 (3) and 71.043, Stats.) (1) DEFINITIONS. In this rule:

(a) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. 71.043 (4) (a), Stats.

(b) "Manufacturing" has the meaning designated in s. 77.51(27), Stats., by virtue of s. 71.043 (4) (b), Stats.

(c) Fuel and electricity "consumed in manufacturing" means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not "consumed in manufacturing" if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising and administrative department activities. If separate gas or electric meters are not used to accurately measure the fuel and electricity consumed in manufacturing in Wisconsin, a reasonable allocation is necessary.

(2) CREDIT ALLOWABLE. Section 71.043 (2), Stats., provides that "The tax imposed upon or measured by corporation net income of the taxable year 1973 and subsequent taxable years pursuant to s. 71.01 (1) or (2), Stats., may be reduced by an amount equal to the sales and use tax under ch. 77, Stats., paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. . . ."

(3) CARRY FORWARD OF UNUSED CREDIT. (a) If a corporation is entitled to a sales and use tax credit for 1973 and subsequent tax years under s. 71.043 (2), Stats., such credit, to the extent not offset by the tax liability of the same year, may be offset against the tax liability of the subsequent year and each succeeding year up to a total of 5 years or when the credit has been completely offset, whichever occurs first.

(b) The sales tax credit computed for 1973 and subsequent tax years shall first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied.

(4) SALES AND USE TAXES NOT DEDUCTIBLE. Under s. 71.04 (3), Stats., sales and use taxes paid during the taxable year 1980 and thereafter are not deductible from gross income if the taxes may be used as provided in s. 71.043 (2) and (3) to reduce a corporation's income or franchise tax.

Note: An example of the computation and application of the credit follows:

Register, July, 1987, No. 379

## Computation of Income or Franchise Tax Payable After Sales Tax Credit

	1980	1981
a. Income (franchise) tax payable before sales tax credit	\$ 1,000.00	\$10,000.00
b. Sales tax credit of current year available (schedule below)	\$ 3,846.15	\$ 3,846.15
c. Current year's credit allowable	\$ 1,000.00	\$ 3,846.15
d. Carry forward of unused 1980 credit	\$(2,846.15)	\$ 2,846.15
e. Total credit allowable in 1981 (c + d)		\$ 6,692.30
f. Income (franchise) tax payable after sales tax credit	\$ -0-	\$ 3,307.70

## Computation of Sales Tax Credit Available

	Annual Total 1980 & 1981
Cost of fuel and electricity directly consumed in manufacturing in Wisconsin (including tax)	\$100,000.00
Sales tax credit available in 1980 & 1981: $\$100,000 \div 1.04 = \$96,153.85 \times 4\% =$	\$ 3,846.15 (1)

(1) An alternative method of computation, which produces the same result, is to divide \$100,000 by 26.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (2) (a) r. (1) (d), (2) (b) and (3) (a), renun. (3) (b) and (c) to be (3) (a) and (b), cr. (4), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.12 Amended income and franchise tax returns. (1) GENERAL. (a)** The department shall accept amended returns to correct Wisconsin income tax returns previously filed. Amended Wisconsin returns also shall be filed with the department if either amended federal returns are filed and the changes therein affect the amount of Wisconsin income reportable or Wisconsin franchise or income tax payable, or amended returns are filed with another state and a credit has been allowed against Wisconsin taxes for taxes paid to the state and the changes affect the amount of income reportable or Wisconsin franchise or income tax payable. The amended Wisconsin returns shall be filed within 90 days after the date the amended federal returns or amended returns of other states are filed with those agencies.

Note: Refer to s. Tax 2.105 for additional information.

(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.

## Tax 2

(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."

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; am. (1) (a), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.13 Moving expenses.** (s. 71.05 (1) (a)7 and (b)4, Stats.) (1) GENERAL. Certain moving expenses qualify for a deduction in arriving at federal adjusted gross income. When a person *moves into* Wisconsin, such expenses are allowed as a deduction in computing Wisconsin adjusted gross income. The deductibility of moving expenses incurred in *moving from* Wisconsin was changed for 1975 and subsequent taxable years by the enactment of s. 71.05 (1) (a)7, Stats., which provides for an add modification for "Moving expenses incurred to move from this state".

(2) TREATMENT OF MOVING EXPENSES INCURRED IN MOVING FROM WISCONSIN. Moving expenses may be deducted in arriving at federal adjusted gross income for federal income tax purposes. Under s. 71.05 (1) (a)7, Stats., in determining Wisconsin adjusted gross income an add modification shall be made for "moving expenses incurred to move from this state". This add modification applies when the taxpayer becomes domiciled in another state, i.e., becomes a nonresident for Wisconsin tax purposes, either on the day he or she moves to the other state or prior to the move. However, the add modification is not required if the taxpayer retains his or her Wisconsin domicile after moving to another state and continues to be subject to Wisconsin's taxing jurisdiction.

Note: The following example illustrates the add modification for moving expenses for a taxpayer moving from Wisconsin to New York when the taxpayer's Wisconsin domicile is not retained:

Wisconsin Gross Income	\$18,000
New York Gross Income	600
Moving Expenses to New York	(4,000)
Federal Adjusted Gross Income	\$14,600
*Add Modification for Moving Expenses to New York	4,000
Subtract Modification: New York Gross Income	(600)
Wisconsin Adjusted Gross Income	\$18,000

\*The \$4,000 of moving expenses to New York is entered as an add modification on the Wisconsin income tax return, Form 1.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. (2), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.14 Aggregate personal exemptions.** The aggregate personal exemptions allowable under s. 71.09 (6p) (a) and (b), 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.

Register, July, 1987, No. 379

**Tax 2.15 Methods of accounting for corporations.** (s. 71.11 (8), 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 Change in method of accounting for corporations.** (s. 71.11 (8) (b), Stats.) (1) **GENERAL.** (a) A change in the method of accounting by corporations shall be made under s. 71.11 (8) (b), Stats., which reads as follows: "In computing a corporation's taxable income for any taxable year, commencing after December 31, 1953, if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply."

(b) A change in a corporation's method of accounting may involve an overall change of the entire accounting system or it may involve only a single item.

(c) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department. Applications for such change shall be made in the manner described in sub. (5).

(d) 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.

(2) **CHANGE IN METHOD OF ACCOUNTING FOR SINGLE ITEMS.** Any change in the accounting treatment of a single item, if "material", is deemed a change in the method of accounting under s. 71.11 (8) (b), Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin franchise/income tax purposes.

(3) **1953 ACCOUNT BALANCES.** (a) *Taxpayer-initiated change.* On a taxpayer-initiated change, the net 1953 account balances shall not be allowed as an offset in the year of change.

(b) *Department-initiated change.* 1. On a department-initiated change, the net 1953 balances shall be allowed as an offset in the year of change in accordance with the internal revenue code and federal regulations.

2. Net 1953 account balances shall be computed by the taxpayer and adequately supported by its accounting records in order for them to be allowed as offsets in the year of change.

3. No offset is available for taxpayers incorporated after December 31, 1953 or in connection with changes involving LIFO inventories.

(c) Paragraphs (a) and (b) shall apply to all tax years open to assessment or refund.

(4) TRANSITIONAL ADJUSTMENTS. The entire impact of a change in method of accounting shall be reflected in net income of the year of change for Wisconsin franchise/income tax purposes, thereby resulting in a doubling up of income and/or deductions in that year. (This represents a significant difference from the federal treatment which, in general, permits a 10-year amortization of the net transitional adjustment at the beginning of the year of change.)

(5) APPLICATION FOR CHANGE IN METHOD OF ACCOUNTING. (a) Applications to use the LIFO inventory method and subsequent changes in inventory accounting method shall be filed with the department pursuant to rule Tax 2.26. All other applications shall contain the following:

1. Nature of the taxpayer's business;
2. The method of accounting used in keeping its books;
3. The reason(s) for requesting the change;
4. A legible copy of federal Form 3115, "Application for Change in Accounting Method";
5. Legible copies of *all* subsequent correspondence with the internal revenue service pertaining to such application;
6. A statement, and whenever possible a schedule, which clearly indicate the manner in which it proposes to affect the change for Wisconsin franchise/income tax purposes;
7. A copy of the entry, its date and explanation, made on the books to accomplish the change. (When no book entry is made, the reason for its absence shall be stated.); and
8. Any other pertinent information.

(b) 1. Applications shall be filed before the end of the taxable year for which the change is to be effective. Such applications shall be in letter form with supporting schedules and data and mailed to: Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708.

2. The department has no form comparable to federal Form 3115.

Note: See *Ladish Co. v. Dept. of Revenue* (1975), 69 Wis. 2d 723, concerning a change in method of accounting for a single item.

Rules Tax 2.25, "Corporation accounting generally" and 2.26, "'Last in, first out' method of inventorying for corporations" describe department interpretations with respect to methods of accounting for inventories.

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; r. and recr. Register, May, 1978, No. 269, eff. 6-1-78; am. (1) (a), Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.165 Change in taxable year. (ss. 71.02 (1) (d) and (2) (k), and 71.10 (3m) and (16), Stats.). (1) DEFINITIONS. In this rule:

Register, July, 1987, No. 379

- (a) "Calendar year" means a 12 month period ending on December 31.
- (b) "Fiscal year" means a 12 month period ending on the last day of any month other than December 31.
- (c) "Taxable year" or "income year" means a calendar year, a fiscal year or a short period of less than 12 months resulting from a change in reporting from a calendar to a fiscal, a fiscal to a calendar, or a fiscal to a different fiscal year and is the period for which the taxable income is reported.

(2) CORPORATIONS. (a) *General.* A new corporation may elect the taxable year on which it will report. A taxable year must end on the last day of a month and, if accounting records are kept on a 52-53 week period, the taxable year shall be considered to end on the last day of the month closest to the end of the 52-53 week period.

(b) *Change in taxable year.* A corporation may not change its taxable year without first obtaining approval from the department. The request to change shall be made in writing to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708 prior to the close of the proposed new taxable year. The request shall contain the following information:

1. Name and address of corporation.
2. Taxable year presently used.
3. Proposed taxable year.
4. Effective date of change.
5. Reason for requesting the change.

(c) *Computation of tax.* The income for the short taxable year shall be computed on an annual basis and the tax for the short taxable year shall be a fractional portion of the tax computed on such annual income. As an example, in changing from a calendar year to a fiscal year ending September 30, with net income for the 9 month period of \$18,000, the tax on the income of the short taxable year may be computed as follows:

1. Multiply short period income by 12.  $\$18,000 \times 12 = \$216,000$
2. Divide by number of months in the short period to obtain annualized income.  $\$216,000 \div 9 = \$24,000$
3. Compute the tax on the annualized income. Tax on \$24,000 equals \$1,676 (1977 rates).
4. Prorate this tax to obtain the tax for the short period.  $\$1,676 \times 9/12 = \$1,257$ .

(3) PERSONS OTHER THAN CORPORATIONS. (a) *General.* A person other than a corporation is required to adopt the same taxable year for Wisconsin as for federal income tax purposes. The taxable year is established with the filing of the first income tax return.

(b) *Change in taxable year.* For federal purposes, approval is requested by filing federal Form 1128 on or before the 15th day of the second calendar month following the close of the short taxable year for which the return is required. The change is effected for Wisconsin purposes by at-

taching a copy of Form 1128 and the federal approval to the Wisconsin tax return for the short taxable year, which return is due on or before the 15th day of the 4th month after the end of the short taxable year.

(c) *Computation of tax.* The Wisconsin taxable income for the short taxable year shall be computed on an annual basis. For natural persons, the tax computed on the annualized income, reduced by the amount for personal exemptions, is multiplied by the number of months in the short taxable year and divided by 12. As an example, in changing from a calendar year to a fiscal year ending June 30, with Wisconsin taxable income for the 6 months of \$14,000, and claiming 4 exemptions as of June 30, the tax on the income of the short taxable year may be computed as follows:

1. Multiply short period income by 12.  $\$14,000 \times 12 = \$168,000$
2. Divide by number of months in the short period to obtain annualized income.  $\$168,000 \div 6 = \$28,000$
3. Compute the tax on the annualized income. Tax on \$28,000 equals \$2,577 (1977 tax rates).
4. Subtract personal exemptions.  $\$2,577 - \$80 = \$2,497$
5. Prorate this tax to obtain tax for the short period.  $\$2,497 \times 6/12 = \$1,248.50$ .

For estates and trusts, the computation is the same except that step 4 ("Subtract personal exemptions") is omitted; in the example, the tax equals \$1,288.50 ( $\$2,577 \times 6/12$ ).

(4) **PARTNERSHIPS.** (a) *General.* A partnership is required to adopt the same taxable year for Wisconsin as for federal income tax purposes. If federal approval of the taxable year adopted for the first return is required, a copy of federal Form 1128 and approval shall be attached to the first Wisconsin return filed.

(b) *Change in taxable year.* If federal approval is required for a change in taxable year, a copy of the federal Form 1128 and the federal approval shall be attached to the Wisconsin partnership return for the short taxable year.

(c) *Computation of income.* Partnership income for the short taxable year shall be determined under the internal revenue code as defined under s. 71.02 (2) (b), Stats.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79.

**Tax 2.17 Cash method of accounting for corporations.** (s. 71.11 (8), 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.** (s. 71.11 (8), 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 ac-  
Register, July, 1987, No. 379

counting 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.** (s. 71.11 (8), 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 reported 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 reported 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 s. 71.337, 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 rec. 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; am. (1), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies.** (s. 71.11 (8), Stats.) (1) Except as otherwise provided in sub. (3), 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.

Register, July, 1987, No. 379

## Tax 2

(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 deferral 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.

History: 1-2-56; correction in (1) made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379.

**Tax 2.21 Accounting for incorporated contractors.** (s. 71.11 (8), 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 ch. 71, 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.

History: 1-2-56; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.22 Accounting for incorporated dealers in securities.** (s. 71.11 (8), 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 2.24 Accounting for incorporated retail merchants.** (s. 71.11 (8), 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.** (s. 71.11 (8) and (9), 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 Register, July, 1987, No. 379

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 2 most commonly used bases in valuing inventories are 1. cost and 2. cost or market, whichever is lower.

(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 revenue.

(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; am. Register, February, 1976, No. 230, eff. 3-1-76.

**Tax 2.26 "Last in, first out" method of inventorying for corporations.** (s. 71.11 (9), Stats.) Any corporation permitted or required to take inventories pursuant to the provisions of s. 71.11 (9), 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 internal revenue service, and that the inventories used in reporting income to the United States internal revenue service and to the Wisconsin department of revenue agree both as to computation and amounts except as provided in sub. (7).

(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 internal revenue service.

(4) An application to use such method must be filed with the Wisconsin department of revenue in substantially the same form as required by the internal revenue service, 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 franchise or income tax purposes, in addition to those regulations of the United States internal revenue service made generally applicable by sub. (3), 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.

Register, July, 1987, No. 379

## Tax 2

(6) Except as provided in sub. (7), any corporation which has been computing its inventory for Wisconsin franchise or 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 internal revenue service to change its method of inventory valuation for federal income tax purposes shall also change its method of inventory valuation for Wisconsin franchise or 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 internal revenue service 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 the timber over the adjusted basis thereof, may exclude from its inventory, for Wisconsin franchise or income tax purposes, the excess of the fair market value of the timber over the adjusted basis thereof, or may, with the consent of the Wisconsin department of revenue, include the excess in its inventory for Wisconsin franchise or income tax purposes subject to the conditions the 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; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (5), (6) and (7), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.30 Property located outside Wisconsin—depreciation and sale.** (s. 71.07 (1), Stats.) (1) **DEFINITIONS.** In this rule, "internal revenue code" means the internal code in effect for the taxable year specified by s. 71.02(2)(b), Stats., and "federal adjusted basis" means those amounts determined under such code. For example, for the taxable year 1976 "internal revenue code" means the federal internal revenue code in effect on December 31, 1975.

(2) **GENERAL.** (a) Prior to tax year 1975, income or loss derived from real property or tangible personal property followed the situs of the property from which derived.

(b) In 1975, s. 71.07 (1), Stats., was amended, effective with the 1975 tax year, to read in part:

"All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust. Income or loss of nonresident individuals and nonresident estates and trusts from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived. Income or loss of nonresident individuals and nonresident estates and trusts derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived."

Register, July, 1987, No. 379

(3) **TREATMENT IN 1975 AND SUBSEQUENT YEARS FOR RESIDENT INDIVIDUALS, ESTATES AND TRUSTS.** For tax year 1975 and thereafter, income or loss from property and business located outside Wisconsin, received by resident individuals, estates and trusts, is taxable. The basis for depreciation and for determining gain or loss on disposition of property for such taxpayers is the same as the basis determined under the internal revenue code, whether the property was acquired before becoming or while a resident of this state.

Note: In the case of *Wisconsin Department of Revenue vs. Romain A. Howick*, 100 Wis. 2d 274 (1981), the Wisconsin supreme court held that for the purpose of determining a loss on sale the basis of property located outside Wisconsin acquired before the owner became a Wisconsin resident is the basis determined under the internal revenue code. In this rule, the same principle is applied to gains realized upon the disposition of such property.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. and recr. (3), Register, July, 1982, No. 319, eff. 8-1-82.

**Tax 2.31 Taxation of personal service income of nonresident professional athletes.** (ss. 71.01 (1) and 71.07 (1), (2) and (5), Stats.). (1) **DEFINITIONS.** (a) In subs. (2), (3) and (4) (a) "duty days" means days during the regular playing season within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days. In sub. (4) (b) "duty days" means days during the postseason within a taxable year for which the athlete is compensated, such as practice days, travel days and actual playing days.

(b) "Travel days" means days spent in the state (or other governmental jurisdiction) of destination, except that when the team performs on a travel day, the day shall be considered spent where the performance occurs.

(2) **GENERAL.** Wisconsin individual income tax is imposed on nonresident natural persons upon such income as is derived from the performance of personal services within Wisconsin. When a specific amount is received for personal services performed in Wisconsin, that amount shall be included in Wisconsin income. When compensation is received for personal services performed partly within and partly outside Wisconsin, the amount to be included in Wisconsin income shall be determined by an allocation of personal services performed in Wisconsin to total personal services on the basis that most correctly reflects the proper apportionment under the facts and circumstances of the particular case. In the absence of clear evidence to the contrary, allocations shall be made on the basis of time; that is, the compensation allocated to Wisconsin shall bear the same relation to total compensation as the number of days of performance of personal service within Wisconsin bears to the total number of days of performance of personal service for which compensation is received.

(3) **METHOD OF ALLOCATION.** (a) The allocation to Wisconsin of income earned from the performance of personal services by a nonresident professional athlete under a playing contract shall, as a general rule, be made on the basis of time according to a fraction, the denominator of which is the total number of duty days covered by the contract and the numerator of which is the number of those duty days spent in Wisconsin. For players not under contract, the denominator shall include the total number of duty days and the numerator shall include the number of those duty days spent in Wisconsin.

## Tax 2

(b) Amounts paid for participation in training or exhibition games and any per diem payments made in connection therewith are earned at the location of the participation and are considered separately.

(4) **TAXATION OF EARNINGS.** (a) The fraction determined in sub. (3) (a) shall be applied to the total compensation received within a taxable year for the regular playing season, as well as to bonuses or other compensation received for that season without regard to when paid. The fraction shall also be applied to a bonus received for signing a contract. If bonuses are received prior to or following a year to which the playing contract pertained, the fraction determined for the year covered by the contract will control.

(b) If postseason games are played, the total number of duty days shall be the denominator and the number of those duty days spent in Wisconsin shall be the numerator of the fraction, and this fraction shall be applied to the compensation received within a taxable year for the post-season games.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

### Determination of Income from Multistate Operations

**Tax 2.39 Apportionment method.** (s. 71.07 (2), Stats.) Any person doing business both in and outside this state shall report by the statutory apportionment method when the person's business in this state is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

(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 s. 71.07 (2) (d), Stats., are the property factor, the payroll factor and the sales factor. Property, payroll or sales related to the production of nonapportionable income under s. 71.07 (1), 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 s. 71.07 (3), 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

Register, July, 1987, No. 379

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 employe shall be included in the numerator of the factor if the employe'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 employes 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 employes shall be made as though such employes 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 employes 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 property (except sales to the United States government; see par. (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 U.S. 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, Stats., contains provisions for including gross receipts from transactions 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 subd. 5.

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 this state, gross receipts shall be attributable to this state based upon the ratio which compensation and other direct costs of performing such services in

## Tax 2

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 s. 71.07 (2) (b) 4, Stats.

c. The provisions of pars. (b) 2 and (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. 216; eff. 12-1-73; cr. (intro.), Register, January, 1978, No. 265, eff. 2-1-78.

**Tax 2.40 Nonapportionable income.** (s. 71.07 (1) and (2), 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 s. 71.07 (2) (d), 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 non-apportionable interest and dividends received.

(3) For "financial organizations" (except insurance companies) and "public utilities" as defined in s. 71.07 (2) (d), 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

Register, July, 1987, No. 379

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.

(3m) Subsections (2) and (3) apply for only the calendar years 1973 and 1974 or corresponding fiscal years.

(4) Total nonapportionable income or loss and Wisconsin nonapportionable 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 nonapportionable income or loss.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (3m), Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 2.41 Separate accounting method.** (s. 71.07 (2), 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.

(a) 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 for income years through 1974 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. Federal income taxes are not deductible for income years 1975 and thereafter.

(b) 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. Miscellaneous income, such as income from intangibles and income from tangible property used in the business, and such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Net rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation but are taxable in full if the property is located in Wisconsin. Gross rentals must be reduced by all expenses related to such investment property.

History: 1-2-56; am. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, November, 1977, No. 263, eff. 12-1-77.

Register, July, 1987, No. 379

## Tax 2

**Tax 2.44 Permission to change basis of allocation.** (s. 71.07 (2), 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 shall be obtained in writing from the department of revenue upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708 before the end of the tax year for which the change is desired.

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, 1983, No. 333, eff. 10-1-83.

**Tax 2.45 Apportionment in special cases.** (s. 71.07 (5), Stats.) When the business of any person, other than an interstate professional sports club or "financial organization" or "public utility," as defined in s. 71.07 (2) (d), 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 s. 71.07 (2), 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; am. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.46 Apportionment of business income of interstate air carriers.** (s. 71.07 (2) (e), 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 substituted 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.

Register, July, 1987, No. 379

**Tax 2.47 Apportionment of net business income of interstate motor carriers of property.** (1) (s. 71.07 (2) (e), 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.** (s. 71.07 (2) (e), 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

## Tax 2

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.** (s. 71.07 (2) (e), 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 s. 71.07 (2) (b), Stats., and s. Tax 2.39 (4). "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 sub. (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 s. 71.07 (2) (d), Stats., except any type of insurance company.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; am. (1)(b), Register, July, 1978, No. 271, eff. 8-1-78.

Register, July, 1987, No. 379

**Tax 2.50 Apportionment of net business income of interstate public utilities.** (s. 71.07 (2) (e), Stats.) (1) For the calendar year 1973, or corresponding fiscal years, and for calendar and fiscal years thereafter, except as provided in sub. (2), the business income of "public utilities", as defined in s. 71.07 (2) (d) 2, 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 s. 71.07 (2) (a), (b) and (c), Stats., and s. 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 ss. Tax 2.46, 2.47 and 2.48, respectively.

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

**Tax 2.505 Apportionment of net business income of interstate professional sports clubs.** (s. 71.07 (2), Stats.) The apportionable income of professional sports clubs engaged in income producing activities both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using an apportionment fraction composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined as follows:

(1) **PROPERTY FACTOR.** The property factor is a fraction as defined in s. 71.02 (2) (a), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.07 (2) (a), Stats., and s. Tax 2.39 (3). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) **PAYROLL FACTOR.** The payroll factor is a fraction as defined in s. 71.07 (2) (b), Stats. Compensation shall be reported as provided in s. 71.07 (2) (b), Stats., and s. Tax 2.39 (4). Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) **SALES FACTOR.** The sales factor is a fraction as defined in s. 71.07 (2) (c), Stats. Sales shall be included in the factor in accordance with s. 71.07 (2) (c), Stats., s. Tax 2.39 and the following rules:

(a) **Gate receipts.** Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numerator of the sales fraction for taxpayers whose home facility is in Wisconsin shall include all gate receipts from games played in its home facility. The numerator of the sales fraction for taxpayers whose home facility is outside Wisconsin shall include the percentage of gate receipts received from games played in Wisconsin.

(b) **Radio and television receipts.** Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in Wisconsin in proportion to the number of games played in Wisconsin to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in Wisconsin if the games are played in Wisconsin.

## Tax 2

(c) *Concession income and miscellaneous income.* Concession income is assigned to the state in which the concession is operated. Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the state in which the activity is conducted.

(d) *Player contracts, franchises, etc.* Income from player contract transactions, franchise fees, and other similar sources is regarded as intangible business income and shall be excluded from the numerator and the denominator of the sales fraction.

Note: This rule clarifies the department of revenue's policy and applies to all taxable years open to audit under s. 71.10 (10), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

### Gross Income

**Tax 2.51 Rent received by corporations from Wisconsin real estate.** (s. 71.03 (1) (b), 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 s. 71.305, Stats., such distribution is not includable in gross income then, except as provided in s. 71.307 (2), 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 s. 71.305 (1), Stats., a part of the distribution is not includable in gross income (except as provided in s. 71.307 (2), 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 s. 71.305 (2), 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 s. 71.305 (1), 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 share-

Register, July, 1987, No. 379

holder 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.** (s. 71.03 (1) (d), 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 renun. (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.** (s. 71.03 (1) (d), 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.** (s. 71.03 (1) (d), 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

## Tax 2

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.** (s. 71.03 (1) (c), 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 s. 71.07 (1), 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 2.69 Income from Wisconsin business.** (ss. 71.01 and 71.07, 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 department of revenue 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; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.70 Gain or loss on capital assets of corporations; basis of determining.** (s. 71.03 (1) (g), 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 s. Tax 2.19)

(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

Register, July, 1987, No. 379

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 2.72 Exchanges of property by corporations generally.** (s. 71.03 (1) (g), Stats.) (1) Except where otherwise specifically provided by ch. 71, Stats., 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 ch. 71, Stats., where property of 2 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) In general there are 3 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 s. 71.03 (5), Stats., 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; r. (3) and renum. (4) to be (3), Register, February, 1975, No. 230, eff. 3-1-75.

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

Register, July, 1987, No. 379

## Tax 2

(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.** (s. 71.03 (1) (g) 3, 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) (a) For 1980 and preceding taxable years, this section does not apply when insurance money received on the conversion of Wisconsin assets is used in replacement outside of Wisconsin. In this case, the gain or loss shall be reported in the year of conversion.

(b) For 1981 and subsequent taxable years, this section does not apply when insurance money received on the conversion of nonbusiness assets located in Wisconsin is used in replacement with similar property outside of Wisconsin. Also, this section does not apply when insurance money received on the conversion of business assets located in Wisconsin is used in replacement with similar property outside of Wisconsin, and at the time of replacement, the taxpayer is not subject to taxation under ch. 71, Stats. In these cases the gain or loss shall be reported in the year of conversion.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (3), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.74 Gain or loss on disposition of property by corporations; adjustments to basis.** (s. 71.03 (1) (g), 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

Register, July, 1987, No. 379

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) For 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 permitted for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable 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 ch. 71, 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.

## Tax 2

(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 ch. 71, Stats. The amount actually sustained is that amount charged off on the books of the corporation where such amount is considered by the secretary of revenue 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; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (4), Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 2.75 Recoveries by corporations.** (s. 71.03 (1) (k), 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.** (s. 71.03 (1) (k), 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 2.80 Improvements on leased real estate, income to corporate lessor.** (s. 71.03 (1) (k), 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.** (s. 71.03 (1) (k), 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 Nexus.** (ss. 71.01 (1) and (2) and 71.10 (1), Stats.) (1) DEFINITIONS. In this rule:

Register, July, 1987, No. 379

(a) "Representative" does not include an independent contractor. A person may be considered a representative even though he or she may not be considered an employe for other purposes such as the withholding of income tax from commissions. If a person is subject to the direct control of the foreign corporation, he or she may not qualify as an independent contractor under P.L. 86-272. (*Herff Jones Company v. State Tax Commission*, Oregon Supreme Court, August 23, 1967, 430 P. 2d 998.)

(b) "Business location" includes a repair shop, parts department, purchasing office, employment office, warehouse, meeting place for directors, sales office, permanent sample or display room, research facility or a recreational facility for use of employes or customers. A residence of an employe or representative is not ordinarily considered a business location of the employer unless the facts indicate otherwise. It could be considered a business location under one or more of the following conditions: a portion of the residence is used exclusively for the business of the employer, the employe is reimbursed or paid a flat fee for the use of this space by the employer; the employe's phone is listed in the yellow pages under the name of the employer; the employe uses supplies, equipment or samples furnished by the employer; or the space is used by the employe to interview prospective employes, hold sales meetings, or discuss business with customers.

(2) BACKGROUND. (a) Every domestic corporation (one incorporated under Wisconsin's laws), except those exempt under s. 71.01 (3) Stats., and every "licensed" foreign corporation (one not incorporated in Wisconsin) is required to file a complete corporation franchise/income tax return (Form 4 or 5) regardless of whether or not business was transacted.

(b) A foreign corporation is "licensed" if it has obtained a Certificate of Authority from the Wisconsin secretary of state to transact business in this state pursuant to s. 180.801, Stats. A "licensed" foreign corporation is presumed to be subject to Wisconsin franchise/income taxes.

(c) An unlicensed foreign corporation is subject to Wisconsin franchise/income taxes if it has "nexus" with Wisconsin. The purpose of this rule is to provide guidelines for determining what constitutes "nexus", that is, what business activities are needed for a foreign corporation to be subject to Wisconsin franchise/income taxes.

(3) FEDERAL LIMITATIONS ON TAXATION OF FOREIGN CORPORATIONS. (a) *Federal constitutional provisions.* 1. Article I, Section 8 of the U.S. Constitution grants congress the power to regulate commerce with foreign nations and among the several states. States are prohibited from levying a tax which imposes a burden on interstate or foreign commerce. However, this does not mean states may not impose any tax on interstate commerce. A state tax on net income from interstate commerce which is fairly attributable to the state is constitutional. (*Northwestern States Portland Cement Co. v. Minnesota*; *Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S. Ct. 357.)

2. Section I of the 14th Amendment protects taxpayers within any class against discrimination and guarantees a remedy against illegal taxation.

(b) *Federal Public Law 86-272.* 1. Under Public Law 86-272, a state may not impose its franchise/income tax on a business selling tangible

personal property, if the *only* activity of that business is the solicitation of orders by its salesman or representative which orders are sent outside the state for approval or rejection, and are filled by delivery from a point outside the state. The activity must be *limited* to solicitation. If there is any activity which exceeds solicitation, the immunity from taxation under Public Law 86-272 is lost.

2. This law, enacted by congress in 1959, does not extend to:

- a. Those businesses which sell services, real estate or intangibles in more than one state;
- b. Domestic corporations; or
- c. Foreign nation corporations, i.e., those not incorporated in the United States.

3. If the *only* activities in Wisconsin of a foreign corporation selling tangible personal property are those described below (a and b) such corporation is not subject to Wisconsin franchise/income taxes under P.L. 86-272:

- a. Usual or frequent activity in Wisconsin by employes or representatives soliciting orders for tangible personal property which orders are sent outside this state for approval or rejection.
- b. Solicitation activity by non-employe independent contractors, conducted through their own office or business location in Wisconsin.

(4) WHAT CONSTITUTES "NEXUS". (a) *Factors*. If a foreign corporation has one or more of the following activities in Wisconsin, it is considered to have "nexus" and shall be subject to Wisconsin franchise/income taxes:

- 1. Maintenance of any business location in Wisconsin, including any kind of office.
- 2. Ownership of real estate in Wisconsin.
- 3. Ownership of a stock of goods in a public warehouse or on consignment in Wisconsin.
- 4. Ownership of a stock of goods in the hands of a distributor or other non-employe representative in Wisconsin, if used to fill orders for the owner's account.
- 5. Usual or frequent activity in Wisconsin by employes or representatives soliciting orders with authority to accept them.
- 6. Usual or frequent activity in Wisconsin by employes or representatives engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, repair of equipment).
- 7. Operation of mobile stores in Wisconsin (such as trucks with driver-salespersons), regardless of frequency.
- 8. Miscellaneous other activities by employes or representatives in Wisconsin such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for customer personnel in the operation, repair and maintenance of the taxpayer's products.

9. Leasing of tangible property and licensing of intangible rights for use in Wisconsin.

10. The sale of other than tangible personal property such as real estate, services and intangibles in Wisconsin.

11. The performance of construction contracts and personal services contracts in Wisconsin.

(b) *How to obtain ruling.* The guidelines in par. (a) as to what activities constitute "nexus" should not be considered all-inclusive. A ruling may be requested about a particular foreign corporation as to whether it is subject to Wisconsin franchise/income taxes by writing to the Wisconsin Department of Revenue, Audit Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79.

**Tax 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations.** (ss. 71.02 (2) (a) and (b), 71.317 (3) and 71.333, Stats.) (1) To qualify for the benefits of section 333 of the internal revenue code in computing Wisconsin taxable income, a qualified electing shareholder, other than a corporate shareholder shall file with the department federal form 964 in accordance with the instructions contained thereon within 30 days of the adoption of the plan of liquidation.

(2) To qualify for the benefits of s. 71.333, Stats., a corporation, other than an excluded corporation, which is a qualified electing shareholder, must file with the department federal form 964 in accordance with the instructions contained thereon within 30 days of the adoption of the plan of liquidation.

(3) Another copy of the form 964 shall be attached to and made a part of the shareholder's income or franchise tax return for the taxable year in which the transfer of all the property under the liquidation occurs.

(4) Once made, an election cannot subsequently be changed.

(5) Written elections shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. (1), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.86 Income to corporations from cancellation of government contracts.** (s. 71.03 (1) (k), 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 Reduction of delinquent interest rate under s. 71.13 (1) (b), Stats.** ( s. 71.13 (1) (b), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

Register, July, 1987, No. 379

## Tax 2

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) **FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) Any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) **DETERMINATION NOT APPEALABLE.** The secretary's determination under this rule is not appealable.

**History:** Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.88 Interest rates.** (ss. 71.09 (5), 71.10 (5) and 71.13 (1) (a), Stats.) (1) **INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT.** Unpaid individual income or corporate franchise or income taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(2) **INTEREST ON REFUNDS.** (a) Any refund of individual income or corporate franchise or income taxes shall include interest as follows:

1. If the tax being refunded is from a return which has a filing due date on or after November 1, 1975 interest shall be computed at the rate of 9% per year from the due date of the return to the date paid by the department.

2. If the tax being refunded is from a return which has a filing due date prior to November 1, 1975 interest shall be computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid by the department.

(b) However, for income and franchise taxes no interest shall be allowed if the refund is paid within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This shall apply to a Register, July, 1987, No. 379

refund of taxes resulting from an overpayment by declaration of estimated tax as well as from withheld taxes.

(3) **DELINQUENT TAXES.** Any individual income or corporate franchise or income tax delinquencies shall include interest at the rate of 1.5% per month from the date on which the taxes became delinquent until the taxes are paid.

(4) **EXTENSION PERIODS.** If an extension of time is granted for filing an individual income or a corporate franchise or income tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 12% per year. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent and shall be subject to delinquent interest under sub. (3) from the end of the extension period until paid.

Note 1: For unpaid non-delinquent taxes due prior to November 1, 1975, interest was computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

2. For unpaid non-delinquent taxes due on or after November 1, 1975 and assessed by the Department of Revenue before August 1, 1981, interest was computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

3. Any individual income or corporate franchise or income taxes which were delinquent before November 1, 1975 were subject to delinquent interest at the rate of 1% per month from the date the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until paid.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1), (3) and (4), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.89 Penalty for underpayment of estimated tax.** (ss. 71.21 (11) and 71.22 (8), Stats.) Any penalty imposed against an individual or corporate taxpayer for the underpayment of estimated tax shall be at the rate of 12% per year on the amount of underpayment for the period of underpayment.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; r. and recr. Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.90 Withholding; wages.** (s. 71.19 Stats.) (1) The term "wages" means all remuneration for services performed by an employe for his employer unless specifically excepted under s. 71.19, 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 retirement pay, and supplemental unemployment benefits are wages within the meaning of the statute if paid as compensation for services performed by the employe for the employe's 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, s. 71.19 (1) (i), Stats., relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the

Register, July, 1987, No. 379

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 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 s. 71.02 (2) (b), 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, are excepted from withholding only if the tips are non-cash tips or if the cash tips received during the course of a month are less than \$20.

(15) Withholding is not required:

(a) Upon amounts paid to an employe by the employe's 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 internal revenue code, as defined in s. 71.02 (2) (b), Stats.

(b) When an employe certifies to an employer that the employe incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

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; am. (2), (14) and (15), Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 2.91 Withholding; fiscal year taxpayers.** (1) Except as provided in sub. (2) hereof, amounts withheld pursuant to s. 71.20, 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 revenue with one legible copy of a written statement, adapted to such fiscal year, but otherwise consistent with the written statement referred to in s. 71.10 (8) (a), Stats., and the employe files a copy of such statement along with his fiscal year return.

History: Cr. Register, March, 1963, No. 87, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-76.

**Tax 2.92 Withholding tax exemptions.** (ss. 71.20 (9) (e), (14), (16) and (22), Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as are allowable for federal withholding purposes. An employe who elects to have the same number of Wisconsin withholding exemptions as are allowable for federal purposes shall notify his or her employer of this election. An employe making this election is not required to complete a Wisconsin withholding exemption certificate, form WT-4. An employe who claims a different number of withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed Wisconsin withholding exemption certificate, form WT-4.

(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

Register, July, 1987, No. 379

## Tax 2

her employer with a completed form WT-4, "Employee's Wisconsin Withholding Exemption Certificate". For this purpose, a tax liability is "incurred" if the employee had for the preceding year, or anticipates for the current year, a net Wisconsin income tax due, i.e., gross tax less personal exemptions on a Wisconsin return. If an employee is married, the net tax of the employee's spouse shall not be considered in determining if the employee may claim this exemption.

(3) (a) Effective April 1, 1979, an employee may enter into a written agreement with his or her employer to withhold a lesser amount of tax than indicated in the withholding tax tables, if the employee determines the lesser amount approximates the employee's anticipated income tax liability for the year. Form WT-4A, "Wisconsin Employee Withholding Agreement", shall be used for this purpose and a completed copy of the form shall be sent by the employee to the department within 10 days after it is filed with the employer. If the employee fails to notify the department within the required 10 days, he or she shall be subject to a penalty of \$10, as provided by s. 71.20 (22) (c), Stats.

(b) The agreement between the employee and employer shall be renewed each year. For calendar year taxpayers, the agreement expires on April 30 of the year immediately following the year in which it was entered into. For fiscal year taxpayers, the agreement expires 4 months following the close of the fiscal year in which entered into. To renew the agreement, an employee shall provide a new form WT-4A to his or her employer and submit a copy of the completed form to the department as provided in par. (a). If a new form WT-4A is executed before the expiration dates described in this paragraph, it shall supersede the previous agreement.

(c) If the department determines that an agreement would result in an insufficient amount of tax being withheld, the department may void the agreement by notification to the employer and employee.

(d) Section 71.20 (16), Stats., provides that any employee who enters into an agreement with the intent to defeat or evade the proper withholding of tax, shall be subject to a penalty equal to the difference between the amount required to be withheld and the amount actually withheld for the period that the incorrect agreement was in effect.

(e) Under s. 71.20 (22) (e), Stats., any employee who willfully supplies an employer with false or fraudulent information regarding an agreement with the intent to defeat or evade the proper withholding of tax may be imprisoned not more than 6 months or fined not more than \$500, plus the costs of prosecution, or both.

Note: Forms WT-4 and WT-4A may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) and (2), cr. (3), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.93 Withholding from wages of a deceased employee and from death benefit payments.** (ss. 71.19(1)(j) and 71.20(1), Stats.) (1) GENERAL. Section 71.20(1), Stats., requires employers to withhold Wisconsin income tax from payments of wages "to an employee". Various types of payments are made to the estate or to beneficiaries of a deceased employee which resulted from the deceased person's employment. The department

Register, July, 1987, No. 379

shall follow the federal internal revenue service's policy in determining whether withholding of income tax is required from such payments.

(2) **PAYMENTS SUBJECT TO WITHHOLDING.** An uncashed check originally received by a decedent prior to the date of death and reissued subsequently to the decedent's personal representative shall be subject to withholding of Wisconsin income tax.

(3) **PAYMENTS NOT SUBJECT TO WITHHOLDING.** The following types of payments to a decedent's personal representative or heir shall not be subject to withholding of Wisconsin income tax:

(a) Payments representing wages accrued to the date of death but not paid until after death.

(b) Accrued vacation and sick pay.

(c) Termination and severance pay.

(d) Death benefits such as pensions, annuities and distributions from a decedent's interest in an employer's qualified stock bonus plan or profit sharing plan (s. 71.19(1)(j), Stats.).

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78.

**Tax 2.935 Reduction of delinquent interest rate under s. 71.20 (5) (c), Stats. (s. 71.20 (5) (c), Stats.) (1) PROCEDURES.** The secretary may reduce the delinquent interest rate from 18% to 12% per year when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the withholding taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) **FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

## Tax 2

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) DETERMINATION NOT APPEALABLE. The secretary's determination under this rule is not appealable.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.94 Tax sheltered annuities. (s. 71.03(2)(d), Stats.) (1) GENERAL.**

(a) For many years members of the state teachers' retirement system have had the privilege of paying in voluntary additional deposits, to provide additional retirement income to supplement normal retirement benefits. In January of 1964 it became possible for such members to pay in additional deposits under a new program known as the Tax Sheltered Annuity Plan.

(b) When a tax sheltered annuity is purchased for an employe by a public school system or by an exempt educational, charitable or religious organization, the deposit used to acquire this annuity may be excluded from the employe's gross income in the year of payment under section 403(b) of the internal revenue code. Accordingly, since January 1, 1965, when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income, these payments also have been excluded from employes' taxable income for Wisconsin income tax purposes. Prior to that date, such payments were taxable for Wisconsin income tax purposes.

(c) All benefits paid under tax sheltered annuity contracts, including withdrawals, death benefits or annuities, are included in federal taxable income when received. The Wisconsin treatment is described in subs. (2) and (3).

(2) SECTION 71.03(2)(d) EXEMPTION. Normal retirement benefits received from systems enumerated in s. 71.03(2)(d), Stats., are exempt as provided by that section. However, benefits received from tax sheltered annuity deposits administered by such systems do not qualify for the exclusion from Wisconsin taxable income provided by that statute. Tax sheltered annuity benefits shall be treated the same for Wisconsin income tax purposes as for federal income tax purposes; that is, they shall be included in gross income.

(3) STATE TEACHERS RETIREMENT SYSTEM ANNUITY BENEFITS. (a) Tax sheltered annuity benefits received by retired teachers on and after January 1, 1974 shall be included in income. No subtraction modification from federal adjusted gross income shall be allowed, except as provided in par. (c).

(b) Tax sheltered annuity benefits received on or before December 31, 1973 shall be considered nontaxable. A subtraction modification under s. 71.05 (1)(b)4, Stats., shall be permitted for such benefits as were included in federal gross income.

(c) If a school system purchased a tax sheltered annuity for an employe prior to January 1, 1965, and the employe paid a Wisconsin income tax on the tax sheltered annuity deposit which was used to pay the 1964 annuity premium, a subtraction modification under s. 71.05(1)(b)4,

Register, July, 1987, No. 379

Stats., shall be allowed for the tax sheltered annuity benefits received on or after January 1, 1974 which are included in federal income and upon which the employe previously paid a Wisconsin income tax. The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax sheltered annuity benefits excludable from Wisconsin income because of receipt prior to January 1, 1974, as illustrated in the following examples which assume that the taxpayer files its tax return on a calendar year basis.

*Example 1:* An employe made a deposit of \$200 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employe retires after January 1, 1974, a subtraction modification under section 71.05(1)(b)4 is permitted for the first \$200 of tax sheltered annuity benefits received. All subsequent benefits are taxable with no subtraction modification allowed.

*Example 2:* An employe made a deposit of \$300 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and \$120 of such benefits received were not included in Wisconsin taxable income. A subtraction modification under section 71.05(1)(b)4 is permitted for the next \$180 (\$300 - \$120) received after January 1, 1974. All subsequent benefits are taxable with no subtraction modification allowed.

*Example 3:* An employe made a deposit of \$160 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and treated \$200 of such benefits as nontaxable for Wisconsin income tax purposes. All such benefits received after January 1, 1974 are taxable with no subtraction modification allowed.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

**Tax 2.945 Spousal individual retirement contributions.** (s. 71.02 (2) (b) 8, (d) and (e), Stats.) (1) **PURPOSE.** The purpose of this rule is to define the Wisconsin income tax treatment of a spousal individual retirement contribution.

(2) **DEFINITIONS.** In this rule

(a) "Qualifying individual" means an individual to whom a deduction is allowable under section 219 (a) of the internal revenue code.

(b) "Qualifying individual retirement contribution" means contributions which are deductible under section 219 of the internal revenue code.

(c) "Spousal individual retirement contribution" means the amount allowable as a deduction under section 219 (c) of the internal revenue code.

(3) **FEDERAL LAW.** Under section 219 (c) of the internal revenue code, a qualifying individual may deduct, in addition to the amount allowable under section 219 (a) of the internal revenue code, an additional amount not exceeding \$2,000 for contributions by or on behalf of the individual to an individual retirement plan established for the benefit of the individual's nonworking spouse, if the qualifying individual files a joint federal income tax return for the taxable year to which the contribution applies and the nonworking spouse has no compensation for the year. The total amount deductible on a joint return is limited to the lesser of \$2,250 or the qualifying individual's earned income for the year. Under s. 71.02 (2) (b) 8, Stats., the amount of contributions to an individual retirement plan deductible by an individual on a Wisconsin income tax return is determined under the internal revenue code.

Register, July, 1987, No. 379

(4) **DEDUCTION ALLOWABLE.** (a) Spousal individual retirement contributions shall be deductible from gross income in determining Wisconsin adjusted gross income on an individual's Wisconsin income tax return.

(b) The Wisconsin statutes require each spouse to file a return and compute his or her Wisconsin taxable income or loss separately. Under this principle of separate determinations of taxable income, each spouse shall be allowed to deduct only the qualifying individual retirement contributions made to his or her individual retirement plan.

Note: The following examples illustrate the Wisconsin tax treatment of contributions to individual retirement plans for an individual and a nonworking spouse:

*Example 1:* Mr. X has earned income of \$20,000 in 1982 and establishes individual retirement accounts for himself and his nonworking spouse, who received \$500 of taxable interest income during 1982. Timely contributions totalling \$2,000 were made to his account and \$250 was contributed to his spouse's account for 1982. Mr. X may deduct a maximum of \$2,000 on his 1982 Wisconsin income tax return and his wife may deduct the \$250 contributed to her plan.

*Example 2:* Same facts as example 1 except \$1,000 is contributed to Mr. X's retirement plan and \$1,250 to his wife's plan. In this situation, Mr. X may deduct a maximum of \$1,000 while \$1,250 is deductible by his wife. Since Mrs. X received only \$500 of taxable income (interest) in 1982, she does not receive a Wisconsin tax benefit for \$750, the excess of the \$1,250 retirement contribution to her plan over her taxable income.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83.

**Tax 2.95 Reporting of installment sales by natural persons and fiduciaries.** (s. 71.02 (2) (b) and 71.07 (1), Stats.) (1) **GENERAL PRINCIPLES.** (a) *Installment sales.* Sales of real or personal property may be made under installment arrangements which provide for part or all of the sales price to be paid after the close of the tax year in which the sales are made. Under the installment method of reporting income, the gross profit from these sales may be prorated over the period in which payments under the installment arrangement are received. Losses may not be reported under the installment method.

(b) *Sale of installment obligation.* If a taxpayer reports a sale on the installment method and later sells or disposes of the installment obligation (i.e., the taxpayer's right to the unpaid installments), a gain or loss from the transaction is usually recognized in the year of disposition of the installment obligation.

(2) **LAW.** (a) The Wisconsin tax treatment of installment sales by natural persons and fiduciaries is determined under the internal revenue code in effect under s. 71.02 (2) (b), Stats.

(3) **SITUS OF INCOME.** (a) *Prior to 1975.* For taxable years prior to 1975, s. 71.07 (1), Stats., provided that for Wisconsin income taxation purposes, income or loss derived from the sale of real property or tangible personal property followed the situs of the property. Interest income and income or loss from the sale of intangible personal property followed the situs of the residence of the recipient.

(b) *1975 and thereafter.* Beginning with the 1975 taxable year and thereafter, s. 71.07 (1), Stats., provides that all income or loss of resident individuals shall follow the residence of the individual. A nonresident's income or loss derived from the sale of real property or tangible personal property follows the situs of the property. Interest income of a nonresident and income from the sale of intangible personal property follows the situs of the individual's residence.

Register, July, 1987, No. 379

(4) **TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF INTANGIBLE PERSONAL PROPERTY.** Upon the sale of intangible personal property reported under the installment method:

(a) *Resident seller.* If the seller is a Wisconsin resident, the portions of each installment payment that represent gain and interest income from the sale which are received while the seller is a Wisconsin resident are taxable by Wisconsin.

(b) *Nonresident seller.* If the seller is not a Wisconsin resident, the portions of each installment payment that represent gain and interest income from the sale are *not* taxable by Wisconsin.

(5) **TAXATION OF PROCEEDS FROM INSTALLMENT SALE OF REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY.** Upon the sale of real property or tangible personal property reported under the installment method:

(a) *Wisconsin property.* 1. If the property is located in Wisconsin and the seller is a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale is taxable by Wisconsin.

2. If the property is located in Wisconsin and the seller is not a Wisconsin resident, the portion of each installment payment that represents gain is taxable by Wisconsin. Interest income of a nonresident is *not* taxable by Wisconsin.

(b) *Out-of-state property.* 1. If the property is located outside of Wisconsin and the sale occurred prior to 1975:

a. If the seller is a Wisconsin resident, the portion of each installment payment that represents gain is *not* taxable by Wisconsin regardless of the year in which received. Interest income from the sale is taxable by Wisconsin.

b. If the seller is not a Wisconsin resident, the portion of each installment payment that represents gain and interest income from the sale are *not* taxable by Wisconsin.

2. If the property is located outside of Wisconsin and the sale occurred in taxable year 1975 or thereafter:

a. If the sale occurred while the seller was a Wisconsin resident and the seller is a Wisconsin resident at the time installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are taxable by Wisconsin. However, if the seller no longer is a Wisconsin resident when installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are *not* taxable by Wisconsin.

b. If the sale occurred while the seller was not a Wisconsin resident and the seller is a Wisconsin resident at the time installment payments are received, the portion of each of the installment payments that represents gain is *not* taxable by Wisconsin, but interest income from the sale is taxable. However, if the seller is not a Wisconsin resident at the time installment payments are received, the portions of each of these installment payments that represent gain and interest income from the sale are *not* taxable by Wisconsin.

## Tax 2

(6) **TAXATION OF PROCEEDS FROM SALE OF INSTALLMENT OBLIGATION.** An installment obligation (i.e., an individual's right to unpaid installments from the sale of property) is intangible personal property. Any gain or loss from the sale of an installment obligation follows the residence of the seller. Therefore, any gain or loss of a Wisconsin resident must be included in, or subtracted from, Wisconsin taxable income.

*Example:* In 1975, while an Iowa resident, a taxpayer sold Wisconsin real estate on a land contract and elected to report the sale on the installment method. The selling price of the land was \$2,000. In an earlier year the seller acquired the land for \$1,500. In the year of the sale the seller received a down payment of \$400. On January 1, 1976, the seller became a Wisconsin resident, and on June 30, 1976, the seller received an installment payment of \$400 and interest of \$100. On July 1, 1976, the seller sold the land contract ("LC") obligation for \$1,000. The seller's Wisconsin taxable income from these transactions is as follows:

<b>1975:</b>		
Selling price of land (also contract price)		\$ 2,000
Cost of land (seller's basis)		<u>(1,500)</u>
Gross profit		<u>\$ 500</u>
Gross profit percentage ( $\$500 \div \$2,000$ )	25%	
Payment received in 1975		\$ 400
Wisconsin taxable income ( $25\% \times \$400$ )		<u>\$ 100</u>
<b>1976:</b>		
Amount of installment payment reportable as Wisconsin income ( $25\% \times \$400$ )		\$ 100
Interest income received		100
Amount realized from sale of LC obligation	<u>\$ 1,000</u>	
Unpaid balance of the LC obligation	1,200	
Amount of income reportable if the balance was paid in full ( $25\% \times \$1,200$ )	<u>(300)</u>	
Adjusted basis of LC obligation	<u>(900)</u>	
Gain from sale of LC obligation		<u>100</u>
Wisconsin taxable income		<u>\$ 300</u>

*History:* Cr, Register, January, 1979, No. 277, eff. 2-1-79; r. and rec. (2) and (5) (b) 2.a. and b., am. (4) (a) and (b), (5) (b) 1.a., Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.955 Credit for income taxes paid to other states.** (s. 71.09(8), Stats.) (1) **DEFINITION.** In this rule, "state" means the 50 states of the United States and the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(2) **CREDITS ALLOWABLE.** For taxable years 1978 and thereafter, except as provided in sub. (3), an income tax credit may be claimed by a Wisconsin resident individual, estate or trust for any net income tax paid to another state upon income of the individual, estate or trust taxable by such state.

(3) **CREDITS NOT ALLOWED.** An income tax credit shall not be allowed for:

(a) Income tax paid to Illinois, Indiana, Kentucky, Maryland, Michigan or Minnesota on personal service income earned in these states included under a reciprocity agreement (see s. Tax 2.02).

(b) Income tax paid to another state on income not considered taxable income for Wisconsin tax purposes.

Register, July, 1987, No. 379

(c) Income tax paid to a county, city, village, town or foreign country.

(4) **HOW TO CLAIM A CREDIT.** The amount of income tax credit claimed shall be entered on the line entitled "Net income tax paid to other states" on Wisconsin income tax return form 1. The credit shall not exceed the Wisconsin net tax. To verify the credit claimed, the following information shall be attached to Form 1 or 1A in the following situations:

(a) If the credit is based entirely on tax withheld and a refund is due from the other state, attach a copy of the wage statement and that state's income tax return.

(b) If there is a tax due on the other state's return or if estimated tax payments were made to that state, attach proof of payment of such amounts along with a copy of the wage statement and that state's income tax return. Proof of payment is not required to be attached to Form 1 or 1A if either the tax due or estimated tax payments do not exceed \$50.

(5) **YEAR IN WHICH TO CLAIM INCOME TAX CREDIT.** The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out-of-state income is considered taxable Wisconsin income.

Note: An example of the time for claiming the credit referred to in sub. (5) of s. Tax 2.955 follows:

A Wisconsin resident receives income of \$4,000 in 1980 from rental property located in Iowa. The person files a 1980 declaration of estimated tax of \$200 with Iowa, with \$150 of declaration payments being made in 1980 and the fourth quarter payment of \$50 being made in January 1981. The Iowa income of \$4,000 is reported as income on the 1980 Iowa and Wisconsin returns. The 1980 Iowa income tax return shows the following:

	1980 Iowa Return
Iowa Rental Income	\$ <u>4,000</u>
Iowa Net Tax (amount to be claimed as a credit on 1975 Wisconsin return)	\$ 185
Declaration Payments	\$ <u>200</u>
Refund	\$ <u>15</u>

The taxpayer may claim a "Credit for net income tax paid to other states" of \$185 on the 1980 Wisconsin return, even though a part of such tax was paid in 1981.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (4) (b), Register, January, 1981, No. 301, eff. 2-1-81; r. (2) (a) and (b), (3) (b), am. (2) (c), (3) (d) and (4), renum. (3) (c) to be (3) (b), r. and recr. (5), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.96 Extension of time to file corporation franchise or income tax returns.** (s. 71.10 (5) (a), Stats.) (1) **GENERAL.** Corporation franchise or income tax returns, forms 4 and 5, are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year unless an extension of time for filing has been granted. The returns may be filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return.

Register, July, 1987, No. 379

## Tax 2

(2) **PROCEDURE.** (a) *The 30-day or 6-month extension from department.* A request for a 30-day or 6-month extension, Form IC-830, from the department shall be filed in duplicate by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged on the copy of the extension request which is returned to the taxpayer.

(b) *The 3-month federal extension.* 1. A copy of federal extension Form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 3-month extension provision for the Wisconsin return to be considered timely filed.

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay any estimated tax liability on or before the 15th day of the 3rd month following the taxable year. This may be done by attaching a remittance either to an amended "Wisconsin Declaration of Estimated Corporation Franchise or Income Tax" form or to a copy of the federal extension (Form 7004) and mailing them to the department of revenue.

(c) *Additional federal extensions.* If an additional extension of time has been granted by the internal revenue service, a copy of both sides of the extension, Form 7005, showing the action and signature of the district director, shall be attached to the Wisconsin franchise or income tax return for that return to be considered timely filed.

(d) *Federal termination or refusal to grant extension.* If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before the date of termination fixed by the internal revenue service.

(3) **INTEREST CHARGES AND LATE FILING FEES.** (a) Any additional tax due with the complete return which is not paid by the original due date is subject to interest at 12% per year during the extension period and 1½% per month from the end of the extension period until the date of payment.

(b) Any required installments of estimated tax unpaid as of the original due date of the return are subject to interest at 1½% per month until paid regardless of any extensions granted for filing the return.

(c) A corporation return filed after the extension period is subject to a \$10 late filing fee.

(4) **CONSOLIDATED RETURNS.** Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, and any additional federal extension, form 7005, shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

(5) **DOMESTIC INTERNATIONAL SALES CORPORATIONS.** Since a Domestic International Sales Corporation's (DISC's) federal annual information return, Form 1120 DISC, is not due for federal purposes until the 15th day of the 9th month following the end of the taxable year and the DISC's Wisconsin return, Form 4 or 5, is due on or before the 15th day of the 3rd month following the end of the taxable year, a federal extension for a DISC cannot apply to the Wisconsin return. If a complete Wisconsin return cannot be filed by the due date, the corporation may obtain an

extension from the department for a period not to exceed 6 months, if the extension is requested prior to the original due date of the return.

Note: Requests for extensions and related correspondence, documents or remittances shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1), (2) (a) and (c), (3) (a) and (c), (4) and (5), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.98 Disaster area losses.** (s. 71.02 (2) (b), Stats.) (1) **GENERAL.** (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used for personal or business purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

(b) If a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, section 165(h) of the internal revenue code gives taxpayers the election to deduct the loss on the return for the current tax year or on the return for the immediately preceding tax year.

(2) **WISCONSIN TAX TREATMENT OF DISASTER LOSSES.** (a) *Individuals.*  
1. The Wisconsin income tax treatment for individuals is determined under the federal internal revenue code in effect under s. 71.02 (2) (b), Stats.

2. If an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin Form 1X may be used.

(b) *Corporations.* The Wisconsin corporation tax law is contained in chapter 71, Stats., and is not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the internal revenue code are not available to corporations for Wisconsin franchise and income tax purposes.

Note: (1) As an example of the above, on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

Calumet	Iowa	Rock
Columbia	Jefferson	Sauk
Crawford	LaFayette	Sheboygan
Dane	Manitowoc	Vernon
Dodge	Milwaukee	Walworth
Fond du Lac	Ozaukee	Washington
Grant	Richland	Waukesha
Green		

An individual who sustained a casualty loss from this disaster in any of these 22 counties (regardless of where that individual resided) could have elected to deduct the loss on the individual's 1976 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers (assuming the due date for filing the 1976 Wisconsin return was not extended beyond April 15, 1977). If the election was not made, the loss was deductible on the taxpayer's 1976 return.

(2) This rule explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law. This rule does not explain all the details regarding casualty losses. However, Internal Revenue Service Publication 547, entitled "Tax Information on Disaster, Casualty Losses, and Thefts", may be helpful in under-

## Tax 2

standing such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources and related casualty loss problems.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. (2), renum. (3) to be (2) and am. (2) (a)1. and (b), Register, September, 1983, No. 333, eff. 10-1-83.