

## Chapter Tax 3

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

Tax 3.01	Rents paid by corporations (p. 73)	Tax 3.35	Depletion, basis for allowance to corporations (p. 83)
Tax 3.03	Dividends received, deductibility of (p. 73)	Tax 3.36	Depletion of timber by corporations (p. 83)
Tax 3.05	Profit-sharing distributions by corporations (p. 74)	Tax 3.37	Depletion of mineral deposits by corporations (p. 83)
Tax 3.07	Bonuses and retroactive wage adjustments paid by corporations (p. 75)	Tax 3.38	Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron (p. 83)
Tax 3.08	Retirement and profit sharing payments by corporations (p. 75)	Tax 3.43	Amortization of trademark or trade name expenditures—corporations (p. 84)
Tax 3.085	Retirement plan distributions (p. 75)	Tax 3.45	Bond premium, discount and expense—corporations (p. 84)
Tax 3.09	Exempt compensation of military personnel (p. 76)	Tax 3.47	Legal expenses and fines—corporations (p. 85)
Tax 3.095	Income tax status of interest and dividends from municipal, state and federal obligations received by individuals and fiduciaries (p. 76)	Tax 3.48	Deductions for research or experimental expenditures—corporations (p. 85)
Tax 3.096	Interest paid on money borrowed to purchase exempt government securities (p. 80)	Tax 3.52	Automobile expenses—corporations (p. 87)
Tax 3.098	Railroad retirement supplemental annuities (p. 80)	Tax 3.54	Miscellaneous expenses not deductible—corporations (p. 88)
Tax 3.10	Salesmen's and officers' commissions, travel and entertainment expense of corporations (p. 81)	Tax 3.81	Offset of occupational taxes paid against normal franchise or income taxes (p. 88)
Tax 3.12	Losses on account of wash sales by corporations (p. 81)	Tax 3.82	Evasion of tax through affiliated interests (p. 88-1)
Tax 3.14	Losses from bad debts by corporations (p. 81)	Tax 3.91	Petition for redetermination (p. 88-1)
Tax 3.17	Corporation losses, miscellaneous (p. 82)	Tax 3.92	Informal conference (p. 88-2)
		Tax 3.93	Closing stipulations (p. 88-2)
		Tax 3.94	Claims for refund (p. 88-2)

**Tax 3.01 Rents paid by corporations.** (s. 71.04 (2), Stats.) (1) DEDUCTIBLE RENTAL PAYMENTS. Rents paid on property used in producing taxable income are deductible from gross income. The cost of leaseholds, acquired for cash or property, represents rent paid in advance and as such is deductible from gross income in equal amounts over the life of the leaseholds. Taxes paid by the lessee for the lessor are to be treated as additional rent paid and are a deductible expense.

(2) APPLICABILITY. As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; renun. to be (1) and cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.03 Dividends received, deductibility of.** (s. 71.04 (4), Stats.) (1) In determining whether 50% or more of the net income or loss for the preceding year of the corporation paying the dividend was used in computing taxable income, if the corporation paying the dividend was subject to the franchise tax measured by net income, interest income from the federal government and its instrumentalities must be included but deductible dividends must be disregarded. If the corporation paying the dividend was subject to the net income tax, non-taxable interest from the

Register, February, 1990, No. 410

federal government or its instrumentalities and deductible dividends must both be disregarded.

(2) When a corporation keeps its records on the basis of a fiscal year ending not later than June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending within the calendar year when such dividends are paid. When a corporation keeps its records on the basis of a fiscal year ending subsequent to June 30, the dividends received from such corporation during the calendar year will be presumed to have been paid from the income of the corporation for its fiscal year ending in the year prior to the calendar year when such dividends are paid.

(3) All dividends must be reported in full on the income tax return of the person receiving them, regardless of the deductibility of certain dividends received by corporations. Corporate taxpayers should deduct such dividends as they believe to be deductible. Whether or not the dividends are deductible will be determined in accordance with the records on file with the department of revenue and proper adjustment will be made.

(4) All corporations doing business within Wisconsin must report the dividends paid to residents of Wisconsin on forms 9b. (See s. Tax 2.04).

(5) Distributions received from corporations which may deduct dividends paid from gross income for tax purposes do not qualify as deductible dividends.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; cr. (5), Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 3.05 Profit-sharing distributions by corporations.** (s. 71.04 (1), Stats.) (1) **DEDUCTION.** Payments made to officers and employees for services rendered under the terms of a profit-sharing agreement, in lieu of or in addition to fixed salaries or other compensation, are proper deductions from gross income. Payments made to the stockholders of a corporation who are not actively engaged in the business are not allowable deductions. If profit-sharing distributions are based on stock holdings, they will be treated as dividends and, therefore, are not allowable deductions.

(2) **FORM OR METHOD OF FIXING COMPENSATION.** The form or method of fixing compensation is not decisive as to the deductibility thereof. If payments are made pursuant to a profit-sharing agreement entered into between employer and employee before services are rendered, which are not influenced by any consideration on the part of the employer other than that of securing the services of the employee on fair and advantageous terms, they will be allowable as deductions from gross income even though in the actual working out of the contract the payments may prove to be greater than the amounts which would ordinarily be paid.

(3) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; renum. (1) (a) to be (2) and am., cr. (3), Register, July, 1989, No. 403, eff. 8-1-89.

Register, February, 1990, No. 410

(4) Losses from the sale or other disposition of assets are not deductible if a gain on the disposition of the same assets would have resulted in wholly exempt income.

(5) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1), (2) and (3) do not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1), cr. (4) and (5), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.24 Corporation taxes, miscellaneous.** History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 3.35 Depletion, basis for allowance to corporations.** (s. 71.04 (2), Stats.) (1) **BASIS.** The capital sum recoverable through depletion allowances is the tax cost of the depletable property. In the absence of competent evidence to the contrary, it will be assumed that the fair market value at January 1, 1911, is represented by the actual cost less depletion sustained to that date. No depletion is deductible on property acquired subsequent to January 1, 1911, the cost of which was deducted as current expense at the time of purchase and allowed for income tax purposes. After depletion of the tax cost to the extent of 100% has been allowed, no further deduction is permissible.

(2) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; renum. to be (1), cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.36 Depletion of timber by corporations.** (s. 71.04 (2), Stats.) (1) **COMPUTATION.** The computation of the allowance for depletion of timber for a given year shall be based upon the number of units of timber cut during that year and the tax cost of each unit. The unit cost is determined by dividing the sum of the tax cost at the beginning of the taxable period and the additions at cost during the period by the sum of the units on hand at the beginning of the taxable period and the number of units acquired during such period.

(2) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, sub. (1) does not apply to taxable year 1987 or to taxable years thereafter.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; renum. to be (1), cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.37 Depletion of mineral deposits by corporations.** (s. 71.04 (2), Stats.) The computation of the allowance for depletion of mineral deposits for a given year shall be based upon the number of units of ore or other deposits extracted during the year and the income tax cost per unit.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron.** (s. 71.046, Stats.) Section 71.046, created by chapter 370, Laws of 1947 and amended by chapter 438, Laws of 1953, provides for a deduction of prescribed percentages of gross income from sales of the ore or ore products

Register, February, 1990, No. 410

of lead, zinc, copper or other mines, (except iron mines) and of mills finishing the products of such mines for the smelter.

(1) This depletion deduction may be taken only if the saving in tax due to such deduction is used by the taxpayer in prospecting for ore and duly verified proof thereof is furnished the department of revenue.

(2) Only expenditures in prospecting for ore made during or within 12 months after the close of the year for which the depletion deduction is taken will serve to fulfill the requirement that the tax savings be so used. Unless proof of expenditure is furnished within 24 months after the close of the income year for which the deduction for depletion was made, the taxpayer will be subject to an additional assessment based on the disallowance of the deduction taken.

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

**Tax 3.43 Amortization of trademark or trade name expenditures—corporations.** (s. 71.04(2e), 1985 Stats.) (1) **ELECTION.** If a corporation elects to amortize trademark or trade name expenditures under s. 71.04(2e), 1985 Stats.:

(a) The election for a particular trademark or trade name expenditure is irrevocable.

(b) Each trademark or trade name expenditure may be treated differently by the taxpayer.

*Example:* A taxpayer may elect to amortize one trademark but not another, and the length of amortization periods for 2 trade names may vary.

(c) The corporation shall attach to its tax return a statement similar to that required by reg. section 1.177-1 (c) of the internal revenue code. The statement shall include the name and address of the corporation, taxable year involved, character and amount of expenditure, number of months the expenditure will be ratably deducted and a declaration regarding accounting segregation of books and records.

(2) **RECORD KEEPING.** Trademark or trade name expenditures amortized under s. 71.04(2e), 1985 Stats., shall be kept in separate accounts on a taxpayer's books and records.

(3) **EFFECT OF ELECTION ON BASIS.** Upon sale or other disposition of a trademark or trade name amortized under s. 71.04(2e), 1985 Stats., in which gain or loss is recognized, an adjustment to basis shall be made in computing gain or loss for any such amortization allowed or allowable.

(4) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1), (2), and (3) do not apply to taxable year 1987 or to taxable years thereafter.

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; am. (1) (intro), (b) and (c), (2) and (3), cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.44 Organization and financing expenses—corporations.** History: 1-2-56 am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, August, 1970, No. 176, eff. 9-1-70; r. Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.45 Bond premium, discount and expense—corporations.** (s. 71.04 (2) and (15) (g), 1985 Stats.) (1) **GENERAL.** If bonds are issued at a discount or premium, the issuing corporation shall amortize the net amount Register, February, 1990, No. 410

of the discount or premium and the bond expenses over the life of the bonds.

(2) **RETIREMENT.** Except as provided in s. 71.04 (15) (g), 1985 Stats., if bonds are retired at a price in excess of or less than the issuing price, the profit or loss resulting is taxable income or deductible expense in the year in which the bonds are retired, if proper adjustment is made for the discount, bond expense, or premium previously reflected in income.

(3) **REFINANCING.** (a) If a bond issue is refinanced with another bond issue before the first issue matures, any unamortized discount or expense that is applicable to the first issue shall be deducted as current expense in the year that the refinancing takes place and any unamortized premium shall be taken up as income in that year.

(b) If old bonds are exchanged for new bonds instead of being refinanced by the proceeds of a new issue, then any unamortized premium, discount or expense attributable to the old issue shall be combined with similar items attributable to the new issue and amortized over the life of the new issue.

(c) If a bond issue is retired in exchange for stock of the issuing corporation, the transaction is considered a readjustment of the corporation's capital structure and any unamortized discount or expense is not deductible.

(4) **MERGERS.** The surviving corporation in a merger may not deduct the unamortized discount and expense applicable to a bond issue put out by the merged company when the issue is retired by the survivor. Neither may the surviving corporation deduct amortization of the bond discount and expense applicable to a bond issue put out by the merged company.

(5) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, this section does not apply to taxable year 1987 or to taxable years thereafter.

Note: Refer to *Great Western Power Co. of California vs. Commissioner*, 297 U.S. 543; *Liquid Carbonic vs. Commissioner*, 34 BTA 1191; and *Wisconsin Electric Power Company vs. Department*, 251 Wis. 346.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78; am., cr. (3) (b), (c), (4) and (5), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.47 Legal expenses and fines—corporations.** (s. 71.04 (2), Stats.) Legal expenses incurred in connection with the operation of a taxpayer's business are proper deductions, unless such business is conducted in violation of law. Fines are not deductible.

History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66.

**Tax 3.48 Deductions for research or experimental expenditures—corporations.** (ss. 71.03 (1) (j) and 71.04 (2f), 1985 Stats. and s. 71.26 (2) (a), Stats.) (1) **DEFINITIONS.** In this section:

(a) "Paid or incurred" shall be construed according to the method of accounting used by the taxpayer in computing taxable income.

(b) "Research or experimental expenditures" means expenditures paid or incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or labora-

Register, February, 1990, No. 410

tory sense. The term includes costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention or similar property, and improvements to these types of already existing property and the costs of obtaining a patent, such as attorney's fees expended in making or perfecting a patent application. The term does not include expenditures paid or incurred for acquiring another person's patent, model, production or process; the ordinary testing or inspection of materials or products for quality control; management studies, consumer surveys, advertising or promotions; or research in connection with literary, historical, or similar projects. Neither does the term include expenditures paid or incurred for the acquisition or improvement of land or depreciable property whether incurred by the taxpayer or by another person or organization on its behalf, to the extent of the cost of the component materials of the depreciable property and the costs of labor or other elements involved in its construction and installation.

(2) **DEDUCTION.** Subject to certain limitations, a corporate taxpayer may elect to either deduct research or experimental expenditures in the year paid or incurred, or to capitalize the expenditures and amortize them over a period of not less than 60 months selected by the taxpayer beginning with the month in which the taxpayer first realizes benefits from the expenditures, or to depreciate the expenditures over the useful life of the property to which they relate.

(a) *Election to treat as expense.* Election to treat research or experimental expenditures as expenses may be made by claiming the expenses as a deduction on the return for the year in which paid or incurred. The election shall apply to all research or experimental expenditures paid or incurred in the taxable year of adoption and all subsequent years unless a different method is authorized by the department.

(b) *Election to amortize.* 1. If the taxpayer has not elected to deduct research or experimental expenditures as currently deductible expenses, it may elect to treat expenditures which are chargeable to a capital account with no determinable useful life as deferred expenses which may be amortized ratably over a period of not less than 60 months as selected by the taxpayer. However, if the property resulting from the expenditures has a determinable useful life, the capitalized expenditures or the unamortized balance thereof shall be amortized or depreciated over the determinable useful life.

2. The election to defer the deduction and to amortize over 60 months shall be made by attaching a signed statement to the taxpayer's franchise or income tax return for the first taxable year to which the election is applicable and shall set forth the information required under reg. section 1.174-4 (b) (1) of the internal revenue code.

(c) *Change in method or period.* Permission to change to a different method of treating research or experimental expenditures or to a different period of amortization of deferred expenses shall be required from the department in writing. A request for permission shall be addressed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, Wisconsin 53708. The request shall include the name and address of the taxpayer, shall be signed by the taxpayer or the taxpayer's duly authorized representative, and shall be filed no later than the last day of the first taxable year for which the change in method or period is to apply. The request

shall set forth the information required under either reg. section 1.174-3 (a) (3) or reg. section 1.174-(4) (b) (2) of the internal revenue code.

(3) **EFFECT ON BASIS.** Research and experimental expenditures not deducted currently are chargeable to a capital account and shall be added to the basis of the property resulting from such expenditures. Upon the sale or other disposition of the property in which a gain or loss is recognized, an adjustment to basis shall be made in computing gain or loss for any amortization allowed or allowable.

(4) **RESEARCH CREDIT.** (a) For taxable years 1984 and 1985, s. 71.04 (2) (b) 5, 1983 Stats., requires that the deduction for expenses or expenditures for research shall be decreased by the full amount of the research credit and research facilities credit computed under the provisions of s. 71.09 (12r) and (12rf), 1983 Stats.

(b) For the taxable year 1986 and succeeding years, the deduction for research and experimental expenses is not required to be reduced, but the full amount of the credit computed is required to be taken into gross income in the year for which the credit was computed.

(5) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin corporate franchise and income tax law, subs. (1), (2), (3), and (4) (a) do not apply to taxable year 1987 or to taxable years thereafter.

**History:** Cr. Register, February, 1978, No. 266, eff. 3-1-78; renum. (1) (a) to (b) to be (1) (b) and (a) and am. (1) (b), am. (2) (intro.), (a), (b), (c) and (3), cr. (4) and (5), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 3.52 Automobile expenses—corporations.** (s. 71.04 (1) and (2), 1985 Stats.) (1) **BUSINESS USE.** If a corporation's automobile is used exclusively for its business purposes, the actual expenses of operating the vehicle, including gasoline, oil, license fees, insurance premiums and depreciation, are deductible from gross income.

(2) **BUSINESS AND PERSONAL USE.** If the corporation's automobile is used partly for business and partly for personal purposes, the expenses of operating the vehicle including gasoline, oil, license fees, insurance premiums and depreciation may be apportioned on the basis of the ratio of business mileage to total mileage.

(a) The amount allocated to business purposes is deductible from the corporation's gross income.

(b) The amount allocated to personal use is not allowable as automobile expense but may be deductible under s. 71.04 (1), 1985 Stats., if the amount is treated as additional compensation to the employe, is reported on a federal form W-2 or Wisconsin form 9b and is reasonable for the services performed.

(3) **APPLICABILITY.** As a result of 1987 Wisconsin Act 27 which generally federalized Wisconsin's corporate franchise and income tax law, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, July, 1989, No. 403, eff. 8-1-89.

Register, February, 1990, No. 410

**Tax 3.54 Miscellaneous expenses not deductible—corporations.** (s. 71.04 (2), Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following:

(1) Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stockholders or employees, unless reported as compensation paid on form WT-9 or form 9b.

(2) Dues to fraternal orders, social clubs.

(3) Political contributions.

(4) For the 1976 taxable year and thereafter, any expenses incurred for or on behalf of a public official.

History: 1-2-56; am. Register, February, 1960, No. 50, eff. 3-1-60; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78.

**Tax 3.55 Donations and contributions—corporations.** History: 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; r. Register, February, 1990, No. 410, eff. 3-1-90.

### Miscellaneous

**Tax 3.81 Offset of occupational taxes paid against normal franchise or income taxes.** (ss. 70.41 (1), (3) and 70.42 (1), (3), Stats.) (1) Occupational taxes are paid to the treasurer of the town, village or city where the elevator, warehouse or dock of the taxpayer is located on or before December 15th each year. The taxpayer may present his receipt showing payment of such tax to the department of revenue as so much cash in payment of normal franchise or income tax assessed against him in the following year on the tax roll for the same district. If the normal franchise or income tax on this roll exceeds the amount of the occupational tax receipt, only the excess need be paid in cash. All surtaxes must be paid in cash.