

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

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**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, 1975, No. 230, eff. 3-1-75; 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

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.** Payors 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-

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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.

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(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:

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## 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 I-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-

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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 (5) 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)."

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(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.

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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:

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## 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 ÷ 1.04 = \$96,153.85 × 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), renum. (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.

(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."

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

\*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.** (s. 71.09 (6p) (a) and (b), Stats.) For taxable years prior to 1986, 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; am. Register, July, 1989, No. 403, eff. 8-1-89.

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**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), 1985 Stats.) (1) **GENERAL.** (a) The computation of adjustments necessary for a change in the method of accounting by corporations shall be made under the provisions of s. 71.11 (8) (b), 1985 Stats.

(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 changes 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), 1985 Stats. If an item is "material" for federal income tax purposes, it generally will be "material" for Wisconsin franchise and income tax purposes.

(3) **1953 ACCOUNT BALANCES.** (a) *Taxpayer-initiated change.* On a taxpayer-initiated change, the net 1953 account balances may 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 and income tax purposes.

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**Note:** Wisconsin's treatment of transitional adjustments 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 s. 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 or reasons 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 showing the computation of adjustments to income for each year, which clearly indicate the manner in which it proposes to effect the change for Wisconsin franchise or income tax purposes;
7. A copy of the entry, its date and explanation, made on the books to accomplish the change or when no book entry is made, the reason for its absence; 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. The 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.

(6) **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:** 1) As to a change in method of accounting for a single item refer to *Ladish Co. v. Dept. of Revenue*, 69 Wis. 2d 723 (1975).

2) As to a change of method of accounting from cash to accrual basis refer to the decisions of the Wisconsin Tax Appeals Commission in *Streets and Roads Construction Corp. v. Dept. of Revenue*, Docket No. 1-6239 (July 28, 1981) and *Wisconsin Railroad Services Corp. v. Dept. of Revenue*, Docket No. 1-6813 (June 5, 1985).

3) Refer to ss. Tax 2.25, "Corporation accounting generally", and 2.26, "Last-in, first-out method of inventorying for corporations", for departmental 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; am. (1) (a), (c), (2), (3) (a), (4), (5) (a) (intro.), 3., 4., 6., 7., (b) 1. and 2., cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

**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:

(a) "Calendar year" means a 12 month period ending on December 31.  
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(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 attaching 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-  
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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), 1985 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 taxable year, may be reported on the instalment basis. On the instalment basis there shall be reported as income from the instalment sale in any taxable 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.

Note: Refer to *Castle Corporation vs. Wis. Dept. of Revenue*, 142 Wis. 2d 716 (1987).

(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. But the transfer of an instalment sale obligation by merger or consolidation pursuant to s. 71.368 (1) (a) 1, 1985 Stats., is not a distribution by the merged or consolidated corporation as long as the surviving or consolidated corporation continues to report the gain to the state.

Note: Refer to *Falls Communications, Inc. v. Wis. Dept. of Revenue*, 131 Wis. 2d 545 (1986).

(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, 1985 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 taxable year in which the sale or exchange takes place.

(7) 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.

History: 1-2-56; am. (2), Register, March, 1966, No. 123, eff. 4-1-66; r. and recr. Register, October, 1966, No. 130, effective with respect to income years beginning on and after January 1, 1967; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1), Register, September, 1983, No. 333, eff. 10-1-83; am. (1) to (3) and (6), cr. (7), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies.** (s. 71.11 (8), 1985 Stats.) (1) Except as otherwise provided in sub. (2), acceptance corporations and dealers in commercial paper shall report the discount on the purchase of paper as income in the year of purchase.

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(2) Acceptance corporations and dealers in commercial paper may elect to report their income on the deferred profit basis, provided that their books and records are kept on that basis and provided further that both the deferment of income, and the expenses incurred in producing the income are made in accordance with generally accepted accounting principles and practice. The election of or change to the deferred profit basis shall be made before the close of the year for which the return is made, and after having made the election or change, the deferred profit basis of reporting shall be adhered to in all subsequent periods. Those corporations which report their income on the accrual method are not required to obtain authorization from the department to change from the method under sub. (1) to the deferred profit basis if notice of this change is given to the department in writing before the close of the year in which the change is to be made.

(3) Where the records of acceptance corporations and dealers in commercial paper are kept on the deferred profit basis, schedules shall be attached to the tax returns clearly setting forth the unrealized profit accounts and reconciling the income and surplus per books with net income.

(4) 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.

**History:** 1-2-56; correction in (1) made under s. 13.93 (2m) (b) 4, Stats., Register, July, 1987, No. 379; am. (1), renum. (2) and (3) to be (3) and (2) and am., cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.21 Accounting for incorporated contractors.** (ss. 71.11 (8), 1985 Stats. and 71.25 (5), 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 taxable years, the percentage of completion basis may be used provided such basis clearly reflects the income taxable under ch. 71, Stats. Under the percentage of completion method, a portion of the total contract price is treated as sales for the current period. This portion may be determined by an engineer's or an architect's estimate or by another method which will clearly reflect the income realized to date. The difference between the sales thus determined and the actual cost incurred, adjusted for inventories of materials at the end of the year, is reported as gain or loss for the taxable year.

(2) The profit on jobs taken on a cost plus basis and uncompleted at the close of a taxable year shall be computed in accordance with the terms of the contract and reported at that time, and may not be deferred until the year in which the contract is completed.

(3) The income derived from the performance of construction activities within Wisconsin by a nonresident contractor is attributable to Wisconsin and is subject to the Wisconsin franchise or income tax. If the operations in Wisconsin of the nonresident contractor are part of a unitary business, the apportionment method shall be used to determine Wisconsin income, and the separate accounting method may not be used without permission from the department.

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(4) 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. (1), Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1) and (2), r. and recr. (3), cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.22 Accounting for incorporated dealers in securities.** (s. 71.11 (8), 1985 Stats.) (1) Dealers in securities shall report for franchise or income tax purposes on the accrual method of accounting.

(2) Inventories of securities held for sale shall be reported on a consistent basis conforming to that used in the trade or business.

(3) Securities held for investment purposes shall be reported at cost, and any increase or decrease in value shall be reported only at the time of sale.

(4) 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.

History: 1-2-56; r. and recr. Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.24 Accounting for incorporated retail merchants.** (s. 71.11 (8), 1985 Stats.) (1) The "retail method" of valuing inventories is acceptable when it is consistently followed and adequate records are kept. When a change is made to the retail method of valuing inventories from another method of valuing inventories, the difference between the beginning inventory, taken on the old basis, and the beginning inventory, taken on the basis of the "retail method," will constitute an increase or decrease in income for the year in which the change is made. Retail merchants shall report all other items of income and expense on the accrual method.

(2) 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.

History: 1-2-56; am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.25 Corporation accounting generally.** (s. 71.11 (8) and (9), 1985 Stats.) (1) In a business requiring the use of inventories, income is properly computed by the accrual method of accounting. Inventories taken in accordance with the best accounting practice in the trade or business and used by the taxpayer to clearly reflect income are accepted.

(a) Except for other methods of computing inventory recognized in this chapter, the 2 most commonly used bases in valuing inventories are cost and lower of cost or market.

(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.

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(3) 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.

**History:** 1-2-56; am. (1) (b), Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. (1) (intro.) and (a), cr. (3), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.26 "Last in, first out" method of computing inventory for corporations.** (s. 71.11 (9), 1985 Stats.) Any corporation permitted or required to take inventories pursuant to s. 71.11 (9), 1985 Stats., may elect to compute its inventory in accordance with the method provided by section 472 of the internal revenue code, provided that:

(1) The same method of computing inventory is used in reporting income to the internal revenue service, and the inventories used in reporting income to the internal revenue service and to the department of revenue agree both as to computation and amounts except as provided in sub. (5).

(2) Except as otherwise provided in this section, the change to and the use of the last in, first out method of inventorying shall be subject to and conditioned upon all of the regulations promulgated with respect to this method of computing inventory by the internal revenue service.

(3) A statement of election to use the last in, first out method shall be filed with the department of revenue in the same form as required by the internal revenue service, and 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.

(4) Except as provided in sub. (5), any corporation which has been computing its inventory for Wisconsin franchise or income tax purposes in accordance with section 472 of the internal revenue code and which has been authorized or directed by the 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 taxable 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.

(5) Any corporation which has been authorized or directed by the 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 its adjusted basis, may exclude from its inventory, for Wisconsin franchise or income tax purposes, the excess of the fair market value of the timber over its adjusted basis, or may, with the consent of the department of revenue, include the excess in its inventory for Wisconsin franchise or income tax purposes subject to the conditions the department may prescribe.

(6) 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.

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; r. (1) and (5), renum. (2) to (4) and (6) and (7) to be (1) to (5) and am., cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

**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."

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(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 postseason 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 1/3% of the fraction and the sales factor shall represent 66 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  
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**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 employees located in this state to the total compensation paid to employees located everywhere. An employee shall be deemed located in Wisconsin if his services are performed entirely within Wisconsin, or if services performed with-

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out 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.

**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 thereafter, the business (apportionable) income of a public utility shall be apportioned to Wisconsin on the basis of the arithmetical average of the following 2 ratios:

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sponding 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. 71.25 (6), 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. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), 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. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), 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. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 (5) 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.

(c) *Concession income and miscellaneous income.* Concession income is assigned to the numerator if the concession is operated within Wisconsin.

Miscellaneous income such as parking lot income, advertising income, and other similar income is assigned to the numerator if the activity is conducted within Wisconsin.

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

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; am. (1) to (3) (intro.), (c) and (d), Register, July, 1989, No. 403, eff. 8-1-89.

### 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.** (ss. 71.03 (1) (d) and (k), 71.305 and 71.307 (2), 1985 Stats.) (1) **BASIS.** If a shareholder receives new stock or stock rights as a distribution on old stock held before the distribution and under s. 71.305 (1), 1985 Stats., the distribution is not includable in gross income, then except as provided in s. 71.307 (2), 1985 Stats., the basis of the old 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 new stock or stock rights as a distribution on old stock held before the distribution, and under s. 71.305 (1), 1985 Stats., a part of the distribution is not includable in gross income, except as provided in s. 71.307 (2), 1985 Stats., the basis of the old 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 the distribution which is includable in gross income, pursuant to s. 71.305 (2), 1985 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 in this subsection will apply to the stock rights only if these rights are exercised or sold.

(2) **EXCEPTION.** Under s. 71.307 (2), 1985 Stats., the basis of rights to buy stock which is excluded from gross income under s. 71.305 (1), 1985 Stats., shall be zero if the fair market value of the 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 for all the rights received by the shareholder in a particular distribution and includes all the stock of the same class owned by the shareholder in the issuing corporation at the time of the distribution. The 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. This statement shall disclose the number of shares of the old stock owned by the shareholder on the date of distribution, the basis of these 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 shareholder making

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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:

(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

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dent 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

taxpayer property subject to a liability, the assumption or acquisition in the amount of the liability shall be considered as money received by the taxpayer on the exchange.

(5) 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.

**History:** Cr. Register, February, 1958, No. 26, eff. 3-1-58; am. Register, March, 1966, No. 123, eff. 4-1-66; am. (1) and (4), cr. (5), Register, July, 1989, No. 403, eff. 8-1-89.

**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 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

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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.

(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

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-employee 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-employee 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, 1985 Stats.) (1) To qualify for the benefits of section 333 of the internal revenue code in computing Wisconsin net 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, 1985 Stats., a corporation, other than an excluded corporation, that is a qualified electing 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.

(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 may not subsequently be changed.

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

(6) 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 except if a corporation elects, under s. 3047 (1) (c) of the Act to apply to the transaction ss. 71.301 to 71.372, 1985 Stats.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; am. (1), Register, September, 1983, No. 333, eff. 10-1-83; am. (1), (2) and (4), cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

**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:

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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.

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(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.

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(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.

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(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 recr. (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.

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(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 rec. (5), Register, September, 1983, No. 333, eff. 10-1-83.

**Tax 2.956 Historic structure and rehabilitation of nondepreciable historic property credits.** (s. 71.07 (9m) and (9r), 71.28 (6) and (7) and 71.47 (5) and (6), Stats.) (1) **PURPOSE.** This section clarifies the phrase "*first applies . . . for projects begun after December 31, 1988*" as used in the initial applicability of s. 71.09 (12p) and (12q), Stats., as created by 1987 Wisconsin Acts 395 and 399, respectively. The initial applicability is provided in section 71 of Act 395 and in section 3203 (47) (mp) of Act 399.

(2) **DEFINITION OF "BEGUN".** In the initial applicability of s. 71.09 (12p) and (12q) Stats., the date a project is "begun" means the date on which the physical work of rehabilitation commences. The physical work of rehabilitation commences when actual construction, or destruction in

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preparation for construction, commences. The term "physical work of rehabilitation," however, does not include preliminary activities such as planning, designing, securing financing, exploring, researching, developing plans and specifications, or stabilizing a building to prevent deterioration, such as placing boards over broken windows.

History: Emerg. cr. 12-28-88; cr. Register, June, 1989, No. 402, eff. 7-26-89.

**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.

(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

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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 1975 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 1975 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-

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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.