

## Chapter Tax 2

INCOME TAXATION, RETURNS, RECORDS AND  
GROSS INCOME

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**Tax 2.01 Residence.** (s. 71.02, Stats.) Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file form I-827, "Residence Questionnaire", or the "Residence Questionnaire" which is a part of the 1NPR income tax form, 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 or form 1NPR may be obtained from the Department of Revenue 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; am. Register, February, 1990, No. 410, eff. 3-1-90.

**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

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

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

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

(c) Form 4B. Apportionment data.

(d) Form 4C. Separate accounting data.

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

(f) Form 4H. Declaration of inactivity.

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

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

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

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

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

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

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

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

(o) Schedule FC. Farmland preservation credit.

(p) Schedule R. Research credits.

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

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

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

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

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1977, No. 261, eff. 10-1-77; am. Register, September, 1983, No. 333, eff. 10-1-82; am. (1) (a), (c) and (d), renum. (1) (f) to (j) and (2) to be (1) (g) to (k) and (3) and am. (1) (h) and (k) and (3), cr. (1) (f), (l) to (p) and (2), Register, July, 1987, No. 379, eff. 8-1-87.

**Tax 2.04 Information returns and wage statements.** (ss. 71.04 (1) and 71.10 (1), (8m) and (8n), Stats.) (1) All corporations carrying on activities within this state, whether taxable or not under ch. 71, Stats., shall file with the department of revenue, on or before January 31 of each year on federal form W-2 or Wisconsin form 9b or on other forms approved by the department, statements of payments made within the preceding calendar year to residents of Wisconsin of salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services whether subject to withholding or not, and to non-residents of all payments for the performance of personal services in Wisconsin, whether subject to withholding or not. A copy of federal form 1087 or 1099, as appropriate, may be filed in lieu of Wisconsin form 9b.

(2) Salaries, wages, bonuses, commissions, retirement pay, fees or other remuneration for services, and payments for the performance of personal services in Wisconsin paid by a corporation to an individual in a calendar year and aggregating less than \$500 need not be so reported if no part thereof was within the definition of wages in s. 71.19 (1), Stats.

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

(4) Except as provided in sub. (7), statements of payments to residents of Wisconsin within the preceding calendar year of interest and dividends, including dividends paid in capital stock, and payments of all rents and royalties on property regardless of location, and payments to residents and non-residents of Wisconsin of rents and royalties on property located in Wisconsin shall be filed on or before March 15 of each year on forms 9b or other approved forms. The forms must be filed on the date indicated even if the corporation keeps its records on a fiscal year other than a calendar year.

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

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

(7) Corporations which elect to file a combined federal and state information return with the internal revenue service reporting items enumerated in sub. (4) will not be required to file a separate information return with the Wisconsin department of revenue. Under the combined federal

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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 Transfers of capital stock, information return.** (s. 71.69, Stats.)

(1) All corporations doing business within this state, whether subject to the franchise or income tax or not, shall file with the department of revenue on or before March 15 of each year reports of transfers of capital stock, including disposals, by individuals who were residents of Wisconsin during the preceding calendar year.

(2) Transfers of capital stock shall be reported on Wisconsin form 8 or on other substitute forms approved by the department and shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, Wisconsin 53708.

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; r. and recr. Register, February, 1990, No. 410, eff. 3-1-90.

**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.** 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; r. Register, February, 1990, No. 410, eff. 3-1-90.

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**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 2440W. 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.

(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.** 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, February, 1990, No. 410

Register, December, 1982, No. 324, eff. 1-1-83; r. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 2.085 Claim for refund on behalf of a deceased taxpayer.** (s. 71.75 (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) Form I-804 does not have to be filed if the refund is claimed on a joint Wisconsin income tax return of the surviving spouse and the decedent. The surviving spouse shall write "filing as surviving spouse" in the signature area of the return. If someone other than the surviving spouse is the personal representative, the personal representative shall also sign the joint return.

(3) 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; renum. (2) to be (3), cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

**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 appearing on the returns is the signature adopted by the person to sign the returns filed and that such signature was affixed to the returns by the person or at the person's direction. The letter shall also list each return by name and identifying number.

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(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.** (ss. 71.75 (2), 71.76 and 71.77 (2) and (7), Stats.)

(1) **PURPOSE.** This section clarifies the time periods for a taxpayer to report federal audit adjustments and federal and other state amended returns for Wisconsin income or franchise tax purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(2) **DEFINITION.** In this rule, "taxpayer" includes individuals, estates, trusts and corporations.

(3) **GENERAL.** (a) Section 71.76, Stats., provides that a taxpayer shall report to the department changes made to a tax return by the internal revenue service, or file with the department amended Wisconsin income tax returns reporting any information contained in amended returns filed with the internal revenue service, or with another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state.

(b) Except as provided in sub. (5), the department may give notice to the taxpayer of assessment or refund within 90 days of the date the department receives the taxpayer's report of federal adjustment or amended return described in par. (a). The limitations referred to in this paragraph do not apply to instances where the taxpayer files an incorrect income or franchise tax return with intent to defeat or evade the income or franchise tax assessment.

(4) **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.

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facturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

(b) "Manufacturing" has the meaning specified in s. 77.54 (6m), Stats., by virtue of s. 71.28 (3) (a) 1, Stats.

(c) "Paid" has the meaning specified in s. 71.22 (8), Stats.

(d) "Sales and use tax under ch. 77 paid by the corporation" has the meaning specified in s. 71.28 (3) (a) 2, Stats.

(2) CREDIT ALLOWABLE. (a) Under s. 71.28 (3), Stats., a corporation may reduce its income or franchise tax liability for the year by an amount equal to the Wisconsin state and county sales and use taxes it has paid on fuel and electricity consumed in manufacturing personal property within Wisconsin.

(b) 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.

(c) The credit is allowable for all Wisconsin and Wisconsin county sales and use taxes paid during the taxable year on fuel or electricity destined for manufacturing purposes, regardless of when the fuel or electricity was or is to be consumed.

Note: Refer to *Streets and Roads Construction Corporation v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. 1-6239, July 28, 1981, and *Fort Howard Paper Company v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. 1-8266, November 1, 1983.

(3) CARRY FORWARD OF UNUSED CREDIT. (a) If a corporation is entitled to a sales and use tax credit under s. 71.28 (3), Stats., the 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 15 years until the credit has been completely offset.

Note: The carry forward of the sales tax credit was increased from 5 to 15 years by 1985 Wisconsin Act 29, and the 15 year carryforward first applies to credits carried forward from the 1980 taxable year.

(b) The sales tax credit 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) CREDIT INCLUDABLE IN NET INCOME. Under s. 71.26 (2), Stats., the credit computed for sales and use taxes paid on fuel and electricity consumed in manufacturing under s. 71.28 (3), Stats., shall be included in net income for the tax year. Except for tax-option corporations, the entire credit computed for the tax year is includable in net income, even though the credit is not entirely used or no income or franchise tax liability exists. Under s. 71.34 (1) (e), Stats., tax-option corporations shall only include in net income the amount of credit computed under s. 71.28 (3), Stats., and used to offset the income or franchise tax liability of the current year.

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; am. (1) (intro.) and (3), renum. (1) (a) to (c) to be (1) (d), (b) and (a) and am., cr. (1) (c), r. and recr. (2) and (4), Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 2.12 Amended income and franchise tax returns (ss. 71.74, 71.75 and 71.76, Stats.) (1) GENERAL.** (a) The department shall accept amended

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returns to correct Wisconsin franchise or 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 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 regarding amended Wisconsin returns required as a result of filing amended federal returns or amended returns of other states and amended Wisconsin returns required as a result of adjustments made to a federal return by the Internal Revenue Service.

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

(c) If an amended return shows a refund, it shall be filed within 4 years of the unextended due date of the original return. However, there are 2 exceptions, as follows:

1. A claim for refund of the tax paid as a result of an office audit or field audit may be filed within 2 years of the date the tax was assessed if no petition for redetermination was filed.

2. A claim for refund of the tax paid as a result of a federal audit adjustment may be filed within 90 days of the date on which the federal audit adjustment became final.

Note: Refer to s. Tax 2.105 (4) (a) 1 for information regarding when a federal audit adjustment is final.

(2) FORMS. Amended returns may be filed using form 1X for individuals and form 4X for corporations. Other forms may be used, but such forms shall be clearly marked "AMENDED RETURN" across the top of the first page.

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

Although the use of forms 1X and 4X 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; am. (1) (a) and (b), r. and recr. (1) (c) and (2), Register, February, 1990, No. 410, eff. 3-1-90.

**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".

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

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

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

(3) **APPLICABILITY.** As a result of the federal Tax Reform Act of 1986, which provides that moving expenses are deductible as an itemized deduction rather than as an adjustment to income, subs. (1) and (2) do not apply to taxable year 1987 or to taxable years thereafter.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr. (2), Register, September, 1983, No. 333, eff. 10-1-83; Cr. (3), Register, February, 1990, No. 410, eff. 3-1-90.

**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.

**Tax 2.15 Methods of accounting for corporations.** (s. 71.11 (8), 1985 Stats.) (1) No uniform method of accounting can be prescribed for all corporations, and the law contemplates that each corporation may report 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.

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

**History:** 1-2-56; am. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75; renum. to be (1) and am., cr. (2), Register, February, 1990, No. 410, eff. 3-1-90.

**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.

**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 in-Register, February, 1990, No. 410

(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), renun. (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.”*

(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. 71.02, 71.04 (1) (a), (4) and (11), 71.23 (1), 71.25 (5), (6), (7), (8), (9) and (12), and 71.362 (1), 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 Register, February, 1990, No. 410

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.

(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 ap-

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portionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. If one of these factors is omitted pursuant to s. 71.07 (3), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

(a) If either the property factor or payroll factor is omitted, the other of such factors shall represent  $33\frac{1}{3}\%$  of the fraction and the sales factor shall represent  $66\frac{2}{3}\%$  of the fraction.

(b) If the sales factor is omitted, the property factor and the payroll factor shall each represent 50% of the fraction.

(2) In order to use the apportionment method the taxpayer must have income from business activity subject to taxation by this state and at least one other state or foreign country. Income from business activity



this election shall retain a copy of the election and of the return with which it was filed, in order to substantiate the use of an allocated basis upon a subsequent disposition of the stock acquired by exercise.

(3) **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.

**History:** 1-2-56; am. (1) (intro.), renum. (1) (a) to be (2) and am., cr. (3), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.56 Insurance proceeds received by corporations.** (s. 71.03 (1) (d), 1985 Stats.) (1) Generally, interest on insurance proceeds paid to policy owners or beneficiaries is includable in income.

(2) Under an interest option clause in which all the principal proceeds are retained and interest is paid on the principal periodically, the interest is includable in income.

(3) Under an income option clause in which the principal proceeds and interest on the proceeds are paid in periodical instalments to the policy owner, the interest paid is includable in income.

(4) When, under an income option clause chosen by the beneficiary, payments are made to the beneficiary, the interest paid is includable in income.

(5) When, under an income option clause designated by the insured, payments are made to the beneficiary and the instalment payments are made under the insurance contract, no part of the payment is includable in income.

(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, r. (1), (3) (b), (3) (c) and (3) (d) and renum. (2) to be (1) and (3) (a) to be (1) (d), Register, March, 1966, No. 123, eff. 4-1-66; am. (1) (intro.), renum. (1) (a) to (d) to be (2) to (5) and am., cr. (6), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.57 Annuity payments received by corporations.** (s. 71.03 (1) (k), 1985 Stats.) (1) **AMOUNTS INCLUDABLE IN INCOME.** Annuity payments under an endowment or annuity contract are income to the extent of any payment after the Wisconsin adjusted tax basis has been recovered. However, when the contract provides for the separation of the periodic payments into principal and interest, the interest so received is income when received.

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

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

**Tax 2.60 Dividends on stock sold "short" by corporations.** (s. 71.03 (1) (d), 1985 Stats.) (1) **DIVIDENDS PAID BEFORE DELIVERY.** When stock is sold "short" for later delivery and a dividend is paid before delivery, the purchaser, as owner of the borrowed stock, receives the dividend and shall include the dividend in taxable income. The amount credited to the lender of the stock and charged to the "short" seller is income upon

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which the lender is subject to tax. The amount charged to the "short" seller becomes part of the cost of the stock sold.

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

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

**Tax 2.61 Building and loan dividends on instalment shares received by corporations.** **History:** 1-2-56; r. Register, July, 1989, no. 403, eff. 8-1-89.

**Tax 2.63 Dividends accrued on stock.** (s. 71.03 (1) (d), 1985 Stats.) (1) **AMOUNT INCLUDABLE IN INCOME.** In the case of stock purchased by a corporation between dividend dates, the entire amount of the future dividend when received is income to the purchaser and must be included in its income. The amount advanced by the purchaser to the seller in contemplation of the next dividend payment is an investment of capital and becomes part of the cost of the stock purchased.

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

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

**Tax 2.65 Interest received by corporations.** (ss. 71.03 (1) (c), 1985 Stats., and 71.26 (2), Stats.) (1) In general, all interest is includable in the income by which the franchise tax is measured, including interest received on monies invested in obligations of the United States government and its instrumentalities and agencies. If a corporation is not subject to the franchise tax, but is subject to net income taxation, interest on federal obligations is not taxable, but interest on postal savings and federal tax refunds is taxable. Profit or loss on the sale or other disposition of federal obligations is a taxable gain or deductible loss for purposes of both the franchise tax measured by net income and the net income tax.

(2) Interest is deemed to be received when accrued or received in cash, depending upon the method of accounting used by the taxpayer corporation. Interest becomes taxable to a corporation reporting on a cash basis when it is made available to it. Coupons on bonds which are due but have not been cashed are considered as received provided that the cash for payment of the coupons is available. Accrued interest paid on bonds purchased between interest payment dates shall be treated as a deduction from the interest received.

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

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

**Tax 2.69 Income from Wisconsin business.** (ss. 71.01 and 71.07, Stats.) All of the income realized from business carried on in Wisconsin is taxable. The fact that a person or corporation is licensed to do business in Wisconsin is evidence that it is doing business in the state, within the meaning of this chapter. However, a person or corporation may be doing business in this state within the meaning of this chapter even though not

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licensed. In all cases of doubt the complete facts should be reported to the department of revenue for determination.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, March 1966, No. 123, eff. 4-1-66; am. Register, February, 1975, No. 230, eff. 3-1-75.

**Tax 2.70 Gain or loss on capital assets of corporations; basis of determining.** (s. 71.03 (1) (g), 1985 Stats.) (1) Profits or losses resulting from the sale or other disposition of capital assets are ordinarily taxable income or deductible losses for the year in which the sale or other disposition takes place. In certain cases of real estate sales involving deferred payments, the profit may be treated as not wholly realized in the year of sale and may be deferred in accordance with the terms of payment.

Note: Refer to s. Tax 2.19.

(2) The fair market value at January 1, 1911, shall be determined in the light of the facts and circumstances known as of that date. In the absence of competent evidence to the contrary, cost less depreciation sustained to January 1, 1911 will be considered the fair market value as of that date. The method of arriving at the January 1, 1911 value shall be clearly set forth in the franchise or income tax returns.

(3) Stocks, bonds and other securities are considered as capital assets when held by a person other than a dealer in securities. The profit or loss on sale or other disposition of securities is, therefore, determined in the same manner and on the same basis as that used for other capital assets.

Note: Refer to s. Tax 2.22.

(4) In determining the profit or loss on the sale of stock received as a stock dividend, the total Wisconsin adjusted tax basis of the original shares on which the dividend was declared is allocated to the new and old shares with due regard to the fair market value of the new and old shares at the date of the dividend.

Note: Stock dividends were taxable income prior to 1926. Therefore, sub. (4) does not apply to stock dividends received before January 1, 1926.

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

History: 1-2-56; am. (1) (intro.), renum. (1) (a) to (c) to be (2) to (4) and am., cr. (5), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.72 Exchanges of property by corporations generally.** (s. 71.03 (1) (g), 1985 Stats.) (1) Except when specifically provided by ch. 71, Stats., where property is exchanged for other property which has a fair market value, a taxable gain or deductible loss may be realized, and the fair market value shall be treated as the price realized for the property exchanged and the cost price of the property received, for purposes of future sale. When the property received in exchange has no determinable market value, the property received takes the place of the property exchanged, and no profit or loss is recognized, and in the event of future sale, the adjusted tax basis of the original property exchanged becomes the basis for computing the gain or loss on the property received in exchange.

(2) Except when specifically provided by ch. 71, Stats., where property of 2 different kinds is received in exchange for property, one kind having a determinable fair market value and the other no determinable fair market value, the gain is measured by the excess of the fair market value of

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the property received over the adjusted tax basis of the property exchanged. The property received which has no determinable fair market value is considered as having no cost in case of future sale, the entire proceeds of the sale being income. If the adjusted tax basis of the property exchanged is in excess of the fair market value of the property received in exchange, the excess shall be taken as the adjusted tax basis of the property received which has no determinable fair market value, no loss being recognized.

(3) In general there are 3 types of exchanges upon which exemption from tax may be claimed:

- (a) Exchanges made pursuant to a plan of reorganization.
- (b) Exchanges in which the property received in trade has no determinable market value.
- (c) Exchanges of property held for productive use or investment pursuant to s. 71.03 (5), 1985 Stats.

(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; am. Register, February, 1958, No. 26, eff. 3-1-58; r. (4) (c) and renum. (4) (d) to be (4) (c) and am., Register, March, 1966, No. 123, eff. 4-1-66; r. (3) and renum. (4) to be (3), Register, February, 1975, No. 230, eff. 3-1-75; am. (1), (2) and (3) (c), cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

**Tax 2.721 Exchanges of property held for productive use or investment by corporations.** (s. 71.03 (5), 1985 Stats.) (1) Property held for productive use in a trade or business may be exchanged without recognition of gain or loss for property of a like kind held for investment as well as for property of a like kind held for productive use in a trade or business, and similarly, property held for investment may be exchanged without recognition of gain or loss for property of a like kind held for productive use in trade or business as well as for property of a like kind held for investment.

(2) The phrase "of a like kind" has reference to the nature or character of the property and not its grade or quality. One kind or class of property may not be exchanged tax free for property of a different kind or class.

Examples: 1) Unimproved real estate may be exchanged for unimproved real estate without recognition of gain or loss by a taxpayer not a dealer in real estate, because the properties are "like kind."

2) If unimproved real estate is exchanged for personal property, gain or loss is recognized, since the properties are not "like kind."

3) In an exchange of real estate for real estate by a dealer in real estate, gain or loss is recognized, since the property is part of its stock in trade.

Note: For taxable years prior to 1984, if the property transferred was located in Wisconsin, nonrecognition of gain or loss is only applicable if the property acquired was located in Wisconsin. For the taxable year 1984 and subsequent taxable years, s. 71.03 (5), 1985 Stats., was amended to remove the requirement that the replacement property be located in Wisconsin in order to qualify for nonrecognition of gain or loss.

(3) A leasehold interest in land cannot be exchanged tax free for a fee title unless the lease has 30 years or more to run.

(4) Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the Register, July, 1989, No. 403

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

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

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

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

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

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

(b) The taxpayer's financial condition.

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

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

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

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

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

**Tax 2.88 Interest rates.** (ss. 71.03 (7), 71.24 (7), 71.44 (3), 71.82 (1) and (2) (a) and 71.90 (1), Stats.) (1) **INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT.** Unpaid individual income or corporate franchise or income taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

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

(3) **INTEREST ON REFUNDS.** (a) Any refund of individual income or corporate franchise or income taxes, where the tax being refunded is from a return which has a filing due date on or after November 1, 1975, shall include interest at the rate of 9% per year from the due date of the return to the date paid by the department, except as provided in par. (b).

(b) No interest may be allowed on income and franchise taxes if the refund is certified on a refund roll within 90 days of the due date of the return or the date the return was filed, whichever occurs later. This treat-

ment shall apply to a refund of taxes resulting from an overpayment of estimated tax as well as from withheld taxes.

(4) **INTEREST ON DEPOSIT OF CONTESTED TAXES.** Any refund of an amount deposited with the department pursuant to s. 71.90 (1), Stats., shall include interest at the rate of 9% per year from the date the funds were deposited to the date refunded, provided the funds being refunded are from a return which has a filing due date on or after November 1, 1975.

(5) **EXTENSION PERIODS.** If an extension of time is granted for filing an individual income or a corporate franchise or income tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 12% per year. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent and shall be subject to delinquent interest under sub. (2) from the end of the extension period until paid.

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

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

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

4. For any tax refunded from a return which had a filing due date prior to November 1, 1975, interest was computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid by the department.

**History:** Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1), (3) and (4), Register, September, 1983, No. 333, eff. 10-1-83; renum. (2) to (4) to be (3), (2) and (5) and am., cr. (4), Register, July, 1989, No. 403, eff. 8-1-89.

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

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

**Tax 2.90 Withholding; wages.** (ss. 71.63 and 71.66 (3), Stats.) (1) The term "wages" means all remuneration for services performed by an employe for an employer unless specifically excepted under s. 71.63, Stats.

(2) The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales, commissions on insurance premiums, pensions and retirement pay, and supplemental unemployment benefits are wages within the meaning of the statute if paid as compensation for services performed by the employe for the employer's employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may Register, July, 1989, No. 403

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.

(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:

<i>1975:</i>	
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>
<i>1976:</i>	
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:

## Tax 2

(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.

(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	\$ 200
Refund	\$ <u>15</u>

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

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

**Tax 2.956 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. Register, February, 1990, No. 410



taxable years, disaster area losses from damage to property used for personal purposes were also allowed, as an itemized deduction, using the provisions in sub. (1) (b) and the individual treatment in sub. (2) (b).

3) As an example of Note 2) 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	LaPayette	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.

4) Tax 2.98 explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law, however, it does not explain all the details regarding casualty losses. Internal Revenue Service Publication 549, entitled "Condemnations and Business Casualties and Thefts," may be helpful in understanding 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; am. (1) (a), r. (2) (b), renum. (2) (a) 1. and 2. to be (2) (a) and (b) and am., Register, February, 1990, No. 410, eff. 3-1-90.