

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, WI 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),

Register, January, 1995, No. 469

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. (ss. 71.05 (2) and 71.64 (8), Stats.) (1) **PURPOSE.** This section explains the reciprocity agreements between Wisconsin and other states.

(2) **DEFINITIONS.** The following definitions pertain only to Wisconsin. Definitions of the same terms in other states may vary. In this section:

(a) "Personal service income" means all salaries, wages, commissions and fees earned by an employe and all commissions and fees earned by a self-employed person in the conduct of a profession or vocation. Personal service income does not include income derived from activities involving the substantial use of capital or labor of others.

(b) "Resident" means a natural person who is domiciled in this state.

(3) **WISCONSIN LAW.** (a) Under s. 71.05 (2), Stats., 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 the personal service income, if the state of residence allows either of the following:

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

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

(b) Under s. 71.64 (8), Stats., a Wisconsin employer of a nonresident individual residing in a state with which Wisconsin has a reciprocity agreement under sub. (4) need not withhold Wisconsin income tax from personal service income earned in Wisconsin by the nonresident.

(4) **AGREEMENTS WITH OTHER STATES.** (a) Wisconsin has formal reciprocity agreements with:

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, 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-IC-DISC, is not due for federal purposes until the 15th day of the 9th month following the end of the taxable year and the DISC's Wisconsin return, form 4 or 5, is due on or before the 15th day of the 3rd month following the end of the taxable year, a federal extension for a DISC cannot apply to the Wisconsin return. If a complete Wisconsin return cannot be filed by the due date, the corporation may obtain an extension from the department for a period not to exceed 6 months, if the extension is requested prior to the original due date of the return.

Note: Requests for extensions and related correspondence, documents or remittances shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 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; am. (1), (2) (a) and (b), (4) and (5), r. (2) (c), renum. (2) (d) to be (2) (c), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.97 Earned income credit eligibility. (s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats.) (1) **GENERAL.** Under s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats., certain persons may claim an earned income credit based on the person's earned income or federal adjusted gross income.

(2) **DEFINITIONS.** In this section:

(a) "Earned income" means:

1. Wages, salaries, tips and other employe compensation.

2. The amount of the person's net earnings from self-employment for the taxable year within the meaning of s. 1402 (a) of the internal revenue code, but net earnings shall be determined with regard to the deduction allowed to the person under s. 164 (f) of the internal revenue code.

(b) "Qualifying child" means, with respect to any person for any taxable year, an individual:

1. Who meets the relationship test described in sub. (5) (a).

2. Who, except as provided in sub. (5) (a) 3, has the same principal place of abode as the person for more than one-half of the taxable year.

3. Who meets the age requirements of sub. (5) (b).

4. Whom the person properly identifies under the requirements of sub. (5) (c).

(3) **PERSONS ELIGIBLE FOR THE CREDIT.** (a) Except as provided in pars. (b), (c) and (d), a person who has a qualifying child for the taxable year may claim the earned income credit.

(b) A person may not claim the earned income credit for the taxable year if the person is the qualifying child of another person for that taxable year.

Example: You and your daughter lived with your mother during the taxable year. Both you and your mother meet all the requirements for the earned income credit for the taxable year.

Your daughter is your qualifying child. Both you and your daughter are qualifying children of your mother.

You cannot take the earned income credit because you are your mother's qualifying child.

(c) If 2 or more persons would be treated as eligible for the credit with respect to the same qualifying child for taxable years beginning in the same calendar year, only the person with the highest federal adjusted gross income for the taxable year may claim the earned income credit with respect to the qualifying child.

Example: You and your 5-year-old son moved in with your mother in April. You are not a qualifying child of your mother. Your son meets the conditions to be a qualifying child for both you and your mother. Your federal adjusted gross income for the taxable year was \$7,000 and your mother's was \$14,000. Since your mother's federal adjusted gross income was higher, only your mother may claim the earned income credit with respect to your son.

(d) A person who claims the foreign earned income exclusion under s. 911 of the internal revenue code for the taxable year may not claim the earned income credit.

(4) **EARNED INCOME COMPUTATION.** (a) The earned income of a person shall be computed without regard to any marital property laws.

(b) No amount received as a pension or annuity may be taken into account in computing earned income.

(c) No amount to which s. 871 (a) of the internal revenue code applies, relating to income of nonresident alien individuals not connected with United States business, may be taken into account in computing earned income.

(5) **"QUALIFYING CHILD" REQUIREMENTS.** (a) *Relationship test.* 1. An individual bears a relationship to the person if the individual is any of the following:

- a. A son or daughter of the person, or a descendant of either.
- b. A stepson or stepdaughter of the person.
- c. An eligible foster child of the person.

2. Subdivision 1 does not apply to any individual who is married as of the end of the person's taxable year unless the person is entitled to a deduction under s. 151 of the internal revenue code for that taxable year with respect to the individual or would be so entitled but for par. (2) or (4) of s. 152 (e) of the internal revenue code.

3. For purposes of subd. 1.c, an eligible foster child is an individual not described in subd. 1.a or b who:

- a. The person cares for as the person's own child.

b. Has the same principal place of abode as the person for the person's entire taxable year.

4. A child who is legally adopted or who is placed with a person by an authorized placement agency for adoption by the person shall be treated as a child by blood.

(b) *Age requirements.* An individual meets the requirements of this paragraph if the individual meets any of the following conditions:

1. Has not attained the age of 19 as of the end of the calendar year in which the taxable year of the person begins.

2. Is a student as defined in s. 151 (c) (4) of the internal revenue code who has not attained the age of 24 as of the end of the calendar year.

3. Is permanently and totally disabled as defined in s. 22 (e) (3) of the internal revenue code at any time during the taxable year.

(c) *Identification requirements.* The requirements of this paragraph are met if, as part of the tax return on which the credit is claimed:

1. The person provides the name and age of each qualifying child.

2. In the case of a qualifying child who has attained the age of one year before the end of the person's taxable year, the person provides the taxpayer identification number of the qualifying child.

(d) *Abode must be in the United States.* The requirements of sub. (2) (b) 2 and par. (a) 3. b shall be met only if the principal place of abode is in the United States.

Note: The provisions of this section are effective for taxable years beginning on or after January 1, 1994, as a result of the enactment of 1993 Wis. Act 16, which created s. 71.07 (9e) (ad), (ah), (ap) and (at), Stats. Prior to the enactment of 1993 Wis. Act 16, the Wisconsin earned income credit was based on a percentage of the federal basic earned income credit.

History: Cr. Register, January, 1995, No. 469, eff. 2-1-95.

Tax 2.98 Disaster area losses. (ss. 71.01 (6) and 71.22 (4), Stats.) (1) (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used in a trade or business or for income-producing 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, s. 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) (a) The Wisconsin income tax treatment is determined under the federal internal revenue code in effect under s. 71.22 (4), Stats., for corporations and s. 71.01 (6), Stats., for individuals.

(b) If a corporation or 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 4X may be used by corporations and Wisconsin form 1X may be used by individuals.

Note: 1) For taxable years prior to 1987, the Wisconsin corporation tax law was contained in ch. 71, Stats., and was not referenced to the federal law in regard to disaster losses. Therefore, the election provisions in the internal revenue code were not available to corporations for Wisconsin franchise and income tax purposes for those years. The amendment allowing disaster losses for corporations was enacted by 1987 Wis. Act 27.

2) Section 71.02 (2) (d), 1983 Stats., which defines "Wisconsin taxable income," was renumbered 71.02 (2) (me), 1985 Stats., and amended by 1985 Wis. Act 29, effective with 1986 individual income tax returns filed in taxable year 1987. This amendment is reflected in s. Tax 2.98. Section 71.02 (2) (me), 1985 Stats., was again renumbered, s. 71.01 (16), Stats., by 1987 Wis. Act 312. For 1985 and prior year income tax returns filed in 1986 and prior 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) 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.

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.