

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

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

Note: Refer to s. Tax 2.955 for information on the credit for tax paid to other states.

(12) DELINQUENT TAXES. Reciprocity agreements do not affect the withholding of delinquent Wisconsin income taxes, interest, penalties and costs under s. 71.91 (7), Stats.

Note: 1) Forms 1-ES, W-220 and W-222 and their instructions may be obtained free of charge by writing to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

2) Out-of-state employers of Wisconsin residents wishing to withhold Wisconsin income tax from those employes' incomes may contact Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

3) The State of Maryland enacted an income tax law, Ch. 1, Laws 1992, 1st Spec. Sess., on May 1, 1992, which resulted in the termination of reciprocity between Wisconsin and Maryland, effective for taxable years beginning after December 31, 1991. Prior to enactment of Maryland Ch. 1, Laws 1992, 1st Spec. Sess., Wisconsin practiced reciprocity with Maryland since prior to 1960, based on an informal agreement and acquiescence by Wisconsin and Maryland. Under the provisions of prior Maryland law and s. 71.05 (2), Stats., a Wisconsin resident could exclude from Maryland taxation, the income from salaries, wages, and compensation for personal services to the extent Wisconsin taxed the income of and accorded similar treatment to Maryland residents.

History: Cr. Register, April 1978, No. 268, eff. 5-1-78; r. and recr., Register, March, 1991, No. 423, eff. 4-1-91; am. (3) (a) (intro.), 1., (4) (a) 1. to 4., (b) (intro.), (5) (a), (6) (b), (7) and (8), r. (4) (b) 1. and 2. and (9), renum. (10) to (13) to be (9) to (12) and am. (10) (a), (b), (11) (a) and (12), Register, April, 1993, No. 448, eff. 5-1-93.

Tax 2.03 Corporation returns. (ss. 71.24 (1), (1m) and (3), 71.365 (4) and (5) and 71.44 (1) (a) and (c), 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. This return is to be used only by corporations reporting on the apportionment or separate accounting method.

(b) Form 4B. Apportionment data.

(c) Form 4BL. Computation of Wisconsin net business loss offset.

(d) Form 4C. Separate accounting data.

(e) Form 4-ES. Corporation estimated tax voucher.

(f) Form 4H. Declaration of inactivity.

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

(h) Form 4T. Exempt organization business franchise or income tax return.

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

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

(k) Form 5. 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. It may not be used by

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tax-option (S) corporations or corporations which determine their Wisconsin net income by the apportionment or separate accounting method.

(l) Form 5E. Election by an S corporation not to be treated as a tax-option corporation.

(m) Schedule 5K-1. Tax-option (S) corporation shareholder's share of income, deductions, etc.

(n) Form 5S. Tax-option (S) corporation franchise or income tax return.

(o) Form 4466W. Application for quick refund of overpayment of estimated tax.

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

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

(r) Schedule DC. Development zone credits.

(s) Schedule FC. Farmland preservation credit.

(t) 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 shall be mailed to the address specified by the department on the form or schedule or delivered to the department's audit bureau at 4638 University Avenue, Madison, Wisconsin.

Note: Blank forms may be obtained from the department at 4638 University Avenue, Madison, or by mail request to P. O. Box 8903, Madison, WI 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; r. and recr. (1), am. (3), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.04 Information returns and wage statements. (ss. 71.26 (3) (e), 71.65 (2), 71.70, 71.71 (2), 71.72 and 71.74 (4), Stats.) (1) DEFINITION.

In this section, "person" means an individual, a trust, estate, partnership, association, or corporation.

(2) **COMPENSATION FOR SERVICES.** Under ss. 71.65 (2), 71.71 (2), and 71.72, Stats., all persons carrying on activities within this state, whether taxable or not under ch. 71, Stats., are required to file with the department of revenue, on federal form W-2 or W-2P or on Wisconsin form 9b or on other forms approved by the department, a statement of certain payments made within the preceding calendar year. For individuals who are residents of Wisconsin, the statement shall set forth the salaries, wages, bonuses, commissions, annuities, pensions, retirement pay, fees or other remuneration paid for services whether subject to withholding or not. For individuals who are nonresidents, the statement shall include all payments for the performance of personal services in Wisconsin, whether subject to withholding or not, except retirement plan distributions identified in s. Tax 3.085 as being exempt from Wisconsin income tax. A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b. The following shall also apply with respect to compensation for services:

(a) All payments which are wages within the statutory definition under s. 71.63 (6), Stats., regardless of amount, shall be reported on form W-2.

(b) All payments which are not wages within the definition under s. 71.63 (6), Stats., but from which Wisconsin income tax has been withheld, shall be reported on form W-2 or W-2P.

(c) Payments of \$600 or more which are not within the statutory definition of wages under s. 71.63 (6), Stats., and from which no Wisconsin income tax has been withheld, shall be reported on a Wisconsin form 9b. However, if the payment was to an employe for whom a form W-2 is required under par. (a) or (b), the payment, regardless of amount, shall be included on form W-2.

(d) All statements required shall be filed by January 31. Forms W-2 or W-2P shall be mailed or delivered to the Department of Revenue at 4638 University Avenue, P.O. Box 8920, Madison, WI 53708. Form WT-7, Annual Reconciliation of Wisconsin Income Tax Withheld From Wages, shall accompany the wage statements submitted, if the employer is required to be registered to withhold Wisconsin income taxes from employe's wages. Corporations shall mail or deliver Wisconsin forms 9b or substitute forms to the Department of Revenue at 4638 University Avenue, P.O. Box 8908, Madison, WI 53708. Payors other than corporations shall mail or deliver Wisconsin forms 9b or substitute forms to the Department of Revenue at 4638 University Avenue, P.O. Box 59, Madison, WI 53785. A letter of transmittal identifying the sender shall accompany the forms 9b or substitute forms.

(e) Sections 71.65 (5) and 71.73 (2), Stats., permit a thirty-day extension of time to file the forms described in this subsection. A written request may be sent to the department at P.O. Box 8920, Madison, WI 53708 and to be effective shall be postmarked on or before the due date of the statements. The department's approval of the extension shall be attached to the statements when they are filed with the department.

(3) **RENTS AND ROYALTIES.** All persons making payments of rents and royalties of \$600 or more to individuals who are residents of Wisconsin,

regardless of where the property is located, and to nonresident individuals if the property is located in Wisconsin, shall file with the department of revenue, on form 9b or an approved substitute form, reporting the payments made in the preceding calendar year. The following shall also apply with respect to rents and royalties:

(a) A copy of federal form 1099 may be filed in lieu of Wisconsin form 9b.

(b) Corporations shall file by March 15, by mailing or delivering the statements to the Department of Revenue at 4638 University Avenue, P.O. Box 8908, Madison, WI 53708. Payors other than corporations shall file by April 15, by mailing or delivering the statements to the Department of Revenue at 4638 University Avenue, P.O. Box 59, Madison, WI 53785.

(c) No extensions of time for filing forms 9b or substitute forms to report payments of rents or royalties shall be allowed.

(4) Items to be reported on forms W-2, W-2P, 9b, or substitute forms may be disallowed as deductions from gross income if not properly reported.

(5) Payors who participate in the combined federal/state filing program with the internal revenue service and report items required to be filed on a Wisconsin form 9b to the internal revenue service, are not required to file separate information returns for those items with the department of revenue.

Note: Under the combined federal/state filing program, the internal revenue service will forward information from the information returns 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; r. and recr. Register, June, 1990, No. 414, eff. 7-1-90.

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, WI 53708.

Note: Blank forms may be obtained by mail request addressed to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 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 2.07 Earned income tax credit. (ss. 71.07 (9e) and 73.03 (48), Stats.)

(1) **CRITERIA FOR PROVIDING INFORMATION.** The department has established the following criteria regarding the dissemination of information to the public concerning the federal and Wisconsin earned income tax credits:

(a) Disseminate information to potential claimants in the most cost-effective manner possible.

(b) Disseminate information to the public through multiple channels to increase the probability that potential claimants will become aware of the earned income tax credits.

(c) Utilize volunteer tax preparers and community-based organizations that have personal contact with potential claimants, to provide earned income tax credit information and assistance.

(d) Clarify the relationship between federal and Wisconsin earned income tax credits and coordinate outreach efforts with the internal revenue service, or "IRS."

(e) Provide sufficient information to allow potential claimants to self-evaluate their eligibility for the earned income tax credits.

(f) Provide convenient ways for potential claimants to obtain additional information, assistance and forms.

(2) **METHODS OF PROVIDING INFORMATION.** Methods the department uses to disseminate information to the public concerning the federal and Wisconsin earned income tax credits include the following:

(a) Produce an informational flyer, distribute copies through appropriate organizations having regular contact with potential earned income tax credit claimants throughout the state, and have additional copies available for distribution upon request.

Example: Copies of the informational flyer may be distributed to members of the Wisconsin legislature or to various sites such as municipal buildings, community agencies, or job service centers.

(b) In conjunction with the IRS, when training volunteers who provide free tax-filing assistance throughout Wisconsin, include training to identify potential earned income tax credit claimants and to assist them in claiming both the federal and Wisconsin credits.

(c) Highlight the Wisconsin earned income tax credit in the Wisconsin individual income tax and homestead credit booklets.

(d) Mail camera-ready copies of earned income tax credit informational flyers to large Wisconsin employers, and request them to make and distribute copies of the flyer to their employees as appropriate.

(e) Work with the IRS in providing joint efforts to publicize both the federal and Wisconsin earned income tax credits.

Example: For the 1993 tax-filing season, the department and the IRS jointly utilized the IRS toll-free telephone information line, to provide callers with information about both the federal and Wisconsin earned income tax credits.

(f) Annually produce a report summarizing the level of participation in and level of benefits provided by the earned income tax credit program.

(g) Work with other state agencies, public utilities, and other organizations to distribute information about the federal and Wisconsin earned income tax credit programs.

Note 1) The federal earned income tax credit, provided under s. 32 of the internal revenue code, is available to eligible individuals and married couples filing a joint income tax return,

who have at least one qualifying child living with them. The federal credit consists of three parts, as follows:

a) A basic credit, computed based on the amount of adjusted gross income or earned income, and whether the individual or couple had one qualifying child or two or more qualifying children.

b) A health insurance credit, computed based on the amount of adjusted gross income or earned income, and the amount paid for health insurance that covered at least one qualifying child.

c) An extra credit for a child born during the taxable year, computed based on adjusted gross income or earned income.

2) The Wisconsin earned income tax credit is available under s. 71.07 (9 e), Stats., to full-year Wisconsin residents who are eligible to claim the federal earned income tax credit. The Wisconsin credit is computed as a percentage of the federal basic credit, dependent upon whether the individual or couple have one qualifying child, two qualifying children, or three or more qualifying children.

History: Cr. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.08 Returns of persons other than corporations. (ss. 71.03 (2), 71.20 (1) and 71.55 (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:

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(a) Form 1. (Long form). Return for all individuals who are full-year Wisconsin residents, whether married or single.

(b) Form 1A. (Short form). Optional short form return for individuals who are married filing a joint return or who are single.

(c) Form 1-ES. Estimated tax voucher for individuals, estates, and trusts.

(d) Form 1NPR. Return for individuals who are nonresidents or part-year residents of Wisconsin.

(e) Form 1X. Amended individual income tax return.

(f) Form WI-Z. Optional short form return for single individuals.

(g) Schedule 2440W. Disability income exclusion for individuals.

(h) Schedule FC. Farmland preservation credit claim.

(i) Schedule H. Homestead credit claim.

(j) 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.

(k) Schedule MT. Alternative minimum tax.

(l) Schedule T. Transitional adjustments for individuals.

(m) Schedule U. Underpayment of estimated tax by individuals and fiduciaries.

(n) Schedule WD. Capital gains and losses for individuals.

(o) Form 2. Return for trustees, personal representatives, and others acting in a fiduciary capacity, but excluding guardians. Guardians shall report on form 1, 1A, 1NPR, or WI-Z.

(p) Schedule 2K-1. Beneficiary's share of income, deductions, etc.

(q) Schedule WD (form 2). Capital gains and losses for fiduciaries.

(r) Form 3. Return for partnerships and joint ventures.

(s) Schedule 3K-1. Partner's share of income, deductions, etc.

(t) Form 4T. Exempt organization business franchise or income tax return.

(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 address specified by the department on the form or schedule.

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

Register, June, 1991, No. 426

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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; r. and recr. (1), am. (3) (intro.), r. (3) (a) to (c), Register, June, 1990, No. 414, eff. 7-1-90.

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, WI 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 return: 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.

(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. 71.03 (5), Stats.) At the time of filing Wisconsin income tax returns 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 which affect the computation of Wisconsin income, credits or penalties, shall be included and filed with the Wisconsin return. Copies of the short form federal returns 1040A and 1040EZ are not required to be filed if a Wisconsin form 1A or WI-Z is being filed for the same taxable year. If the federal return is filed electronically, a copy of the electronic material as contained in replicas of the official forms or on forms designed by the electronic filer shall be included and filed with the Wisconsin return.

History: Register, December, 1965, No. 120, eff. 1-1-66; am. Register, June, 1990, No. 414, eff. 7-1-90.

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.

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. Federal form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", or 870-AD, "Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment", are the forms prescribed for this purpose.

c. Expiration of the 90-day time period, or the 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 that time.

d. A closing agreement entered into with the internal revenue service under s. 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 which has become final, or the date the court approves a voluntary agreement stipulating disposition of the case. A court of competent jurisdiction includes a United States district court, a court of appeals, a court of claims, or the United States supreme court.

Note: Refer to the Note following this section for the time when the federal 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 on the amended federal tax return 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, WI 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.

(5) **TAXPAYER'S FAILURE TO REPORT OR FILE ADJUSTMENTS AND AMENDED WISCONSIN RETURNS.** (a) *Adjustments and amended returns relating to taxable year 1987 and thereafter.* If a taxpayer fails to report federal adjustments or the filing of an amended other state or federal return, relating to the taxable year 1987 and thereafter, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 4 years after discovery by the department.

Example. An individual taxpayer filed a 1987 Wisconsin income tax return on April 15, 1988. Adjustments were made by the internal revenue service to the 1987 federal income tax return which the taxpayer did not report to the department within 90 days after the adjustments became final. The internal revenue service reports these adjustments to the department under the exchange of information agreement between the two agencies on June 1, 1990. The department may issue an assessment for the adjustments any time on or before June 1, 1994.

(b) *Adjustments and amended returns relating to 1986 and prior taxable years.* 1. Adjustment became final or amended return filed after July 1, 1983. If a taxpayer fails to report federal adjustments which became final after July 1, 1983 and relate to 1986 or prior taxable years, or the filing of an amended other state or federal return filed after July 1, 1983 which relates to 1986 or prior taxable years, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the adjustments or amended return within 10 years after the date the original Wisconsin return for the year was filed or within 2 years after the date when the federal determination of tax becomes final, whichever is later. 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 the last date prescribed by law under s. 71.77 (8), Stats.

2. Adjustment made and became final or amended return filed after May 4, 1976 and before July 2, 1983. If a taxpayer fails to report federal adjustments which were made and became final during the period of May 5, 1976 through July 1, 1983 or the filing of an amended other state or federal return during the period of May 5, 1976 through July 1, 1983, within the 90-day period described in sub. (6), the department may assess additional Wisconsin income or franchise tax relating to the 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 the last date prescribed by law under s. 71.77 (8), Stats.

Examples. 1) A taxpayer filed a 1983 income tax return on April 15, 1984. The taxpayer filed an amended return with Ohio on January 1, 1985. The result of the amended return was a reduction in the net tax paid to Ohio on income also reported to Wisconsin. The taxpayer did not notify the department within 90 days of filing the amended Ohio return. The department has until April 15, 1994 to issue an assessment for the Ohio amended return's effect on the Wisconsin credit for taxes paid to other states.

2) An individual taxpayer filed a 1980 Wisconsin income tax return by April 15, 1981. Adjustments were made by the internal revenue service to the individual's 1980 federal in-

come tax return and the adjustments became final on July 1, 1982. The taxpayer either failed to notify the department of the adjustments or notified the department more than 90 days after they became final. The department of revenue may issue an assessment for the adjustments any time on or before April 15, 1991, 10 years from the due date of the 1980 Wisconsin return.

(6) **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 the report or amended return as follows:

(a) *Assessments.* Under s. 71.77 (2), Stats., an assessment may be made within 4 years from the date the original Wisconsin income or franchise tax return was filed. However, under s. 71.77 (7) (a), Stats., if the taxpayer reported less than 75% of the correct income and the additional tax for the year exceeds \$100 for an individual return or a married filing separate return, or \$200 for a joint return, an assessment may be made within 6 years after the return was filed.

(b) *Refunds.* Under s. 71.75 (2), Stats., a refund may be made if claims are filed within 4 years of the unextended date the original Wisconsin income or franchise tax return was due.

(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, the 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 after the expiration of the 4-year period for filing claims for refund as described in par. (b), a refund based upon federal adjustments reducing the taxpayer's federal tax liability, which are applicable to the taxpayer's Wisconsin tax liability, 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.

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 the 90 days.

Examples. 1) Federal adjustments were made to an individual's 1983 federal income tax return; the adjustments became final on June 1, 1988. On August 15, 1988, within 90 days after the 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), 1985 Stats., (renumbered s. 71.77 (2), 1987 Stats.) for making adjustments to the 1983 Wisconsin return expired on April 15, 1988, the department had until November 13, 1988, 90 days after the date the department received a report of the adjustments, to give notice of an assessment to the taxpayer.

2) A taxpayer filed an amended 1985 New York return on June 1, 1986. An amended Wisconsin return, reflecting the changes on the amended New York return, was filed with the department on July 1, 1986. Under the 4-year assessment period in s. 71.77 (2) (formerly s. 71.11 (21) (bm)), Stats., the department has 4 years from April 15, 1986, the due date of the 1985 return, in which to notify the taxpayer of any assessment relating to the changes on the amended New York return.

(7) **PRIOR FIELD AUDIT BY DEPARTMENT.** If federal adjustments or changes on an amended return filed with the internal revenue service or Register, June, 1991, No. 426

another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund may only relate to those federal adjustments or the changes on the 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: 1) Decisions of the U.S. tax court and other courts ordinarily become final as follows:

a. If no appeal is made of a U.S. 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 U.S. tax court under s. 7463 of the internal revenue code become final 90 days after they are entered.

b. Appealed decisions of the U.S. tax court become final as set forth in s. 7481 of the internal revenue code.

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

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

e. A decision of the U.S. 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 that time.

2) In the case of *Bacon v. Wisconsin Department of Revenue*, Wis. Court of Appeals, No. 83-497, March 23, 1984, it was held that a federal assessment occurring prior to the effective date of s. 71.11 (21) (g) 2 and (21m), 1985 Stats., (May 5, 1976) relieves a taxpayer of notifying the department of the federal assessment in absence of legislative intent of retroactivity, regardless of when the assessment became final as a result of an appeal.

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; r. (2), (4) and (5) (d); renum. (1), (3), (5) (a) to (c) and (6) to be (2), (4), (6) and (7) and am. (2), (4) (a) 1.b., c. and e, (b), (6) (a) to (c) and (7), cr. (1), (3) and (5), Register, February, 1990, No. 410, eff. 3-1-90.

Tax 2.11 Credit for sales and use tax paid on fuel and electricity. (ss. 71.26 (2), 71.28 (3) and 71.34 (1) (e), Stats.) (1) DEFINITIONS. In this section:

(a) 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 or administrative department activities. However, fuel and electricity used directly in manufacturing 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. I-6239, July 28, 1981, and *Fort Howard Paper Company v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, Docket No. I-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 Wis. Act 29, and the 15 year carry forward 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 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: 1) 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.

2) 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. 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; r. and recr. (3), Register, June, 1990, No. 414, eff. 7-1-90; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.14 Aggregate personal exemptions. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.15 Methods of accounting for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.16 Change in method of accounting for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.165 Change in taxable year. History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; cr. (5), Register, June, 1991, No. 426, eff. 7-1-91; r. Register, November, 1993, No. 455, eff. 12-1-93.

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Tax 2.19 Instalment method of accounting for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.21 Accounting for incorporated contractors. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.22 Accounting for incorporated dealers in securities. History: 1-2-56; r. and recr. Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.24 Accounting for incorporated retail merchants. History: 1-2-56; am., cr. (2), Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.25 Corporation accounting generally. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.26 "Last in, first out" method of computing inventory for corporations. 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; r. Register, November, 1993, No. 455, eff. 12-1-93.

Tax 2.30 Property located outside Wisconsin — depreciation and sale. (ss. 71.05 (12) (a), (b) and (c), (15), (16), (17) and (18) and 71.04 (1) (a), Stats.) (1) SCOPE. This section applies only with respect to resident individuals, estates, and trusts.

(2) DEFINITION. In this section, "internal revenue code" means the internal revenue code in effect for the taxable year specified in s. 71.01 (6), Stats.

Example: For taxable year 1988, "internal revenue code" means the internal revenue code in effect on December 31, 1987.

(3) RESIDENT INDIVIDUALS, ESTATES, AND TRUSTS. Income or loss derived from property and business located outside Wisconsin by resident individuals, estates, and trusts, is taxable or deductible as appropriate under ch. 71, Stats. Except as provided in sub. (4), the basis for depreciation and for determining gain or loss on disposition of property for these 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.

(4) EXCEPTIONS. (a) When an individual acquires a new residence, the adjusted basis of the new residence is not reduced for nonrecognized gain from the sale or exchange of an old residence located outside Wisconsin if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or

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2. The sale or exchange of the old residence occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

(b) When an individual sells or exchanges a principal residence located outside Wisconsin and the nonrecognition of gain provisions do not apply, the adjusted basis of the residence sold or exchanges is not reduced for nonrecognized gain from any previous sale or exchange of a principal residence located outside Wisconsin if:

1. The previous sale or exchange occurred in taxable year 1975 or thereafter when the individual was not a resident of Wisconsin; or

2. The previous sale or exchange occurred before taxable year 1975, whether the individual was a resident or not at the time of the sale or exchange.

Example: A taxpayer becomes a Wisconsin resident on July 1, 1988. Prior to becoming a Wisconsin resident the taxpayer had owned several different homes. Each time a new home was acquired, the federal nonrecognition of gain provisions applied with respect to the gain realized from the sale of the previous home. Upon becoming a Wisconsin resident, the taxpayer owned a home in Missouri with a federal adjusted basis of \$65,000 (\$95,000 cost, less \$30,000 of gains postponed from prior sales). The Missouri home was sold for \$97,000 in August 1988. The taxpayer decides not to purchase a new residence. The Wisconsin adjusted basis of the Missouri home is \$95,000.

(c) For residential real property and certain agricultural real property placed in service during taxable year 1986, depreciation and gain or loss on disposition of the property shall be computed under the internal revenue code in effect on December 31, 1980 unless:

1. The property is placed in service out-of-state by a taxpayer during taxable year 1986 before the taxpayer becomes a Wisconsin resident. In this case, the property's adjusted basis and depreciation are the same as the amounts allowable for federal tax purposes.

Example: A taxpayer becomes a Wisconsin resident on January 1, 1987. Prior to that date, the taxpayer is an Illinois resident. On July 1, 1986, the taxpayer purchases and places in service residential real property located in Illinois. On the taxpayer's 1987 Wisconsin return, the taxpayer's adjusted basis and depreciation on this property will be the same as the amounts shown on the taxpayer's 1987 federal return. The taxpayer does not have to recompute the basis of the property and depreciate it using one of the methods permitted under the December 31, 1980 Code.

2. The property located out-of-state is acquired in a transaction occurring in taxable year 1986 or thereafter where the basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor. The adjusted basis of the property on the date of the transfer is the same as the federal adjusted basis.

Example: A taxpayer is a Wisconsin resident. The taxpayer receives by gift on January 1, 1986, residential real property located in Illinois. The adjusted basis of the property to the donor, transferor, is \$200,000. In acquiring the property by gift, the taxpayer, transferee, receives the same adjusted basis in the property as the transferor. The Wisconsin adjusted basis will be the federal adjusted basis on January 1, 1986.

Note: 1) 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 a 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 section the same principle is applied to gains realized on the disposition of such property. This principle was codified into s. 71.05 (1) (m), Stats., by 1985 Wis. Act 261, effective for the earliest taxable year in respect to which additional assessments or refunds may be made. Section 71.05 (1) (n) and (o), Stats., was also created by 1985 Wis. Act 261 to provide exceptions with respect to a principal residence effective for the same period of time. Section 71.05 (1), (m), (n), and (o), Stats., was renumbered s. 71.05 (12) (a), (b), and (c), Stats., by 1987 Wis. Act 312.

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2) Section 71.07 (1), Stats., was amended by Chapter 39, Laws of 1975, effective with the 1975 taxable year. Prior to the 1975 taxable year, income or loss derived from real property or tangible personal property followed the situs of the property from which derived. Section 71.07 (1), Stats., was renumbered ss. 71.04 (1) (a) and 71.362 (1), Stats., by 1987 Wis. Act 312.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; r. and recr. (3), Register, July, 1982, No. 319, eff. 8-1-82; r. (2), renum. (1) to be (2) and am., cr. (1) and (4), am. (3), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 2.31 Taxation of personal service income of nonresident professional athletes. **History:** Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. Register, June, 1993, No. 450, eff. 7-1-93.

Determination of Income from Multistate Operations

Tax 2.39 Apportionment method. (ss. 71.04 (4), (5), (6), (7), (9), (10) and (11) and 71.25 (5), (6), (7), (8), (9), (11) and (12), Stats.) (1) **GENERAL.** Except as provided in sub. (3) (a), any person, except resident individuals, resident estates and resident trusts, engaged in business both within and without Wisconsin shall report by the statutory apportionment method when the person's business in Wisconsin is an integral part of a unitary business unless the department, in writing, allows reporting on a different basis.

Note: Refer to ss. 71.04 (4) and 71.25 (6), Stats.

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

(a) "Apportionable income" has the meaning in s. 71.25 (5) (a), Stats.

(b) "Engaged in business within and without Wisconsin" means having business activity which is sufficient to create nexus in Wisconsin and at least one other state or foreign country.

(c) "Gross receipts" means gross sales less returns and allowances, plus service charges, freight, carrying charges or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales and use taxes, shall be included as part of the receipts if the taxes are passed on to the purchaser or included as part of the selling price of the product.

(d) "Nexus" means that a taxpayer's business activity in a state or foreign country is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. Nexus may exist even if a state or foreign country does not impose a tax on the taxpayer. Conversely, voluntary filing and paying income or franchise taxes when not required to do so, or paying a fee for qualification, organization or for the privilege of doing business in that state or foreign country does not, in itself, create nexus.

Note: Refer to s. Tax 2.82 for a description of factors which are recognized in determining whether nexus exists.

Examples: 1) State A imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return and pays the \$50 minimum tax, although it carries on no activities in State A. Corporation X does not have "nexus" in State A under these circumstances.

2) State B requires all nonresident corporations which qualify or register to do business in State B to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of \$50 and a maximum fee of \$500. Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State B also imposes a corporation income tax. Nonresident

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Corporation Y is qualified to do business in State B and pays the required fee to the Secretary of State but does not carry on any activities in State B other than utilizing its courts. Corporation Y does not have "nexus" in State B under these circumstances.

3) State C requires all nonresident corporations qualified or registered to do business in State C to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (1) outstanding capital stock, and (2) surplus and undivided profits. The fee or tax base attributable to State C is determined by a three-factor apportionment formula. Nonresident Corporation Z, which operates a plant in State C, pays the required fee or tax to the Secretary of State. Corporation Z by virtue of its operation of a plant in State C has "nexus" in State C.

4) State D imposes a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation W files a return based upon its business activities in the state but the amount of computed liability is less than the minimum tax. Corporation W pays the minimum tax. Corporation W has "nexus" in State D under these circumstances.

5) Corporation U is actively engaged in manufacturing farm equipment in State E. State E imposes a net income tax but exempts corporations engaged in manufacturing farm equipment. Corporation U has "nexus" in State E under these circumstances.

6) Corporation V has a sales office and warehouse located in State F. State F doesn't impose a corporation franchise or income tax. Corporation V has "nexus" in State F.

(e) "Nonapportionable income" has the meaning in s. 71.25 (5) (b), Stats.

(f) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. A foreign country is not a state.

(3) APPORTIONMENT FRACTION. (a) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04 (8) and 71.25 (10), Stats., shall use 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. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04 (1) and (4) or 71.25 (5) (b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04 (10) or 71.25 (11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

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

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

Note: See ss. Tax 2.46, 2.47, 2.48, 2.49, 2.50 and 2.505 for special apportionment fractions of interstate air carriers, motor carriers, pipelines, finance companies, public utilities and professional sports clubs.

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(b) The apportionment method may be used only if the taxpayer has nexus in Wisconsin and at least one other state or foreign country and its business within Wisconsin is an integral part of a unitary business.

Note: Refer to ss. 71.04 (4) and 71.25 (6), Stats.

(4) PROPERTY FACTOR. (a) *Numerator; denominator.* The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented and used by the taxpayer in Wisconsin in the production of apportionable income during the tax period. The denominator shall include the average value of all of the real and tangible personal property located everywhere owned or rented and used by the taxpayer in the production of apportionable income during the tax period. Property in transit on the date or dates for determining its average value, as described in par. (f), shall be considered to be at its destination, for purposes of computing the property factor. The value of mobile or movable property such as construction equipment, trucks, airplanes or other equipment which is located within and without Wisconsin during the tax period shall be determined for purposes of the numerator of the factor on the basis of the ratio of time used, serviced and stored within Wisconsin to total time used, serviced and stored during the tax period. However, an automobile assigned to a traveling employee shall be included in the numerator of the factor if the employee's compensation is assigned to Wisconsin under the payroll factor.

Note: Refer to ss. 71.04 (5) and 71.25 (7), Stats.

(b) *Owned property.* Property owned by the taxpayer is valued at its original cost for purposes of computing the property factor. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes, prior to any adjustments, at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements to the property and partial disposition of the property, by reason of sale, exchange, abandonment or other means. If the original cost of property is unascertainable, the property shall be included in the factor at its fair market value as of the date of acquisition by the taxpayer. Any subsequent adjustments, other than depreciation or amortization, to net income which affect property, such as capitalizations of repairs and adjustments to inventory, shall also be included in the property factor. The original cost of depletable property such as mines, oil and gas wells and timber shall be reduced by any extraction to the extent that cost depletion has been allowed. Inventories shall be included in the factor in accordance with the valuation method used for Wisconsin income or franchise tax purposes. Property acquired by gift or inheritance shall be included in the factor at its basis for federal income tax purposes. Pollution abatement equipment or waste treatment facilities written off as an expense under s. 71.04 (2b) and (2g), 1985-86 or prior years Stats., but still in use, shall be included at original cost.

Note: Refer to ss. 71.04 (5) (c) and 71.25 (7) (c), Stats.

(c) *Rented property.* Property rented by the taxpayer is valued at 8 times the net annual rental determined at arm's length for purposes of computing the property factor. Net annual rental is the annual rental paid by the taxpayer, or allocated by the department pursuant to s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., less any annual rental received by the taxpayer from sub-rentals. In exceptional cases this definition of net annual rental may result in a negative value or clearly inaccurate valuation. In these exceptional instances, any other method which

will properly reflect the net annual rental value may be required by the department or may be requested by the taxpayer; however, in no case shall the net annual rental be less than an amount which bears the same ratio to the total annual rental paid by the taxpayer as the rental value of the part of the property used by the taxpayer in the production of apportionable income bears to the total rental value of the same rental property.

(cm) *Annual rental.* In this subsection, annual rental:

1. Is the amount paid as rental for the property for a 12-month period. Where property is rented for less than a 12-month period, the net rent paid for the actual period of rental shall constitute the "annual rental" for the tax period. Where a taxpayer has rented property for a term of 12 or more months and the tax period for which the property factor is being computed covers a period of less than 12 months, such as may be due to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized; however, if the rental term is for less than 12 months, the rent shall be adjusted accordingly.

2. Is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

a. Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise;

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities or janitor services. If a payment includes rent and other charges unsegregated, such as rental charges for public warehouses, the amount of rent shall be determined by making a reasonable allocation between the rent and the other items.

3. Does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles or royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes an amount paid to a holder of an interest in real property which constitutes a sharing of current or future production of natural resources from the property, whether denominated as royalty, advanced royalty, rental, delay rental or otherwise.

Note: Refer to ss. 71.04 (5) (c) and 71.25 (7) (c), Stats.

(d) *Leasehold improvements.* Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of leasehold improvements shall be included in the factor.

(e) *Construction in progress.* Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used by the taxpayer in the regular course of its trade or business. If the property is partially used by the taxpayer in the regular course of its trade or business while

under construction, the value of the property to the extent used shall be included in the property factor.

(f) *Averaging property values.* As a general rule the "average value" of property shall be determined by averaging the value at the beginning and ending of the tax period, but the department of revenue may require or the taxpayer may utilize the averaging of monthly values during the tax period if reasonably required to properly reflect the average value of the taxpayer's property. Averaging by monthly values shall generally be applied if substantial fluctuations in the values of the property exist during the tax period, or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Note: Refer to ss. 71.04 (5) (d) and 71.25 (7) (d), Stats.

(5) **PAYROLL FACTOR.** (a) *Numerator; denominator.* The numerator of the payroll factor shall include the total amount paid in Wisconsin during the tax period by the taxpayer for compensation in the production of apportionable income and the denominator shall include the total compensation paid everywhere during the tax period by the taxpayer in the production of apportionable income. Compensation is paid in Wisconsin and included in the numerator if, as provided in ss. 71.04 (6) (b) and 71.25 (8) (b), Stats., one of the following applies:

1. The individual's service is performed entirely within Wisconsin.

Example: Corporation A has a manufacturing plant located in Wisconsin. The compensation of an Illinois resident who works at the Wisconsin manufacturing plant is included in the numerator of the payroll factor since the employee's service is performed entirely in Wisconsin.

2. The individual's service is performed within and without Wisconsin, but the service performed without Wisconsin is incidental to the individual's service within Wisconsin.

Example: Corporation B has its headquarters and a manufacturing plant in Wisconsin. Corporation B also has a manufacturing plant located in Indiana. The manager of the Wisconsin manufacturing plant spends two weeks during the tax year at the manufacturing plant located in Indiana training the new plant manager. The compensation of the Wisconsin plant manager is included in the numerator of the payroll factor because the service performed in Indiana is incidental to the service performed in Wisconsin.

3. A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin.

Example: Corporation C has a sales office located in Wisconsin. A salesperson working out of the Wisconsin office solicits sales in Wisconsin, Minnesota and Iowa. Since a portion of the salesperson's service is performed in Wisconsin and the salesperson's base of operations is in Wisconsin, the compensation of the salesperson is included in the numerator of the payroll factor.

4. A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

Example: Corporation D has its regional sales office in Wisconsin. An Iowa resident works out of her home as a salesperson for Corporation D and solicits sales in Iowa, Illinois and Wisconsin. The salesperson is directed from the regional sales office located in Wisconsin. The compensation of the Iowa salesperson is included in the numerator of the payroll factor since a portion of her service is performed in Wisconsin, she has no base of operations and she is directed from Wisconsin.

5. A portion of the service is performed within Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.

Example: Corporation E is headquartered in and has its sales office in Indiana and maintains inventory in Wisconsin. A Wisconsin resident salesperson solicits sales in Wisconsin and Minnesota. The compensation of the Wisconsin salesperson is included in the numerator of the payroll factor since a portion of the salesperson's service is performed in Wisconsin, the salesperson is a resident of Wisconsin and the salesperson is directed or controlled from Indiana but performs no services in Indiana.

6. The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Example: Corporation F has its sales office in Wisconsin. A salesperson resides in Nebraska and solicits sales in Nebraska and Kansas. Corporation F does not have nexus in Nebraska or Kansas. The salesperson returns to the Wisconsin sales office for two weeks each year for meetings and training. The compensation of the Nebraska salesperson is included in the numerator of the payroll factor since he is directed from an office in Wisconsin, returns to Wisconsin periodically for business purposes and Corporation F does not have nexus in Nebraska.

Note: Refer to ss. 71.04 (6) (a) and (b) and 71.25 (8) (a) and (b), Stats.

(b) *Services.* An individual shall be considered to be performing a service in Wisconsin during the year if the individual performs services in Wisconsin for at least 5 days during the year. The compensation of any one employe may not be split between 2 or more states during the year; however, this does not apply if the employe is transferred or changes positions during the year.

(c) *Compensation.* Compensation includes:

1. Wages, salaries, commissions and any other form of remuneration paid to employes for personal services including amounts contributed to a qualified cash or deferred arrangement under s. 401(k) of the internal revenue code on behalf of employes who have elected to participate in the plan. However, matching contributions to the trust by an employer under s. 401(k) of the internal revenue code are not included since the employes do not have a right to receive the matching contributions directly in cash.

2. The value of board, rent, housing, lodging and other benefits or services furnished to employes by the taxpayer in return for personal services, provided that these amounts constitute income to the recipient under the federal internal revenue code for the year for which the payroll factor is computed. In the case of employes not subject to the federal internal revenue code, such as citizens of foreign countries employed in foreign countries, the determination of whether the benefits or services constitute income to the employes shall be made as though the employes are subject to the federal internal revenue code.

3. Deductible management or service fees paid, or management or service fees allocated by the department under s. 71.10 (1), 71.30 (2) or 71.80 (1) (b), Stats., to a related corporation, as defined in s. 267 (f) (1) of the internal revenue code, as consideration for the performance of personal services. As provided in s. 71.25 (8) (d), Stats., the recipient of these fees may not include the compensation paid to its employes with respect to the personal services in either the numerator or denominator of its payroll factor and the situs of the fees is in Wisconsin if the services fulfill one of the requirements of par. (a). Except for these management or service fees, payments made to an independent contractor or any other person not properly classifiable as an employe are excluded.

Examples: 1) Corporation A, headquartered in Illinois, owns 100% of the stock of Corporation B which is headquartered in Wisconsin. Employees of Corporation A perform all the accounting functions for Corporation B. For these services Corporation A charged \$30,000 of office payroll as management fees to Corporation B, which paid that amount to Corporation A. If the employees of Corporation A that performed the accounting services for Corporation B were based in Illinois and spent only part of their time in Wisconsin while performing these services, no portion of the \$30,000 is includable in the numerator of the payroll factor of Corporation B because the services do not meet the requirements of par. (a). The entire \$30,000 is includable in the denominator of the payroll factor of Corporation B. If Corporation A files a Wisconsin return on the apportionment basis, it may not include in its computation of the payroll factor the \$30,000 paid to its employees for services they performed for Corporation B.

2) Corporation C, headquartered in Wisconsin, owns 100% of the stock of Corporation D which is also headquartered in Wisconsin. Employees of Corporation C prepare all tax returns for Corporation D. For these services Corporation C charged \$20,000 of tax department payroll as management fees to Corporation D, which paid that amount to Corporation C. All of the services were performed in Wisconsin. The \$20,000 is included in both the numerator and denominator of the payroll factor of Corporation D. Corporation C may not include the \$20,000 in either the numerator or denominator of its payroll factor.

Note: Refer to ss. 71.04 (6) (d) and 71.25 (8) (d), Stats.

(d) *Excludable compensation.* Compensation paid to produce nonapportionable income or losses or income exempt from taxation under ch. 71, Stats., may not be included in the numerator or denominator of the payroll factor.

Note: Refer to ss. 71.04 (6) (c) and 71.25 (8) (c), Stats.

(6) **SALES FACTOR.** (a) *Numerator; denominator.* The numerator of the sales factor shall include the gross receipts from sales which are in Wisconsin in the production of apportionable income; and the denominator shall include all gross receipts from sales in the production of apportionable income.

Note: Refer to ss. 71.04 (7) and 71.25 (9), Stats.

(b) *Sales of tangible personal property attributable to Wisconsin.* 1. Gross receipts from the sales of tangible personal property, except sales to the federal government as described in subd. 4, are in Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin regardless of the f.o.b. point or other conditions of the sales. Some situations in which property is considered to be delivered or shipped to a purchaser within Wisconsin are if:

a. The property is picked up outside Wisconsin by a purchaser having a Wisconsin business location and the purchaser returns to Wisconsin with the property.

Example: Corporation B is a Minnesota brewer that sells beer to a Wisconsin purchaser to be picked up at the brewer's shipping dock in Minnesota. The purchaser is a beer distributor which used its own vehicle to pick up the beer and haul it back to Wisconsin. Corporation B is subject to the tax by the State of Wisconsin. These dock sales are assigned to Wisconsin in Corporation B's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's location is in Wisconsin and the product is shipped to Wisconsin. Therefore, Corporation B, for Wisconsin franchise tax purposes, will include the amount of this dock sale in both the numerator and the denominator of the sales factor.

Note: In *Pabst Brewing Co. v. Wisconsin Department of Revenue* (Ct. App. Dist. IV, 1986), 130 Wis. 2d 291, the taxpayer sold beer to an Illinois distributor who picked it up in its own truck at the taxpayer's Wisconsin shipping dock and hauled it to Illinois. The Court held that the sales were not Wisconsin sales, since the location of the purchaser, rather than the location of the pickup of the product, controlled the determination of where the sale was assigned for purposes of the sales factor. The Court noted that if the sales were assigned to Wisconsin, the method of delivery, a condition of the sale, would be the determinative, which is contrary to statute. These sales are referred to as "dock sales," which are those sales where a purchaser

uses its owned or rented vehicles or a common carrier it has made arrangements with to take delivery of the product at the seller-taxpayer's shipping dock.

b. The taxpayer, at the designation of the purchaser, or the purchaser delivers to or has the property shipped to a recipient other than the purchaser within Wisconsin.

Example: Corporation M is a Wisconsin manufacturer that sells plumbing ware to an Illinois wholesaler and retailer to be picked up at the manufacturer's shipping dock in Wisconsin. The purchaser has its corporate headquarters in Illinois. The purchaser uses its own vehicle to pick up plumbing ware and haul it to the job site of the purchaser's customer. The customer is a plumbing contractor that is working on a new motel being constructed in Madison, Wisconsin. These dock sales are assigned to Wisconsin in Corporation M's sales factor in its apportionment formula for Wisconsin tax purposes, since the purchaser's customer's location is in Wisconsin and the product is shipped to Wisconsin. The delivery to the plumbing contractor was at the designation of the purchaser and that is where the product was delivered. Therefore, Corporation M, for Wisconsin franchise tax purposes, is required to include the amount of this dock sale in both the numerator and the denominator of the sales factor.

c. The shipment by either the taxpayer or the purchaser terminates in Wisconsin, even though the property is subsequently transferred by the purchaser to another state.

Example: Corporation B has a Wisconsin manufacturing plant which makes engines for an Indiana based manufacturer. Title to the engines passes to the purchaser after the engines are tested. Corporation B, at the direction of the purchaser, ships the tested engines to a public warehouse in Wisconsin. The warehouse stores the engines until directed to ship them by the purchaser. These sales are included in the numerator of the sales factor for Corporation B since the public warehouse is considered to be a business location of the Indiana purchaser and the warehouse is located in Wisconsin.

d. The recipient is in Wisconsin, even though the property is ordered from outside Wisconsin.

Example: Corporation A manufactures batteries at a location in Wisconsin. It sells batteries to an Illinois retailer which operates stores nationwide. The purchaser orders the batteries from its Illinois location and directs Corporation A to ship the batteries to its warehouse in Wisconsin. These sales are included in the numerator of the sales factor since the batteries were shipped to a Wisconsin location.

e. The property is being shipped by a seller or purchaser from one state to a consignee in another state and is diverted while enroute to a purchaser in Wisconsin, or the designee of a purchaser who is in Wisconsin.

Example: Corporation X, a manufacturer located in Superior, Wisconsin, sells a portion of its manufactured product via a consignment arrangement with a retailer-consignee in Chicago, Illinois. Pursuant to an order from the Chicago consignee for additional inventory, Corporation X ships via its own trucks additional inventory of its product to Chicago. After entering Illinois but before reaching Chicago, the driver receives instructions from the consignee to deliver the entire load to a customer in Beloit, Wisconsin. Since the property was shipped to a purchaser in Wisconsin, the sale is attributable to Wisconsin and the gross receipts from the sale are included in both the numerator and denominator of Corporation X's sales factor.

2. If the taxpayer does not have nexus in the state of destination, the sale is attributed to Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin. The amount included in the numerator of the sales factor shall be at 50% of the sales. For purposes of this subdivision:

a. Sales are attributed to Wisconsin even though the taxpayer has a certificate of authority in the state of destination but the business activities in the destination state do not result in nexus based on the standards in s. Tax 2.82.

b. Sales are not attributed to Wisconsin if the taxpayer has a written opinion from the state of destination that the taxpayer has nexus in that

state and the taxpayer is in agreement with the written opinion, even if the business activities in the destination state are not sufficient to create nexus under the standards of s. Tax 2.82.

c. Sales are not attributed to Wisconsin if the taxpayer is incorporated in the state of destination other than Wisconsin.

3. If a taxpayer's salesperson located in an office in Wisconsin makes a sale to a purchaser in another state in which the taxpayer does not have nexus and the property is not shipped or delivered from Wisconsin, the following rules apply:

a. If the taxpayer has nexus in the state from which the property is delivered or shipped, then the sale is in that state.

b. If the taxpayer does not have nexus in the state from which the property is delivered or shipped, then the sale is in Wisconsin and the amount included in the numerator of the sales factor shall be at 50% of the sale.

4. With respect to sales to the federal government:

a. For the taxable years beginning on or after January 1, 1989, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, in Wisconsin regardless of the f.o.b. point or other conditions of sale. For purposes of this section, only sales for which the federal government makes direct payment to the seller pursuant to the terms of its contract constitute sales to the federal government. Thus, sales by a subcontractor to the prime contractor, the party to the contract with the federal government, do not constitute sales to the federal government.

b. For taxable years beginning on or after January 1, 1989, and before January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin. The amount included in the numerator of the sales factor shall be at 50% of the sale.

c. For taxable years beginning on or after January 1, 1990, gross receipts from the sales of tangible personal property are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin and the taxpayer does not have nexus in the destination state. The amount included in the numerator of the sales factor shall be 50% of the sale.

Note: For taxable years beginning prior to January 1, 1989, gross receipts from the sales of tangible personal property to the federal government, including its agencies and instrumentalities, are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin.

(c) *Sales other than sales of tangible personal property attributable to Wisconsin.* 1. Sections 71.04 (7) (d) and 71.25 (9) (d), Stats., contain provisions for including gross receipts from transactions other than sales of tangible personal property in the numerator of the sales factor.

2. Under ss. 71.04 (7) (d) and 71.25 (9) (d), Stats., gross receipts are attributed to Wisconsin if the income producing activity which gave rise to the receipts is performed wholly within Wisconsin. If the income producing activity is performed within and without Wisconsin, the receipts are attributed to Wisconsin in accordance with subd. 5.

3. For purposes of this paragraph, "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. This activity does not include activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes but is not limited to the following:

a. The rendering of personal services by employes or the utilization of tangible and intangible property by the taxpayer in performing a service.

b. The sale, rental, leasing, licensing the use of or other use of real property.

c. The rental, leasing, licensing the use of or other use of tangible personal property.

d. The sale, licensing the use of or other use of intangible personal property such as patents, copyrights, trademarks, trade names, etc.

4. For purposes of this paragraph, "costs of performing" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

5. Receipts from sales, other than sales of tangible personal property, are in Wisconsin if the income producing activity is performed wholly within Wisconsin. If the income producing activity is performed partly within and partly without Wisconsin, receipts shall be assigned to Wisconsin based upon the ratio of direct costs of performing the services in Wisconsin to the direct costs of performing the services in all states having jurisdiction to tax the business. The following are special rules for determining when receipts from certain income producing activities are in Wisconsin during the taxable year:

a. Gross receipts from the sale, lease, rental or other use of real property are in Wisconsin if the real property is located in Wisconsin.

b. Gross receipts from the rental, lease, licensing the use of or other use of tangible personal property shall be assigned to Wisconsin if the property is within Wisconsin during the entire period of rental, lease, license or other use. If the property is within and without Wisconsin during the period of rental, gross receipts attributable to Wisconsin shall be based upon the ratio which the time the property was used in Wisconsin bears to the total time the property was used in all states having jurisdiction to tax the business during each year. However, if mobile property such as automobiles and trailers is within and without Wisconsin during the period of rental, gross receipts shall be attributed to the situs where the property is customarily kept or garaged or, for property that is not customarily kept at any location, gross receipts shall be attributed to the situs where the property first comes into the lessee's possession.

c. Gross receipts from the performance of personal services are attributable to Wisconsin if the services are performed entirely in Wisconsin.

If the services are performed partly within and partly without Wisconsin, gross receipts shall be attributable to Wisconsin based upon the ratio which compensation and other direct costs of performing the services in Wisconsin bear to total compensation and other direct costs of performing the services in all states having jurisdiction to tax the business during the taxable year. Where services are performed in a state which does not have jurisdiction to tax the business, gross receipts are attributed to Wisconsin if the compensation related to performing the services is allocated to Wisconsin by s. 71.04 (6) (b) or 71.25 (8) (b), Stats.

6. The provisions of this paragraph shall also apply to sales, other than sales of tangible personal property, to the federal government.

(7) **PARTNERSHIPS AND JOINT VENTURES.** A partnership or unincorporated joint venture is considered an extension of the partners or owners when the partners or owners have more than a passive ownership interest in the partnership or unincorporated joint venture. When this is the case, partnership or unincorporated joint venture income or loss shall retain its character as apportionable or nonapportionable income or loss and the partner's or owner's share of property, payroll and sales used to produce apportionable business income or loss shall be included in the partner's or owner's apportionment factors. If the ownership interest is passive, the partnership or unincorporated joint venture interest shall be an investment, with the apportionment factors being unaffected.

History: Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (1m); r. and recr. (5) (f) 5., Register, November, 1973, No. 215; eff. 12-1-73; cr. (intro.), Register, January, 1978, No. 265, eff. 2-1-78; r. and recr. Register, June, 1991, No. 426, eff. 7-1-91.

Tax 2.40 Nonapportionable income. **History:** Cr. Register, August, 1973, No. 212, eff. 9-1-73; cr. (3m), Register, November, 1977, No. 263, eff. 12-1-77; r. Register, June, 1991, No. 426, eff. 7-1-91.

Tax 2.41 Separate accounting method. (s. 71.07 (2), Stats.) (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: the ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business.

(a) Federal income taxes are based upon income and should, therefore, be allocated to Wisconsin business on the basis of income. Federal income taxes are deductible for income years through 1974 only on the cash basis, and the allocation to Wisconsin business for any year, therefore, must be based upon the ratio of income within Wisconsin to the total income of the year on which the federal income taxes are assessed, even though that ratio differs from the ratio of the year in which the taxes are actually paid. Federal income taxes are not deductible for income years 1975 and thereafter.

(b) The relationship of the general overhead items to Wisconsin operations will determine whether the home office income and expense should be allocated to the Wisconsin business. Miscellaneous income, such as income from intangibles and income from tangible property used in the business, and such overhead items as officers' salaries, office salaries, of-

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office rent and sundry office expenses should ordinarily be included in the allocation.

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

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

Tax 2.44 Permission to change basis of allocation. (s. 71.07 (2), Stats.) Except when income must be reported on the apportionment basis, permission to make a change either from separate accounting to apportionment, or vice versa shall be obtained in writing from the department of revenue upon written application setting forth in detail the reasons why the desired change will more clearly reflect the taxpayer's Wisconsin income. Such application shall be mailed to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708 before the end of the tax year for which the change is desired.

History: 1-2-56, am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1983, No. 333, eff. 10-1-83.

Tax 2.45 Apportionment in special cases. (s. 71.25 (12), Stats.) When the business of any person, other than an interstate professional sports club or "financial organization" or "public utility," as defined in s. 71.25 (10), Stats., within Wisconsin is an integral part of a unitary business conducted within and without Wisconsin, but because of unusual or unique circumstances the portion of the income of the person derived from business transacted in Wisconsin cannot be ascertained with reasonable certainty by use of the apportionment formula provided in s. 71.25 (6), Stats., or by separate accounting in view of the unitary nature of the business, the department will substitute in the place of some or all of the statutory apportionment factors another factor or other factors as will reasonably apportion to Wisconsin the business income properly assignable to Wisconsin. In any case in which an apportionment of business income is made pursuant to this regulation the taxpayer, at the time of the assessment, will be apprised of the factors used in the formula adopted.

History: Cr. Register, December, 1956, No. 12, eff. 1-1-57; am. Register, August, 1973, No. 212, eff. 9-1-73; am. Register, September, 1983, No. 333, eff. 10-1-83; am. Register, July, 1989, No. 403, eff. 8-1-89.

Tax 2.46 Apportionment of business income of interstate air carriers. (s. 71.07 (2) (e), Stats.) The apportionable income of an interstate air carrier doing business in Wisconsin shall be apportioned to Wisconsin on the basis of the ratio obtained by taking the arithmetical average of the following 3 ratios:

(1) The ratio which the aircraft arrivals and departures within this state scheduled by such carrier during the calendar or fiscal year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period; provided that in the case of nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures;

Register, June, 1991, No. 426