

Chapter Tax 3

INCOME TAXATION, DEDUCTIONS FROM GROSS INCOME, EXCLUSIONS AND EXEMPTIONS

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Tax 3.03 Dividends received deduction – corporations. (ss. 71.22 (4), 71.26 (2) and (3) (j), 71.42 (2) and 71.45 (2) (a) 8., Stats.) **(1)PURPOSE.** This section clarifies the deduction from gross income allowed to corporations for dividends received. Dividends may be deductible due to the recipient’s ownership of the payer corporation, as provided in sub. (3).

(2) DEFINITION. “Dividends received” means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under ch. 71, Stats.

Note: Refer to s. 71.26 (3) (j), Stats.

(3) DIVIDENDS DEDUCTIBLE DUE TO OWNERSHIP. A corporation may deduct from gross income 100% of the dividends received from a payer corporation during a taxable year if both of the following occur:

(a) The dividends are paid on common stock of the payer corporation.

(b) The corporation receiving the dividends owns directly or indirectly during the entire taxable year in which the dividends are received at least 70% of the total combined voting stock of the payer corporation.

Note: 1) Refer to s. 71.26 (3) (j), Stats.

2) Only cash dividends were deductible by the recipient in taxable years 1980 through 1986. This limitation was eliminated by 1987 Wis. Act 27.

3) For taxable years 1980 through 1983 the deduction was limited to 50% of the dividends received.

4) For the taxable year 1984 the deduction was limited to 75% of the dividends received.

5) For taxable years 1985 and thereafter the deduction equals 100% of the dividends received.

6) For taxable years beginning before January 1, 1993, the corporation receiving the dividends was required to own directly or indirectly during the entire taxable year in which the dividends were received at least 80% of the total combined voting stock of the payer corporation. The percentage of ownership requirement was changed from 80% to 70% by 1993 Wis. Act 16.

(4) LIMITATION ON DEDUCTION. The deduction under sub. (3) may not exceed the dividend received and included in gross income for a taxable year.

(5) DIVIDENDS INCLUDABLE IN GROSS INCOME. All dividend income shall be included in full in gross income on the franchise or income tax return of the recipient, whether or not certain dividends are deductible.

History: 1–2–56; am. Register, September, 1964, No. 105, eff. 10–1–64; am. (1), Register, March, 1966, No. 123, eff. 4–1–66; am. Register, February, 1975, No. 230, eff. 3–1–75; cr. (5), Register, July, 1978, No. 271, eff. 8–1–78; r. and recr. Register, June, 1990, No. 414, eff. 7–1–90; r. and recr. Register, December, 1995, No. 480, eff. 1–1–96.

Tax 3.085 Retirement plan distributions. (s. 71.04 (1) (a), Stats.) **(1)NONRESIDENTS.** Employe annuity, pension, profit-sharing or stock bonus plan distributions, including self-employed retirement plan distributions, and distributions from qualified deferred compensation plans under ss. 401 (k), 403 (b) and 457 of the internal revenue code received by a person while a nonresident of Wisconsin shall be exempt from the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed in Wisconsin.

(2) RESIDENTS. Employe annuity, pension, profit-sharing or stock bonus plan distributions, including self-employed retirement plan distributions, and distributions from qualified deferred compensation plans under ss. 401 (k), 403 (b) and 457 of the inter-

nal revenue code received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin.

History: Cr. Register, March, 1978, No. 267, eff. 4–1–78; am. Register, June, 1990, No. 414, eff. 7–1–90.

Tax 3.095 Income tax status of interest and dividends received from government and other securities by individuals and fiduciaries. (s. 71.05 (6) (a) 1. and (b) 1., Stats.) **(1)PURPOSE.** This section lists federal, state, municipal and other government securities, and certain nongovernment securities, and specifies whether interest and dividends payable on those securities are exempt from or subject to the Wisconsin income tax on individuals and fiduciaries. The lists are not all-inclusive.

Note: Information regarding the income tax status of interest and dividends received from securities not listed in this section may be obtained by writing to Wisconsin Department of Revenue, Technical Services Staff, P.O. Box 8933, Madison, WI 53708–8933.

(2) DEFINITIONS. In this section:

(a) “CHAP” means “Community Housing Alternatives Program.”

(b) “Federal securities” means only securities which are direct and primary obligations of the United States and securities the interest on which federal law prohibits states from taxing. Federal securities do not include securities for which the United States is merely a guarantor and, therefore, has an obligation which is secondary and contingent to that of the issuer of the security.

(c) “Public housing agency” means any state, county, municipality or other governmental entity or public body, or agency or instrumentality thereof, which is authorized to engage in or assist in the development or operation of lower income housing, under 42 USC 1437a (b) (6).

(d) “WHEDA” means “Wisconsin Housing and Economic Development Authority.”

(3) GENERAL. (a) Under s. 71.05 (6) (a) 1., Stats., interest income which is subject to the Wisconsin income tax on individuals and fiduciaries, but which is not included in federal adjusted gross income, shall be added to federal adjusted gross income in computing Wisconsin taxable income.

Note: Section 71.05 (1) (a) 1., 1985 Stats., was amended by 1987 Wis. Act 27, to provide for the addition to federal adjusted gross income, of any interest not included in federal adjusted gross income which is not specifically exempted from state taxation. This change applies only to securities issued after January 28, 1987. Prior to enactment of 1987 Wis. Act 27, the addition applied only to interest excluded from federal adjusted gross income solely by s. 103 of the internal revenue code. Section 71.05 (1) (a) 1., 1985 Stats., was renumbered s. 71.05 (6) (a) 1., Stats., by 1987 Wis. Act 312, effective January 1, 1989.

(b) Under s. 71.05 (6) (b) 1., Stats., interest and dividend income which is included in federal adjusted gross income but which is by federal law exempt from state income taxation, shall be subtracted from federal adjusted gross income in computing Wisconsin taxable income.

(4) EXEMPT SECURITIES. Interest and dividends payable on the following securities shall be exempt from the Wisconsin income tax on individuals and fiduciaries:

(a) *Exempt state, municipal and other government securities.*
 1. District of Columbia general obligation bonds issued on or

prior to January 28, 1987, where the interest from the bonds qualifies for exemption from federal income taxation for a reason other than or in addition to s. 103 of the internal revenue code.

2. Higher education bonds issued by the state of Wisconsin, s. 71.05 (6) (a) 1., Stats.

3. Public housing agency bonds issued on or prior to January 28, 1987, by agencies located outside Wisconsin where the interest from the bonds qualifies for exemption from federal income taxation for a reason other than or in addition to s. 103 of the internal revenue code.

4. Public housing authority bonds issued by municipalities located in Wisconsin, s. 66.40 (14) (a), Stats.

5. Redevelopment authority bonds issued by municipalities located in Wisconsin, s. 66.431 (5) (a) 4.c., Stats.

6. Stripped general obligation bond certificates attributable to certain District of Columbia general obligation bonds issued on or prior to January 28, 1987, where the interest from the bonds qualifies for exemption from federal income taxation under section 1286 of the internal revenue code and D.C. Code Ann. 47-332.

Note: Stripped general obligation bond certificates meeting the criteria of subd. 6. include Stripped Tax-Exempt Participations, or 'STEPS.'

7. Virgin Island Housing Authority bonds issued on or prior to January 28, 1987, where the interest from the bonds qualifies for exemption from federal income taxation for a reason other than or in addition to section 103 of the internal revenue code.

8. WHEDA bonds issued on or prior to January 28, 1987, except business development revenue bonds, economic development revenue bonds and CHAP housing revenue bonds issued by WHEDA.

9. WHEDA bonds issued to fund a loan under s. 234.935, Stats.

10. WHEDA bonds issued under s. 234.65, Stats., to fund an economic development loan to finance construction, renovation or development of property that would be exempt under s. 70.11 (36), Stats.

11. Wisconsin Housing Finance Authority bonds, 42 USC 1437i (b).

Note: Under par. (a), interest and dividends payable on certain securities issued on or before January 28, 1987, is exempt from Wisconsin income tax. This is because prior to enactment of 1987 Wis. Act 27, which amended s. 71.05 (1) (a) 1., 1985 Stats., effective with securities issued after January 28, 1987, no modification was provided to add to federal adjusted gross income interest and dividends which were excludable from federal adjusted gross income for any reason other than or in addition to s. 103 of the internal revenue code. Section 71.05 (1) (a) 1., 1985 Stats., was renumbered s. 71.05 (6) (a) 1., Stats., by 1987 Wis. Act 312, effective January 1, 1989.

(b) *Exempt federal securities.* 1. Armed Services Housing Mortgage Insurance debentures, 12 USC 1748b (f).

2. Bank for Cooperative debentures, 12 USC 2134.

3. Bank repurchase agreements for U.S. Government treasury bills, notes and bonds, if interest is paid by the federal government directly to the taxpayer.

4. Commodity Credit Corporation bonds, 15 USC 713a-5.

5. Commonwealth of Puerto Rico public improvement bonds, 48 USC 745.

6. Farm Credit System Financial Assistance Corporation notes, bonds and debentures, 12 USC 2278b-10 (b).

7. Federal Deposit Insurance Corporation bonds, 12 USC 1825.

8. Federal Farm Credit Banks Consolidated Systemwide Securities, 12 USC 2055.

9. Federal Home Loan Bank bonds, debentures and notes, 12 USC 1433.

10. Federal Housing Authority debentures, 12 USC 1710 (d) and 1747g (g).

11. Federal Intermediate Credit Bank debentures, 12 USC 2079.

12. Federal Land Bank Association bonds, notes and debentures, 12 USC 2055.

13. Federal Land Bank bonds, 12 USC 2055.

14. Federal Reserve Bank dividends, 12 USC 531.

15. Federal Savings and Loan Insurance Corporation bonds, 12 USC 1725 (e).

16. Financial Assistance Corporation bonds, notes and debentures, 12 USC 2278b.

17. Financing Corporation obligations, 12 USC 1441.

18. General Insurance Fund debentures issued to acquire housing projects, 12 USC 1747g (g).

19. General Insurance Fund debentures issued under the War Housing Insurance Law, 12 USC 1739 (d).

20. General Services Administration Public Building Trust Participation certificates, 31 USC 3124.

21. Guam bonds, 48 USC 1423a.

22. Industrial Development bonds of East Samoa, 48 USC 1670.

23. Panama Canal Zone bonds, 31 USC 743-745.

24. Production Credit Association debentures, 12 USC 2098.

25. Proprietary zero-coupon certificates, 31 USC 3124.

Note: Proprietary zero-coupon certificates include CATS, TIGRs, Cougars, ETRs, Lions, STARS, Zebras, etc.

26. Puerto Rico Aqueduct and Sewer Authority revenue bonds, 48 USC 745.

27. Puerto Rico Electric Power Authority electric revenue bonds, 48 USC 745.

28. Puerto Rico Electric Power Authority power revenue bonds, 48 USC 745.

29. Puerto Rico Highway Authority revenue bonds, 48 USC 745.

30. Puerto Rico Industrial Development Company bonds, 48 USC 745.

31. Puerto Rico Municipal Finance Agency 1974 Series A bonds, 48 USC 745.

32. Puerto Rico Ports Authority revenue bonds, 48 USC 745.

33. Puerto Rico Public Buildings Authority public education and health facility bonds, 48 USC 745.

34. Puerto Rico Public Buildings Authority revenue bonds, 48 USC 745.

35. Puerto Rico Telephone Authority revenue bonds, 48 USC 745.

36. Puerto Rico Water Resource Authority Series B debentures, 48 USC 745.

37. Resolution Funding Corporation bonds, 12 USC 1441b (f) (7).

38. Student Loan Marketing Association obligations, 20 USC 1087-21.

39. Tennessee Valley Authority bonds, 16 USC 831n-4 (d).

40. Territory of Hawaii bonds.

41. Territory of Puerto Rico bonds, 48 USC 745.

42. United States Postal Service bonds, 39 USC 2005.

43. United States savings bonds, 31 USC 3124.

44. United States Treasury bills and notes, 31 USC 3124.

45. University of Puerto Rico university system revenue bonds, 48 USC 745.

46. Virgin Islands general obligation bonds, 48 USC 1574 (b) (ii) (A).

47. Virgin Islands Public Improvement bonds, 48 USC 1574 (b) (i).

(5) **TAXABLE SECURITIES.** Interest and dividends payable on the following securities shall be subject to the Wisconsin income tax on individuals and fiduciaries:

(a) *Taxable state and municipal government securities.* 1. District of Columbia Development Land Agency bonds, 42 USC 1452.

2. District of Columbia general obligation bonds issued after January 28, 1987, D.C. Code 47-33.

3. Municipal bonds.

4. Public housing agency bonds issued after January 28, 1987, and by agencies located outside Wisconsin. Public housing agency bonds issued on or prior to January 28, 1987, by agencies located outside Wisconsin where the interest from the bonds qualifies for exemption from federal income taxation solely because of section 103 of the internal revenue code.

5. Robert F. Kennedy Stadium bonds, D.C. Code 2-1720 et seq.

6. Transit bonds of the Washington Metropolitan Area Transit Authority.

7. Wisconsin Health Education Assistance Loan revenue obligation bonds, s. 39.374, Stats.

8. WHEDA bonds issued after January 28, 1987, and all business development revenue bonds, economic development revenue bonds and CHAP housing revenue bonds issued by WHEDA, regardless of when issued, unless specifically exempt by law, ch. 234, Stats.

(b) *Other taxable securities.* 1. Asian Development Bank bonds, 22 USC 290i-9.

2. College Construction Loan Insurance Association obligations, 20 USC 1132.

3. Environmental Financing Authority obligations, 33 USC 1281.

4. Export-Import Bank of the United States debentures, 12 USC 635.

5. Farmer's Home Administration insured notes, 7 USC 1928 and 1929.

6. Federal Assets Financing Trust participation certificates, 12 USC 1717 (c).

7. Federal Financing Bank bonds, 12 USC 2288.

8. Federal Home Loan Bank dividends, 12 USC 1426 and 1436.

9. Federal Home Loan Mortgage Corporation obligations, 12 USC 1455.

10. Federal National Mortgage Association certificates, 12 USC 1718.

Note: In 1968, the Federal National Mortgage Association became 2 separate corporations. One corporation retained the original name and the other is known as the Government National Mortgage Association.

11. Federal National Mortgage Association dividends, 12 USC 1719.

12. Government National Mortgage Association, or Ginnie Mae, bonds, 12 USC 1720 and 1721.

13. HUD/New Communities Program obligations, 42 USC 4514.

14. Insured Merchant Marine bonds, 46 USC 1273.

15. Inter-American Development Bank bonds, 22 USC 283.

16. Interest paid on deposits in any federal bank or agency.

17. International Bank for Reconstruction and Development bonds, also known as World Bank bonds, 22 USC 286.

18. Rural Telephone debentures, 7 USC 947 (a).

19. Small Business Administration notes, 15 USC 633.

20. Small Business Investment Company debentures, 15 USC 683 and 687.

21. Tennessee Valley Authority bonds, 16 USC 831n-3.

22. Virgin Islands Housing Authority bonds issued after January 28, 1987, 48 USC 1408 (a).

23. World Bank bonds, also known as International Bank for Reconstruction and Development bonds, 22 USC 286.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; emerg. cr. (1) (g) to (i), am. (2) (intro.), r. (2) (b), (h) and (j), eff. 7-31-87; r. and recr. Register, April, 1988, No. 388, eff. 5-1-88; emerg. am. (3) (intro.) and (c), cr. (3) (g), r. and recr. (4) (b), eff. 1-1-89; am. (2) (intro.), (3) (intro.), (c), (f), (4) (intro.) and (b), cr. (4) (c) to (f), Register, August, 1989, No. 404, eff. 9-28-89; cr. (1) (a), (b), (f), (g), (i), (q), (r) and (v), (2) (a), (d), (f), (g), (m), (o), (p) to (u), (w), (zh), (zq) and (zr), (4) (b) and (e); renum. (1) (a) to (n), (2) (a) to (zb), (4) (a), (b), (d) and (e) to be (1) (c) to (e), (h), (j) to (p), (s) to (u), (2) (b), (c), (e), (h) to (l), (n), (v), (x) to (zd), (zf), (ze), (zg), (zi) to (zp), (4) (d), (h), (g) and (a) and am. (1) (p), Register, June, 1991, No. 426, eff. 7-1-91; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94.

Tax 3.096 Interest paid on money borrowed to purchase exempt government securities. (s. 71.05 (6) (b) 1., Stats.)

(1) Any amount of distributable and nondistributable interest or dividend income which is by federal law exempt from the Wisconsin income tax shall be reduced by any related expense before it is claimed as a subtraction modification on a Wisconsin fiduciary income tax return.

(2) Interest expense is a "related expense" if it is incurred to purchase securities producing exempt interest or dividend income and if it is deducted in computing Wisconsin taxable income.

(3) Interest expense is not a "related expense" if it is incurred to purchase securities producing exempt interest or dividend income but is not deducted in computing Wisconsin taxable income (for example, because the taxpayer elects the standard rather than to itemize deductions).

Note: 1) For taxable year 1987, the subtraction modification for the amount of distributable and nondistributable exempt interest and dividend income did not have to be reduced by related expenses before it was claimed on a Wisconsin fiduciary return as a result of amendment to s. 71.05 (1) (b) 1. by 1987 Wis. Act 27.

2) For taxable years prior to 1986, individual taxpayers were required to reduce the amount of interest or dividend income which was by law exempt from Wisconsin income tax by any related expense before the income was claimed as a subtraction modification on a Wisconsin individual income tax return if the related expense was deducted in computing Wisconsin taxable income.

Examples:

1) U.S. bond interest exempt from Wisconsin income tax.	\$600
Interest which was paid on funds used to acquire exempt securities and which was claimed as an itemized deduction.	<u>400</u>
Subtraction modification.	<u>\$200</u>
2) U.S. bond interest exempt from Wisconsin income tax.	\$400
Interest paid to acquire the exempt securities which was claimed as an itemized deduction.	<u>600</u>
Subtraction modification.	<u>\$ 0</u>
3) U.S. bond interest exempt from Wisconsin income tax.	\$400
Interest paid to acquire the exempt securities but not claimed as an itemized deduction	<u>600</u>
Subtraction modification	<u>\$400</u>

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77; am. (1), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 3.098 Railroad retirement supplemental annuities. (s. 71.05 (6) (b) 3., Stats.).

Railroad retirement supplemental annuities paid under 45 USC 231m are exempt from the Wisconsin taxable income of their recipients.

Note: 1) The Railroad Retirement Act of 1974 as amended by P.L. 98-76 (45 USC s. 231m), effective August 12, 1983, provides that:

"(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1954 [26 USCS §§ 1 et seq.], notwithstanding any other law of the United States, or of any State . . . no annuity or supplemental annuity shall be . . . subject to any tax. . . .

(b) (1) This section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section (2) (b) of this Act [45 USCS § 231a (b)] from income taxable pursuant to Federal income tax provisions of the Internal Revenue Code of 1954 [26 USCS §§ 1 et seq.]"

2) 45 USCS. s. 231m prohibits states from taxing railroad retirement supplemental annuity payments. Taxpayers may make a modification to federal adjusted gross income to remove this income in computing Wisconsin adjusted gross income.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77; am. Register, July, 1989, No. 403, eff. 8-1-89.

Tax 3.91 Petition for redetermination. (ss. 71.80 (18), 71.88 (1), 77.59 (6) and 77.61 (14), Stats.) (1) Scope. A person feeling aggrieved by a notice of additional assessment of income, franchise, sales, use, withholding or gift tax, by a notice of reduced homestead, farmland preservation or other credits, or by a notice of refund or denial of refund may petition the department of revenue for redetermination. This section describes the administrative provisions related to the petition for department redetermination.

(2) **FORMAT OF THE PETITION.** The petition for redetermination specified in ss. 71.88 (1) and 77.59 (6), Stats., shall be written, preferably typed, on only one side of plain white paper not more than 8 1/2 inches wide by 11 inches long and shall be filed in duplicate. It shall set forth clearly and concisely the specific grievances to the assessment, refund or denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative.

(3) **FILING DEADLINE.** A petition for redetermination shall be filed within 60 days after receipt of a notice of additional assessment, refund or denial of refund. A petition for redetermination is not "filed" within the proper statutory 60-day time period unless it is actually received within the 60-day period, or unless it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight of the sixtieth day and the petition is actually received by the department within 5 days of the prescribed sixtieth day date.

Note: Refer to ss. 71.80 (18), 71.88 (1), 77.59 (6) and 77.61 (14), Stats.

(4) **DEPOSIT OR PAYMENT.** (a) *Deposit.* Any person who files a petition for redetermination may elect to deposit the amount of

additional assessment, including interest and penalty, with the department of revenue at any time before the department makes its redetermination. Any deposited amount which is later refunded will bear interest at the statutory rate.

(b) *Payment.* A person may also pay any portion of the assessment admitted to be correct together with interest to date of payment. However, the payment shall be considered an admission that portion of the assessment is correct. The admitted portion that is paid may not be recovered in an appeal or in any other action or proceeding.

(5) **INFORMAL CONFERENCE.** A taxpayer may request in a petition for redetermination or at any time before the department of revenue has acted on the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. The conference shall be held at a time and place determined by the department.

(6) **CLOSING STIPULATIONS.** If the informal conference specified in sub. (5) results in an agreement as to facts and issues and the applicable law, the taxpayer and the department of revenue may enter into a closing stipulation.

History: 1-2-56; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, July, 1978, No. 271, eff. 8-1-78; renum. (1) and (2) to be (2) and (3) and am., cr. (1) and (4), (5) and (6) renum. from Tax 3.92 and 3.93 and am., Register, June, 1990, No. 414, eff. 7-1-90.

Tax 3.94 Claims for refund. History: 1-2-56; am. (1) and (2), Register, September, 1964, No. 105, eff. 10-1-64; am. (1), Register, May, 1966, No. 125, eff. 6-1-66; am. Register, July, 1978, No. 271, eff. 8-1-78; am. (1), renum. (2) and (3) to be (3) (a) and (b) and am., cr. (2), Register, June, 1990, No. 414, eff. 7-1-90; **r. Register, May, 1996, No. 485, eff. 6-1-96.**