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Recently Adopted Rules Summarized

Summarized below is information regarding administrative rules adopted, revised, or repealed, effective June 1, 1996. Sections Tax 2.09 (Reproduction of franchise or income tax forms), 2.105 (Notice by taxpayer of federal audit adjustments and amended returns), and 2.12 (Amended returns) are repealed and recreated. Section Tax 2.31 (Compensation received by nonresident members of professional athletic teams) is created, and sec. Tax 3.94 (Claims for refund) is repealed.

In addition to the summaries, the text of the rules is reproduced, excluding notes and examples. See the order blank on page 51 of this Bulletin for information about obtaining the Revenue section of the Wisconsin Administrative Code.

Tax 2.09 Reproduction of franchise or income tax forms. Statutory references are updated and “franchise” tax is added to the title. The rule is revised to reflect the department’s policy and specifications regarding forms reproduction, and for clarity, titles are added to the subsections, the subsections are grouped differently, and language and style are updated. The text of Tax 2.09 is as follows:

Tax 2.09 **REPRODUCTION OF FRANCHISE OR INCOME TAX FORMS.** (ss. 71.03(6)(a), 71.20(1), 71.24(1) and 71.44(1)(a), Stats.) (1) **GENERAL.** Subject to the provisions

of this section, the official Wisconsin franchise or income tax forms required to be filed with the department may be reproduced and the reproductions may be filed in lieu of the corresponding official forms. Any reproduction which varies from the official version in any particular, except as authorized in this section, shall be submitted to the department for approval before it is used. The department may reject any reproduction which is in whole or in part illegible or which is of a format that has not been approved by the department.

(2) **SPECIFICATIONS.** The following specifications shall apply:

(a) Printing of reproductions shall be by conventional printing processes, photocopying, computer graphics or similar reproduction processes and shall duplicate the font sizes, graphics and format of the official form. Reproductions may be printed on one side or both sides of the paper.

(b) Reproductions of optical character reader-scannable, or OCR-scannable, documents shall bear an OCR-scannable line as prescribed for the specific document type. Photocopies of OCR-scannable forms may not be filed.

(c) The reproductions shall be on paper of substantially the same weight and texture, and of quality at least as good as that used in the official forms.

(d) In the reproduction of tax forms, official forms printed on colored paper may be reproduced on white paper, and black ink may be substituted for colored ink.

(e) The size of the reproduction, both as to dimensions of the paper and image reproduced on it, shall be the same as that of the official form, except that full-page official forms which are other than 8½ inches by 11 inches in size may be reproduced on 8½ inch by 11 inch paper.

(f) Except for returns executed by fiduciaries as provided in sub. (3) or returns filed electronically, all signatures required on returns which are filed with the department shall be original, affixed subsequent to the reproduction process.

(3) **FIDUCIARIES.** A fiduciary or the fiduciary’s agent may use a facsim-

ile 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 the returns declaring, under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by the person to sign the returns filed and that the 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 shall be retained by the person filing the returns and shall be available for inspection by the department.

(c) If returns are reproduced by photocopying or similar reproductive methods, the facsimile signature shall be affixed subsequent to the reproduction process.

Tax 2.105 Notice by taxpayer of federal audit adjustments and amended returns. References to temporary recycling surcharge are added as appropriate. In sub. (2), the definition of "taxpayer" is expanded to include partnerships and limited liability companies. Subsection (4) is changed to reflect a 1991 change to sec. 71.76, Wis. Stats., regarding when a taxpayer must notify the department of federal changes, and to clarify reporting requirements regarding federal adjustments and amended returns. Subsections (5), (6), and (7) are rearranged, for clarity, and obsolete material is deleted. Language, style, and format are updated. The text of Tax 2.105 is as follows:

Tax 2.105 NOTICE BY TAXPAYER OF FEDERAL AUDIT ADJUSTMENTS AND AMENDED RETURNS. (ss. 71.75(2), 71.76, 71.77(2) and (7) and 77.96(4), 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 franchise or income tax

and temporary recycling surcharge purposes, and the result if a taxpayer fails to report the adjustments or amended returns.

(2) **DEFINITION.** In this section, "taxpayer" includes individuals, estates, trusts, partnerships, limited liability companies and corporations.

(3) **GENERAL.** (a) Under ss. 71.76 and 77.96(4), Stats., a taxpayer meeting the conditions described in sub. (4) shall report to the department changes or corrections made to a tax return by the internal revenue service, or file with the department amended Wisconsin franchise or income tax returns or amended temporary recycling surcharge 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 adjustments or amended return described in par. (a). The 90-day limitation does not apply to instances where the taxpayer files an incorrect franchise or income tax return or temporary recycling surcharge return with intent to defeat or evade the franchise or income tax or temporary recycling surcharge assessment.

(4) **TAXPAYER REQUIRED TO REPORT.** (a) *Federal adjustments.* If the federal net income tax payable, a credit claimed or carried forward, a net operating loss carried forward or a capital loss carried forward on a taxpayer's federal tax return is adjusted by the internal revenue service in a way which affects the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall report the adjustments to the department within 90 days after they become final. The following shall also apply with respect to federal adjustments:

1. 'Finality of federal adjustments.' For the purpose of determining

when the federal adjustments 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 subd. 1. 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 to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept 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.

2. 'Information to report to department.' The taxpayer shall submit to the department a copy of the final federal audit report issued by the internal revenue service together with any other documents or schedules necessary to inform the department of the adjustments as finally determined. The report shall be included with an amended Wisconsin return if a Wisconsin refund is being claimed and may be, but is not required to be, included with an amended return if additional Wisconsin tax or temporary recycling surcharge is due or if there

is no change in tax or temporary recycling surcharge.

3. 'Agreement with adjustments.' A taxpayer shall be deemed to concede the accuracy of the federal adjustments for Wisconsin franchise or income tax or temporary recycling surcharge purposes unless a statement is included with the report to the department stating why the taxpayer believes 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 net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall file with the department an amended Wisconsin return reflecting the same changes. 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 net franchise or income tax or temporary recycling surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. 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.* An amended Wisconsin return or a taxpayer's report of federal adjustments submitted with an amended Wisconsin return shall be filed in accordance with the provisions of s. Tax 2.12(5) and (6). A taxpayer's taxpayer's report of federal adjustments submitted to the department without an amended return shall be identified as reflecting federal adjustments made by the internal revenue service and shall be mailed to Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708-8906. The report submitted without an amended return may not be made a part of or attached to any Wisconsin tax return.

(5) **ASSESSMENTS AND REFUNDS BY DEPARTMENT.** If a taxpayer reports federal adjustments or files an amended Wisconsin return with the department within 90 days after the adjustments become final or after an amended return is filed with the internal revenue service or another state, the department may make an assessment or issue a refund relating to the report or amended return as follows:

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

(b) *Refunds.* Under s. 71.75(2), Stats., the department may issue a refund if an amended return is filed within 4 years of the unextended date the original Wisconsin franchise or income tax return was due.

(c) *Exceptions.* 1. An assessment may be made later than the 4- and 6-year periods provided 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 of federal adjustments or an amended Wisconsin return. However, the assessment made after the expiration of the 4- and 6-year periods shall 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 an amended Wisconsin return 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 or temporary recycling surcharge 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 adjustments.

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.

4. If federal adjustments or changes on an amended return filed with the internal revenue service or another state pertain to a year which has been previously field audited by the department and the field audit has been finalized, an assessment or refund nevertheless may be made. However, the assessment or refund shall only relate to those federal adjustments or the changes on the amended return. Notice of the assessment or refund shall be given to the taxpayer within 90 days of the date the department received the report of federal adjustments or an amended Wisconsin return from the taxpayer.

(6) **TAXPAYER'S FAILURE TO REPORT FEDERAL ADJUSTMENTS OR FILE 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 federal or other state return, relating to the taxable year 1987 and thereafter, within the 90-day period described in sub. (3)(b), the department may assess additional Wisconsin franchise or income tax or temporary recycling surcharge relating to the adjustments or amended return within 4 years after discovery by the department.

(b) *Adjustments and amended returns relating to 1986 and prior taxable years.* If a taxpayer fails to report federal adjustments or the filing of an amended federal or other state return which related to 1986 or prior taxable years within the 90-day period described in sub. (3)(b), the department may assess additional Wisconsin franchise or income 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.

Tax 2.12 Amended returns. Throughout the rule, references to credit claims, temporary recycling surcharge, and partnership returns are added as appropriate. Many of the subsections are rearranged, for clarity. Some of the provisions of Tax 3.94 are made part of Tax 2.12, including the definition of "timely filed," as part of sub. (2) and the manner in which amended forms must be filed, as part of sub. (6). Subsections (5) and (6) clarify that amended forms must be filed on the proper form and in the proper manner, and a listing of forms is provided.

In addition, the rule is expanded to include many new provisions, such as: subs. (1) — the scope of the rule; (3)(b) — claims for refund must be made on an amended form; (3)(c) and (d) — when and how a taxpayer must report federal audit changes and amended federal or other states' returns; (4)(b) — exceptions to the 4-year filing limitation; (5)(b) — the department may prescribe special amended forms; and (6)(c) and (d) — amended returns must be mailed to a specific address and may not be attached to original returns. The text of Tax 2.12 is as follows:

Tax 2.12 AMENDED RETURNS. (ss. 71.30(4), 71.74, 71.75, 71.76, 71.77, 71.80(18) and 77.96(4), Stats.) (1) **SCOPE.** This section applies to amended Wisconsin franchise or income tax returns, amended partnership returns, amended temporary recycling surcharge returns and amended farmland preservation credit and homestead credit claims.

(2) **DEFINITION.** In this section, "timely filed," in the case of an amended return or credit claim, means the amended return or credit claim is

actually in the possession of the department prior to the expiration of the statutory limitation period or extended limitation period, or it is mailed in a properly addressed envelope with postage prepaid and is received by the department within 5 working days after the last day of the statutory limitation period or extended limitation period.

(3) **GENERAL.** (a) The department shall accept amended returns and credit claims to correct previously filed original, other amended or adjusted Wisconsin franchise or income tax returns, partnership returns, temporary recycling surcharge returns or farmland preservation credit or homestead credit claims.

(b) Under s. 71.75(6), Stats., and as provided in this section, a refund of taxes or credits under ch. 71, Stats., or temporary recycling surcharge under s. 77.96(4), Stats., may be claimed only by filing an amended return or credit claim.

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of Wisconsin net franchise or income tax or temporary recycling surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward.

(d) An amended Wisconsin return filed to report internal revenue service adjustments as provided in s. Tax 2.105(4)(a) shall include a copy of the final federal audit report.

(e) An amended return or credit claim does not begin or extend the statute of limitation periods for assessing additional tax or temporary recycling surcharge or claiming a refund.

(4) **TIMELY FILING.** (a) Except as provided in par. (b), if an amended return or credit claim shows a refund, it shall be filed within 4 years of the unextended due date of the original return.

(b) The 4-year filing limitation in par. (a) does not apply in the following situations:

1. Except as provided in subs. 3 and 4, an amended Wisconsin return or credit claim requesting a refund may not be filed for any year covered by a field audit which resulted in a refund or no change in the tax owed, or in an assessment that has become final under s. 71.88(1)(a) or (2)(a), 71.89(2), 73.01 or 73.015, Stats., provided the department advises the taxpayer that the field audit is final unless the taxpayer appeals the result.

2. Except as provided in subs. 3 and 4, an amended Wisconsin return or credit claim requesting a refund may not be filed for any item of income or deduction assessed as a result of an office audit, provided the assessment has become final under s. 71.88(1)(a) or (2)(a), 71.89(2), 73.01 or 73.015, Stats.

3. An amended Wisconsin return or credit claim requesting a refund of the tax or temporary recycling surcharge paid as a result of an office audit or field audit assessment may be filed within 2 years of the date the tax or temporary recycling surcharge was assessed if no petition for redetermination was filed.

4. An amended Wisconsin return requesting a refund of an overpayment attributable to a capital loss carryback may be filed by a corporation within 4 years after the due date, or extended due date, for filing the return for the taxable year of the capital loss that is carried back.

5. If the limitation period for making an assessment or refund has been extended by written agreement between a taxpayer and the department, an amended Wisconsin return or credit claim requesting a refund relating to the year or years covered by the extension agreement may be filed during the extension period.

6. An amended Wisconsin return filed under the provisions of sub. (3)(c) shall be filed with the department within 90 days after the date the amended federal or other state return is filed.

7. An amended Wisconsin return filed under the provisions of sub. (3)(d) shall be filed with the department within 90 days of the date on which the federal audit adjustments become final.

8. An amended Wisconsin return filed under the provisions of s. 71.30(4), Stats., to claim a reduction of income resulting from a renegotiation or price redetermination of a defense contract or subcontract shall be filed within one year of the final determination.

(5) FORMS. (a) Except as provided in par. (b), an amended Wisconsin return or credit claim requesting a refund shall be filed on the proper form as shown in the following table, in the manner prescribed in sub. (6). An amended return filed for a purpose other than to request a refund is not required to be filed on the forms indicated below.

<u>ORIGINAL FORM</u>	<u>AMENDED FORM</u>
1, 1A, WI-Z	1X
1NPR	1NPR
1 or 1A with Schedule H	1X + corrected H*
1 with Schedule FC	1X + corrected FC*
1NPR with Schedule H or FC	1NPR + corrected H or FC*
Schedule H alone	Schedule H
2	2
3	3
3S	3S
4	4X
4I	4I
4T	4T
5	4X
5S	5S
1CNP	1CNP
1CNS	1CNS

* If H or FC is changed.

(b) The department may prescribe a special form for taxpayers to use in claiming a refund, to address a specific tax issue. In this situation, the special

form may be used in lieu of the amended form prescribed in par. (a).

(6) MANNER. (a) An amended return or credit claim shall be in writing, indicate the reporting period for which the change was made and contain a statement setting forth the specific grounds upon which the amended form is based.

(b) An amended return or credit claim other than form 1X or 4X shall be identified as an amended form by checking the "amended return" box if one is provided on the form or by marking "AMENDED" across the top of the first page of the amended form.

(c) An amended return or credit claim requesting a refund may not be made a part of or attached to any original Wisconsin return or credit claim.

(d) An amended return or credit claim shall be mailed to the department at the address specified on the form or in its instructions or at the address provided for mailing amended Wisconsin returns or credit claims.

Tax 2.31 Compensation received by nonresident members of professional athletic teams. This rule is created to provide a fair and equitable method of allocating and apportioning to Wisconsin, compensation received by nonresident members of professional athletic teams. The rule is based on the uniform regulations developed by the Federation of Tax Administrators (FTA) Task Force on Nonresident Income Tax Issues, and adopted by the FTA Membership in June 1994. The text of Tax 2.31 is as follows:

Tax 2.31 COMPENSATION RECEIVED BY NONRESIDENT MEMBERS OF PROFESSIONAL ATHLETIC TEAMS. (ss. 71.02 and 71.04(1)(a) and (11), Stats.) (1) SCOPE. This section apportions and allocates to Wisconsin, in a fair and equitable manner, a nonresident employe's total compensation for services rendered in Wisconsin as a member of a professional athletic team. The section does not apply to

employes domiciled in a state with which Wisconsin has a reciprocity agreement.

(2) DEFINITIONS. In this section:

(a) Except as provided in subds. 1 and 2, "duty days" means all days during the taxable year from the beginning of a professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete and days on which a member of a professional athletic team renders a service for a team on a date outside this time period. Rendering a service includes conducting training and rehabilitation activities at the facilities of the team. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, days spent participating in instructional leagues, days spent at special games such as the "Pro Bowl" or an "all-star" game and days served with the team through all post-season games in which the team competes or is scheduled to compete. The following exceptions to this definition apply:

1. Duty days for any person who joins a professional athletic team after the beginning of the team's official pre-season training period shall begin on the day the person joins the team. Conversely, duty days for any person who leaves a professional athletic team before the last scheduled game shall end on the day the person leaves the team. Where a person switches professional athletic teams during a taxable year, separate duty day calculations shall be made for the periods the person was with each team.

2. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member has been suspended without pay and prohibited from performing any services for the team, may not be treated as duty days.

(b) "Member of a professional athletic team" includes employes who are active players, players on the disabled list or any other persons such as coaches, managers and trainers, and who are required to and do travel with

and perform services on behalf of a professional athletic team on a regular basis.

(c) "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, hockey or soccer team.

(d) "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year by the member for services rendered from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during that taxable year, and during the taxable year on a date outside this time period. The compensation includes, but is not limited to, salaries, wages, bonuses as described in sub. (3)(c) and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. The compensation may not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments or any other payments not related to services rendered for the team.

(3) METHOD OF ALLOCATION. (a) *General*. The allocation to Wisconsin of income earned by a nonresident employe as total compensation for services rendered as a member of a professional athletic team shall be made on the basis of a fraction, the numerator of which is the number of duty days spent within Wisconsin rendering services for the team in any manner during the taxable year and the denominator of which is the total number of duty days spent both within and outside Wisconsin during the taxable year.

(b) *Duty days during the taxable year*. Duty days shall be included in the fraction described in par. (a) for the taxable year in which they occur, including where a team's official pre-season training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one taxable year. The following additional provisions apply:

1. Days during which a member of a professional athletic team is on the disabled list, does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Wisconsin, may not be considered duty days spent in Wisconsin. However, all days on the disabled list shall be included in the total duty days spent both within and outside Wisconsin.

2. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event may not be considered duty days spent in Wisconsin but shall be considered in the total duty days spent both within and outside Wisconsin.

(c) *Bonuses*. Bonuses which shall be included for purposes of the allocation described in par. (a) are:

1. Performance bonuses earned as a result of play during the season, including bonuses paid for championship, playoff or "bowl" games played by a team or for selection to all-star league or other honorary positions.

2. Bonuses paid for signing a contract, unless all of the following conditions are met:

a. The payment of the signing bonus is not conditional upon the signee playing any games for the team or performing any subsequent services for the team, or even making the team.

b. The signing bonus is payable separately from the salary and any other compensation.

c. The signing bonus is nonrefundable.

(4) ALTERNATIVE METHODS OF ALLOCATION. It is presumed that application of the provisions of this section will result in a fair and equitable apportionment of compensation received by nonresident members of professional athletic teams. Where it is demonstrated that the method provided under this section does not fairly and equitably apportion the compensation, the department may require the member of a professional athletic team to apportion and allocate the compensation under a method which the department prescribes, provided the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion compensation where the member demonstrates that the method provided under this section does not fairly and equitably apportion the compensation. The proposed method shall be fully explained on the member's Wisconsin income tax return.

Tax 3.94 Claims for refund. This rule is repealed, and many of the provisions are made a part of Tax 2.12, as explained in the summary of Tax 2.12. The claims for refund provisions are made part of the amended return rule, to reflect a 1994 change to sec. 71.75(6), Wis. Stats., providing that claims for refund must be filed on forms and in the manner prescribed by the department. □