

Credit Is Income

The tax credit is income and must be reported on the claimant's Wisconsin franchise or income tax return for the year in which the credit is computed. This is the case even if the claimant cannot take the full amount of the credit computed in the current year and must carry part of it forward to subsequent years.

A tax-option corporation must report as income for the year in which it uses, or passes through to its shareholders, credits carried over from taxable years beginning before January 1, 1998.

8. **Development Zones Credit Created** (1997 Act 27, repeal secs. 560.75(9), 560.765(3)(i), and 560.797(3)(b)9., amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.21(4), 71.26(2)(a) and (3)(n), 71.34(1)(g), 71.45(2)(a)10., 71.47(4)(am), 73.03(35), 77.92(4), 560.70(6), 560.71(1m)(d) and (e), 560.72(2)(h), 560.73(1)(e), 560.745(1)(b) and (2)(a), (am), and (c)1., 560.75(8), 560.765(3)(c) and (5)(e) and (f), 560.768(1)(a) and (b)2., 560.78(1)(a), (2)(a), and (3)(b), 560.795(3)(b)6. and (d), and 560.797(2)(b)4. and 5. and (3)(b)6. and 8., repeal and recreate sec. 560.70(7), and create secs. 71.07(2dd)(e), (2de)(d), (2di)(i), (2dj)(i), (2dL)(h), (2dr)(i), (2ds)(i), and (2dx), 71.10(4)(gu), 71.28(1dd)(f), (1de)(e), (1di)(j), (1dj)(j), (1dL)(j), (1ds)(j), (1dx), and (4)(am)3., 71.30(3)(eom), 71.47(1dd)(e), (1de)(d), (1di)(i), (1dj)(i), (1dL)(h), (1ds)(i), and (1dx), 71.49(1)(eom), 560.70(2m), 560.735(6r), 560.785, and 560.797(1)(am) and (4)(g), effective for taxable years beginning on or after January 1, 1998.)

For taxable years beginning on or after January 1, 1998, a person who is certified for tax benefits by the Department of Commerce may claim the "development zones credit" as a credit against taxes. For purposes of this tax credit, "development zone" means a development zone under sec. 560.70, Wis. Stats., a development opportunity zone under sec. 560.795, Wis. Stats., or

an enterprise development zone under sec. 560.797, Wis. Stats.

The current development, development opportunity, and enterprise development zones day care, environmental remediation, investment, jobs, location, research, and sales tax credits may no longer be claimed for taxable years beginning on or after January 1, 1998. However, unused credits from taxable years that began before January 1, 1998, may continue to be carried forward to years that begin on January 1, 1998, or thereafter.

Computing the Credit

The development zones credit is the total of following amounts:

- a. 50% of the amount expended for environmental remediation in a development zone.

"Environmental remediation" means removal or containment of environmental pollution and restoration of soil or groundwater that is affected by environmental pollution in a brownfield and investigation, unless the investigation determines that remediation is required and that remediation is not undertaken. The removal, containment, or restoration work, other than planning and investigating, must be begun after the area that includes the site where the work is being done is designated a development zone and after the claimant is certified for tax benefits.

"Environmental pollution" means the contaminating or rendering unclean or impure the air, land, or waters of the development zone, or making it injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

"Brownfield" means an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

- b. The dollar amount, up to \$6,500, determined by the Department of Commerce multiplied by the number of full-time jobs created in a development zone and filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.

“Full-time job” means a regular, non-seasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. “Full-time job” does not include training before an employment position begins.

“Member of a targeted group” means a Wisconsin resident who is:

- a vocational rehabilitation program referral,
- an economically disadvantaged Vietnam-era veteran,
- an economically disadvantaged youth,
- a Supplemental Security Income (SSI) recipient,
- a general assistance recipient,
- a youth in a cooperative education program, who belongs to an economically disadvantaged family,
- an economically disadvantaged ex-convict,
- an eligible work incentive employe,
- a qualified summer youth employe, age 16 or 17, who works between May 1 and September 15,
- a person unemployed as a result of a business closing or mass layoff, in situations where Wisconsin law requires the employer to provide notification of the closing or layoff,
- a dislocated worker,
- a resident of an empowerment zone, or an enterprise community, that the U.S. government designates,
- a person who is employed in an unsubsidized job but meets the eligibility requirements under sec. 49.145(2) and (3), Wis. Stats., for a Wisconsin works employment position,
- a person who is employed in a trial job, as defined in sec. 49.141(1)(n), Wis. Stats.,
- a person who is eligible for the Wisconsin works health plan under sec. 49.153, Wis. Stats., or
- a person who is eligible for child care assistance under sec. 49.155, Wis. Stats.

The employe must be certified as a member of a targeted group by a Jobs Service office of the Wisconsin Department of Workforce Development.

- c. The dollar amount, up to \$4,000, determined by the Department of Commerce multiplied by the number of full-time jobs created in a development zone and not filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.
- d. The dollar amount, up to \$6,500, determined by the Department of Commerce multiplied by the number of full-time jobs retained in a development zone, excluding jobs for which the former Wisconsin jobs credit has been claimed,

and filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.

- e. The dollar amount, up to \$4,000, determined by the Department of Commerce multiplied by the number of full-time jobs retained in a development zone, excluding jobs for which the former Wisconsin jobs credit has been claimed, and not filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.

Claimants must include with their Wisconsin franchise or income tax returns a copy of their certification for tax benefits and a copy of the Department of Commerce's verification of their expenses.

Partnerships, limited liability companies treated as partnerships, and tax-option (S) corporations may not claim the credit, but the eligibility for, and the amount of, the credit will be based on their economic activity. The entity will compute the amount of credit that will pass through to its partners, members, or shareholders. Partners, members, or shareholders may claim the credit based on the entity's activities, in proportion to their ownership interests.

Unused Credits

Unused credits may be carried forward for up to 15 years. In the case of a change in ownership or business of a corporation, the limitations of section 383 of the Internal Revenue Code apply to the carryover of any unused Wisconsin development zone credit.

If the certification for tax benefits is revoked, credit may not be claimed for that year and unused credits may not be carried forward to succeeding years. If a claimant ceases business operations in the development zone, unused credits may not be carried forward to any taxable year following the year in which the operations cease.

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Assessments, Refunds, Appeals

The franchise and income tax provisions in chapter 71, Wis. Stats., relating to assessments, refunds, appeals, collection, interest, and penalties, apply to the development zone credit.

C. Homestead Credit

1. **Eliminate Double Counting of Scholarship Income** (1997 Act 27, amend sec. 71.52(6), effective for taxable years beginning on or after January 1, 1998.)

The definition of "income" for homestead credit purposes is amended to subtract scholarship and fellowship gifts or income that are included as part of Wisconsin adjusted gross income, if the scholarship and fellowship gifts or income had been included in income on a previous year's homestead credit claim. This eliminates the double counting of scholarship and fellowship gifts or income for certain claimants.

Under both prior law and the amendment to sec. 71.52(6), scholarship and fellowship gifts or income are includable in income on a homestead credit claim in the year they are received. However, under prior law any portion of scholarship and fellowship gifts or income that was determined to be taxable for income tax purposes in a subsequent year was includable a second time in the subsequent year, as "Wisconsin adjusted gross income."

D. Sales and Use Taxes

1. Telephone Message Services Are Taxable (1997 Act 27, create sec. 77.52(2)(a)5m, effective for sales on or after December 1, 1997.)

Sales and use tax is imposed on services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental, as defined in sec. 77.51(5), Wis. Stats., element of another service that is sold to that purchaser and is not taxable.

2. Telecommunications Services Originating or Terminating in Wisconsin and Charged to a Service Address in Wisconsin Are Taxable, Except Certain Services Obtained by Means of a Toll-Free Number (1997 Act 27, amend sec. 77.52(2)(a)5, effective for sales on or after December 1, 1997.)

Sales and use tax is imposed on telecommunications services that:

- either originate or terminate in Wisconsin, and
- are charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid.

Exception: Services that are obtained by means of a toll-free number, that originate outside Wisconsin and that terminate in Wisconsin, are not taxable.

Under prior law, telecommunications services were taxable if the services originated in Wisconsin and were charged to a service address in Wisconsin.

3. Credit Allowed for Sales Tax Properly Paid to Another State on Interstate Telecommunications Services (1997 Act 27, create sec. 77.525, effective October 14, 1997.)

Any person who is subject to the tax under sec. 77.52(2)(a)5, Wis. Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under sec. 77.52(2)(a)5, Wis. Stats., was passed on an amount equal to the amounts not remitted.

4. Motor Vehicles Used by Dealership — Measure of Use Tax Changed (1997 Act 27, amend sec. 77.53(1m)(a), effective December 1, 1997.)

Persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships (e.g., sole proprietors, partners, subchapter S shareholders, LLC members, etc.) who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, may use \$99* (see the end of this summary on page 23 for an explanation) per month as the measure of use tax for motor vehicles assigned to them that are used for a purpose, in addition to retention, demonstration, or display, while being held for sale.

“Actively participates” means the person performs services for the dealership, including selling, accounting, managing, and consulting, for more than 500 hours in a taxable year for which the person receives compensation. “Actively participates” does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use, or monitoring the finances or operations of the activity in a nonmanagerial capacity.

Previously, motor vehicles assigned to these persons and used for a purpose, in addition to retention, demonstration, or display, while being held for sale were subject to use tax on the lease value computed using the IRS Lease Value Table contained in IRS Reg. § 1.61-21(d)(2).

The following examples illustrate the amendment to sec. 77.53(1m)(a), Wis. Stats.:

Example 1: Individual C is the shareholder in a subchapter S corporation that operates a motor vehicle dealership. Individual C is the general manager of the dealership responsible for all management decisions of the dealership. Individual C spends 40 hours per week performing his duties relating to the dealership. The compensation Individual C receives for services performed are not considered wages subject to withholding for federal income tax purposes.

Individual C is assigned by the dealership a motor vehicle that is held for sale. Individual C uses the motor vehicle for personal travel (e.g., to and from home).

Individual C “actively participates” in the dealership because the hours spent performing services for the dealership are more than 500 per year (40 hours X 52 weeks = 2,080 hours). Although compensation received is not subject to withholding for federal income tax purposes, the dealership may use \$99* per month as the amount subject to use tax on the motor vehicle assigned to Individual C by the dealership.

Example 2: Individual A is the sole proprietor of a motor vehicle dealership. Individual A has turned over the day-to-day management of the dealership to his daughter. Individual A’s only activities in the business include meetings with his daughter four hours each week regarding the management of the dealership. Individual A is paid for services performed. Such payments are not subject to withholding for federal income tax purposes.

Individual A is assigned by the dealership a motor vehicle that is held for sale. Individual A uses the motor vehicle for personal travel (e.g., to and from home).

Individual A does not “actively participate” in the dealership because hours spent performing services for the dealership are only 208 per year (4 hours X 52 weeks). Therefore, the dealership may not use \$99* per month as the amount subject to use tax on the motor vehicle assigned to Individual A by the dealership.

Example 3: Individual B is a limited partner in a partnership that operates a motor vehicle dealership. Individual B receives cash distributions from the partnership based on her partnership interest. These distributions are not subject to withholding for federal income tax purposes. Individual B performs no services for the partnership. Individual B’s activities for the partnership relate only to reviewing financial statements for purposes of monitoring her investment.

Individual B is assigned by the dealership a motor vehicle that is held for sale. Individual B uses the motor vehicle for personal travel (e.g., to and from home).

Individual B does not “actively participate” in the dealership. Therefore, the dealership may not use \$99* per month as the amount subject to use tax on the motor vehicle assigned to Individual B by the dealership.

* \$99 is the amount effective for the period 1/1/97 through 12/31/97. This amount is subject to change effective each January 1 thereafter to account for changes in the Consumer Price Index.

5. **“Real Property Construction Activities” — Definition Changed** (1997 Act 27, amend sec. 77.51(2), effective for sales of property pursuant to contracts entered into on or after December 1, 1997.)

The definition of “real property construction activities” for purposes of sec. 77.51(2),

Wis. Stats., is changed to mean “activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the real property.” In sec. 77.51(2), Wis. Stats., “real property construction activities” do not include “affixing to real property tangible personal property that remains tangible personal property after it is affixed.”

This change in definition of “real property construction activities” reverses the decision of the Wisconsin Supreme Court in *Wisconsin Department of Revenue v. Sterling Custom Homes* (282 N.W.2d 573 (1979)). Manufacturers of modular homes are no longer considered engaged in real property construction when they manufacture a home for a specific site designated by the purchaser prior to manufacturing. The manufacturer is engaged in real property construction activities when the manufacturer affixes the modular home at the site selected by the purchaser.

The following examples illustrate the sales and use tax treatment of modular homes as a result of the change in definition of “real property construction activities.” The sales and use tax treatment may differ depending on where the manufacturing takes place, who affixes the modular home to real property, and the site where the modular home is affixed. These examples are not all-inclusive.

Example 1: *Manufactured in Wisconsin, Dealer Affixes, Wisconsin Site* Modular Home Manufacturer enters into a contract with Dealer to manufacture a modular home for a site in Wisconsin selected by Customer. Modular Home Manufacturer manufactures the modular home in Wisconsin after the site is selected. Modular Home Manufacturer delivers the modular home in Wisconsin to Dealer. Dealer, who has entered into a contract with Customer for the sale and installation of the modular home, affixes the modular home in Wisconsin for Customer.

Per Amendment to Sec. 77.51(2), Wis. Stats.:

- Sales of materials by Vendors to Modular Home Manufacturer are not subject to Wisconsin sales or use tax. The materials are for resale.
- The sale of the modular home by Modular Home Manufacturer to Dealer is subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling tangible personal property in Wisconsin to Dealer. Dealer is the consumer of the modular home it uses in real property construction activities (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Dealer to Customer is not subject to Wisconsin sales or use tax. Dealer is selling to Customer a real property improvement.

Prior Law:

- Sales of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities in Wisconsin (i.e., manufacturing of home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Dealer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Dealer a real property improvement.
- The sale of the modular home by Dealer to Customer was not subject to Wisconsin sales or use tax. Dealer was selling to Customer a real property improvement.

Example 2: *Manufactured in Wisconsin, Dealer Affixes, Illinois Site* Modular Home Manufacturer enters into a contract with Dealer to manufacture a modular home for a site in Illinois selected by Customer. Modu-

lar Home Manufacturer manufactures the modular home in Wisconsin after the site is selected. Modular Home Manufacturer delivers the modular home to Dealer in Illinois. Dealer, who has entered into a contract with Customer for the sale and installation of the modular home, affixes the modular home in Illinois for Customer.

Per Amendment to Sec. 77.51(2), Wis. Stats.:

- Sales of materials by Vendors to Modular Home Manufacturer are not subject to Wisconsin sales or use tax. The materials are for resale.
- The sale of the modular home by Modular Home Manufacturer to Dealer is not subject to Wisconsin sales or use tax. The sale of tangible personal property does not take place in Wisconsin.
- The sale of the modular home by Dealer to Customer is not subject to Wisconsin sales or use tax. Dealer is selling to Customer a real property improvement. In addition, the sale takes place outside Wisconsin.

Prior Law:

- Sale of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction in Wisconsin (i.e., manufacturing of home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Dealer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Dealer a real property improvement. In addition, the sale did not take place in Wisconsin.
- The sale of the modular home by Dealer to Customer was not subject to Wisconsin

sales or use tax. Dealer was selling to Customer a real property improvement. In addition, the sale did not take place in Wisconsin.

Example 3: Manufactured in Wisconsin, Manufacturer Affixes, Wisconsin Site
Modular Home Manufacturer enters into a contract with Customer to manufacture and install a modular home for a site in Wisconsin selected by Customer. Modular Home Manufacturer manufactures the modular home in Wisconsin after the site is selected.

Per Amendment to Sec. 77.51(2), Wis. Stats.:

- Sales of materials by Vendors to Modular Home Manufacturer are subject to Wisconsin sales or use tax. Modular Home Manufacturer is the consumer of materials it uses in real property construction activities in Wisconsin (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer is not subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling to Customer a real property improvement.

Prior Law:

- Sale of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities in Wisconsin (i.e., manufacturing of home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Customer a real property improvement.

Example 4: *Manufactured in Wisconsin, Manufacturer Affixes, Illinois Site* Modular Home Manufacturer enters into a contract with Customer to manufacture and install a modular home for a site in Illinois selected by Customer. Modular Home Manufacturer manufactures the modular home in Wisconsin after the site is selected.

Per Amendment to Sec. 77.51(2), Wis. Stats.:

- Sales of materials by Vendors to Modular Home Manufacturer are subject to Wisconsin sales or use tax. Modular Home Manufacturer is the consumer of materials it stores in Wisconsin and uses in real property construction activities in Illinois (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer is not subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling to Customer a real property improvement. In addition, the sale does not take place in Wisconsin.

Prior Law:

- Sales of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities in Wisconsin (i.e., manufacturing of modular home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Customer a real property improvement. In addition, the sale did not take place in Wisconsin.

Example 5: *Manufactured in Illinois, Manufacturer Affixes, Wisconsin Site* Modular Home Manufacturer enters into a contract

with Customer to manufacture and install a modular home for a site in Wisconsin selected by Customer. Materials are delivered by Vendors to Modular Home Manufacturer in Illinois. Modular Home Manufacturer manufactures the modular home in Illinois after the site is selected.

Per Amendment to Sec. 77.51(2), Wis. Stats.:

- Modular Home Manufacturer is subject to Wisconsin use tax on its purchase of materials. Modular Home Manufacturer is the consumer of materials (i.e., modular home) it stores in Wisconsin and uses in real property construction activities in Wisconsin (i.e., affixing the modular home at the predetermined site). **Note:** Credit would be allowed, up to the amount of Wisconsin state and local taxes, for Illinois state and local taxes properly paid on the materials.
- The sale of the modular home by Modular Home Manufacturer to Customer is not subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling to Customer a real property improvement.

Prior Law:

- Sales of materials by Vendors to Modular Home Manufacturer were not subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities (i.e., manufacturing of home for predetermined site). However, storage, use, and consumption of the materials as tangible personal property took place in Illinois where the modular home was manufactured.
- The sale of the modular home by Modular Home Manufacturer to Customer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Customer a real property improvement.