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THE WISCONSIN CORPORATE INCOME AND FRANCHISE TAXES

A. INTRODUCTION

Corporations doing business in Wisconsin are subject to either the corporate income tax or the corporate franchise tax. The corporate income tax is a tax on the net income of corporations doing business in the state. The corporate franchise tax is a tax on the privilege of doing business in the state. Corporate net income is used as the measure, or base, for the franchise tax. The distinction between the two taxes is subtle, relating primarily to the restrictions under federal law on the types of income that states can tax with an income tax (e.g., interest from U.S. obligations).

The vast majority of corporations pay the franchise tax. The income tax applies to corporations whose business in Wisconsin consists entirely of foreign or interstate commerce and to corporations that are filing their final return before dissolution. Because both levies employ the same 7.9% rate and the same general rules for determining corporate net income (although certain types of income cannot be taxed under the income tax), the two taxes are usually considered as one.

Corporate tax collections in state fiscal year (FY) 2011 were \$852.9 million, or 6.6% of total general purpose revenue (GPR) taxes of \$12.9 billion.

B. COMPUTATION OF NET INCOME

Computation of net income is federalized; that is, based primarily on the Internal Revenue Code (IRC). The starting point for computing Wisconsin net income is federal gross income, subject to certain modifications. Conformity to the IRC is not automatic in Wisconsin but rather requires adoption by statute of each federal law change. Wisconsin applies federal regulations, rules, and court cases interpreting the IRC, when applicable, in determining the proper treatment of an item. In general, for purposes of computing amortization and depreciation, Wisconsin follows IRC as of December 31, 2000; thus, Wisconsin does not allow the more recent bonus depreciation and expensing allowed under federal law.

Certain items that are exempt under federal law are taxable in Wisconsin. These items of income must be added back to federal taxable income to arrive at Wisconsin taxable income. These items include: interest income from state and municipal obligations, state taxes accrued or paid, expenses related to nontaxable income, and federal depreciation or amortization in excess of Wisconsin amounts. The amount of Wisconsin credits is also added back to income to avoid double counting of the credit amount.

For tax years beginning on or after January 1, 2008, interest and rental expenses paid by a corporation to a related entity as defined under Section 267 of the IRC must be added back

to income. For tax years beginning on or after January 1, 2009, intangible expenses and management fees paid to a related entity must also be added back to income.¹

Wisconsin also subtracts from income some items that are taxable at the federal level but exempt under Wisconsin law. These items include dividends that are taxed federally but qualify for the Wisconsin dividends received deduction, certain subpart F income from controlled foreign corporations, certain other federally taxable interest, dividends and capital gains, and the amount of the Wisconsin depreciation deduction that exceeds federal amounts. The resulting amount, after all pre-apportionment additions and subtractions are made, is multiplied by the apportionment factor to arrive at apportioned income. To this is added the Wisconsin portion of non-apportionable income, and Wisconsin net business loss carryforwards are subtracted to arrive at net taxable income.²

For tax years beginning on or after January 1, 2009, corporate groups with common ownership are required to file a combined tax return. Income and deduction items, with inter-company transactions removed, are summed for all members to arrive at the group's income that is apportioned to each member based on the member's sales in Wisconsin.

C. APPORTIONMENT OF INCOME

Corporations that conduct business in more than one state must apportion their net income among the states with jurisdiction to tax the income. For most types of corporations, the numerator of the factor is comprised of sales in Wisconsin, while the denominator is total sales without regard to location. For members of corporate groups that are required to file a combined report, each member determines its sales both within Wisconsin as well as total sales. Sales between members of the same corporate group are disregarded. The total sales for each member are summed to derive a common denominator for the sales factor for all members. Total group income is apportioned to each member based on the member's Wisconsin sales as a share of total group sales everywhere. Members with no sales in Wisconsin will have no apportionable income that is taxable to Wisconsin.³

In calculating the sales factor under the multi-state apportionment formula, taxpayers are required to treat certain "throwback" sales as being the equivalent of Wisconsin sales. Throwback sales are shipments of tangible personal property originating in Wisconsin to the federal government or to customers located in states where the seller is not subject to tax because of nexus standards defined by federal law (P.L. 86-272) and further clarified by the Wisconsin Administrative Code (Chapter Tax 2.82).⁴

Under the nexus standards, a corporation must have some type of economic activity in a state before its income can be taxed by that state. A corporation cannot be taxed by a state in which it does not have nexus. The purpose of the throwback rule is to ensure that 100% of a multi-jurisdictional corporation's income is apportioned to states with jurisdiction to tax it.

¹ A deduction is allowed for these expenses if either the expense was paid to a related entity acting as a conduit to an unrelated third party or the expense was paid to a bank holding company, a savings bank holding company, or a savings and loan holding company.

² Non-apportionable income is income derived from the sale of non-business real or tangible personal property or from rentals and royalties from non-business real or tangible personal property.

³ More information on Wisconsin's combined reporting law can be found at <http://www.revenue.wi.gov/comb rept/index.html>.

⁴ For tax years beginning on or after January 1, 2009, throwbacks sales of computer software, services, royalties, and intangibles were repealed.

(It does not matter if the state actually imposes a corporate income tax.) In the absence of a throwback rule, sales to destinations where the seller does not have nexus would not be included in the numerator of the sales factor of any state. This would result in a company paying tax on less than its entire income.

Like most states, Wisconsin uses special apportionment formulas for certain industries. The following table shows the special industry factors used in the apportionment formula. Each factor measures the share of Wisconsin activity to total activity, e.g., Wisconsin payroll to total payroll. In each case where multiple factors are listed, the apportionment percentage for the specific industry is the arithmetic average of the factors listed in Table 1. For corporations in any of the special industry classifications that are members of a combined group, an additional calculation is required to convert the special apportionment factor into a modified sales factor so that its numerator and denominator can be combined with those of the other members of the group.

Industry	Factors
Interstate Pipeline Companies	Three equally-weighted factors - property, payroll, and traffic units
Interstate Financial Institutions	Single receipts factor
Interstate Telecommunications Companies	Three equally-weighted factors - property, payroll, and sales
Insurance Companies	Single premiums factor
Interstate Air Carriers	Three equally-weighted factors - revenue tons, originating revenues, and arrivals and departures
Interstate Motor Carriers	Two equally-weighted factors - gross receipts and ton miles of carriage
Interstate Railroads, Sleeping Car Companies, Car Line Companies	Two equally-weighted factors - gross receipts and revenue ton miles
Interstate Broker-Dealers, Investment Advisers, Investment Companies, and Underwriters	Single receipts factor

D. RECYCLING/ECONOMIC DEVELOPMENT SURCHARGE

For state fiscal years before FY 2012, Wisconsin also imposed a recycling surcharge on all corporations with gross receipts exceeding \$4 million at a rate of 3% on gross tax liability. The maximum surcharge is \$9,800 and the minimum is \$25. The surcharge does not apply to entities not required to file an income tax return. Income and franchise tax credits cannot be applied to reduce the amount of the recycling surcharge.

Revenues from the recycling surcharge was deposited in the segregated recycling fund and used to fund local government recycling and solid waste management programs and private business efforts to develop recycled products or markets related to these products. The recycling surcharge generated \$49.8 million in revenue in FY 2010.

Beginning in state fiscal year 2012, the recycling surcharge is renamed the economic development surcharge. All provisions of the surcharge remain the same, except that the revenues are deposited in a segregated economic development fund and are used to fund

economic development programs of the Wisconsin Economic Development Corporation (WEDC).

E. CREDITS

A credit is an amount subtracted directly from the taxpayer's Wisconsin gross tax liability (i.e., the amount determined by applying the Wisconsin tax rate to Wisconsin taxable income) to determine Wisconsin net tax liability. Generally, business credits are nonrefundable, that is, they are used only to reduce the amount of tax otherwise due. If the amount of nonrefundable credits exceeds the claimant's tax liability for the year, the unused credit amounts can be carried over to future tax years (generally up to 15 years) to be used to offset tax liabilities in those years. There are some credits that are refundable, in that the amount of credit in excess of tax otherwise due is refunded to the taxpayer.

The credits can be grouped into one of five general categories: research credits, zone-based credits, credits for economic development, industry-specific credits, and agricultural credits.⁵

1. Research Credits

To encourage corporations to carry out research and development (R&D) activities in the state, five tax credits are available: a credit for R&D-related non-capital expenditures, a credit for investments in R&D facilities, an engine research credit, an energy efficient products research credit and a super research credit. The credits are only available to corporations.

Research Expenditure Credit. A nonrefundable research expenditure credit for non-capital expenditures related to research activities conducted in Wisconsin is available to corporations. The credit applies only to research expenditures that are undertaken to discover information that is technological in nature and intended to be useful in the development of a new or improved business component. Expenses must be incurred in connection with research conducted in Wisconsin in order to qualify for the credit.

The credit is patterned after the federal research credit and is equal to 5% of the excess of qualified research expenses for the current year over a base period amount. Qualifying expenditures are defined by reference to the rules established under Section 41 of the IRC. The "base period amount" is calculated in the same manner as that for the federal credit, except that the gross receipts used in computing the state credit are from sales attributable to Wisconsin (other than throwback sales) for purposes of apportionment. Qualified research expenses cover in-house expenses for the taxpayer's own research (wages, supplies, and computer use charges) and 65% of amounts paid or incurred for qualified research done by a person other than an employee of the taxpayer. Unused amounts of the credit can be carried forward for up to 15 years.

Research Facilities Credit. A research facilities credit applies to capital investments to construct and equip new research facilities or expand existing facilities located in

⁵ More information on Wisconsin's business credits, including the most recent information on the amount of credits claimed and used to offset tax is available in the publication entitled "State Tax Incentives for Economic Development in Wisconsin," available at <http://www.revenue.wi.gov/ra/11incent.pdf>

Wisconsin. The credit is equal to 5% of the amount of qualified investments in tangible, depreciable property that is not replacement property.

The rules relating to the credit are similar to the rules for the research expenditures credit. The credit is nonrefundable and unused amounts of credit may be carried forward and offset against tax liability over the next 15 years.

Engine Research Credits. For tax years beginning after June 30, 2007, credits equal to 10% of qualified research and 10% of qualified facility expenses related to designing internal combustion engines and related substitutes such as fuel cells and electric and hybrid drives are available. The credits are also available for research related to designing vehicles powered by such engines and for research on improving production processes for such engines and vehicles. Expenses under the engine research credits are not eligible for the regular research expenditure and research facilities credits. Unused credits may be carried forward for fifteen years.

Energy Efficient Products Research Credits. For tax years beginning after June 30, 2007, credits equal to 10% of qualified research and 10% of qualified facility expenses related to the design and manufacturing of energy efficient lighting systems, building automation and control systems, or automotive batteries for use in hybrid-electric vehicles, that reduce the demand for natural gas or electricity or improve the efficiency of its use are available. Expenses under the energy efficient products research credits are not eligible for the regular research expenditure and research facilities credits. Unused credits may be carried forward for fifteen years.

Super Research and Development Credit. A credit is available for tax years beginning on or after January 1, 2011, for corporations that increase their research expenditures. The credit is equal to the amount of qualified research expenses for research conducted in Wisconsin in a tax year that exceeds 1.25 times the average annual amount of qualified research expenses in the corporation's previous three tax years. Unused credit amounts may be carried forward up to five years to offset future tax liabilities. "Qualified research expenses" are as defined under Section 41 of the IRC, and the research must be done in this state. Expenses for claims under the regular research expenditure credit also qualify for the super research credit as long as they exceed 1.25 times the preceding three-year average.

2. Zone-Based Credits

Prior to the passage of 2009 Act 2, Wisconsin had seven zone-based programs to encourage economic development in certain areas of the state: the Development Zone, Airport Development Zone, Agricultural Development Zone, Enterprise Development Zone, Technology Zone, Development Opportunity Zone, and the Enterprise Zone Jobs credit programs. Act 2 repealed the Development Zone, Airport Development Zone, Agricultural Development Zone, Technology Zone, and Enterprise Development Zone programs and replaced them with a single Economic Development Credit (see the discussion below of the Economic Development Credit), but left in place the Development Opportunity Zone and Enterprise Zone Jobs credits.

Development Opportunity Zone Credit. Under the Development Opportunity Zone program, businesses conducting economic activities in a zone may claim nonrefundable development opportunity zone credits allocated to them by the Wisconsin Economic

Development Corporation (WEDC). Nine zones with a total of \$44.4 million in tax credits have been authorized. All six of the original zones have expired. A zone in Janesville and one in Kenosha were authorized in 2009 Act 28 with a total credit available of \$5 million each over the life of the zone. In addition, 2011 Act 37 authorized an additional zone for the City of Beloit, also for a total credit amount of \$5 million over the life of the zone. For all three of these new zones, if the original \$5 million is allocated within five years, the zones can be extended for an additional five years with an additional \$5 million each. The designation for the new zones will be effective for 60 months from the date of designation.⁶

Businesses locating or expanding their operations within the development opportunity zones are eligible to claim a job creation credit based on the number of new, full-time positions created; an environmental remediation credit that equals up to 50% of eligible environmental remediation costs; and an investment credit equal to 2.5% of the purchase of depreciable tangible personal property (or 1.75% of the price if the property has been expensed under section 179 of the IRC).

A capital investment credit is also available for certain businesses located in the new Kenosha, Janesville, and Beloit zones equal to 3% of qualified purchases of depreciable tangible personal property and amounts expended to acquire, construct, rehabilitate or remodel qualified real property.

Enterprise Zone Jobs Credit. A refundable enterprise zone jobs credit is available for certified businesses located in a designated enterprise zone. The Department of The WEDC may certify for tax benefits a business that begins operations in an enterprise zone if the business offers compensation and benefits to its employees working in the zone for the same type of work that are at least as favorable as those offered to its employees working outside the zone. The WEDC may also certify a business that expands operations in an enterprise zone, if the business will increase its personnel by at least 10% or the business makes a capital investment in property located in the enterprise zone equal to at least 10% of the business' gross revenues in the preceding tax year attributable to business activities in Wisconsin. Finally, The WEDC may certify a business that retains existing jobs in an enterprise zone if the business makes a significant capital investment in property located in the zone, and at least one of the following applies: (1) the business is an original equipment manufacturer with a significant supply chain in Wisconsin, as determined by The WEDC; or (2) more than 500 full-time employees are employed by the business in the enterprise zone

The WEDC is authorized to designate no more than 20 enterprise zones, with three of the zones being areas comprising political subdivisions whose population totals less than 5,000 and at least two areas comprising political subdivisions whose population is greater than 5,000 but less than 30,000. A designation may be in effect for no more than 12 years. In determining whether to designate an area as an enterprise zone, The WEDC must consider indicators of the area's economic need, infrastructure and energy support, the rate of business development, existing resources available to the area, and the effect of designation on other initiatives and programs to promote economic and community development in the area, such as job training and the creation of high-paying jobs.

⁶ The new zone in Janesville was designated in March, 2010, and the Kenosha zone was designated in March 2011. The Beloit zone will be designated as of August 2, 2011, the effective date of 2011 Act 37.

The credit has five components:

- 1) A credit based on changes in the claimant's zone payroll over a base year, up to 7% of the base change. Eligible wages are those paid to new employees whose annual wages are greater than \$20,000 but not more than \$100,000 in a Tier I county or municipality, or greater than \$30,000 but not more than \$100,000 in a Tier II county or municipality.⁷ Credit claims would be limited to 12 consecutive years.
- 2) An additional credit based on up to 7% of wages paid to existing zone employees. Eligible wages are those paid to employees whose annual wages are greater than \$20,000 but not more than \$100,000 in a Tier I county or municipality, or greater than \$30,000 but not more than \$100,000 in a Tier II county or municipality. The total number of employees must be equal to or greater than the number of employees in the base year. Credit claims are limited to five consecutive years.
- 3) A credit based on the amount paid for training to upgrade the job-related skills of full-time employees who work in the enterprise zone;
- 4) A credit of up to 10% of significant capital expenditures in the zone.
- 5) For taxable years beginning after December 31, 2009, a credit equal 1% of the amount the claimant paid in the taxable year for goods or services from Wisconsin vendors, not including capital expenditures for which the credit is claimed.

3. Credits for Economic Development

Economic Development Credit. For tax years beginning after December 31, 2008, an economic development tax credit is available. The nonrefundable credit may be claimed against the corporate income and franchise tax or against the insurance premiums tax. The amount of credit available is limited to \$103.2 million, which is the amount of available credit that had not been allocated by the Department of Commerce in the five zone-based programs that this credit replaces, plus an additional \$25 million added in 2011 Act 4.

Under the program, a business may apply to the WEDC for certification to claim tax benefits. The WEDC may certify a business that conducts or intends to conduct at least one eligible activity. The eligible activities include:

- Creating and maintaining, for a period of time established by the WEDC, full-time jobs in addition to any existing full-time jobs.
- Making a significant investment in new equipment, machinery, real property, or depreciable personal property.

⁷ The provisions of 2009 Act 11 require the Department of Commerce to promulgate rules defining a Tier I and Tier II county. As of this writing, the rules have not been issued. Act 11 requires Commerce to consider the following in defining Tier I and Tier II: unemployment rate, percentage of families with incomes below the poverty line, median family income, median per capita income, and other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

- Making significant investments in the training or reeducation of employees for the purpose of improving the productivity or competitiveness of the business.
- Locating or retaining a corporate headquarters in Wisconsin, or retaining employees holding full-time jobs in Wisconsin.

The WEDC may authorize additional tax benefits for certified claimants if the claimant conducts at least one eligible activity in an area designated by the WEDC as economically distressed, or if the claimant creates, retains, or trains members of certain targeted groups.⁸

Unused tax credit amounts may be carried forward up to 15 years to offset future tax income and franchise tax liabilities.

Jobs Tax Credit. 2009 Act 28 created a refundable jobs tax credit for tax years beginning after December 31, 2009. In order to claim the credit, a business would have to be certified by the WEDC, which may certify a business, for up to ten years. The credit would equal up to 10% of the wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in a tax year. The WEDC may award jobs credits of up to 10% of wages of an employee who is paid at least \$20,000 but not more than \$100,000 in a Tier I county or municipality, and of at least \$30,000 but not more than \$100,000 in a Tier II county or municipality.⁹ Credit may also be awarded for costs incurred by the business to undertake training activities.

The WEDC may allocate up to \$5 million in jobs tax credits in a calendar year, except that the maximum total amount that may be awarded in the period from January 1, 2010 through June 30, 2013 is \$14.5 million. The \$14.5 million limit does not apply to amounts transferred from the angel investment credit or the early stage seed investment credit (see below). Amounts claimed in taxable years beginning after December 31, 2009 and before January 1, 2012 are to be paid in taxable years beginning after December 31, 2011.

Early Stage Seed Investment Credit. Effective for taxable years beginning after 2004, an early stage seed investment credit is available equal to 25% of investments paid to a fund manager that invests the funds in qualified new business ventures that are certified by the WEDC. The credit may be claimed against the income and franchise tax as well as against the insurance premiums tax. The maximum annual amount that may be claimed by all claimants is \$6.0 million for calendar years beginning before January 1,

⁸ "Member of a targeted group" means a person who resides in an area designated by the federal government as an economic revitalization area, a person who is employed in an unsubsidized job but meets the eligibility requirements for a Wisconsin Works employment position, a person who is employed in a trial job, as defined in s. 49.141 (1) (n), or in a real work, real pay project position under s. 49.147 (3m), a person who is eligible for child care assistance, a person who is a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income recipient, a general assistance recipient, an economically disadvantaged ex-convict, a dislocated worker, as defined in 29 USC 2801 (9), or a food stamp recipient, if the person has been certified in the manner under 26 USC 51 (d) (13) (A) by a designated local agency, as defined in 26 USC 51 (d) (12).

⁹ As of this writing, the rules defining a Tier I and Tier II county have not been promulgated. See the criteria the Department of Commerce must use in creating the definitions in footnote 7 under the Enterprise Zones Jobs Credit.

2010, and \$8.0 million for calendar year 2010. For calendar years beginning on or after January 1, 2011, the maximum annual amount will increase to \$20.5 million for all claimants, plus an additional \$250,000 per year for investments in nanotechnology businesses. If the investment is held for less than three years, any previously claimed credits must be repaid to the Department of Revenue. In addition, if the investor has invested in the business prior to the business being certified as a qualified new business venture, investments after certification by this investor are not eligible for credit. The WEDC may reallocate unused credits in any calendar year to the Jobs Tax Credit.

For tax years beginning on or after January 1, 2009, a claimant may transfer unused credits to another entity. The transferor will be required to obtain prior authorization from the fund manager, and the fund manager would be required to notify the Department of Revenue and the WEDC.

To be qualified to receive investments that are eligible for the credit, a qualified new business venture must have its headquarters in the state, have less than 100 employees, at least 51% of whom are employed in the state, and have been in business for not more than seven consecutive years. A qualified new business venture must also be engaged in one of the following: manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology, processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying proprietary technology, pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying proprietary technology.

The business may not be primarily engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable resource.

Supplement to the Federal Historic Rehabilitation Credit. A nonrefundable credit is available to encourage the rehabilitation of historic buildings in Wisconsin.¹⁰ This supplement to the federal historic rehabilitation credit can be claimed only for projects that are eligible for the federal credit. The state supplemental credit is equal to 5% of qualified rehabilitation expenditures, as defined under Section 48 (g) of the IRC, to substantially rehabilitate certified historic buildings for use in a trade or business. The credit is patterned after the federal 20% credit for commercial rehabilitation of historic buildings. The rehabilitation work must meet historic preservation standards and the expenditures must exceed the taxpayer's adjusted basis in the building. Unused amounts of the credit can be carried forward for up to 15 years. The credit applies only to property located in Wisconsin.

Taxpayers must reduce their Wisconsin adjusted basis in the building by the amount of the credit claimed. The reduced basis will result in lower depreciation deductions.

¹⁰ The credit applies to rehabilitation projects begun after December 31, 1988, and for rehabilitated property placed in service after June 30, 1989.

Water Consumption Credit. A non-refundable credit is available for taxable years that begin after December 31, 2009 and before January 1, 2020 for claimants who are an industrial customer of a municipal water utility that is located in a federal renewal community zone in this state, and whose average annual water consumption from that utility for a 24-month period exceeds 100 million cubic feet. The credit is calculated by subtracting the claimant's water usage costs in taxable year 2009 from the claimant's water usage costs in the taxable year and multiplying by 0.5. The maximum amount that a claimant may claim in a taxable year is \$300,000.

Post-Secondary Education Credit. For taxable years beginning on or after January 1, 2010, a credit is available for businesses that pay tuition for their employees at a qualified post-secondary institution if the individual was eligible for a grant from the Federal Pell Grant Program and is a resident of this state. A qualified post-secondary institution is defined as a University of Wisconsin System institution, a technical college system institution, a regionally-accredited four-year non-profit college or university having its regional headquarters and principal place of business in this state, or a school approved by the Educational Approval Board if the delivery of education occurs in this state. The credit is equal 25% of the tuition paid, or 30% if the individual is enrolled in a course of instruction that relates to a worker shortage in this state as determined by the local Workforce Development Board. The claimant shall claim the credit for the taxable year in which the individual graduates for costs incurred or paid for all taxable years. A claimant may not claim the credit for tuition amounts paid or incurred for a family member unless the family member was employed an average of 20 hours per week at the claimant's business in the one-year period commencing participation in the education program, and if the family member is enrolled in a course of instruction that substantially relates to the claimant's business.

Relocation Credit. For taxable years beginning after December 31, 2010, a nonrefundable credit is available for businesses that relocate to this state from another state or country. The credit is equal to the net Wisconsin tax liability of the businesses after taking into account all other allowable credits, deductions, and exclusions, and can be claimed for two taxable years beginning with the year in which the business relocates to Wisconsin. To be eligible for the credit the claimant must not have done business in this state in the any of the two preceding taxable years. Unused credit amounts may not be carried forward.

4. Industry-Specific Credits

Manufacturing Investment Credit. The manufacturer's sales tax credit was repealed for tax years beginning after December 31, 2005. For tax years beginning on or after January 1, 2008, firms that had more than \$25,000 of unused manufacturer's sales tax credit as of December 31, 2005 may claim a new nonrefundable manufacturing investment credit equal to the total unused manufacturers' sales tax credit carryforwards held before the credit was repealed.¹¹ The unused credit must be amortized equally over 15 years. Unused credits can be carried forward for 15 years. Companies would be allowed to take the credit beginning in 2008 only if they were certified by the Department of Commerce to have met one of the following criteria:

¹¹ Firms that had less than \$25,000 in manufacturer's sales tax credit carryforwards as of December 31, 2005 were allowed to claim 50% of the amount in tax year 2006 and 50% in tax year 2007.

- Retention of 100% of the full-time (at least 35 hours per week) jobs employed by the company as of December 23, 2003.
- Average annual investment since January 1, 2003 equal to 2% of total book value of the company's depreciable assets in Wisconsin-based plants/facilities or \$5 million.

Qualified Production Activities Credit. For taxable years beginning after December 31, 2012, 2011 Act 32 created a non-refundable Qualified Production Activities Credit. The credit would equal a specified percentage of the claimant's qualified production activities income, as defined under the Internal Revenue Code, that is derived from property assessed as manufacturing or agricultural property in Wisconsin, as defined under state property tax law. Under the corporate income and franchise tax and for insurance companies, the credit would be the lesser of a specified percentage of the claimant's:

- qualified production activities income, as defined under the federal Internal Revenue Code, derived from manufacturing or agricultural property, in Wisconsin, as defined under state property tax law;
- income apportioned to Wisconsin for state corporate income and franchise tax purposes; or
- taxable income for corporate income and franchise tax purposes.

The specified tax credit percentages are as follows:

- 1.875% for tax years beginning after December 31, 2012, and before January 1, 2014;
- 3.75% for tax years beginning after December 31, 2013, and before January 1, 2015;
- 5.526% for tax years beginning after January 31, 2014, and before January 1, 2016; and
- 7.5% for tax years beginning after December 31, 2015.

Unused tax credit amounts may be carried forward up to 15 years to offset future tax liabilities.

Film Production Credits. For tax years beginning after December 31, 2008, two refundable credits related to expenditures for film production in this state are available.

The film production services income and franchise tax credit is equal to 25% of the salary, wages, or labor-related contract payments paid by the claimant in the taxable year to individuals, including actors, who were residents of this state at the time that they were paid and who worked on an accredited production in this state, not including the salary, wages, or contract payments paid to any individual who was paid more than \$250,000. In addition, a credit equal to 25% of the production expenditures paid in the taxable year is available. "Production expenditures" mean any expenditures that are incurred in this state and directly used to produce an accredited production, including

expenditures for set construction and operation, wardrobes, make-up, photography, sound recording/mixing, lighting, editing, film processing, special/visual effects, renting or leasing facilities, equipment or motor vehicles, food, lodging, and any other similar expenditure as determined by the Department of Tourism. "Production expenditures" do not include salary, wages, or labor-related contract payments.

The film production company investment credit is equal to 15% of the purchase price of depreciable, tangible personal property, if the purchase is sourced to this state. In addition, a claimant may claim 15% of the amount expended to acquire, construct, rehabilitate, remodel, or repair real property, if the production company exclusively produces accredited productions.

To be certified for either credit, the production company must apply to the Department of Tourism and pay an application fee equal to 2% of the claimant's budgeted production expenditures or \$5,000, whichever is less. Total film production services and investment credits are limited to \$500,000 in a fiscal year for all claimants.

Credit for Insurance Security Fund Assessments. Chapter 646, Wisconsin Statutes, provides a credit against state taxes, including the corporate income and franchise tax, for certain assessments levied on insurance companies by the Wisconsin Insurance Security Fund. The fund is designed to protect policyholders in cases where their insurance company has failed and is in the process of liquidation. Where the available assets and reserves of failed insurers are inadequate to meet claims, the fund may assess insurance companies doing business in the state, with some exceptions (e.g., fraternal benefit societies). Such assessments are eligible for a 100% tax credit if they cannot be recovered through higher premiums. This can occur if premiums are fixed for a particular line of business. The tax credit is nonrefundable and must be claimed in equal installments over a five-year period, beginning with the year following the one in which the assessment is made.

Health Insurance Risk-Sharing Plan (HIRSP) Assessments Credit. An income and franchise tax credit and a license fee credit are available for insurers that pay assessments for HIRSP. HIRSP offers health insurance to Wisconsin residents who either are unable to find adequate health insurance coverage in the private market due to their medical conditions or who have lost their employer-sponsored group health insurance. Applicants are required to meet HIRSP eligibility criteria to qualify. The credit is equal to a percentage of the amount of assessments paid by the insurer in the taxable year under the HIRSP. The Department of Revenue, in consultation with the Office of the Commissioner of Insurance, determines the credit percentage for each year so the annual cost the credit is approximately \$5 million. The amount of the credit for all insurers cannot exceed \$5 million per year.

Biodiesel Fuel Production Credit. For tax years beginning on or after January 1, 2012, and before January 1, 2015, a nonrefundable credit is available that is equal to 10 cents per gallon for biodiesel fuel produced in Wisconsin for producers that produce at least 2.5 million gallons of biodiesel fuel per year. The maximum credit that a claimant may claim in a taxable year is \$1 million.

Ethanol and Biodiesel Pump Credit. An ethanol and biodiesel fuel pump tax credit is available for tax years beginning after December 31, 2007 and before January 1, 2018. The credit is equal to 25% of the amount paid in a tax year to install or retrofit pumps

located in Wisconsin that dispense motor fuel consisting of at least 85% ethanol or at least 20% biodiesel fuel or pumps that allow the end user to choose the percentage of gasoline replacement renewable fuel or diesel replacement renewable fuel. The maximum tax credit for a tax year cannot exceed \$5,000 for each service station that claims a credit for an installed or retrofitted pump. Unused credit amounts may be carried forward up to 15 years to offset future tax liabilities.

Electronic Medical Records Credit. For tax years beginning after December 31, 2011, a nonrefundable tax credit is available equal to 50% of the amount paid by a health care provider in a tax year for information technology hardware or software that is used to maintain medical records in an electronic form. Tax credits not entirely used to offset income and franchise taxes can be carried forward up to 15 years to offset future tax liabilities. The maximum total amount of electronic medical records tax credits that can be claimed in a tax year is \$10 million and is allocated to claimants by the Department of Revenue. The Department of Revenue also certifies health care providers as eligible to claim the electronic medical records tax credit.

Community Rehabilitation Program Credit. A community rehabilitation program tax credit that equals 5% of the amount the claimant pays in a tax year to a community rehabilitation program to perform work for the claimant's business is available for tax years beginning on or after July 1, 2011. The maximum tax credit that can be claimed is \$25,000 for each community rehabilitation program that the claimant enters into a contract with, and unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. In order to claim a credit, the claimant is required to submit with the claimant's tax return verification that the claimant has entered into a contract with a community rehabilitation program and that the program has received payment from the claimant for work provided by the program.

Food Processing Plant and Food Warehouse Investment Credit. For taxable years beginning after December 31, 2009 and before January 1, 2017 a refundable credit is available for investments in modernization or expansion of food processing plants and food warehouses. "Food processing plant or food warehouse modernization or expansion" is defined as constructing, improving, or acquiring buildings or facilities, or acquiring equipment if used exclusively for food processing or food warehousing and if acquired and placed in service in this state during taxable years that begin after December 31, 2009, and before January 1, 2017.

The maximum aggregate amount of credits that may be claimed by a claimant is \$200,000 for all tax years. Claimants must be certified by the Department of Agriculture, Trade, and Consumer Protection (DATCP) as eligible for the credit, and the claimant must include a copy of the certification with the tax return when the credit is claimed. DATCP allocates credits among claimants. The maximum amount that may be allocated is \$1.0 million in fiscal year 2010, \$1.2 million in fiscal year 2011, and \$700,000 in fiscal years 2012 through 2017.

Woody Biomass Harvesting and Processing Equipment Credit. A refundable woody biomass harvesting and processing tax credit equal to 10% of the amount the claimant paid in the tax year for equipment that is used primarily to harvest or process woody biomass that is used for fuel or as a component of fuel is available for taxable years beginning after December 31, 2009, and before January 1, 2016. "Woody biomass" is

defined as trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land.

Claimants must be certified by DATCP as eligible to receive the credit, and DATCP allocates credits among claimants. The maximum amount of credit that may be allocated in a year is \$900,000, and the maximum aggregate amount of credits that a claimant may claim for all tax years is \$100,000.

5. Agricultural Credits

Dairy and Livestock Farm Investment Credit. A nonrefundable credit is available for 10% of expenses to modernize or expand a dairy or livestock farm. Dairy animals include heifers raised as replacement dairy animals. Livestock includes cattle (not including dairy animals), swine, poultry including farm-raised pheasants but not including other farm-raised game birds or ratites, fish that are raised in aquaculture facilities, sheep, and goats. The aggregate amount of credit that a taxpayer may claim is \$75,000 for expenses to construct, improve, and acquire buildings or facilities and equipment, for dairy animal housing, confinement, feeding, milk production, and waste management, except that no more than \$50,000 may be based on expenses that are incurred prior to May 27, 2010. The credit may be claimed for dairy farm modernization or expansion for taxable years beginning after December 31, 2003 and before January 1, 2017, and for livestock farm modernization or expansion for taxable years beginning after December 31, 2005 and before January 1, 2017.

Farmland Preservation Credit. Corporations are eligible for Farmland Preservation Credits and must meet basically the same requirements as individual taxpayers. Income for corporations is defined as the sum of net corporate income, any business loss carryforward allowed under section 71.26 (4), Wis. Stats., and the household income of each corporate shareholder including the income of spouse, dependents, and other members of the household. Corporations must include in income farm depreciation in excess of \$25,000, all nonfarm depreciation, and nonfarm business losses. The credit is refundable.

The credit is available for tax years through 2009, although the credit may still be claimed for tax years after 2009 for preservation agreements entered into before July 1, 2009. For tax years 2010 and after, the Farmland Preservation Credit and the Farmland Tax Relief Credit have been replaced with a single program called the Farmland Preservation Credit, 2010 and Beyond (see below).

Farmland Preservation Credit, 2010 and Beyond. Beginning in tax year 2010, a refundable per-acre farmland preservation credit is available under which a claimant may claim as a credit against income taxes an amount calculated by multiplying the claimant's qualifying acres by one of the following amounts:

- \$10 if the qualifying acres are located in a farmland preservation zoning district and are also subject to a farmland preservation agreement that is entered into after July 1, 2009;
- \$7.50 if the qualifying acres are located in a farmland preservation zoning district but are not subject to a farmland preservation agreement that is entered into after July 1, 2009; or

- \$5 if the qualifying acres are subject to a farmland preservation agreement that is entered into after July 1, 2009 but are not located in a farmland preservation zoning district.

Dairy Manufacturing Facility Investment Credit. For tax year beginning after December 31, 2006 and before January 1, 2015, a refundable credit is available based on expenses incurred for modernization or expansion of a dairy manufacturing facility in this state. The maximum annual amount of credit that may be allocated to all claimants is \$700,000. The maximum aggregate amount a single C-corporation may claim for all years is \$200,000. S corporations, partnerships, and limited liability companies may claim a maximum of \$200,000 for each of its manufacturing facilities. "Dairy manufacturing modernization or expansion" is defined as constructing, improving, or acquiring buildings or facilities, or acquiring equipment, if used exclusively for dairy manufacturing.

Dairy manufacturers must be certified as eligible for the credit by DATCP. In the event that the total dollar amount of applications for the credit exceeds the annual limit, DATCP will allocate the credit on a pro-rata basis to the applicants.

Dairy Cooperative Manufacturing Facility Investment Credit. For tax years beginning after December 31, 2008 and before January 1, 2017, a refundable credit is available to dairy cooperatives based on expenses incurred for modernization or expansion of the cooperative's dairy manufacturing facility in this state. The maximum amount of credit that may be allocated to all cooperatives is \$600,000 in FY 2010 and \$700,000 in FY 2011 through 2017. The maximum aggregate amount a single cooperative may claim for all years is \$200,000 for each of its manufacturing facilities. The dairy cooperative must apply to DATCP for the credit but could not claim the credit. Instead, the cooperative must pass the credit through to its members. The definition of "dairy manufacturing facility" and other terms are the same as for the dairy manufacturing facility credit outlined above.

Meat Processing Facility Investment Credit. 2009 Act 2 created a refundable meat processing facility investment tax credit equal to 10% of the amount the claimant paid in the tax year for meat processing modernization or expansion related to the claimant's meat processing operation. The tax credit can be claimed for tax years beginning after December 31, 2008 and before January 1, 2017. The maximum aggregate amount of meat processing facility investment tax credits that can be claimed by a claimant in all years is \$200,000. The total amount of tax credits that can be claimed is limited to \$300,000 in fiscal year 2010 and \$700,000 in fiscal years 2011 and thereafter.

"Meat processing modernization or expansion" is defined as constructing, improving, or acquiring buildings or facilities or acquiring equipment for meat processing if acquired and placed in service in this state during taxable years that begin after December 31, 2008, and before January 1, 2017.

Meat processors must be certified as eligible for the credit by DATCP. In the event that the total dollar amount of applications for the credit exceeds the annual limit, Commerce will allocate the credit on a pro-rata basis to the applicants.

Beginning Farmer and Farm Asset Credits. Available for tax years beginning after December 31, 2010, the refundable beginning farmer tax credit would equal the amount paid by the beginning farmer to enroll in a financial management program in the year to which the claim related. An individual is a beginning farmer if they have:

- (a) a net worth of less than \$200,000;
- (b) farmed for fewer than ten years out of the preceding 15 years;
- (c) entered into a lease for a term of at least three years with an established farmer for the use of the established farmer's agricultural assets by the beginning farmer; and
- (d) used the leased agricultural assets for farming.

The beginning farmer tax credit may be claimed on one-time basis, and the maximum credit that may be claimed is \$500.

The farm asset owner tax credit is equal to 15% of the lease amount received by an established farmer in the year to which the claim related. "Lease amount" is defined as the amount of the cash payment paid by a beginning farmer to an established farmer each year for leasing the established farmer's agricultural assets. The credit may only be claimed for the first three years of any lease of the established farmer's assets to a beginning farmer. The credit is refundable.

F. PASS-THROUGH ENTITIES

Wisconsin provides for differential tax treatment of business income depending on the form of organization under which a business operates. Business income of S-corporations, partnerships and limited liability companies that choose to be treated as partnerships is reported and taxed on the individual income tax returns of the owners (shareholders, partners or members) of the business.

Wisconsin law permits the formation of Subchapter S corporations and limited liability companies. Both of these entities combine the benefits of limited liability offered to corporations, with pass-through of income to the individual owners. Thus, these entities generally pay no tax at the entity level. Instead, income is passed through to the individual shareholders or members, who pay tax on the income at the lower individual income tax rates. (The individual income tax rates range from 4.6% to 7.75%, compared to the 7.9% corporate income tax rate.) This flow-through aspect of income also avoids the double taxation of C-corporation dividends that occurs when profits are first taxed at the corporate level and then again at the individual level when profits are distributed as dividends to individual shareholders.

1. Subchapter S Corporations¹²

Wisconsin has federalized its treatment of Subchapter S corporations. Subchapter S, or "tax-option" corporations, elect to have their income exempted from the corporate income tax. The net profit or loss of these companies, with certain exceptions, is instead attributed to stockholders on a prorated basis and taxed under the individual income tax. Interest income on debt issued by federal, state, and municipal governments is taxable at the entity level. In addition, S corporations with more than \$4 million in gross receipts are also subject to the economic development surcharge. Finally, S corporations are subject to a tax on certain built-in gains (gains on sale of assets held at the time of conversion to an S corporation).

Typically, "tax-option" corporations are small businesses with fairly simple capital structures. The IRC restricts the number of shareholders to a maximum of 100. It also imposes a number of other limitations, such as the amount of passive investment income that can be earned and the types of stock that can be issued.

Tax liability is determined as of the end of each stockholder's tax year and must be paid regardless of whether or not the corporate income has been distributed. A major impact of exempting S-corporation income at the entity level is that capital gains realized by the S corporation qualify for the state net capital gain exclusion for individuals when the gains are passed through to the shareholders. Up until tax year 2009, this exclusion was 60% for long term gains; 2009 Act 28 reduced the exclusion to 30%.¹³

2. Limited Liability Companies¹⁴

Like S-corporations, owners (called members) of limited liability companies (LLCs) are taxed on the flow-through income of the company at lower individual income tax rates rather than at the higher corporate rate.

LLCs allow for greater flexibility than S-corporations in the way they can be structured. For example, while S-corporations allow only individuals to be owners, LLC members can include corporations, partnerships, foreign entities, trusts, and charitable organizations as well as individuals. An LLC can have an unlimited number of members as owners, and profits and losses can be more freely allocated among the members.

An LLC may be classified for federal income tax purposes as a partnership, a corporation, or as an entity disregarded as a separate entity from its owner. If an LLC is classified as a partnership for federal income tax purposes, it is treated as a partnership for Wisconsin purposes. An LLC classified as a corporation for federal income tax purposes is treated as a corporation by Wisconsin. An LLC with a single owner may elect to be disregarded as a separate entity for federal income tax purposes, and any income or loss from the disregarded LLC would be included on the return of the owner.

¹² For more information on Wisconsin's tax treatment of S corporations, see Publication 102, "Wisconsin Tax Treatment of Tax-option (S) Corporations and Their Shareholders," available at <http://www.revenue.wi.gov/pubs/pb102.pdf>

¹³ Long-term capital gains of farm assets retain the 60% exclusion. Farm assets include farm livestock, farm real property, farm depreciable property or farm equipment.

¹⁴ For more information on Wisconsin's tax treatment of LLCs, see Publication 119, "Limited Liability Companies (LLCs)," available at <http://www.revenue.wi.gov/pubs/pb119.pdf>

If the LLC elects to be disregarded for federal tax purposes it is also disregarded as a separate entity for Wisconsin income tax purposes. LLCs with over \$4 million in gross receipts are subject to the economic development surcharge.

3. Partnerships

A partnership is an association of two or more persons to carry on as co-owners a trade or business for profit. The term “partnership” includes a limited partnership, registered limited liability partnership, syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and is not, within the meaning of the Wisconsin income tax law, a corporation, trust, estate, or sole proprietorship.

As with S corporations and LLCs that elect to be treated as partnerships for tax purposes, income and losses generated by the partnership are passed through to the partners and will be reported on the partner's individual returns. Partnerships with over \$4 million in gross receipts are subject to the economic development surcharge.

G. HISTORY OF THE CORPORATE TAX

Wisconsin enacted the corporate income tax in 1911, at the same time the individual income tax was created. Since enactment, the basic features of the corporate tax have remained fairly constant, with a number of noteworthy changes, including a shift from graduated rates to a flat rate in 1981, federalization of the tax base in 1987, imposition of a recycling surcharge in 1992 (renamed the economic development surcharge for FY 2012 and beyond), changing from three-factor apportionment to a single sales factor in 2008, and implementation of combined reporting for corporate groups in 2009.

1. Imposition of Flat Rate

Chapter 20, Laws of 1981, replaced the series of rates and brackets—ranging from 2.3% on taxable income of less than \$1,000 to 7.9% on income exceeding \$6,000—with a single flat rate of 7.9%. This step signaled the end of nearly 70 years of reliance on a graduated corporate rate structure (see Table 2). Graduated rates were designed to make the corporate tax progressive in its application. However, the growth in business earnings resulting from the dramatic growth in the size and scope of corporations operating in Wisconsin, along with the effects of economic growth and inflation, essentially eliminated the degree of progressivity in the rate structure, since nearly all corporate profits were taxable at the top 7.9% rate. The 7.9% flat rate has not been changed since 1981, except for a 10% surtax during the 1982 and 1983 tax years.

Taxable Income	1913-1953	1954-1970	1971	1972-80	1981 Through Present
First \$1,000	2.0%	2.0%	2.1%	2.3%	Flat Rate of 7.9%
Second \$1,000	2.5	2.5	2.7	2.8	
Third \$1,000	3.0	3.0	3.2	3.4	
Fourth \$1,000	3.5	4.0	4.3	4.5	
Fifth \$1,000	4.0	5.0	5.3	5.6	
Sixth \$1,000	5.0	6.0	6.4	6.8	
More than \$6,000	6.0	7.0	7.4	7.9	

2. Federalization of the Tax Base

1987 Wisconsin Act 27 federalized the determination of net taxable income for the state corporate tax. Until then, the amount of income subject to the state corporate tax was, for the most part, determined independently of federal law. The previous state statutes paralleled federal law in many respects regarding the deductions allowed in determining net taxable income. However, in a number of areas, such as depreciation, there were significant differences between state and federal law. This pattern in the state corporate tax was in contrast to the individual income tax, which closely paralleled federal law. Under the federalized state corporate tax in effect since 1987, corporate taxpayers are subject to tax on the Wisconsin apportioned share of their federal net taxable income, with a limited number of adjustments for the relatively few remaining federal/state law differences and the ongoing effects of previous law differences.

3. Recycling/Economic Development Surcharge

For tax years ending after April 1, 1992, and before April 1, 1999, a temporary recycling surcharge was imposed on regular (C) corporations and tax-option (S) corporations. Until tax year 1998, the surcharge on regular corporations was equal to 5.5% of gross tax liability, and the surcharge on tax-option corporations was equal to 0.4345% of net Wisconsin business income. The rate was cut in half beginning in tax year 1998, to 2.75% of corporate tax liability and 0.2173% of net business income of non-corporate entities. A permanent surcharge was imposed for tax years beginning on or after January 1, 2000. The surcharge rate for regular corporations is 3% of gross tax liability and 0.2% of net income for other business entities. The maximum surcharge is \$9,800 and the minimum is \$25.

Beginning in state fiscal year 2012, the recycling surcharge is renamed the economic development surcharge. All provisions of the surcharge remain the same, except that the revenues are deposited in a segregated economic development fund and are used to fund economic development programs of the WEDC.

4. Single Sales Factor Apportionment

For taxable years 2007 and before, the Wisconsin portion of taxable income for businesses that operated in multiple states was determined by using a formula that had three factors – sales, payroll, and property. For tax years 2008 and after, a single sales factor formula is used, with the numerator being Wisconsin sales and the denominator being total sales without regard for location.

The change to a single sales factor did not affect equally all corporations with income apportionable to Wisconsin. Individual companies could have had a tax increase or a tax decrease depending on the organization of their business compared to prior law. Included below are examples of a company with a tax increase and a company with a tax decrease. In both examples, the change in tax liability is due to the method of apportioning taxable income to the state.

5. Combined Reporting ¹⁵

Effective for taxable years beginning on or after January 1, 2009, Wisconsin law requires groups of corporations with common ownership that are engaged in a unitary business to file a single return (referred to as a combined report) to compute their Wisconsin taxable income. In brief, the corporations required to use combined reporting are those which are both commonly controlled (generally speaking, this means 50% common ownership), and engaged in the same unitary business.

Only regular "C" corporations are required to use combined reporting. Tax-option (S) corporations and individuals must file separate returns. Income earned by a pass-through entity such as a partnership, limited liability company, estate, or trust is included in a combined report to the extent the income passes through to a member corporation. However, the pass-through entities are not considered members of the group.

"Unitary business" is defined as a single economic enterprise made up of one or multiple related entities which are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Entities are presumed to be a unitary business if they have unity of ownership, operation, and use as indicated by the presence of one or more specific factors. These factors include (but are not limited to):

- centralized management, executive force, purchasing, advertising, or accounting;
- inter-corporate sales or leases;
- inter-corporate services, including administrative, employee benefits, human resources, legal, financial, or cash management services;
- inter-corporate debts;
- inter-corporate use of proprietary materials; and
- inter-locking directorates or corporate officers.

The income and deductible expenses that are related to the operation of the unitary business are summed for all members to arrive at the group's unitary business income. Any intercompany transactions are removed. Each corporation in the group multiplies the combined group's unitary business income by an apportionment fraction. The

¹⁵ More information on combined reporting can be found on the Department of Revenue website at <http://www.revenue.wi.gov/comb rept/index.html>

numerator of the fraction is, generally speaking, equal to the member's Wisconsin sales. The denominator of the fraction is the sum of the denominators of all group members' everywhere sales.

Corporate group members that use special multiple-factor formulas would use the multiple-factor apportionment formula to derive a modified sales factor.¹⁶ The denominator of the modified sales factor is total company sales, which is determined in the same manner as corporations that do not use special apportionment factors. The numerator would be determined by applying the multi-factor apportionment percentage as if they were not a member of a combined group to the member's total sales.

Business loss carryforwards from tax years before combined reporting was implemented can only be used to offset the income of the individual group member that generated the losses. With the exception of the research expenditure credit, research facilities credit, engine research credit, and the energy efficient products research credits, new credit claims and credit carryforwards from previous years may only be used to offset the tax liability of the individual group member that generated the credits. Both new claims as well as credit carryforwards from previous years for the research expenditure credit, research facilities credit, engine research credit, and the energy efficient products research credits may be used to offset the tax liability of all members of the combined group. A designated agent of each group, generally the parent company, is responsible for the filing of tax returns for all members of the group.

H. CORPORATE TAX COLLECTIONS

Corporate tax collections as a percent of total general purpose revenue (GPR) have fluctuated over the last 30 fiscal years. As shown in Table 3, corporate tax revenues represented 9.4% of GPR in fiscal year 1981-82 and declined to a low of 5% of GPR in fiscal year 2001-02. The percentage of GPR represented by corporate tax revenue has fluctuated since then, and was 6.6% in fiscal year 2010-11.

¹⁶ The industries required to use special multiple-factor apportionment formulas are interstate pipeline companies, interstate telecommunication companies, interstate air carriers, interstate motor carriers, and interstate railroads.

Fiscal Year	Corporate Tax Collections (\$000s)	Total GPR Collections (\$000s)	Corp. % of GPR	Fiscal Year	Corporate Tax Collections (\$000s)	Total GPR Collections (\$000s)	Corp. % of GPR
1981-82	\$322,939	\$3,425,664	9.40%	1996-97	\$643,822	\$8,804,011	7.30%
1982-83	339,782	3,769,645	9.00%	1997-98	627,024	9,528,237	6.60%
1983-84	393,481	4,528,972	8.70%	1998-99	635,203	9,948,408	6.40%
1984-85	413,645	4,447,227	9.30%	1999-00	644,625	10,945,898	5.90%
1985-86	407,590	4,775,500	8.60%	2000-01	537,159	10,063,439	5.30%
1986-87	470,689	4,954,946	9.50%	2001-02	503,008	10,020,183	5.00%
1987-88	461,369	5,173,665	8.90%	2002-03	526,545	10,199,739	5.20%
1988-89	448,367	5,536,443	8.10%	2003-04	650,526	10,739,319	6.10%
1989-90	436,562	5,649,481	7.70%	2004-05	764,053	11,396,650	6.70%
1990-91	440,917	6,072,955	7.30%	2005-06	780,300	12,030,100	6.50%
1991-92	437,689	6,339,599	6.90%	2006-07	890,100	12,617,900	7.10%
1992-93	492,015	6,871,018	7.20%	2007-08	837,800	13,042,900	6.40%
1993-94	541,284	7,277,553	7.40%	2008-09	629,500	12,113,200	5.20%
1994-95	631,750	7,778,422	8.10%	2009-10	834,500	12,131,700	6.90%
1995-96	\$636,010	\$8,209,483	7.70%	2010-11	\$852,863	\$12,911,985	6.60%

Source: Wisconsin Department of Revenue.

I. WISCONSIN C-CORPORATION FILERS BY INDUSTRY AND NET INCOME

The following tables show Wisconsin C-corporation tax collections by industry and by size of business for tax year 2008, the latest data available.¹⁷ Table 4 shows the number of corporations and the amount of tax by two-digit NAICS code. Table 5 shows the tax collections by size of the corporation, as measured by the amount of net income of the corporation. The data in Tables 4 and 5 do not include S-corporations, because very few S-corporations pay tax at the entity level. Instead, income for S-corporations is passed through and taxes are paid by the individual owners of the corporation.

As shown in Table 4, the finance and insurance sector accounted for approximately 23% of net corporate tax liability reported in tax year 2008, the highest proportion for that tax year. The manufacturing sector accounted for approximately 19% of net tax liability. Wholesale trade was the third-largest sector by net tax liability, accounting for almost 13% of total net tax liability. These three sectors accounted for over half of the total net tax liability in tax year 2008.

¹⁷ Because corporations can have a fiscal year that differs from the calendar year, and because corporations typically are granted extensions on the due date for filing returns, there is a considerable delay before complete statistics for a given tax year are available. For example, the extended due date for the tax year 2009 return for a corporation with a fiscal year that runs from December 1, 2009 through November 30, 2010 would be September 15, 2011.

**TABLE 4
TAX YEAR 2008 WISCONSIN C-CORPORATION INCOME AND FRANCHISE TAX LIABILITY
BY TWO-DIGIT NAICS CLASS**

Industry	NAICS Class	# of Corps.	Net Income			Total Corporate Tax Liability		
			# with Income	Net Income (\$000's)	% of Total	# with Liability	Net Tax (\$000's)	% of Total
Agriculture	11	1,702	598	54,795,680	0.79%	426	3,352,913	0.66%
Mining	21	128	36	53,798,305	0.78%	35	4,241,437	0.83%
Utilities	22	109	42	372,730,719	5.39%	41	29,445,726	5.76%
Construction	23	4,386	1,191	131,153,012	1.90%	1,183	10,328,243	2.02%
Manufacturing	31-33	5,320	1,912	1,397,100,270	20.20%	1,844	96,489,686	18.88%
Wholesale Trade	42	3,792	1,575	857,862,351	12.40%	1,561	66,060,200	12.93%
Retail Trade	44-45	4,038	1,244	438,190,010	6.34%	1,240	34,025,698	6.66%
Transportation and Warehousing	48-49	1,923	650	261,157,151	3.78%	641	20,564,011	4.02%
Information	51	1,367	424	584,208,051	8.45%	415	42,595,230	8.34%
Finance and Insurance	52	4,022	1,264	1,594,636,996	23.06%	1,235	119,397,226	23.37%
Real Estate and Leasing	53	3,166	873	109,351,687	1.58%	860	8,632,723	1.69%
Professional, Scientific, and Technical Services	54	5,368	1,798	402,920,829	5.83%	1,767	26,152,442	5.12%
Management of Companies	55	1,247	334	264,212,914	3.82%	334	20,028,611	3.92%
Administrative, Support, and Waste Management	56	1,712	594	125,564,913	1.82%	590	9,136,953	1.79%
Educational Services	61	191	69	17,022,521	0.25%	68	1,331,976	0.26%
Health Care and Social Assistance	62	2,831	694	140,489,094	2.03%	678	10,495,946	2.05%
Arts, Entertainment, and Recreation	71	784	275	19,868,613	0.29%	274	1,569,621	0.31%
Accommodation and Food Services	72	1,714	440	28,328,131	0.41%	436	2,237,913	0.44%
Other Services (except Public Administration)	81	1,912	617	32,922,956	0.48%	611	2,600,917	0.51%
Other/Unknown	n/a	2,085	508	29,592,933	0.43%	492	2,252,127	0.44%
Totals		47,797	15,138	6,915,907,136	100.00%	14,731	510,939,599	100.00%

Source: Aggregate statistics compiled by the Department of Revenue

As shown in Table 5, C-corporations reported net taxable income of \$6.9 billion for tax year 2008 and net tax liability of \$510.9 million. Of the 47,797 corporate returns filed in tax year 2008, 32,659 (68.4%) showed no taxable income or reported a net loss and thus reported no net tax liability. Of the 15,138 returns that reported a positive net income, 407 either had only minimal income and therefore no tax was due or used non-refundable credits to reduce their net tax liability to zero.

TABLE 5 TAX YEAR 2008 WISCONSIN C-CORPORATION INCOME & FRANCHISE TAX LIABILITY BY NET INCOME CLASS					
Net Income Class	Count	With Net Income		With Net Tax	
		Count	Amount	Count	Amount
No income or net loss	32,659				
\$0 to \$10,000	5,663	5,663	\$17,410,337	5,480	\$1,351,257
\$10,001 to \$25,000	2,238	2,238	36,850,409	2,189	2,844,335
\$25,001 to \$50,000	1,811	1,811	65,636,558	1,771	5,045,799
\$50,001 to \$100,000	1,665	1,665	117,867,892	1,619	8,971,743
\$100,001 to \$250,000	1,455	1,455	234,348,308	1,420	17,950,530
\$250,001 to \$500,000	811	811	287,052,932	796	21,979,028
\$500,001 to \$1,000,000	580	580	412,805,121	570	31,567,537
\$1,000,001 to \$5,000,000	673	673	1,473,495,591	649	109,487,984
\$5,000,001 to \$10,000,000	133	133	931,903,373	131	67,392,239
Over \$10,000,000	109	109	\$3,338,536,615	106	\$244,349,147
Totals	47,797	15,138	\$6,915,907,136	14,731	\$510,939,599

Source: Aggregate statistics compiled by the Department of Revenue.

J. OTHER STATES

Table 6 shows the tax rates and standard apportionment formulas for all 50 states for tax year 2009. Four states (Nevada, South Dakota, Washington, and Wyoming) have no general corporate income tax. Special industry apportionment formulas, such as those used for financial institutions, insurance companies or utilities, are not included in the table.

Also, in some states the tax rates for special entities, such as S corporations or financial institutions, are different than the rates for other entities. These special rates are not included in the table.

"Double-weight" (or "triple-weight") indicates that the apportionment is based on three factors but the sales factor is double-weighted (or triple-weighted).

**TABLE 6
STATES' TAX RATES AND APPORTIONMENT FORMULAS, TAX YEAR 2009**

State	Apportionment	Tax Rates
Alabama	Evenly-weighted 3-Factor	6.5%; taxpayers with \$100,000 or less of gross sales within the state may pay 0.25% on such sales
Alaska	Evenly-weighted 3-Factor	1% on \$10k, up to 9.4% over \$90k
Arizona	Three-factor formula with double-weighted sales factor or enhanced sales factor formula 80-10-10 (sales, property, payroll).	6.97%, minimum tax \$50
Arkansas	Three-factor formula with double-weighted sales factor.	1% on \$3k to 6.5% over \$100k
California	Three-factor formula with double-weighted sales factor. Taxpayers may elect single-sales factor formula beginning with 2011 taxable year	8.84%
Colorado	Single Sales Factor	4.63%; taxpayers with \$100,000 or less of gross sales within the state may pay 0.5% on such sales
Connecticut	Single-factor gross receipts formula for income other than that derived from the sale or use of tangible personal or real property, and three-factor formula with double-weighted sales factor for income derived from the sale or use of tangible personal or real property.	Greater of: 7.5%; 3.1 mills per dollar of capital holding; or minimum tax of \$250. Corporations filing combined returns subject to additional preference tax of up to \$250,000. 10% surcharge for tax years 2009, 2010, 2011
Delaware	Evenly-weighted 3-Factor	8.70%
Washington, DC	Evenly-weighted 3-Factor	9.98%
Florida	Double-weighted Sales Factor	5.5% or 3.3% alternative minimum tax, minus a \$5,000 exemption
Georgia	Single Sales factor	6%
Hawaii	Evenly-weighted 3-Factor	4.4% on \$25k to 6.4% over \$100k; or taxpayers with \$100,000 or less of gross sales within the state may pay 0.5% on such sales
Idaho	Double-weighted Sales Factor	7.6% plus \$10; or taxpayers with \$100,000 or less of gross sales within the state may pay 1% on such sales
Illinois	Single Sales Factor	7.3% Combined Rate
Indiana	Property and payroll factors phased out by 10% each year from 2008 through 2011. Single sales factor apportionment formula effective in tax year 2011.	8.50%
Iowa	Single Sales factor	6% on \$25k to 12% minus \$7,500 over \$250k
Kansas	Evenly-weighted 3-Factor	4% plus 3.05% surtax on income over \$50k; surtax rate reduced to 3.0% for tax years 2011 and after

**TABLE 6
STATES' TAX RATES AND APPORTIONMENT FORMULAS, TAX YEAR 2009**

State	Apportionment	Tax Rates
Kentucky	Double-weighted Sales Factor	4% on \$50k to 6% over \$100k
Louisiana	Evenly-weighted 3 Factor; special formulas for select industries	4% on \$25k to 8% over \$200k
Maine	Single Sales Factor	3.5% on \$25k to 8.93% over \$250k
Maryland	Double-weighted sales factor; Single Sales for manufacturers.	8.25%
Massachusetts	Double-weighted Sales Factor	8.25% in 2010 and 8% in 2011; \$2.60 per \$1,000 of tangible personal property or minimum tax of \$456
Michigan	Single Sales Factor	Michigan Business Tax imposed at rate of 4.95% and modified gross receipts tax imposed at rate of 0.8% on receipts of \$350,000 or more.
Minnesota	Phase in single sales factor by 2013	9.8%; corporations are subject to an additional minimum tax ranging from \$0 to \$5,000 depending on in-state property, payroll, and sales or receipts
Mississippi	General apportionment factor is Single Sales; Most industries have special factors	\$0-\$5,000: 3%; \$5,001-\$10,000: 4%; \$10,001 or more: 5%
Missouri	3-Factor or optional Single Sales for certain industries	6.25%
Montana	Evenly-weighted 3-Factor	6.75%; taxpayers with \$100,000 or less of gross sales within the state may pay 0.5% on such sales.
Nebraska	Single Sales Factor	5.58% on \$100k to 7.81% over \$100k
Nevada	Not Applicable	Not Applicable
New Hampshire	Double-weighted Sales Factor	8.5% if gross income over \$50,000
New Jersey	Double-weighted Sales Factor	Greater of: \$0-\$50,000: 6.5%; \$50,001-\$100,000: 7.5%; \$100,001 or more: 9%; or alternative minimum; or fixed dollar minimum of \$500 up to \$2,000
New Mexico	Evenly-weighted 3-Factor	\$0-\$500,000: 4.8%; \$500,001-\$1 million:6.4%; over \$1 million:7.6%; or taxpayers with \$100,000 or less of gross sales within the state may pay 0.75% on such sales.
New York	Single Receipts Factor	7.1% (6.5% for qualified in-state manufacturers); may be required to use alternative minimum calculation
North Carolina	Double-weighted Sales Factor	6.9% plus a 3% surcharge
North Dakota	Evenly-weighted 3-Factor	\$0-\$25,000: 2.1%; \$25,001-\$50,000:5.25%; \$50,001 or more: 6.4%;
Ohio	Triple-weighted Sales Factor	Commercial activity tax on gross receipts: \$150,000-1 million: \$150; over \$1 million: \$150 plus 0.26%
Oklahoma	3-Factor, or Double-weight if meet investment criteria	6%

TABLE 6
STATES' TAX RATES AND APPORTIONMENT FORMULAS, TAX YEAR 2009

State	Apportionment	Tax Rates
Oregon	Single Sales Factor	6.6% on first \$250,000, 7.9% on income over \$250,000.
Pennsylvania	Three-factor formula 90-5-5 (sales, property, payroll).	9.99%
Rhode Island	Evenly-weighted 3-Factor	Greater of: net income tax of 9%; or franchise tax on capital stock of \$2.50 for each \$10,000; or minimum tax of \$500.
South Carolina	Double-weighted Sales Factor or optional Single Sales Factor for certain industries	5%
South Dakota	Not Applicable	Not Applicable
Tennessee	Double-weighted Sales Factor	6.50%
Texas	Single Gross Receipts Factor	Margin tax imposed on entities with more than \$1 million total revenues at rate of 1%, or 0.5% for entities primarily engaged in retail or wholesale trade. Not required to pay if tax is less than \$1,000
Utah	Evenly-weighted 3-Factor, optional double-weighted sales factor	5%
Vermont	Double-weighted Sales Factor	\$0-\$10,000: 6%; \$10,001-\$25,000: 7%; \$25,001 and over: 8.5%
Virginia	Double-weighted Sales Factor	6%
Washington	Not Applicable	Not Applicable
West Virginia	Double-weighted Sales Factor	9%
Wisconsin	Single Sales Factor	7.90%
Wyoming	Not Applicable	Not Applicable

Source: CCH Multi-state Corporate Income Tax Guide

As shown in Table 7, there are 25 states that currently require combined reporting for affiliated groups of corporations. An additional four states permit combined reporting or require it only in certain cases or for certain corporate groups. Seventeen states and the District of Columbia have no combined reporting requirement.

State	Reporting Requirement	State	Reporting Requirement
Alabama	Single-entity reporting	Mississippi	Combined reporting
Alaska	Combined reporting	Missouri	Single-entity reporting
Arizona	Combined reporting	Montana	Combined reporting
Arkansas	Single-entity reporting	Nebraska	Combined reporting
California	Combined reporting	New Hampshire	Combined reporting
Colorado	Combined reporting	New Jersey	Single-entity reporting
Connecticut ¹⁸	Combined reporting permitted	New Mexico	Combined reporting
Delaware	Single-entity reporting	New York	Combined reporting
District of Columbia	Combined reporting for tax year 2011 and after	North Carolina	Combined reporting
Florida	Single-entity reporting	North Dakota	Combined reporting
Georgia	Single-entity reporting	Ohio	Combined reporting
Hawaii	Combined reporting	Oklahoma	Single-entity reporting
Idaho	Combined reporting	Oregon	Single-entity reporting
Illinois	Combined reporting	Pennsylvania	Single-entity reporting
Indiana ¹⁹	Combined reporting may be required or allowed	Rhode Island	Single-entity reporting
Iowa	Single-entity reporting	South Carolina	Single-entity reporting
Kansas	Combined reporting	Tennessee ²⁰	Combined reporting only for certain groups
Kentucky	Single-entity reporting	Texas	Combined reporting
Louisiana	Single-entity reporting	Utah	Combined reporting
Maine	Combined reporting	Vermont	Combined reporting
Maryland	Single-entity reporting	Virginia	Combined reporting allowed
Massachusetts	Combined reporting	West Virginia	Combined reporting
Michigan ²¹	Combined reporting	Wisconsin	Combined reporting
Minnesota	Combined reporting		

Source: CCH Multi-state Corporate Income Tax Guide

¹⁸ Combined reporting permitted if add back required for otherwise deductible interest expenses and costs paid, accrued, or incurred to one or more group members; or statutory method of determining combined measure of tax for two or more affiliated corporations within group is deemed to unfairly attribute an undue proportion of total income or minimum tax base to the state, and petition to calculate tax on unitary basis is approved.

¹⁹ Combined reporting may be required or allowed if it will more fairly reflect the unitary group's state source income.

²⁰ Separate reporting required, except combined reporting required for unitary groups of financial institutions. Combined reports may be required for entities owned or controlled by the same interests.

²¹ Unitary business groups are required to file combined returns for purposes of Michigan Business Tax. Separate reporting required for purposes of Single Business Tax, unless water's-edge reporting permitted or required.