

Wisconsin Tax-Option (S) Corporation Taxes Form 5S Instructions

New . . .

Computing Wisconsin net income

Compute Wisconsin net income for taxable years beginning in 2005 using the federal Internal Revenue Code as amended to December 31, 2004, with certain exceptions. The exceptions are described on page 6.

Computing Wisconsin sales factor

For taxable years beginning on or after January 1, 2005, gross receipts from the use of computer software are Wisconsin sales if the purchaser or licensee uses the software at a location in Wisconsin. Gross receipts from services are Wisconsin sales if the purchaser receives the benefit of the service in Wisconsin. See page 24.

Corporation e-filing

Wisconsin is participating in the Fed/State 1120 Project for the electronic filing of certain corporate franchise and income tax returns for taxable years beginning in 2005. For additional information, see the Department's web site at www.dor.state.wi.us/eserv/corp.html.

Veterans trust fund donation

Corporations may designate any amount of refund due or additional payment for the veterans trust fund. See page 12.

Withholding required for nonresident shareholders

A tax-option (S) corporation that has nonresident shareholders is subject to a withholding tax, unless certain exceptions are met. See page 8.

Important . . .

Allocation of income from lottery prizes

All income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin is allocated to Wisconsin. A multistate corporation includes this income on Form 4B, Part I, line 4. See page 23.

Federal treatment of qualified subchapter S subsidiaries (QSubs) applies for Wisconsin

A corporation that is treated as a QSub for federal purposes is treated as a QSub for Wisconsin purposes. See page 2.

Payment of corporation franchise and income tax

Corporations registered to pay by electronic funds transfer (EFT) may pay tax due with the return and bills, except audit assessments, by EFT. See page 5.

Wisconsin use tax

Corporations that purchase taxable tangible personal property or taxable services for storage, use, or consumption in Wisconsin without payment of a state sales or use tax are subject to a Wisconsin use tax. See page 5.

For More Information . . .

Visit the Department of Revenue's Internet web site at www.dor.state.wi.us

At this site you may download tax forms and instructions, Department of Revenue publications, and the *Wisconsin Tax Bulletin*, which is a quarterly newsletter that provides information about new Wisconsin tax laws, administrative rules, court decisions, tax releases, and private letter rulings. The site also provides links to Wisconsin laws and tax rules.

Don't Forget . . .

- Fill in your federal employer ID number
- Fill out the form completely
- Attach a copy of your federal Form 1120S and any other required forms, schedules, or statements
- Attach a copy of any extension
- Sign the return



General Instructions

Purpose of Form 5S

Tax-option (S) corporations use Form 5S to report their income, gains, losses, deductions, and credits and to compute their franchise tax, built-in gains tax, and recycling surcharge liability.

Definition of Corporation

“Corporation” includes corporations, joint stock companies, associations, common law trusts, and all other entities treated as corporations under section 7701 of the Internal Revenue Code (IRC).

A single-owner entity that is disregarded as a separate entity under IRC section 7701 is disregarded as a separate entity for Wisconsin franchise or income tax purposes, and its owner is subject to the tax on or measured by the entity’s income.

If a federal S corporation elects to treat a subsidiary as a qualified subchapter S subsidiary (QSub) for federal purposes, that election automatically applies for Wisconsin purposes. The QSub is disregarded as a separate corporation for Wisconsin purposes, and its assets, liabilities, and items of income, deduction, and credit are treated as those of the parent tax-option (S) corporation.

Franchise or Income Tax

Franchise tax applies to –

- All domestic corporations (those organized under Wisconsin law) and
- Foreign corporations (those not organized under Wisconsin law) doing business in Wisconsin or buying or selling lottery prizes if the winning tickets were originally bought in Wisconsin, except where taxation is exempted by statute or barred by federal law.

The tax rate is 7.9%. Income from obligations of the United States government and its instrumentalities is included in income under the franchise tax law.

Income tax applies only to foreign corporations which are not subject to the franchise tax and which own property in Wisconsin or whose business in Wisconsin is exclusively in foreign or interstate commerce. The tax rate is 7.9%. Income from obligations of the United States government and its instrumentalities isn’t included in income under the income tax law.

Recycling Surcharge

The recycling surcharge applies to tax-option (S) corporations having gross receipts from all activities of \$4 million or more during the taxable year. Corporations that must file Wisconsin franchise or income tax returns must pay the recycling surcharge, with certain exceptions. The surcharge doesn’t apply to:

- Domestic corporations that don’t have any business activities in Wisconsin.
- Foreign corporations that don’t have nexus with Wisconsin.
- Corporations that have less than \$4 million of gross receipts from all activities. “Gross receipts from all activities” means gross receipts, gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.
- Nuclear decommissioning trust funds.

For more information, refer to Publication 400, *Wisconsin’s Recycling Surcharge*.

Who Must File

- Corporations organized under Wisconsin law.
- Foreign corporations licensed to do business in Wisconsin.
- Unlicensed corporations doing business in Wisconsin.
- Foreign corporations engaged in buying or selling lottery prizes if the winning tickets were originally bought in Wisconsin.
- Foreign corporations issuing credit, debit, or travel and entertainment cards to customers in Wisconsin.
- Foreign corporations owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in Wisconsin, regardless of the percentage of ownership.
- Foreign corporations owning, directly or indirectly, an interest in a limited liability company treated as a partnership that does business in Wisconsin, regardless of the percentage of ownership.
- Foreign corporations that are the sole owner of an entity that is disregarded as a separate entity under IRC section 7701 and does business in Wisconsin.
- Foreign S corporations that have a QSub that does business in Wisconsin.

Who Is Not Required to File

- Corporations and associations exempt under sec. 71.26(1), Wis. Stats., except those with (a) unrelated business taxable income as defined in IRC section 512, (b) income derived from a health maintenance organization or a limited service health organization, or (c) income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin. Exempt entities include insurers exempt from federal income taxation under IRC section 501(c)(15), town mutuals organized under Chapter 612, Wis. Stats., foreign insurers, domestic insurers engaged exclusively in life insurance business, domestic mortgage insurers, some cooperatives, and religious, scientific, educational, benevolent, or other corporations or associations of individuals not organized or conducted for profit.
- Corporations that are completely inactive in and outside Wisconsin and have filed Form 4H.
- Credit unions that don’t act as a public depository for state or local government funds and have filed Form CU.

Which Form to File

- | | |
|---------|---|
| Form 4 | Corporations (other than tax-option corporations) reporting under the apportionment or separate accounting methods. |
| Form 4H | Corporations that have been completely inactive in and outside Wisconsin for the entire taxable year and don’t anticipate any activity in future years. No other return is required until a corporation is activated, reactivated, or requested to file by the Department of Revenue.

Note: Foreign corporations licensed to transact business in Wisconsin that have no property or activity in Wisconsin but are active outside Wisconsin may not file Form 4H. They must file Form 4, 5, or 5S but need only check box G “No business transacted in Wisconsin” on the front of the return and attach a copy of their federal return. |
| Form 4I | Insurance companies, health maintenance organizations, and limited service health organizations. |
| Form 4T | Exempt corporations and associations of individuals that have unrelated business taxable income as defined in IRC section 512. |
| Form 5 | Corporations (other than tax-option corporations) whose entire business income is attributable to Wisconsin. |

- Form 5E Corporations that have elected and qualified to be S corporations for federal tax purposes but are electing not to be tax-option corporations for Wisconsin franchise or income tax purposes. In addition, such corporations must file Form 4 or 5.
- Form 5R Federal S corporations that elected not to be tax-option corporations for Wisconsin and subsequently are revoking their “opt-out” elections. In addition, such corporations must file Form 5S.
- Form 5S Tax-option (S) corporations.
- Form CU Credit unions that don’t act as a public depository for state or local government funds. These credit unions are exempt from taxation by Wisconsin. Once a Form CU has been filed, no other return must be filed unless requested by the Department of Revenue or the credit union subsequently acts as a public depository.

Supplemental Forms and Schedules

- Form 4B Multistate corporations using the apportionment method to compute Wisconsin income. File this form with Form 4, 4T, or 5S.
- Form 4B-1 Multistate corporations using a special apportionment method to compute Wisconsin income. File this form with Form 4, 4T, or 5S.
- Form 4BL Corporations claiming a net business loss carryforward. File this form with Form 4 or 5.
- Form 4C Multistate corporations using the separate accounting method to compute Wisconsin income. File this form with Form 4 or 4T.
- Form 4U Corporations computing underpayment interest, extension interest, delinquent interest, penalties, and late filing fees. File this form with Form 4, 4I, 4T, 5, or 5S.
- Sch. 5K-1 Tax-option (S) corporation shareholder’s share of income, deductions, etc. File this schedule with Form 5S.
- Sch. CU-1 Credit unions that act as a public depository. File this schedule with Form 4.
- Sch. DC Corporations claiming a Wisconsin development zones credit. File this schedule with Form 4, 4I, 4T, 5, or 5S.
- Sch. DI Corporations claiming a Wisconsin dairy investment credit. File this schedule with Form 4, 4I, 4T, 5, or 5S.
- Sch. FC Corporations claiming a Wisconsin farmland preservation credit. File this schedule with Form 4, 4I, 4T, or 5.
- Sch. FT Corporations claiming a Wisconsin farmland tax relief credit. File this schedule with Form 4, 4I, 4T, or 5.
- Sch. HR Corporations claiming a Wisconsin historic rehabilitation credit. File this schedule with Form 4, 4I, 4T, 5, or 5S.
- Sch. R Corporations claiming a Wisconsin research credit. File this schedule with Form 4, 4I, 4T, or 5.
- Sch. TC Corporations claiming a Wisconsin technology zone credit. File this schedule with Form 4, 4I, 4T, 5, or 5S.
- Sch. V Corporations reporting additions to federal income. File this schedule with Form 4 or 5.
- Sch. VC Corporations claiming a Wisconsin early stage seed investment credit. File this schedule with Form 4, 4I, 4T, 5, or 5S.

- Sch. W Corporations reporting subtractions from federal income. File this schedule with Form 4 or 5.
- Sch. Y Corporations claiming a deduction for dividends received. File this schedule with Form 4, 4I, or 5.
- Sch. Z Corporations claiming a Wisconsin manufacturer’s sales tax credit. File this schedule with Form 4, 4I, 4T, 5, or 5S.
- Sch. Z-1 Corporations claiming a Wisconsin manufacturer’s sales tax credit passed through from a partnership. File this schedule with Form 4, 4I, 4T, 5, or 5S.

How to Obtain Forms

If you need forms or publications, you may:

- Download them from the Department’s Internet web site at www.dor.state.wi.us
- Use your fax telephone to call the Department’s Fax-A-Form Retrieval System at (608) 261-6229
- Request them online at www.dor.state.wi.us/html/formsreq.html
- Call (608) 266-1961
- Write to the Forms Request Office, Wisconsin Department of Revenue, Mail Stop 1-151, P.O. Box 8949, Madison, WI 53708-8949
- Call or visit any Department of Revenue office

How to Obtain Assistance

If you need help in preparing a corporation franchise or income tax return, you may:

- E-mail your question to corp@dor.state.wi.us
- Send a FAX to (608) 267-0834
- Call (608) 266-2772 [TTY (608) 267-1049]
- Write to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8906, Madison, WI 53708-8906
- Call or visit any Department of Revenue office

Period Covered by Return

The return must cover the same period as the corporation’s federal income tax return. A 2005 Wisconsin return must be filed by a corporation for calendar year 2005 or a fiscal year that begins in 2005. A fiscal year may end only on the last day of a month. The period covered by the return can’t exceed 12 months.

However, corporations reporting on a 52-53 week period for federal tax purposes must file on the same reporting period for Wisconsin. A 52-53 week taxable year is deemed to begin on the first day of the calendar month beginning nearest the first day of the 52-53 week taxable year. The taxable year is deemed to end on the last day of the calendar month closest to the last day of the 52-53 week taxable year for purposes of due dates, extensions, and assessments of interest and penalties.

Change in Accounting Period

Any change in accounting period made for federal purposes must also be made for Wisconsin purposes. Attach to the Wisconsin return, for the first taxable year for which the change applies, a copy of the Internal Revenue Service’s notice of approval of accounting period change if the IRS’s approval is required or an explanation of the change if the IRS’s approval isn’t required.

Accounting Methods

In computing net income, the method of accounting must be the same method used in computing federal net income. However, if the method used for federal purposes isn’t authorized under the Internal Revenue Code in effect for Wisconsin, use a method authorized under the Internal Revenue Code in effect for Wisconsin.

General Instructions (continued)

A corporation, including a tax-option (S) corporation, entitled to use the installment method of accounting must take the unreported balance of gain on installment obligations into income in the taxable year of their distribution, transfer, or acquisition by another person or for the final taxable year for which it files or is required to file a Wisconsin franchise or income tax return, whichever year occurs first.

Change in Accounting Method

A change in accounting method made for federal purposes must also be made for Wisconsin purposes, unless the change isn't authorized under the Internal Revenue Code in effect for Wisconsin. Adjustments required federally as a result of a change made while the corporation is subject to Wisconsin taxation must also be made for Wisconsin purposes, except in the last year that a corporation is subject to taxation by Wisconsin it must take into account all remaining adjustments required.

Attach to the Wisconsin return, for the first taxable year for which the change applies, either a copy of the application for change in accounting method filed with the Internal Revenue Service and a copy of the IRS's consent if the IRS's approval is required or an explanation of the change if the IRS's approval isn't required.

Elections

As explained above, a corporation can't make different elections for federal and Wisconsin purposes with respect to accounting periods and accounting methods, unless the federal method isn't permitted under the Internal Revenue Code in effect for Wisconsin. In situations where a corporation has an option under the Internal Revenue Code and the IRS doesn't consider that option to be a method of accounting, a different election may be made for Wisconsin than that made for federal purposes. If federal law specifies the manner or time period in which an election must be made, those requirements also apply for Wisconsin purposes.

If different elections are made, adjustments are required on Form 5S, Schedule 5K, column c, to account for any differences.

When to File

Generally, a corporation must file its franchise or income tax return by the 15th day of the 3rd month following the close of its taxable year. If a return is filed late, without an extension, the corporation may be subject to penalties and interest.

Returns for short taxable years (periods of less than 12 months) are due on or before the federal due date. A corporation that becomes, or ceases to be, a member of an affiliated group and as a result must file two short period returns for federal purposes must also file two short period returns for Wisconsin. The Wisconsin returns are due at the same time as the federal returns. Each short period is considered a taxable year, the same as for federal purposes.

Caution: The due date for paying franchise or income tax and recycling surcharge is explained below.

Extension of Time to File

Any extension allowed by the Internal Revenue Service for filing the federal return automatically extends the Wisconsin due date to 30 days after the federal extended due date. *You don't need to submit either a copy of the federal extension or an application for a Wisconsin extension to the Department by the original due date of your return.* However, you must attach a copy of the federal extension to the Wisconsin return that you file.

If you aren't requesting a federal extension, but you need additional time for Wisconsin, you may receive a 30-day extension by submitting Wisconsin Form IC-830, Application for Extension of Time to File, to the Department on or before the original due date of the return. Attach a copy of Form IC-830 to the Wisconsin return that you file.

If your original federal due date is after the 15th day of the 3rd month following the close of the taxable year, you may receive a Wisconsin extension to the federal due date by submitting Wisconsin Form IC-830, Application for Extension of Time to File, to the Department by the original due date of the Wisconsin return. Attach a copy of the Form IC-830 to the Wisconsin return that you file.

Where to File

Mail your franchise or income tax return to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

When to Pay Franchise or Income Tax and Recycling Surcharge

The franchise or income tax and recycling surcharge must be paid by the 15th day of the 3rd month following the close of the taxable period, *regardless of the due date of the return.* Corporations may be required to make quarterly estimated payments to prepay their franchise or income tax and recycling surcharge.

An extension for filing the return doesn't extend the time to pay the franchise or income tax and recycling surcharge. Interest will be charged on the tax and surcharge not paid by the 15th day of the 3rd month following the close of the taxable year. You can avoid interest charges during the extension period by paying the tax and surcharge due by that date. Submit your payment with Wisconsin Form 4-ES, Corporation Estimated Tax Voucher. If you have received a set of vouchers from the Department, use the 5th voucher to make the estimated tax and surcharge extension payment.

During the extension period, 12% annual interest generally applies to the unpaid tax and surcharge. However, if the sum of the net tax and recycling surcharge shown on the return is \$500 or more, 12% annual interest applies only to 10% of the net tax and surcharge. Interest of 18% per year applies to the remainder of the unpaid tax and surcharge. See Form 4U, Part II.

Payment of Estimated Tax

If the total of a corporation's franchise or income tax and recycling surcharge due is \$500 or more, it generally must make quarterly estimated tax payments using Wisconsin Form 4-ES or by electronic funds transfer. Failure to make required estimated tax payments may result in an interest charge. A corporation that filed Form 4-ES for the current year generally will receive estimated tax vouchers before the first payment of the next year's tax is due.

A corporation that overpaid its estimated tax may apply for a refund **before** filing its tax return if its overpayment is (1) at least 10% of the expected Wisconsin tax liability and (2) at least \$500. To apply, file Wisconsin Form 4466W, Corporation Application for Quick Refund of Overpayment of Estimated Tax, after the end of the taxable year and before the corporation files its tax return. **Do not** file Form 4466W at the same time as your tax return.

A corporation that has a tax due when filing its tax return as a result of receiving a "quick refund" will be charged 12% annual interest on the amount of unpaid tax from the date the refund is issued to the earlier of the 15th day of the 3rd month after the close of the taxable year or the date the tax liability is paid. Any tax that remains unpaid after the unextended due date of the tax return continues to be subject to 18% or 12% annual interest, as appropriate.

Electronic Funds Transfer Required for Certain Tax Payments

Section Tax 1.12, Wisconsin Administrative Code, requires the payment of certain taxes by electronic funds transfer (EFT). A corporation must pay its estimated franchise or income taxes and recycling surcharge by EFT if its net tax less refundable credits on its prior year return was \$40,000 or more. A corporation may also be required to pay sales and use taxes, withholding taxes, fuel taxes, excise taxes, or unemployment insurance using EFT. The Department will notify a corporation when EFT payments are required. The corporation will have 90 days after being notified to register for EFT. The first EFT payment is due on the first tax due date following the end of the 90-day registration period.

Corporations not required to pay by EFT may elect to do so. For more information, visit the Department’s web site at www.dor.state.wi.us/eserv/eftgen.html, e-mail eft@dor.state.wi.us, call (608) 264-9918, or write to the EFT Unit, Wisconsin Department of Revenue, P.O. Box 8949, Madison, WI 53708-8949.

Note: For EFT payments of estimated franchise or income tax and recycling surcharge, enter the last day of your **taxable year**, not the last day of the quarterly installment period, for which the payment is being made.

To make EFT payments of corporation franchise or income tax, choose the appropriate tax type code:

- Corporation estimated tax payment 02100
- Corporation tax due with return 02200
- Corporation amended return tax due 02400
- Corporation bill (except audit assessments) 02540

Information Returns That May Be Required

- Form 8 Report of stock transfers.
- Form 9b Report of rents, royalties, and miscellaneous compensation paid to individuals. (**Note:** You may use federal Forms 1099 instead of Forms 9b. Mail Forms 1099 to the Wisconsin Department of Revenue, P.O. Box 8932, Madison, WI 53708-8932.)

If you must file federal information returns on magnetic media and you file at least 250 Forms 9b with Wisconsin, you generally must file Forms 9b on magnetic media or by electronic transfer. For more information, call (608) 267-3327, e-mail w2data@dor.state.wi.us, or write to the Magnetic Media Coordinator, Audit Bureau, Wisconsin Department of Revenue, Room 232B, 2135 Rimrock Road, P.O. Box 8906, Madison, WI 53708-8906.

Final Return

If the corporation liquidated during the taxable year, check the box on the front of the return marked “Final return.” Attach a copy of your plan of liquidation along with a copy of federal Form 966 to the Wisconsin return. Be sure to **enter the date of liquidation as the taxable year ending date** at the top of the return. Generally, the final return is due on or before the federal due date. In most cases, this is the 15th day of the 3rd month after the date the corporation dissolved. The tax is payable by the 15th day of the 3rd month after the date of dissolution, regardless of the due date of the final return.

Internal Revenue Service Adjustments

If any of your federal tax returns are adjusted by the Internal Revenue Service and the adjustments affect the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net business loss carryforward, or a Wisconsin capital loss carryforward, you must report the adjustments to the Department of Revenue within 90 days after they become final.

Send a copy of the final federal audit reports and any associated amended Wisconsin returns to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908. If submitting a federal audit report without an amended return, mail it to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8906, Madison, WI 53708-8906. Don’t attach these items to the tax return for the current year.

Amended Returns

After you have filed a complete, original tax return, you may file an amended return to correct a tax return as you originally filed it or as it was later adjusted by an amended return, a claim for refund, or an office or field audit.

If you file an amended federal return and the changes affect the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net business loss carryforward, or a Wisconsin capital loss carryforward, you must file an amended Wisconsin return with the Department of Revenue within 90 days after filing the amended federal return.

To file an amended Wisconsin return, use Form 5S and check the “Amended return” box on the front of the return. Attach an explanation of any changes made. Show computations in detail. If the change involves an item of income, deduction, or credit that you were required to support with a form or schedule on your original return, attach the corrected form or schedule. Also attach a worksheet showing how you figured your refund or additional amount owed. If the change affects amounts reportable by your shareholders, attach amended Schedules 5K-1 and provide a copy to the shareholders.

A claim for refund must be filed within 4 years of the unextended due date of the return. However, a claim for refund to recover all or part of any tax or credit paid as a result of an office or field audit must be filed within 4 years after such an assessment. That assessment must have been paid and must not have been protested by filing a petition for redetermination. See section Tax 2.12, Wisconsin Administrative Code, for more information.

Send amended returns to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908. Don’t attach amended returns to other tax returns that you are filing.

Urban Transit Companies

Certain urban transit companies are subject to a special tax under sec. 71.39, Wis. Stats. Contact the Department for further information.

Consolidated Returns

Wisconsin law doesn’t permit corporations that are members of an affiliated group, as defined in IRC section 1504, to file consolidated returns. Each corporation organized under Wisconsin law, licensed to do business in Wisconsin, or doing business in Wisconsin must file a separate Wisconsin franchise or income tax return. In addition, each corporation must make its own estimated tax payments.

Wisconsin Use Tax

Use tax is the counterpart of sales tax. All tangible personal property and selected services, taxable under Wisconsin’s sales tax law, which are stored, used, or consumed in Wisconsin, are subject to use tax if the proper sales tax is not paid. Examples of purchases that frequently result in a use tax liability include the following:

- Mail order and Internet purchases. You owe Wisconsin use tax if you buy such items as computers, furniture, or office supplies from a vendor who is not registered to collect Wisconsin tax.

- Inventory. If you purchase inventory items without tax for resale, and then use these items instead of selling them, you owe use tax.
- Give-aways. Generally, if you purchase items without tax and then give them away in Wisconsin, you owe use tax.

If you hold a seller's permit, use tax certificate, or consumer's use tax certificate, report your use tax on your sales and use tax return, Form ST-12. Otherwise, complete and file Form UT-5 to report use tax.

For more information or forms, visit the Department's web site at www.dor.state.wi.us/html/sales.html, call (608) 266-2776, e-mail sales

10@dor.state.wi.us, or write to the Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949.

Penalties for Not Filing or Filing Incorrect Returns

If you don't file a franchise or income tax return that you are required to file, or if you file an incorrect return due to negligence or fraud, interest and penalties may be assessed against you. The interest rate on delinquent taxes is 18% per year. Civil penalties may be as much as 100% of the amount of tax not reported on the return. Criminal penalties for filing a false return include a fine of up to \$10,000 and imprisonment.

Special Instructions for S Corporations

Definitions

Internal Revenue Code – For taxable years that begin in 2005, “Internal Revenue Code” means the federal Internal Revenue Code (IRC) as amended to December 31, 2004, with the exceptions listed below. The Internal Revenue Code generally applies for Wisconsin purposes at the same time as for federal purposes.

Computing Federal Income for Wisconsin Purposes

Exceptions: The following federal law changes *do not apply* for Wisconsin franchise and income tax purposes:

- Section 13113 of Public Law 103-66, Omnibus Budget Reconciliation Act of 1993, enacted August 10, 1993, relating to the exclusion of 50% of the gain from the sale or exchange of qualified small business stock held more than 5 years.
- Section 1311 of Public Law 104-188, Small Business Job Protection Act of 1996, enacted August 20, 1996, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation's accumulated earnings and profits. Thus, a corporation that was a tax-option (S) corporation for Wisconsin for any taxable year beginning before January 1, 1983, and is a tax-option (S) corporation for its first taxable year beginning after December 31, 1996, may not reduce its accumulated earnings and profits by any amount accumulated in pre-1983 S corporation years. Distributions from pre-1983 tax-option (S) corporation years will continue to be taxable as dividends for Wisconsin purposes.
- Sections 1, 3, 4, and 5 of Public Law 106-519, FSC Repeal and Extraterritorial Income Exclusion Act of 2000, enacted November 15, 2000, relating to the allowance of an exclusion for extraterritorial income. Foreign sales corporation (FSC) treatment is repealed for Wisconsin for taxable years beginning on or after January 1, 2005.
- Section 162 of Public Law 106-554, Community Renewal Tax Relief Act of 2000, enacted December 21, 2000, and section 308 of Public Law 108-311, Working Families Tax Relief Act of 2004, enacted October 4, 2004, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Section 165 of Public Law 106-554, Community Renewal Tax Relief Act of 2000, enacted December 21, 2000, and section 306 of Public Law 108-311, Working Families Tax Relief Act of 2004, enacted October 4, 2004, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date.
- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers. For Wisconsin purposes, accrual basis taxpayers cannot use the installment method for reporting sales and other dispositions occurring on or after December 17, 1999. Instead, gain from the sale of property must be recognized in the year of the sale, rather than when the payments are received.
- Section 101 of Public Law 107-147, Job Creation and Worker Assistance Act of 2002, enacted March 9, 2002, section 201 of Public Law 108-27, Jobs and Growth Tax Relief Reconciliation Act of 2003, enacted May 28, 2003, and section 403(a) of Public Law 108-311, Working Families Tax Relief Act of 2004, enacted October 4, 2004, relating to the 30% bonus depreciation allowance for qualified property acquired after September 10, 2001.
- Section 201 of Public Law 108-27, Jobs and Growth Tax Relief Reconciliation Act of 2003, enacted May 28, 2003, relating to the 50% bonus depreciation allowance for qualified property acquired after May 5, 2003.
- Section 202 of Public Law 108-27, Jobs and Growth Tax Relief Reconciliation Act of 2003, enacted May 28, 2003, relating to increased section 179 expensing for small business, and section 201 of Public Law 108-357, American Jobs Creation Act of 2004, enacted October 22, 2004, relating to the extension of the termination date.
- Section 1201 of Public Law 108-173, Medicare Prescription Drug, Improvement, and Modernization Act of 2003, enacted December 8, 2003, relating to health savings accounts.
- Section 244 of Public Law 108-357, American Jobs Creation Act of 2004, enacted October 22, 2004, relating to special rules for certain film and television productions.
- Section 336 of Public Law 108-357, American Jobs Creation Act of 2004, enacted October 22, 2004, relating to the depreciation allowance for aircraft.
- Section 337 of Public Law 108-357, American Jobs Creation Act of 2004, enacted October 22, 2004, relating to the modification of the placed in service rule for purposes of bonus depreciation.
- Section 909 of Public Law 108-357, American Jobs Creation Act of 2004, enacted October 22, 2004, relating to sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy.
- Section 910 of Public Law 108-357, American Jobs Creation Act of 2004, enacted October 22, 2004, relating to the expansion of the limitation on depreciation of certain passenger automobiles.

In addition, IRC section 1366(f), relating to the reduction in pass-throughs for taxes at the S-corporation level, is modified by substituting the Wisconsin built-in gains tax for the taxes imposed under IRC sections 1374 and 1375.

Federal law changes enacted after December 31, 2004, won't apply for Wisconsin purposes unless subsequently adopted by the Wisconsin Legislature. For example, Public Law 109-58, Energy Tax Incentives Act of 2005, enacted August 8, 2005, Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005, enacted August 10, 2005, and Public Law 109-73, Katrina Emergency Tax Relief Act of 2005, enacted September 23, 2005, do not apply for Wisconsin purposes.

Account for any differences between the amounts reportable for federal and Wisconsin purposes on Form 55, Schedule 5K, column c.

Section 179 Expense Differences

For Wisconsin purposes, the maximum amount of section 179 expense deduction allowable for 2003 and following years is \$25,000 per year. This dollar limitation is reduced by a dollar for each dollar of the cost of qualified property placed in service during the taxable year over \$200,000. Federal changes to the section 179 expense deduction enacted in 2003 do not apply for Wisconsin. The federal changes include the increase in the section 179 expense deduction from \$25,000 to \$100,000 (\$105,000 for 2005), the increase in the phase-out threshold from \$200,000 to \$400,000 (\$420,000 for 2005), and the treatment of off-the-shelf software as qualifying property. You must provide schedules detailing any differences between the federal and Wisconsin amounts of section 179 expense and depreciation and report the net differences as adjustments to federal income on Form 55, Schedule 5K, column c.

Depreciation Differences

For property placed in service in taxable years beginning on or after January 1, 2005, you must compute depreciation or amortization under the Internal Revenue Code as amended to December 31, 2000. For qualified property acquired after September 10, 2001, you may not claim the federal 30% bonus depreciation. The 50% additional first-year depreciation deduction may not be claimed for 50% bonus property acquired after May 5, 2003. Provide a schedule detailing any differences between federal and Wisconsin depreciation amounts. Show adjustments necessary to account for any differences between the amounts reportable for federal and Wisconsin purposes on Form 55, Schedule 5K, column c.

Qualifying Subchapter S Subsidiary (QSub) – A QSub is a corporation that meets all of the following requirements:

- It is created or organized in the United States or under the laws of the United States or any state.
- It is not an ineligible type of corporation, as defined in IRC section 1361(b)(2).
- 100% of its stock is held by an S corporation.
- The S corporation elects to treat the corporation as a QSub.

S Corporation – Under federal law, an S corporation is one that has an election in effect for a taxable year under Subchapter S of the Internal Revenue Code not to pay any corporate tax on its income and, instead, to have the shareholders pay taxes on the income. If the corporation incurs a loss, the loss is treated as the shareholders' loss.

To qualify for federal S corporation treatment under the Internal Revenue Code as amended to December 31, 2004, a corporation must meet all of the following requirements:

- It must be domiciled in the United States. That is, it must be created or organized in the United States under federal or state law.
- It must have no more than 100 shareholders.
- It must have as shareholders only individuals, estates, certain tax-exempt organizations, and certain trusts. Qualified retirement plan trusts, as described in IRC section 401(a), and charitable organiza-

tions, as described in IRC section 501(c)(3), that are exempt from federal income tax under IRC section 501(a) may be shareholders. Grantor trusts, voting trusts, qualified Subchapter S trusts (QSSTs), electing small business trusts (ESBTs), and, for certain periods of time, former grantor trusts and testamentary trusts may be shareholders. In certain cases, IRAs including Roth IRAs may be shareholders of bank S corporations. Corporations, partnerships, and foreign trusts can't be shareholders.

- It must not have a nonresident alien as a shareholder.
- It must have only one class of stock. A corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distributions and liquidation proceeds. Stock may have differences in voting rights and still be considered one class of stock. Straight debt isn't treated as a second class of stock if certain conditions are met. See the Internal Revenue Code and federal regulations for further details.
- It must not be a financial institution that uses the reserve method of accounting for bad debts; an insurance company taxed under Subchapter L of the Internal Revenue Code; a corporation that takes the tax credit for doing business in a United States possession; or a DISC (domestic international sales corporation), an IC-DISC (interest charge domestic international sales corporation), or a former DISC.

This is a very brief summary of the federal requirements. Refer to IRC section 1361(b), as amended to December 31, 2004, for more details.

Tax-Option (S) Corporation – For Wisconsin purposes, a “tax-option (S) corporation” is defined as a corporation which is treated as an S corporation under Subchapter S of the Internal Revenue Code as amended to December 31, 2004, and has not elected out of tax-option corporation status under sec. 71.365(4)(a), Wis. Stats., for the current taxable year.

Corporations Subject to Wisconsin Tax-Option (S) Law

Corporations that are required to file Wisconsin franchise or income tax returns and are included in the definition of a “tax-option corporation” are subject to Wisconsin's tax-option (S) corporation law.

Electing Wisconsin Tax-Option (S) Status

A corporation isn't required to file a separate election form with the Wisconsin Department of Revenue to be treated as a tax-option corporation for Wisconsin purposes. Wisconsin's tax-option (S) corporation law automatically applies to a corporation under Wisconsin's jurisdiction for franchise or income tax purposes if it has an election in effect under Subchapter S of the Internal Revenue Code as amended to December 31, 2004, for a taxable year, unless the corporation has elected out of Wisconsin tax-option status under sec. 71.365(4)(a), Wis. Stats.

An S corporation that has a QSub may not elect out of Wisconsin tax-option status.

A corporation that had elected not to be a tax-option corporation for Wisconsin purposes and subsequently wants to re-elect tax-option status for Wisconsin must file Form 5R, Revocation of Election by an S Corporation Not to Be a Tax-Option Corporation, with the Wisconsin Department of Revenue. The opt-out election is automatically revoked for the taxable year in which a federal S corporation acquires a QSub.

Shareholders Subject to Wisconsin Tax-Option (S) Law

Wisconsin's tax-option (S) corporation law applies to all shareholders of a tax-option (S) corporation that is subject to Wisconsin tax-option (S) corporation law, whether or not the shareholders are Wisconsin residents. Therefore, all shareholders who meet the applicable Wisconsin filing requirements, after taking into account their pro rata shares of the corporation's gross income for Wisconsin purposes, must file Wiscon-

sin income tax returns and report their pro rata shares of the tax-option (S) corporation's items of income, loss, and deduction.

For example, residents and nonresidents of Wisconsin are subject to Wisconsin tax-option (S) law, if they are –

- Shareholders of a tax-option (S) corporation which is organized under the laws of Wisconsin and engaged in business (1) completely in Wisconsin, (2) in and outside Wisconsin, or (3) completely outside Wisconsin.
- Shareholders of a tax-option (S) corporation which isn't organized under the laws of Wisconsin but which is authorized to transact business in Wisconsin or is engaged in business in Wisconsin and required to file a Wisconsin franchise or income tax return.

Withholding Requirement for Tax-Option (S) Corporations Having Nonresident Shareholders

In general, a tax-option (S) corporation that has one or more nonresident shareholders is required to withhold income or franchise tax on the income allocable to the nonresident shareholders.

A nonresident shareholder includes an individual who is not domiciled in Wisconsin and an estate or trust that is a nonresident under sec. 71.14(1) to (3m), Wis. Stats. The withholding rate is the highest rate for single individuals under sec. 71.06, Wis. Stats. (6.75% for 2005).

Exceptions: Withholding is not required on behalf of the following nonresident shareholders:

- A shareholder that is exempt from Wisconsin income or franchise taxation. The tax-option (S) corporation may rely on a written statement from a shareholder explaining why the shareholder is exempt from Wisconsin tax. The corporation must attach a copy of this statement to the Form 5S filed with the Department.
- A shareholder with no Wisconsin income other than his, her, or its share of income attributable to Wisconsin, and his, her, or its share of that income is less than \$1,000.

The tax-option (S) corporation uses Form PW-1 to pay the withholding. Form PW-1 is due with payment by the 15th day of the 3rd month following the close of the corporation's taxable year. It must be filed, and payment must be made, by electronic means unless electronic filing and payment presents an undue hardship. See the Form PW-1 instructions for details of the filing procedures.

Caution: Nonresident shareholders having a Wisconsin filing requirement must file the appropriate Wisconsin income or franchise tax return.

Composite Return for Nonresident Shareholders

A tax-option (S) corporation that does business in Wisconsin and has **two or more** nonresident shareholders who derive no taxable income or deductible loss from Wisconsin other than their pro rata shares of the tax-option (S) corporation's Wisconsin income or loss may file a composite individual and fiduciary income tax return on behalf of those shareholders. The tax-option (S) corporation files this return on Form 1CNS.

A shareholder may not participate in this composite return if –

- The shareholder is an estate or trust that has distributable income in the current year. This includes qualified Subchapter S trusts (QSSTs) and their beneficiaries.
- The shareholder files his or her individual or fiduciary income tax return on a fiscal year basis.
- The shareholder is a Wisconsin resident during any part of 2005.

- The shareholder derives taxable income from Wisconsin in 2005 other than his or her pro rata share of tax-option (S) corporation income or loss from one corporation.
- The shareholder wishes to claim any deductions or tax credits.

Each qualifying and participating shareholder's pro rata share of tax-option (S) corporation income or loss for a corporation's taxable year ending between January 31, 2005, and December 31, 2005, is reported on a 2005 Form 1CNS. The composite return replaces the separate 2005 Wisconsin individual or fiduciary income tax returns that otherwise would be filed by each of the qualifying and participating nonresident shareholders. The 2005 Form 1CNS is due April 17, 2006.

Tax on Net Income of a Tax-Option (S) Corporation

Since each shareholder of a tax-option (S) corporation who meets the applicable Wisconsin filing requirements must file a Wisconsin income tax return and report his, her, or its share of the corporation's income, loss, and deductions, a tax-option (S) corporation generally isn't subject to a corporate income tax or franchise tax measured by its net income, other than interest income from certain federal, state, and municipal government obligations. However, a tax-option (S) corporation may be taxed on a nonfiling or delinquent shareholder's share of the corporation's net income. A tax-option (S) corporation can't offset a net operating loss carryforward from a year when it was a regular (C) corporation against a nonfiling or delinquent shareholder's share of the corporation's income.

Wisconsin Accounting Periods for Tax-Option (S) Corporations

As previously indicated, tax-option (S) corporations must adopt the same accounting period for Wisconsin as for federal purposes. If a tax-option (S) corporation elects, under IRC section 444, to have a taxable year other than a permitted taxable year, that election also applies for Wisconsin. Unlike for federal purposes, the corporation doesn't have to make a required payment of tax as provided in IRC section 7519.

Termination of Tax-Option (S) Treatment

A corporation ceases to qualify for Wisconsin tax-option (S) treatment for any year for which its S corporation election ceases to apply, regardless of whether the termination is voluntary or involuntary, or whether termination is discovered as the result of an audit after a return has been filed.

Voluntary Termination – Under the Internal Revenue Code, a corporation may voluntarily revoke its S election at any time after the initial election is made. The revocation may be effective for the entire taxable year if made on or before the 15th day of the 3rd month of that taxable year. Otherwise, it may be effective for the following taxable year. In either case, the revocation may specify that it is to be effective on a date during the current year that is on or after the day of revocation.

Involuntary Termination – A corporation's Subchapter S status under the Internal Revenue Code as amended to December 31, 2004, will be involuntarily terminated for federal and, therefore, also for Wisconsin purposes if –

- The corporation had accumulated Subchapter C earnings and profits at year-end and its passive investment income exceeded 25% of gross receipts for each of 3 consecutive taxable years. The election is terminated as of the first day of the taxable year beginning after the third consecutive taxable year in which there is excess passive investment income.
- The corporation ceases to be a qualifying Subchapter S corporation. The Internal Revenue Service may waive inadvertent termination and such waiver also applies for Wisconsin.

If the revocation date causes the corporation's taxable year to be split, the corporation must file two short-period returns for federal and Wisconsin purposes. One covers the period it is an S corporation and one covers the period it is a C corporation. Both returns are due on the 15th day of the 3rd month following the close of the corporation's normal taxable year, subject to the regular rules for extensions. The net income for each period may be computed under the daily proration method as provided in IRC section 1362(e)(2) or under normal tax accounting rules if the affected shareholders consent as provided in IRC section 1362(e)(3). The corporation must use the normal tax accounting rules if there was a sale or exchange of 50% or more of the corporation's stock during the year.

Additionally, a corporation may elect, under sec. 71.365(4)(a), Wis. Stats., not to be a tax-option (S) corporation for Wisconsin tax purposes even though its federal S election remains in effect.

Electing Out of Wisconsin Tax-Option Treatment

Generally, a corporation that is an S corporation for federal tax purposes may elect not to be a tax-option (S) corporation for Wisconsin tax purposes. However, if an S corporation has a QSub for federal income tax purposes, neither the S corporation nor the QSub may opt out of Wisconsin tax-option treatment.

The "opt-out" election requires the consent of persons who hold more than 50% of the shares of the tax-option (S) corporation on the day on which the "opt-out" election is made. To be effective for the current taxable year, the election must be made on or before the due date or extended due date of the corporation's current Wisconsin franchise or income tax return. To make the "opt-out" election, the corporation must file Wisconsin Form 5E, Election by an S Corporation Not to Be Treated as a Tax-Option Corporation.

The "opt-out" election is completed by filing a Wisconsin franchise or income tax return in accordance with the election. For more informa-

tion, see the tax release in *Wisconsin Tax Bulletin* 91 (April 1995, page 18).

Corporations that make the "opt-out" election must file Form 4 or Form 5 for Wisconsin rather than Form 5S.

Revoking the Wisconsin "Opt-Out" Election

Except as explained below, once the election not to be a tax-option (S) corporation is completed, the corporation and its successors may not claim Wisconsin tax-option status for the next 4 taxable years after the taxable year to which the "opt-out" election first applies. At any time after this 5-taxable-year period, the corporation may revoke the "opt-out" election by filing Wisconsin Form 5R, Revocation of Election by an S Corporation Not to Be a Tax-Option Corporation.

Voluntary Revocation of Wisconsin "Opt-Out" Election – Revoking the "opt-out" election requires the consent of persons who hold more than 50% of the shares of the S corporation on the day the revocation is made. The corporation must file Form 5R on or before the due date, including extensions, of the Wisconsin franchise or income tax return for the first taxable year affected by the revocation.

Automatic Revocation of Wisconsin "Opt-Out" Election – The "opt-out" election is automatically revoked for the taxable year in which a federal S corporation acquires a QSub. Wisconsin tax-option (S) treatment applies to the S corporation and its QSub.

If the corporation subsequently disposes of the QSub, it could again elect not to be treated as a Wisconsin tax-option (S) corporation for the taxable year following the disposition by filing Form 5E.

Additional Information

For more information, see Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*.

Line-by-Line Instructions

You must complete pages 1 through 4 of Form 5S, including the appropriate schedules on page 2. Do not enter "See Attached" instead of completing the entry spaces. If more space is needed, attach separate sheets using the same size and format as the printed forms. (The numbering corresponds with the line numbers on Form 5S, page 1, unless otherwise indicated.)

Caution: The Internal Revenue Service hasn't finalized the 2005 federal corporation tax forms at the time of this printing. Therefore, federal line numbers referred to on Form 5S and in these instructions may change.

Rounding Off to Whole Dollars

Round cents to the nearest whole dollar by eliminating amounts less than 50 cents and increasing amounts from 50 cents through 99 cents to the next higher dollar.

■ **Period Covered** – File the 2005 return for calendar year 2005 and fiscal years that begin in 2005. For a fiscal year, a 52-53 week period, or a short-period return, fill in the taxable year beginning and ending dates in the taxable year space at the top of the form. If the corporation dissolved, enter the date of dissolution as the ending date.

■ **Name and Address** – Using black ink, print or type the corporation's name and address.

Corporations that change their name must also notify the Department of Financial Institutions to recognize the change. Write to the Corporations Bureau, Division of Corporate and Consumer Services, Department of Financial Institutions, P.O. Box 7846, Madison, WI 53707-7846 or call (608) 261-7577.

■ **A. Federal Employer Identification Number** – Enter the corporation's federal employer identification number (EIN). If you haven't yet applied for a federal EIN, you may do so by filing federal Form SS-4 with the Internal Revenue Service, calling the IRS's toll-free number (800) 829-4933, or applying online at www.irs.gov.

■ **B. Business Activity (NAICS) Code** – Enter the corporation's principal business activity code, based on the North American Industry Classification System (NAICS), from your federal return.

■ **C. State and Year of Incorporation** – Enter the state (or country) under whose laws the corporation is organized and the year of incorporation.

■ **D. First Return, Final Return, Short Period – Change in Accounting Period, and Short Period – Stock Purchase or Sale** – If this is the first year that you are filing a Wisconsin return because the corporation wasn't in existence or didn't do business in Wisconsin in prior years, check the "First return" box. If the corporation ceased to exist or withdrew from Wisconsin during the year, check the "Final return" box.

Line-by-Line Instructions (continued)

Attach a copy of your plan of liquidation and federal Form 966 if the corporation liquidated. Indicate that a short period return is being filed due to a change in the corporation's accounting period or a stock purchase or sale by checking the appropriate box.

■ **E. Amended Return** – If this is an amended return, check the box. Circle the number in front of the lines that you are changing and attach a detailed explanation of the changes made, including any supporting form or schedule.

For example, if you are amending the manufacturer's sales tax credit, circle the "5" before "Manufacturer's sales tax credit" and attach a corrected Schedule Z along with an explanation of the change.

■ **F. Extended Due Date** – If the corporation has an extension of time to file its Wisconsin return, check the box and enter the extended due date.

■ **G. No Business Transacted in Wisconsin** – If the corporation was incorporated under Wisconsin law or licensed to do business in Wisconsin but had no property or activity in Wisconsin for the taxable year, check the box. Attach a complete copy of the corporation's federal return.

■ **H. Filing Form 1CNS** – If the corporation is filing a composite Wisconsin income tax return, Form 1CNS, on behalf of its qualified and participating nonresident shareholders, check the box.

■ **I. Effective Date of Wisconsin Tax-Option Corporation Election** – Enter the month, day, and year that the corporation's Wisconsin tax-option (S) corporation election became effective.

■ **J. Total Number of Shareholders** – Enter the total number of shareholders that the tax-option corporation had during the taxable year.

■ **K. Number of Nonresident Shareholders** – Enter the total number of nonresident shareholders that the tax-option corporation had during the taxable year.

■ **Line 1. Federal, State, and Municipal Government Interest** – Enter the amount of interest income received from the following obligations:

- Obligations of the United States government and its instrumentalities.
- Municipal housing authority bonds issued under sec. 66.1201, Wis. Stats.
- Municipal redevelopment authority bonds issued under sec. 66.1333, Wis. Stats.
- Housing and community development authority bonds issued under sec. 66.1335, Wis. Stats.
- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).
- Bonds issued by a local exposition district under subch. II of ch. 229, Wis. Stats.
- Bonds issued under sec. 66.0621, Wis. Stats., by a local professional baseball park district, a local professional football stadium district, or a local cultural arts district.
- Bonds issued on or after January 1, 2004, by the Wisconsin Housing and Economic Development Authority under sec. 234.08 or 234.61, Wis. Stats., to fund multifamily affordable housing projects or elderly housing projects.

The corporation may reduce the amount of interest income by any applicable amortizable bond premium or interest paid to purchase or hold these federal, state, or municipal government obligations. For Wisconsin purposes, neither the amortizable bond premium nor the related interest expenses are deductible by the shareholders since this federal, state, and municipal government interest isn't taxable to them.

Exception: A foreign corporation subject to the Wisconsin income tax rather than the franchise tax (see page 2) isn't taxed on interest received from the obligations listed above and should skip to line 9.

Note: Corporations doing business only in Wisconsin should skip line 2 and enter the amount from line 1 on line 3. Nonunitary, multistate corporations should also skip line 2.

■ **Line 2. Wisconsin Apportionment Percentage** – Unitary, multistate corporations should complete Wisconsin Form 4B or Form 4B-1, if appropriate (see the instructions on page 22), and enter on line 2 the apportionment percentage from Form 4B, line 39, or Form 4B-1.

Note: If you are a public utility or you are using a special apportionment formula on Form 4B-1, be sure to check the box on line 2.

■ **Line 3. Interest Income Attributable to Wisconsin** – Multiply the amount on line 1 by the percentage on line 2, if applicable. Nonunitary, multistate corporations should enter the amount of federal, state, and municipal government interest attributable to Wisconsin as determined under the separate accounting method (see page 26).

Note: A tax-option (S) corporation can't offset a net operating loss carryforward from a year when it was a regular (C) corporation against this interest income. Sections 71.26(4) and 71.365(2), Wis. Stats., prohibit tax-option (S) corporations from claiming net business loss carryforwards.

■ **Line 4. Franchise Tax** – Enter 7.9% of the amount reported on line 3.

■ **Line 5. Manufacturer's Sales Tax Credit** – Complete Schedule Z and enter the available credit.

Schedule Z – Manufacturer's Sales Tax Credit

Corporations engaged in manufacturing in Wisconsin may claim a credit for Wisconsin state, county, and baseball and football stadium sales and use taxes paid on fuel and electricity consumed in manufacturing tangible personal property.

In addition, a corporation that owns an interest in a pass-through entity, such as a partnership, which is engaged in manufacturing in Wisconsin may claim its share of the entity's manufacturer's sales tax credit computed for the entity's taxable years beginning on or after January 1, 1998. The pass-through credit may be offset only against the tax imposed on the corporation's share of the entity's net income. Use Schedule Z-1 to figure the allowable credit from pass-through entities.

Manufacturing has the meaning designated in sec. 77.54(6m), Wis. Stats., which states in part that "manufacturing" is the production by machinery of a new article with a different form, use, and name from existing materials by a process popularly regarded as manufacturing.

Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his or her behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer.

It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities, or research and development.

The credit is a nonrefundable credit. To the extent that the credit computed for taxable years beginning on or after January 1, 1998, cannot be used to reduce the corporation's tax liability for the current year, it may be passed through to the corporation's shareholders based on their ownership interests. Unused credits may be carried forward for up to 20 years.

Note: A tax-option (S) corporation may not pass through to its shareholders unused manufacturer's sales tax credits computed for taxable years beginning before January 1, 1998.

Caution: The credit may not be offset against the built-in gains tax and the recycling surcharge.

Line 1. Enter the total cost (including Wisconsin state, county, and baseball and football stadium sales and use taxes) of all fuel and electricity purchased during the taxable year for use in Wisconsin.

Line 2. Enter the cost of fuel and electricity included on line 1 (including Wisconsin state, county, and baseball and football stadium sales and use taxes) that wasn't or won't be used for manufacturing. This includes fuel and electricity for heating and lighting office space and warehousing space for raw materials and finished goods and for other nonmanufacturing purposes.

Line 4. Enter any county and baseball and football stadium sales and use taxes included on line 3. (The county tax rate is 0.5% (0.005) in Wisconsin counties that have adopted the county tax. The baseball stadium tax rate is 0.1% (0.001) in Wisconsin counties where the baseball stadium tax applies and the football stadium tax rate is 0.5% (0.005) in Brown County.)

Line 6. Enter purchases included on line 5 on which no Wisconsin sales or use taxes were paid. An example is the portion of coke purchased without tax by a foundry that becomes an ingredient or component part of a manufactured article.

Line 10. Add lines 8 and 9. This is the 2005 manufacturer's sales tax credit based on the corporation's manufacturing activities.

Line 11. Enter the amount of manufacturer's sales tax credit passed through from other entities from Schedule Z-1, column f.

Line 12. Enter any unused manufacturer's sales tax credit from 1988 through 2004. Attach a schedule showing credits carried forward from pass-through entities.

Note: The total amount of credit computed for the current taxable year plus any pre-1998 credit carryover used to offset the corporation's 2005 Wisconsin franchise tax must be included as income. See the instructions for Schedule 5K.

Line 13. Add lines 10 through 12. This is the available manufacturer's sales tax credit.

Note: Beginning January 1, 2006, sales of fuel and electricity consumed in manufacturing tangible personal property are exempt from sales and use tax. The 2006 treatment of any unused manufacturer's sales tax credit will depend on whether the unused credit is \$25,000 or less or more than \$25,000.

■ **Line 6. Community Development Finance Credit** – Enter the available credit.

Corporations that make contributions to the Wisconsin Housing and Economic Development Authority and, in the same year, purchase common stock in the Wisconsin Community Development Finance Company may claim a credit.

The credit is nonrefundable and is equal to 75% of the purchase price of the stock, but may not exceed 75% of the amount that was contributed to the Wisconsin Community Development Finance Authority. Any unused credit may be offset against tax liabilities of the subsequent years, up to 15 years.

■ **Line 8. Net Tax** – Subtract line 7 from line 4. If line 7 is more than line 4, enter zero.

■ **Line 9. Additional Tax on Tax-Option (S) Corporations** – Complete Schedule Q, page 2, and enter the amount of additional tax.

Schedule Q – Additional Tax on Built-In Gains

A tax is imposed on a tax-option (S) corporation that has a "recognized built-in gain" during the "recognition period." A tax-option (S) corporation may be liable for the tax on built-in gains if –

- It was a regular (C) corporation before making its current election to be treated as a tax-option (S) corporation,
- It made its current election after 1986,
- It has a recognized built-in gain within 10 years from the first day of the first taxable year it became a tax-option (S) corporation under its current election (the recognition period), and
- The net recognized built-in gains for prior taxable years don't exceed the net unrealized built-in gain.

The Wisconsin built-in gains tax also may apply to a federal S corporation that has elected not to be a tax-option (S) corporation for Wisconsin purposes and subsequently re-elects Wisconsin tax-option (S) corporation status.

Line 1. Enter the amount that would be the corporation's taxable income for the taxable year if only recognized built-in gains and recognized built-in losses were taken into account. This is the amount computed under IRC section 1374(d)(2)(A)(i), but determined using the Wisconsin basis of the assets. Attach a schedule showing the computation details.

A "recognized built-in gain" is any gain recognized during the recognition period on the sale or distribution (disposition) of any asset, except to the extent the corporation establishes that –

- The asset wasn't held by it on the first day of the first year that the current tax-option (S) election became effective, or
- The recognized gain on any asset exceeds the excess of the fair market value of the asset on the date of conversion over the adjusted basis of the asset on that first day.

Line-by-Line Instructions (continued)

Note: Recognized built-in gain for the taxable year includes any carryover of net recognized built-in gain from the preceding taxable year. Include on line 1 the carryover amount as recognized built-in gain.

A “recognized built-in loss” is any loss recognized during the recognition period on the disposition of any asset to the extent the corporation establishes that –

- a. It owned the asset on the date that the current tax-option (S) election became effective, and
- b. The loss doesn’t exceed the excess of the asset’s adjusted basis on the date of conversion over its fair market value at that time.

Line 2. Enter the amount that would have been the corporation’s Wisconsin net income before apportionment if it were a regular (C) corporation. Generally, this is the taxable income determined under IRC section 1375(b)(1)(B), adjusted for any modifications prescribed by Wisconsin law. Net business loss carryforwards or capital loss carryforwards aren’t used in figuring the net income.

Line 3. Enter the smaller of the amount on line 1 or line 2.

The net recognized built-in gain on which the tax may be imposed is limited by the corporation’s net unrealized built-in gain. The “net unrealized built-in gain” is the excess of the fair market value of the corporation’s assets over the aggregate adjusted bases of those assets on the date the current tax-option (S) election became effective.

If the amount on line 1 exceeds the amount on line 2, the excess is treated as a recognized built-in gain in the succeeding taxable year. This carryover provision applies only in the case of a corporation that made its tax-option (S) election on or after March 31, 1988.

Note: Corporations doing business only in Wisconsin should skip line 4 and enter the amount from line 3 on line 5. Nonunitary, multistate corporations should also skip line 4.

Line 4. Unitary, multistate corporations should complete Form 4B or Form 4B-1, if appropriate, and enter on line 4 the apportionment percentage from Form 4B, line 39, or Form 4B-1.

Note: If you are a public utility or you are using a special apportionment formula on Form 4B-1, be sure to check the box on line 4.

Line 5. Multiply the amount on line 3 by the percentage on line 4, if applicable. Nonunitary, multistate corporations should enter the net recognized built-in gain attributable to Wisconsin as determined under the separate accounting method.

Line 6. Enter any available Wisconsin net business loss carryforward from taxable years for which the corporation wasn’t a tax-option (S) corporation. Include any capital loss carryforward to the extent of net capital gain included in recognized built-in gain for the taxable year after apportionment. See IRC section 1374(b)(2) for details.

Line 9. Enter any Wisconsin community development finance credit available to the corporation, including a credit for the current year as well as any carryover from prior taxable years.

Note: Any credit claimed on Form 5S, line 6, must be taken into account in determining the available credit.

Line 10. Subtract the credit on line 9 from the tax on line 8 and enter the result. If the credit on line 9 exceeds the tax on line 8, enter zero. Also enter the result on Form 5S, line 9.

■ **Line 10. Recycling Surcharge** – Complete Schedule S, page 2, and enter the recycling surcharge.

Note: The recycling surcharge applies to tax-option (S) corporations whose gross receipts from all activities are \$4 million or more in a taxable year.

Schedule S – Recycling Surcharge

A recycling surcharge applies to tax-option (S) corporations that are required to file Form 5S, with certain exceptions. The surcharge doesn’t apply to domestic corporations that don’t have any business activities in Wisconsin, foreign corporations that don’t have nexus with Wisconsin, and corporations that have less than \$4 million of gross receipts from all activities (as defined on page 2).

■ *Line 1.* Complete Schedule 5K and enter the income (loss) from Schedule 5K, line 17e, column d. This is the net income (loss) as determined under Wisconsin law, before application of apportionment or separate accounting. It generally includes interest income from federal, state, and municipal government obligations. However, for a foreign corporation subject to the income tax rather than the franchise tax (see page 2), don’t include interest income that is exempt from state income tax under federal or Wisconsin law.

Note: Corporations doing business only in Wisconsin should skip line 2 and enter the amount from line 1 on line 3. Nonunitary, multistate corporations should also skip line 2.

■ *Line 2.* Unitary, multistate corporations should complete Form 4B or Form 4B-1, if appropriate, and enter on line 2 the apportionment percentage from Form 4B, line 39, or Form 4B-1.

■ *Line 3.* Multiply the amount on line 1 by the percentage on line 2, if applicable. Nonunitary, multistate corporations should enter the net income (loss) attributable to Wisconsin as determined under the separate accounting method.

■ *Line 4.* Enter the greater of \$25 or 0.2% (0.002) of the amount on line 3, but not more than \$9,800.

■ **Line 11. Endangered Resources Donation** – Your donation supports the preservation and management of more than 200 endangered and threatened Wisconsin plants and animals. It also helps protect Wisconsin’s finest remaining examples of prairies, forests, and wetlands.

Support endangered resources in Wisconsin. Fill in line 11 with the amount you wish to donate. Your gift will either reduce your refund or be added to tax due. You can also send a check directly to the Endangered Resources Fund, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707-7921.

■ **Line 12. Veterans Trust Fund Donation** – You may designate an amount as a veterans trust fund donation. Your donation will be used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents.

Fill in line 12 with the amount you wish to donate. Your donation will either reduce your refund or be added to tax due.

■ **Line 14. Estimated Tax Payments** – Enter estimated tax payments made, including EFT payments, or overpayments applied from prior years’ returns, minus any “quick refund” applied for on Form 4466W.

Amended Return: If this is an amended return, enter the tax previously paid. Attach a worksheet to your return showing your computations. (See the instructions for Form 4 or 5 for a sample worksheet.)

■ **Line 15. Wisconsin Tax Withheld From Pass-Through Entities** – If the interest income reported on line 1 includes interest passed through from another entity of which you are a member, enter your share of Wisconsin tax withheld on that interest income, as reported on your Wisconsin Schedule 3K-1.

For taxable years beginning in 2005, pass-through entities are subject to withholding tax on Wisconsin income allocable to a nonresident partner, member, shareholder, or beneficiary. A nonresident includes a corporation whose commercial domicile is not in Wisconsin.

■ **Line 17. Interest, Penalty, and Late Fee Due** – Enter any interest, penalty, and late fee due from Form 4U, line 17 or 26. Check the box if you figured underpayment interest using the annualized income installment method on Form 4U, page 2.

Amended Return: If you previously were assessed interest for underpayment of estimated taxes, complete an amended Form 4U, Part I, based on the total of the amounts shown on lines 8 and 10. Enter the difference between the underpayment interest from the amended Form 4U, line 17, and the amount you previously paid on line 17. Show an overpayment in parentheses. Attach Form 4U to your amended return. Otherwise, leave line 17 blank. The Department will compute interest on the amount of refund approved or tax owed.

■ **Line 18. Tax Due** – If the total of lines 13 and 17 is larger than line 16, enter the amount owed. Pay by electronic funds transfer or mail your check with a 2005 Form 4-ES, Corporation Estimated Tax Voucher, to the address shown on the voucher. Otherwise, paper clip your check to the front of Form 5S.

■ **Line 19. Overpayment** – If line 16 is larger than the total of lines 13 and 17, enter the overpayment.

■ **Line 20. 2006 Estimated Tax** – Enter the amount of any overpayment from line 19 that is to be credited to the corporation's 2006 estimated tax. The balance of any overpayment will be refunded.

Amended Return: If you have already filed your 2006 return, enter the overpayment that you claimed as a credit on your 2006 return from your previously filed original or amended 2005 return. Otherwise, you may allocate the overpayment from line 19 between line 20 and line 21 as you choose.

■ **Line 22.** Enter total company gross receipts, gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross receipts passed through from other entities, and all other receipts that are included in gross income before apportionment for Wisconsin franchise or income tax purposes.

■ **Line 23.** Enter the total company assets from the federal return.

■ **Additional Information Required** – Answer questions 1 through 8 on page 2 of Form 5S.

■ **Signatures** – An officer of the corporation must sign the form at the bottom of page 2. If the return is prepared by someone other than an employee of the corporation, the individual who prepared the return must sign the form, by hand, in the space provided for the preparer's signature and furnish the preparing firm's federal employer identifica-

tion number. A self-employed individual must enter "SSN" and the social security number in the space for the preparer's federal employer identification number.

■ **Attachments** – Attach a copy of each of the following documents:

- Your federal Form 1120S with all supporting schedules.
- Your Wisconsin Schedules 5K-1.
- Any other required Wisconsin forms, schedules, or statements. Include a list of your solely owned LLCs and QSubs.
- Any extension of time to file your return.
- Any statements received from nonresident shareholders who are claiming exemption from Wisconsin income or franchise tax.

Amended Return: If this is an amended return, attach an explanation of the changes made and any supporting forms or schedules. Also attach a worksheet showing how you figured your additional refund or additional amount owed. Send the amended return to the Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

Schedule 5K – Shareholders' Shares of Income, Deductions, etc.

Schedule 5K is a summary schedule of all the shareholders' shares of the corporation's income, deductions, credits, etc., as computed under Wisconsin law, similar to federal Schedule K.

■ **Column b. Federal amount** – Enter the applicable amounts from federal Schedule K in column b of Schedule 5K. For dividends and the net gain (loss) items reported on lines 5 and 8, use the **totals** for the year from Schedule K.

■ **Column c. Adjustment** – Enter any adjustments necessary to arrive at the amount of any share item under Wisconsin law in column c. **Be sure to attach to Form 5S an explanation of any adjustments in column c.**

Caution: Don't make any adjustments on Schedule 5K to exclude a nonresident or part-year resident shareholder's share of tax-option (S) items that are attributable to business outside Wisconsin. These adjustments will be made on the Schedule 5K-1 of each affected shareholder, as described in the instructions for Schedule 5K-1 that follow.

Note: Show additions as a positive number. Show subtractions by putting the amount in parentheses.

■ **Lines 1 through 3, 5 through 12, 14, 15, 17a, 17b, and 17d.** Additions to or subtractions from federal amounts may be required for the following items:

1. Adjustments required because the federal amount in column b was computed using a provision of the Internal Revenue Code that doesn't apply for Wisconsin purposes.

For example, certain federal law changes enacted before December 31, 2004, and any changes enacted after that date don't apply for Wisconsin purposes. See page 6 for details.

2. Differences between the federal and Wisconsin deductions for depreciation or amortization.

Line-by-Line Instructions (continued)

For assets first placed in service in taxable years beginning on or after January 1, 2001, you must compute depreciation or amortization under the Internal Revenue Code as amended to December 31, 2000.

For qualified property acquired after September 10, 2001, you may not claim the federal 30% bonus depreciation. The 50% additional first-year depreciation deduction may not be claimed for 50% bonus property acquired after May 5, 2003.

An asset placed in service before 2005 must continue to be depreciated or amortized under the method allowable for Wisconsin purposes for the year in which it was placed in service.

In addition, many differences in Wisconsin and federal depreciation and amortization existed before January 1, 1987, including the following:

- a. IRC section 168(f)(8), relating to a special rule for leases (safe harbor), didn't apply for Wisconsin purposes. See *Wisconsin Tax Bulletin* 84 (October 1993, page 22) for further details about Wisconsin's treatment of safe harbor leases.
- b. Telegraph, pipeline, gas, electric, steam, and telephone companies (defined under secs. 76.02(4), Wis. Stats. (1983-84), 76.02(5b), 76.28(1)(e)1., 3., and 4., and 76.38(1)(c), Wis. Stats. (1985-86), except for specialized common carriers) had to compute depreciation under the Internal Revenue Code in effect on December 31, 1980, for assets acquired during the period beginning with the 1981 taxable year and ending on December 31, 1986. **Note:** The *Beatrice Cheese, Inc.* decision described in item e below doesn't apply to these companies.
- c. Waste treatment and pollution abatement plants and equipment could be deducted or amortized pursuant to sec. 71.04(2b) or (2g), Wis. Stats. (1985-86).
- d. Alternative energy systems could be deducted or amortized pursuant to sec. 71.04(16), Wis. Stats. (1985-86).
- e. The federal accelerated cost recovery system (ACRS) wasn't allowable for Wisconsin purposes for property located outside Wisconsin and first placed in service from January 1, 1983, through December 31, 1986. Instead, depreciation was to be computed under a method permitted by the Internal Revenue Code as of December 31, 1980, or, in the alternative, the Internal Revenue Code applicable to the calendar year 1972.

However, the Wisconsin Tax Appeals Commission declared this provision unconstitutional in *Beatrice Cheese, Inc. vs. Wisconsin Department of Revenue* (February 24, 1993). Therefore, corporations have the option of (1) claiming the same depreciation deduction as for federal purposes, or (2) continuing their present method of depreciation. Basis differences resulting from the use of different federal and state depreciation methods are accounted for when the assets are disposed of in a taxable transaction. For more information, see the tax release in *Wisconsin Tax Bulletin* 84 (October 1993, page 18).

- f. Wisconsin and federal depreciation may have been different in the case of investment credit property. A corporation electing to claim an investment tax credit for federal income tax purposes could either (1) claim the credit and reduce the depreciable basis of the property by one-half of the credit, or (2) in the case of regular investment tax credit property, claim a reduced investment credit and not reduce the depreciable basis of the property.

Corporations that claimed an investment tax credit on their federal return (and reduced the federal basis of the assets) weren't required to reduce the basis of the investment credit property for Wisconsin purposes and could either (1) claim the same depreciation for Wisconsin as that claimed for federal purposes (except for item e above) and receive a deduction for the basis difference in the year the property is disposed of, pursuant to sec. 71.04(15)(e), Wis. Stats. (1985-86), or (2) claim depreciation on the asset's full (unreduced) basis for Wisconsin. (The second method required separate depreciation records for Wisconsin purposes.)

- g. Intangible drilling costs incurred after the 1980 taxable year are deductible for federal purposes under IRC section 263(c). Before the 1987 taxable year, the amount of depletion, depreciation, or write-off allowable for Wisconsin purposes was limited to that allowable under the Internal Revenue Code in effect on December 31, 1980, or, in the alternative, the Internal Revenue Code applicable to the calendar year 1972.
- h. For the following property acquired in the 1986 taxable year, but before January 1, 1987, depreciation must be computed under the December 31, 1980, Internal Revenue Code: (1) residential real property, and (2) property used in farming, as defined in IRC section 464(e)(1), if the corporation's Wisconsin gross farm receipts or sales exceeded \$155,000 for the 1986 taxable year.
- i. For federal tax purposes, corporations may elect to expense, under IRC section 179, a portion of the cost of "section 179" property placed in service after the 1981 calendar year. For Wisconsin purposes, before the 1987 taxable year, corporations (except regulated investment companies and real estate investment trusts) couldn't claim this expense. Instead, depreciation was allowable on the cost basis of the property, without reduction for the amount the corporation may have elected to expense under section 179 for federal purposes.

For assets placed in service before January 1, 1987, these differences in depreciation (items a through i) continue to exist. Therefore, the depreciation deduction may be different for Wisconsin and federal purposes.

3. Differences between the federal and Wisconsin bases of assets disposed of during the taxable year.

For example, a corporation sold the following assets, which had been held more than one year:

	Selling Price	Wisconsin Basis	Federal Basis
Equipment	\$ 1,000	\$ 1,500	\$ 500
Machinery	15,000	5,000	17,500
Building	200,000	150,000	120,000

The gains (losses) realized on these transactions are –

	Wisconsin Gain (Loss)	Federal Gain (Loss)
Equipment	\$ (500)	\$ 500
Machinery	10,000	(2,500)
Building	50,000	80,000
Total	<u>\$ 59,500</u>	<u>\$ 78,000</u>

For federal purposes, the \$500 gain on the sale of the equipment is determined to be depreciation recapture, which is treated as ordinary gain and included in the corporation's ordinary income or loss on Form 5S, Schedule 5K, line 1, column b.

The corporation must recompute a federal Form 4797, substituting the Wisconsin depreciation allowed or allowable and Wisconsin basis of the assets for the federal amounts.

For Wisconsin purposes, \$5,000 of the gain on the sale of the machinery is determined to be depreciation recapture, which is treated as ordinary gain.

The corporation enters \$4,500 (\$5,000 Wisconsin ordinary gain minus \$500 federal ordinary gain) on Schedule 5K, line 1, column c. The corporation makes the following entries on Schedule 5K, line 9: \$77,500 in column b, \$(23,000) in column c, and \$54,500 in column d.

4. Adjustments required as a result of making different elections for Wisconsin and federal purposes.

For example, since Wisconsin does not allow a credit for foreign taxes paid, the corporation may elect to deduct these taxes on line 1.

5. Additions, generally on line 1, for the following tax credits computed by the corporation.

- The sum of the corporation's manufacturer's sales tax credit computed from Schedule Z, line 10, the total credits passed through from other entities from Schedule Z-1, column e, plus any pre-1998 credit carryover claimed on Form 5S, line 5.
- Dairy investment credit computed on 2005 Schedule DI, line 7.
- Development zones credits computed on 2005 Schedule DC, lines 5, 13, and 21.
- Technology zone credit computed on 2005 Schedule TC, line 6.
- Early stage seed investment credit computed on 2005 Schedule VC, line 8.

6. An addition on line 1 for taxes imposed by Wisconsin, any other state, and the District of Columbia that are value-added taxes, single business taxes, or taxes on or measured by net income, gross income, gross receipts, or capital stock and that were deducted in computing federal ordinary income.

Note: Also show nondeductible taxes as additional nondeductible expenses on Schedule 5K, line 16c.

7. Adjustments required to the recognized built-in gain items if the corporation owes either a federal or a Wisconsin built-in gains tax.

For Wisconsin purposes, the gain on the sale of an asset is reduced by any Wisconsin built-in gains tax paid by the corporation on that asset. For federal purposes, however, the gain is reduced by the federal built-in gains tax.

8. Additions for any federal capital gains tax that reduced net long-term capital gain and for any federal excess net passive income tax that reduced items of passive investment income for federal purposes.

■ **Lines 4, 16a, and 17d.** Additions to or subtractions from the federal amounts may be required for the following items.

- If the interest income reported on line 4, column b, includes any interest from obligations of the United States government and its instrumentalities, identify this amount on a separate schedule for line 17d. **Do not** subtract this amount on Schedule 5K, line 4, column c.

- If the tax-exempt interest income reported on line 16a, column b, includes any interest that is exempt for federal purposes but taxable by Wisconsin, such as state and local government bond interest, report this amount as an **addition** on line 4, column c, and as a **subtraction** on line 16a, column c.

■ **Lines 16b and 16c.** Additions to or subtractions from the federal amounts may be required for the following items.

- Income reported on line 16b that is exempt for federal purposes but taxable by Wisconsin is shown as a **subtraction** in column c. If more income is nontaxable for Wisconsin purposes than for federal purposes, show the additional amount of exempt income as an **addition**. The amount under Wisconsin law in column d is the amount of tax-exempt income for Wisconsin purposes.
- Expenses on line 16c that are nondeductible federally but deductible for Wisconsin purposes are shown as **subtractions** in column c. If more expenses are nondeductible for Wisconsin purposes than for federal purposes, show the additional amount of nondeductible expenses as an **addition**. The amount under Wisconsin law in column d is the nondeductible expense for Wisconsin purposes.

■ **Lines 16d and 17c.** Adjustments to the federal amounts of these items may be necessary because of differences between the Wisconsin and federal accumulated adjustments accounts, previously taxed undistributed income, and accumulated earnings and profits. These differences may occur because the computation of Wisconsin and federal "net income (loss)" differed for the 1979 through 1986 taxable years and Wisconsin didn't recognize tax-option (S) corporations for years before 1979. See the instructions for Schedule 5M on page 17 for more information about distributions.

Report the dividend distributions entered on line 17c to the shareholders on Schedule 5K-1, line 17c, for Wisconsin. This differs from the federal requirement to report the amount of the dividends on Form 1099-DIV rather than on Schedule K-1.

■ **Column d. Wisconsin amount** – Combine the amount in column b with any adjustment in column c and enter the result in column d.

■ **Line 13a.** Enter, in column d, the amount of manufacturer's sales tax credit that is being passed through to the shareholders. The credit passed through can't exceed the sum of the amounts reported on Wisconsin Schedule Z, line 10, and Schedule Z-1, column e, reduced by any portion used by the corporation on Form 5S, line 5. Attach Schedule Z, and Schedule Z-1 if applicable, to the Form 5S filed with the Department.

■ **Line 13b.** Enter, in column d, the available dairy investment credit from Wisconsin Schedule DI, line 7. Attach Schedule DI to the Form 5S filed with the Department.

Shareholders of tax-option (S) corporations that pay certain amounts for dairy farm modernization or expansion of their dairy farm in Wisconsin may be eligible for a tax credit.

■ **Line 13c.** Enter, in column d, the available development zones credit from Wisconsin Schedule DC, line 5. Attach Schedule DC to the Form 5S filed with the Department.

Shareholders of tax-option (S) corporations doing business in Wisconsin development, development opportunity, enterprise development, or agricultural development zones may be eligible for tax credits based on expenditures for environmental remediation and job creation or retention. The Wisconsin Department of Commerce administers the

Line-by-Line Instructions (continued)

Wisconsin development zones programs. For more information about the programs, visit the Department of Commerce web site at www.commerce.wi.gov/CD/CD-bed.html or write to the Wisconsin Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970.

■ **Line 13d.** Enter, in column d, the available development opportunity zone investment credit from Schedule DC, line 13. Attach Schedule DC to the Form 5S filed with the Department.

■ **Line 13e.** Enter, in column d, the available development opportunity zone or agricultural development zone capital investment credit from Schedule DC, line 21. Attach Schedule DC to the Form 5S filed with the Department.

■ **Line 13f.** Enter, in column d, the available technology zone credit from Wisconsin Schedule TC, line 6. Attach Schedule TC to the Form 5S filed with the Department.

Shareholders of tax-option (S) corporations doing business in Wisconsin technology zones may be eligible for a tax credit based on the property taxes paid, capital investments made, and jobs created. The Department of Commerce administers the Wisconsin technology zone program. For more information about the program, visit the Department of Commerce web site at www.commerce.wi.gov/CD/CD-bed.html or write to the Wisconsin Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970.

■ **Line 13g.** Enter, in column d, the available early stage seed investment credit from Wisconsin Schedule VC, line 8. Attach Schedule VC to the Form 5S filed with the Department.

Shareholders of tax-option (S) corporations making payments to a qualified fund manager for investment in a qualified new business venture may be eligible for a tax credit. The Department of Commerce administers the early stage business investment program. For more information about this program visit the Department of Commerce web site at www.commerce.wi.gov/Act255/ or write to the Wisconsin Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970.

■ **Line 13h.** Enter, in column d, the supplement to the federal historic rehabilitation tax credit from Wisconsin Schedule HR, line 5. Attach Schedule HR to the Form 5S filed with the Department.

Shareholders of tax-option (S) corporations that rehabilitate certified historic structures located in Wisconsin and used for business purposes may claim a credit. The Wisconsin Historical Society administers the historic preservation program. For more information about this program, visit the Historical Society's web site at www.wisconsinhistory.org/hp/buildings, write to the Division of Historic Preservation, Wisconsin Historical Society, 816 State Street, Madison, WI 53706-1488, or call (608) 264-6490.

■ **Line 13i.** If the corporation does business in another state and either the corporation or its shareholders must pay an income or franchise tax on or measured by the corporation's income earned there, Wisconsin resident shareholders may be able to claim credit on their individual income tax returns for their pro rata shares of the tax paid. Credit is allowed only if the income taxed by the other state is considered taxable income by Wisconsin.

Fill in line 13i if –

- The corporation's S status is recognized by the other state and the corporation files a combined or composite return with that state on behalf of the shareholders who are nonresidents of that state and pays the tax on their pro rata shares of the corporation's income earned there.

- The corporation's S status is recognized by the other state and the corporation files a corporate franchise or income tax return with that state and pays tax on the income earned there that is attributable to the shareholders who are nonresidents of that state.
- The corporation's S status isn't recognized by the other state and the corporation pays an income or franchise tax on or measured by the income earned there.

Enter the name of the state in the space provided and the amount of franchise or income tax paid to that state in column d. If tax is paid to more than three states, write "See Attached" on one of the entry lines, enter the total amount on that line in column d, and attach a schedule listing all states and the amount of franchise or income tax paid to each state.

Attach to Form 5S a copy of the franchise or income tax return filed with each state for which a credit is claimed.

■ **Line 13j.** If the corporation is subject to withholding tax on the Wisconsin income of nonresident shareholders, enter, in column d, the amount of Wisconsin tax withheld. If a nonresident shareholder claims exemption from Wisconsin income taxation, attach a copy of the exemption statement to the Form 5S filed with the Department.

If the corporation is a member of a partnership that withheld Wisconsin income tax from partnership income that is passed through to the corporation's nonresident shareholders, also include that tax withheld on line 13j, column d.

Caution: In the case of nonresident entertainers, don't include any cash deposits or withholding made with Form WT-11, Nonresident Entertainer's Application and Receipt for Surety Bond, Cash Deposit, or Withholding by Employer.

■ **Line 17d.** On an attached schedule, show any items and amounts not included on lines 1 through 17c that must be reported separately to the shareholders. Include the federal amount, any adjustment, and the amount determined under Wisconsin law for each item.

- If the interest income on line 4, column b, includes any interest from United States government obligations that is taxable for federal purposes but exempt from Wisconsin individual income taxes, report the amount of United States government interest on this schedule.
- If the tax-option (S) corporation disposed of property for which a section 179 expense deduction was claimed in a prior year, provide the following information for each asset: description of the property; gross sales price; both the federal and the Wisconsin cost or other basis plus expense of sale (**excluding** the corporation's basis reduction in the property due to the section 179 expense deduction); depreciation allowed or allowable (**excluding** the section 179 expense deduction); and both the federal and Wisconsin amount of section 179 expense deduction passed through in previous years for the property and the corporation's taxable years for which the amounts were passed through.

■ **Line 17e.** Combine lines 1 through 10 in columns b and d. From the result subtract the sum of lines 11 through 12d. Add or subtract, as appropriate, any income or deductions reported on line 17d that affect the computation of taxable income.

Caution: If you reported on line 17d the disposition of property for which a section 179 expense deduction was claimed in a prior year, complete federal Form 4797 to figure the amount of gain or loss to combine with the other items of income, loss, and deduction. If the fed-

eral and Wisconsin bases of the property or section 179 deductions differ, use two Forms 4797. Disregard the special instructions for S corporations and shareholders when filling out Form 4797. On one Form 4797, determine the federal gain or loss to combine with the other federal amounts reported in column b. Complete a second Form 4797 to compute the Wisconsin gain or loss to combine with the other Wisconsin amounts reported in column d.

Note: Be sure to include in column d interest income from federal, state, and municipal obligations that is reportable on Form 5S, page 1, line 1.

■ **Line 18.** Enter the gross income, as determined under Wisconsin law before application of apportionment or separate accounting, from all activities. This includes gross receipts or sales, gross rents and royalties, interest and dividends, and the gross sales price of capital assets and property used in a trade or business.

Schedule 5M – Analysis of Wisconsin Accumulated Adjustments Account and Other Adjustments Account

Wisconsin Accumulated Adjustments Account

The Wisconsin Accumulated Adjustments Account (AAA) is an account of a tax-option (S) corporation that is used in taxable years beginning after December 31, 1982, to compute the Wisconsin tax effect of distributions from the corporation to its shareholders. The Wisconsin AAA will have a zero balance on the first day of the corporation's first taxable year as a tax-option (S) corporation beginning after December 31, 1982.

Corporations Without Accumulated Earnings and Profits

At the end of the current taxable year, if the corporation doesn't have accumulated earnings and profits for Wisconsin purposes, the Wisconsin AAA is increased or decreased by the following items:

Increased by:

- Taxable income and gains, as determined under Wisconsin law.
- Nontaxable income earned in taxable year 1987 and thereafter (nontaxable income earned before 1987 didn't increase the Wisconsin AAA).

Decreased by:

- Deductible losses and expenses, as determined under Wisconsin law.
- Nondeductible expenses, not due to timing differences (that is, expenses that are never deductible for Wisconsin purposes).
- Property distributions, including cash, made by the corporation that are applicable to the Wisconsin AAA.
- The amount of the supplement to the federal historic rehabilitation tax credit computed.

Corporations With Accumulated Earnings and Profits

At the end of the current taxable year, if the corporation has accumulated earnings and profits for Wisconsin purposes, the Wisconsin AAA is increased or decreased by the following items in the order listed:

1. Increased by taxable income and gains, as determined under Wisconsin law.

2. Decreased by:

- a. Deductible losses and expenses, as determined under Wisconsin law, and expenses that are never deductible for Wisconsin purposes. However, if the total decreases exceed the total increases above, the excess is a "net negative adjustment" that is taken into account in **c** below.
- b. Property distributions, including cash, other than dividend distributions from accumulated earnings and profits, unless the corporation elects to reduce accumulated earnings and profits first. **Note:** Distributions cannot reduce the Wisconsin AAA below zero.
- c. Any net negative adjustment.
- d. The supplement to the federal historic rehabilitation tax credit computed.

In this case, the Wisconsin AAA isn't increased by nontaxable income nor decreased by nondeductible expenses related to nontaxable income. Instead, adjustments for nontaxable income and related expenses are made to the Wisconsin Other Adjustments Account as explained below. If the tax-option corporation is subject to a Wisconsin franchise tax measured by certain federal, state, and municipal government bond interest, that interest is treated as taxable income which increases the Wisconsin AAA.

Note: For purposes of the Wisconsin AAA, taxable income and deductible losses and expenses are the total company amounts as determined under Wisconsin law. The total company amounts are those before application of either apportionment or separate accounting to compute a multistate corporation's income, loss, and deductions attributable to Wisconsin.

As with the federal AAA, the Wisconsin AAA may have a negative balance. Due to past and current differences in the computation of income, loss, and deductions, the federal AAA and Wisconsin AAA may not have the same balance. This may create a difference between the federal and Wisconsin treatment of all or a part of any corporate distributions at the shareholder level.

Wisconsin Other Adjustments Account

The Wisconsin Other Adjustments Account (OAA) is maintained only by corporations that have accumulated earnings and profits at year-end. Since 1987 was the first year for which a Wisconsin OAA may be used, the Wisconsin OAA will have a zero balance at the beginning of the corporation's 1987 taxable year. The account is increased by nontaxable income and decreased by related expenses. The account is also decreased by any distributions during the taxable year that are applicable to the Wisconsin OAA.

Note: If the tax-option corporation is subject to a franchise tax measured by certain federal, state, and municipal government bond interest, that interest is treated as taxable income which increases the Wisconsin AAA, not the Wisconsin OAA.

The Wisconsin OAA may not agree with the federal OAA.

Distributions

For Wisconsin, property distributions, including cash, generally are treated as made from the following sources in the order shown:

1. A nontaxable distribution of net income to the extent of the Wisconsin AAA, but not in excess of the shareholder's Wisconsin stock basis. For distributions made in taxable years beginning on or after January 1, 1997, the Wisconsin AAA is determined without regard to any "net negative adjustment" for the taxable year. A net negative

Line-by-Line Instructions (continued)

adjustment is the excess, if any, of reductions in the AAA for the taxable year, other than for distributions, over the increases in the AAA for the taxable year.

2. A nontaxable distribution of the shareholder's Wisconsin "previously taxed undistributed income" from the 1979 taxable year through the last taxable year beginning before January 1, 1983, but not in excess of the shareholder's Wisconsin stock basis after applying the distributions in 1 above.
3. A taxable dividend to the extent of Wisconsin accumulated earnings and profits.
4. A nontaxable distribution of exempt income to the extent of the Wisconsin OAA, but not in excess of the shareholder's Wisconsin stock basis after applying the distributions in 1 and 2 above.
5. A nontaxable return of capital to the extent of the shareholder's Wisconsin stock basis after applying the distributions in 1, 2, and 4 above.

All nondividend distributions in excess of basis are treated as taxable gain from the sale or exchange of property. Dividends are taxable as ordinary income.

If a tax-option corporation makes more than one distribution to its shareholders during its taxable year and the total distribution exceeds the amount in the Wisconsin AAA at the end of the corporation's taxable year determined without regard to any net negative adjustment for the taxable year, allocate the amount in the Wisconsin AAA among the distributions on a proportionate basis.

The tax-option (S) corporation may elect, with the consent of its affected shareholders, to modify the ordering rules for distributions as follows:

- To distribute accumulated earnings and profits before making distributions from the Wisconsin AAA.
- To make a deemed dividend.
- To forgo distributions of previously taxed income.

If a Subchapter S election is revoked or terminated, distributions of money during the post-termination transition period by the former tax-option (S) corporation to its shareholders are nontaxable to the extent of the corporation's Wisconsin AAA, but not in excess of a shareholder's stock basis. These nontaxable distributions reduce the adjusted basis of the shareholder's stock. Alternatively, the tax-option (S) corporation may elect, with the consent of its affected shareholders, to have distributions of money treated as dividends not made from the AAA to the extent of the corporation's accumulated earnings and profits for Wisconsin purposes.

Schedule 5K-1 – Tax-Option (S) Corporation Shareholder's Share of Income, Deductions, etc.

Schedule 5K-1 shows each shareholder's share of the corporation's income, deductions, credits, etc., which have been summarized on Schedule 5K. Like Schedule 5K, Schedule 5K-1 requires an entry for the federal amount, adjustment, and amount determined under Wisconsin law of each applicable share item. In addition, Schedule 5K-1 for a nonresident or part-year resident shareholder requires a separate entry for the amount of each share item attributable to Wisconsin.

Attach a copy of each shareholder's Schedule 5K-1 to the Form 5S filed with the Department. Keep a copy as a part of the corporation's records, and give each shareholder his or her own separate copy. Schedule 5K-1 must be prepared and given to each shareholder on or before the day on which Form 5S is filed. In addition, give each shareholder a copy of the "Shareholder's Instructions for 2005 Schedule 5K-1."

Note: If the corporation does business only in Wisconsin and has **no** adjustments in column c or Wisconsin credits in column d of Schedule 5K, it isn't necessary to prepare a Wisconsin Schedule 5K-1 for each shareholder. In addition, a Schedule 5K-1 isn't required for a full-year Wisconsin resident shareholder of a corporation that does business in and outside Wisconsin provided there aren't any Wisconsin adjustments or credits. **Be sure to state on the shareholders' federal Schedules K-1, including the copies filed with the Department of Revenue, that there aren't any Wisconsin adjustments or credits.**

Part I - Information About the Corporation

- **Item A.** Enter the corporation's federal employer identification number.
- **Item B.** Enter the corporation's name, address, city, state, and ZIP code.

Part II - Information About the Shareholder

- **Item C.** Enter the shareholder's social security number or federal employer identification number.
- **Item D.** Enter the shareholder's name, address, city, state, and ZIP code.

Note: If a single member limited liability company (LLC) owns stock in the corporation, and the LLC is treated as a disregarded entity for federal income tax purposes, enter the owner's identifying number in item C and the owner's name and address in item D. The owner must be eligible to be a tax-option (S) corporation shareholder. An LLC that elects to be treated as a corporation for federal income tax purposes is not eligible to be a shareholder.

Exception: If a QSST is a shareholder, enter the name and address of the QSST, not the name and address of its beneficiary. The QSST must file a Wisconsin Form 2 to report its share of the tax-option (S) corporation income. The beneficiary must file an individual income tax return to report his or her share of the QSST's income.

- **Item E.** Enter the shareholder's percentage of stock ownership for the taxable year. If there was a change in shareholders or in the relative interest in stock the shareholders owned during the taxable year, each shareholder's percentage of ownership is weighted for the number of days in the taxable year that stock was owned.
- **Item F.** Enter the shareholder's state of residence (domicile). If the state of residence changed during the corporation's taxable year, indicate all states involved. If the shareholder moved into or out of Wisconsin during the corporation's taxable year, and the corporation does business in and outside Wisconsin, the shareholder's Wisconsin share of the tax-option items will be affected. See the instructions below for Part III for more information.

- **Item G.** Check this box only if the shareholder is a nonresident or part-year resident of Wisconsin during the corporation's taxable year and the corporation is a multistate corporation that would figure its income under the apportionment method if it were a regular (C) corporation. See the instructions for Forms 4B and 4B-1, Apportionment

Data, on page 22. Enter the corporation's apportionment percentage from Form 4B, line 39, or Form 4B-1, if appropriate. Include Form 4B or Form 4B-1 with the Form 5S filed with the Department.

■ **Item H.** Check this box only if the shareholder is a nonresident or part-year resident of Wisconsin during the corporation's taxable year and the corporation is a multistate corporation that would figure its income under the separate accounting method if it were a regular (C) corporation. See the instructions for Form 4C, Separate Accounting Data, on page 26. Attach a schedule, similar to Form 4C, that shows the allocation of the amount under Wisconsin law in column d of each applicable share item on Schedule 5K to Wisconsin and outside Wisconsin. This schedule should also show the basis of such allocation.

■ **Item I.** Check the appropriate box to indicate what type of entity this shareholder is.

■ **Item J.** If the corporation ceased to exist, withdrew from Wisconsin, or terminated its tax-option (S) election or if the shareholder terminated his or her interest in the corporation during the taxable year, check the "Final 5K-1" box. To correct an error on a Schedule 5K-1 already filed, file an amended Schedule 5K-1 and check the "Amended 5K-1" box.

Part III - Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

Part III of Schedule 5K-1 shows each shareholder's proportionate share of the items reported on Wisconsin Schedule 5K. In addition, it shows a nonresident or part-year resident shareholder's share of a corporation's items that are reportable to Wisconsin.

Column a – Pro rata share items. Fill in the description, not the applicable code from the federal Schedule K-1, for other income, other deductions, alternative minimum tax (AMT) items, and other items and amounts.

Column b – Federal amount. The federal amount is the shareholder's pro rata share of the amount from Wisconsin Schedule 5K, column b, and generally should agree with the amount for that item reported on the shareholder's federal Schedule K-1.

Column c – Adjustment. The adjustment is the shareholder's pro rata share of the amount from Wisconsin Schedule 5K, column c. **Note:** On an attached schedule, explain the reason for any adjustment in column c. If the difference arises because a federal law change has not been adopted by Wisconsin, identify it as a "Schedule I adjustment." Shareholders must account for this difference on Wisconsin Schedule I.

Column d – Amount under Wisconsin law. The amount under Wisconsin law is the shareholder's pro rata share of the amount from Wisconsin Schedule 5K, column d. This is the amount used in computing Wisconsin income by a full-year resident of Wisconsin.

Column e – Wisconsin source amount. **Fill in this column only for a nonresident or part-year resident of Wisconsin.** The Wisconsin source amount is that portion of a nonresident or part-year resident shareholder's amount from Wisconsin Schedule 5K-1, column d, that is attributable to Wisconsin. If the corporation is doing business in and outside Wisconsin, this generally will be the amount from column d multiplied by the corporation's apportionment percentage from item G. **Do not fill in column e for a shareholder who is a full-year resident of Wisconsin.**

■ **Lines 1 through 12, 14, 15, 17a, and 17d.** Enter the shareholder's share of the federal amount, adjustment, and amount determined under

Wisconsin law for each item. Enter a nonresident's or part-year resident's Wisconsin source amount.

Full-Year Residents of Wisconsin

Individuals who are full-year residents of Wisconsin must report to Wisconsin all income or loss regardless of where it is earned or incurred, unless otherwise exempt (such as United States government interest). Therefore, a tax-option (S) corporation that does business in and outside Wisconsin does not allocate a Wisconsin resident shareholder's share of its income, loss, and deductions between Wisconsin and elsewhere.

A Wisconsin resident shareholder's share of the adjustment and amount determined under Wisconsin law for each item is the shareholder's share, based on his or her percentage of stock ownership, of the adjustment and amount under Wisconsin law shown on Schedule 5K. Do not fill in column e. See the example on page 21.

Nonresidents of Wisconsin

Individuals who are nonresidents of Wisconsin must report to Wisconsin all income or loss that is earned or incurred in Wisconsin.

If the corporation does business only in Wisconsin, a nonresident shareholder's share of the adjustment and amount determined under Wisconsin law of each item is the shareholder's share, based on his or her percentage of stock ownership, of the adjustment and amount under Wisconsin law shown on Schedule 5K. Enter the amount from column d in column e.

If the corporation does business in and outside Wisconsin, a nonresident shareholder's Wisconsin source amount in column e of each item is the shareholder's amount determined under Wisconsin law from column d that is attributable to Wisconsin based on apportionment or separate accounting, as appropriate.

If the corporation is a unitary, multistate corporation, compute the Wisconsin source amount of each share item by multiplying the amount under Wisconsin law in column d for that item by the apportionment percentage from item G. See the example on page 21.

If the corporation has nonapportionable income (loss) on Form 4B, line 5, compute the Wisconsin source amount in column e of any affected item by multiplying the amount of the nonapportionable share item from Schedule 5K, column d, that is attributed to Wisconsin on Form 4B by the nonresident shareholder's percentage of stock ownership.

If the corporation is a nonunitary, multistate corporation, compute the Wisconsin source amount in column e of each share item by multiplying the amount from Schedule 5K, column d, that is allocated to Wisconsin on a schedule similar to Form 4C by the nonresident shareholder's percentage of stock ownership.

Note: The shareholder uses the information from Schedule 5K-1, column d, to calculate the Wisconsin basis in the corporation's stock.

Part-Year Residents of Wisconsin

Individuals who are part-year residents of Wisconsin must report to Wisconsin all income or loss, regardless of where it is earned or incurred, while they were residents of Wisconsin and all income or loss earned or incurred in Wisconsin while they were nonresidents of Wisconsin.

If the corporation does business only in Wisconsin, a part-year resident shareholder's share of the adjustment and amount under Wisconsin law of each item is the shareholder's share, based on his or her percentage of stock ownership, of the adjustment and amount determined under Wisconsin law shown on Schedule 5K, columns c and d, respectively. Enter the amount from column d in column e.

Line-by-Line Instructions (continued)

If the corporation does business in and outside Wisconsin, compute a part-year resident shareholder's Wisconsin source amount in column e of each item in two parts: one for the portion of the corporation's taxable year that the shareholder was a resident of Wisconsin and one for the portion of the corporation's taxable year that the shareholder was a nonresident of Wisconsin. For this purpose, the amount of any share item is determined on a daily basis. That is, every share item is allocated between the resident and nonresident status of the shareholder based on the number of days during the corporation's taxable year that the shareholder was a resident or nonresident of Wisconsin. The shareholder's share of an item for each period (resident or nonresident) is determined in the same manner as that of full-year residents and nonresidents, respectively. See the example on page 21.

■ **Lines 4, 16a, and 17d.** Enter the shareholder's share, based on the percentage of stock ownership, of the federal amount, adjustment, and amount determined under Wisconsin law for each item from Schedule 5K.

If any interest on United States government obligations is included on line 4, column d, report this amount on line 17d. This interest income is not taxable for Wisconsin income tax purposes.

Interest on state and local government bonds generally is exempt for federal purposes but taxable by Wisconsin. Show the amount of state and local government bond interest that is taxable by Wisconsin as an *addition* on line 4, column c, and as a *subtraction* on line 16a, column c.

For a nonresident or part-year resident shareholder of a multistate corporation, compute the Wisconsin source amount in column e by multiplying the amount reported on Schedule 5K-1, column d, by the Wisconsin apportionment percentage or by allocating it in and outside Wisconsin using separate accounting.

■ **Lines 12, 17b, and 17d.** Enter the shareholder's share of the federal amount, adjustment, and amount determined under Wisconsin law for each item. A shareholder may choose to treat items that are deductible on federal Schedule A in either of the following ways:

- As deductions that may be includable in the Wisconsin itemized deduction credit, or
- As modifications that are subtracted from federal adjusted gross income to arrive at Wisconsin adjusted gross income.

Show the amount that would be used in the Wisconsin itemized deduction credit in column d. Multiply the amount on Schedule 5K by the shareholder's percentage of stock ownership. Don't multiply this result by the Wisconsin apportionment percentage or allocate it in and outside Wisconsin using separate accounting, regardless of the shareholder's state of residence.

For items claimed as subtraction modifications, the Wisconsin amount is limited to the amount actually allowed as an itemized deduction for federal purposes. For a nonresident or part-year resident shareholder of a multistate corporation, the Wisconsin amount is further limited to that portion of the federally deductible amount that is attributable to Wisconsin based on apportionment or separate accounting, as appropriate. Therefore, for a nonresident or part-year resident shareholder of a multistate corporation, enter the Wisconsin source amount in column e.

■ **Line 13a.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the manufacturer's sales tax credit from Schedules Z and Z-1.

■ **Line 13b.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the dairy investment credit from Schedule DI.

■ **Line 13c.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the development zones credit from Schedule DC.

■ **Line 13d.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the development opportunity zone investment credit from Schedule DC.

■ **Line 13e.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the development opportunity zone or agricultural development zone capital investment credit from Schedule DC.

■ **Line 13f.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the technology zone credit from Schedule TC.

■ **Line 13g.** Enter in column d the shareholder's share, based on the percentage of stock ownership or as specially allocated in the corporation's organizational documents, of the early stage seed investment credit from Schedule VC.

■ **Line 13h.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the supplement to the federal historic rehabilitation tax credit from Schedule HR.

Caution: The shareholder's Wisconsin basis of the corporation's stock must be reduced by his or her proportionate share of the historic rehabilitation tax credit computed.

Note: Credits are computed in the same manner for shareholders who are full-year, part-year, or nonresidents of Wisconsin. For part-year and nonresident shareholders, also enter the allowable credits in column e.

■ **Line 13i.** Complete this line only for full-year Wisconsin resident shareholders and part-year Wisconsin resident shareholders. Enter zero for nonresident shareholders.

For a full-year resident, enter in column d the shareholder's share, based on the percentage of stock ownership, of the credits on Schedule 5K, line 13i.

For a part-year resident, credit is allowable for only the portion of the corporation's taxable year that the shareholder was a Wisconsin resident. Therefore, enter in column d the amount computed by multiplying the credit on Schedule 5K, line 13i, by the shareholder's percentage of stock ownership. Multiply that result by the ratio of days that the shareholder was a resident of Wisconsin during the corporation's taxable year to the total days in the corporation's taxable year, and enter the result in column e.

■ **Lines 13j.** Complete this line only for shareholders who are nonresidents of Wisconsin. Enter in column d and column e the withholding tax paid by the corporation on behalf of the nonresident shareholder.

■ **Lines 16b and 16c.** Enter the shareholder's share of the federal amount, adjustment, and amount determined under Wisconsin law from Schedule 5K for each of these items. Do not fill in column e.

■ **Line 17c.** Enter the shareholder's share, based on the percentage of stock ownership, of dividend distributions paid from accumulated earnings and profit.

■ **Line 17d.** Complete as necessary. Include the federal amount, adjustment, amount determined under Wisconsin law, and Wisconsin source

amount for each item when applicable. Determine the amounts for each shareholder as discussed for lines 1 through 12, 14, 15, and 17a. Attach additional schedules if more space is needed. Include the following items on line 17d:

- The amount of interest income from United States government obligations that is included on Schedule 5K-1, line 4, column d (column e for nonresidents and part-year residents of Wisconsin). Such interest is taxable for federal income tax purposes but exempt from the Wisconsin individual income tax.
- Information on the sale, exchange, or other disposition of property for which the section 179 expense deduction was claimed.
- Any information needed by a shareholder to determine why the Wisconsin amount of any tax-option (S) item differs from the federal amount.

Note: Tax-option (S) corporations whose Wisconsin resident shareholders may qualify for farmland preservation credit or farmland tax relief credit should attach a copy of the farmland property tax bill to the Schedule 5K-1 given to each qualifying shareholder. It isn't necessary for the corporation to attach the property tax bill to the Schedules 5K-1 filed with the Department. Shareholders must compute their allowable credits based on their proportionate shares of the corporation's property taxes. For additional information about farmland preservation credit, see the Wisconsin Schedule FC instructions. See the instructions for Wisconsin Form 1 or 1NPR for details on the farmland tax relief credit.

■ **Line 18.** Enter the shareholder's share, based on the percentage of stock ownership, of the corporation's gross income that is reportable to Wisconsin.

A full-year Wisconsin resident shareholder's share of the gross income is the shareholder's share, based on his or her percentage of stock ownership, of the amount shown on Schedule 5K, line 18, column d.

A nonresident or part-year resident shareholder's share of the gross income of a corporation that does business only in Wisconsin is the shareholder's share, based on his or her percentage of stock ownership, of the amount shown on Schedule 5K, line 18, column d. Enter the result in both column d and column e.

Compute a nonresident shareholder's share of the gross income of a unitary, multistate corporation by multiplying the amount from Schedule 5K, line 18, column d, by the nonresident shareholder's percentage of stock ownership and entering the result in column d. Multiply that amount by the apportionment percentage and enter the result in column e.

Compute a nonresident shareholder's share of the gross income of a nonunitary, multistate corporation by multiplying the amount from Schedule 5K, line 18, column d, by the nonresident shareholder's percentage of stock ownership and entering the result in column d. Allocate that amount in and outside Wisconsin and enter the portion allocated to Wisconsin in column e.

Compute a part-year resident shareholder's share of the gross income of a multistate corporation in two parts: one for the portion of the corporation's taxable year that the shareholder was a resident of Wisconsin and one for the portion of the corporation's taxable year that the shareholder was a nonresident of Wisconsin. Enter the result in column e.

The shareholder will use this information to determine whether he or she must file a Wisconsin income tax return.

Example of Schedule 5K-1

Corporation S is a calendar-year multistate corporation with a 60% Wisconsin apportionment percentage and no nonapportionable income. Its two shareholders, A and B, each own 50% of the stock of Corporation S. Shareholder A was a Wisconsin resident during all of 2005. Shareholder B was a resident of Wisconsin until moving to Illinois on April 1, 2005. Therefore, Shareholder B was a part-year resident of Wisconsin for 2005, having been a resident for 90 days and a nonresident for 275 days.

Schedule 5K for 2005 shows the following amounts on the lines indicated.

	(a) Pro rata share items	(b) Federal amount	(c) Adjustment	(d) Amt. under Wis. law
1	Ordinary income	\$ 10,000	\$ (1,000)	\$ 9,000
4	Interest income	200	500	700
16a	Tax-exempt interest income	500	(500)	-0-

The tax-exempt interest income is state and local government bond interest that is exempt from federal income taxes but taxable by Wisconsin. The adjustment in column c on lines 4 and 16a is the amount *taxable* by Wisconsin.

For Shareholder A, Schedule 5K-1 would show the following:

	(a) Pro rata share items	(b) Federal amount	(c) Adjustment	(d) Amt. under Wis. law	(e) Wis. source amount
1	Ordinary income	\$ 5,000	\$ (500)	\$ 4,500	
4	Interest income	100	250	350	
16a	Tax-exempt interest income	250	(250)	-0-	

These amounts are determined by multiplying the amounts on Schedule 5K by Shareholder A's 50% stock ownership percentage.

For Shareholder B, Schedule 5K-1 would show the following:

	(a) Pro rata share items	(b) Federal amount	(c) Adjustment	(d) Amt. under Wis. law	(e) Wis. source amount
1	Ordinary income	\$ 5,000	\$ (500)	\$ 4,500	\$ 3,144
4	Interest income	100	250	350	244
16a	Tax-exempt interest income	250	(250)	-0-	

The federal amounts in column b, adjustments in column c, and amounts determined under Wisconsin law in column d are computed by multiplying the amount on Schedule 5K by Shareholder B's 50% stock ownership percentage. The Wisconsin source amounts in column e are computed in two parts: one for the 90-day period that Shareholder B was a resident of Wisconsin, and one for the 275-day period that Shareholder B was a nonresident of Wisconsin.

Compute the Wisconsin source amount of the ordinary income on line 1 for Shareholder B as follows:

(1) For the period of residence, multiply the \$4,500 amount determined under Wisconsin law of ordinary income from Schedule 5K-1, column d, by 90/365, which is the ratio of days Shareholder B was a resident of

Wisconsin to total days in the corporation's taxable year. Add to that result the amount determined for the period of nonresidence in (2) below.

(2) For the period of nonresidence, multiply the \$4,500 amount determined under Wisconsin law of ordinary income from Schedule 5K-1, column d, by Corporation S's 60% Wisconsin apportionment percentage. Multiply the result by 275/365, which is the ratio of days Shareholder B was a nonresident of Wisconsin to total days in the corporation's taxable year.

This results in the following calculation:

Period of residence:	\$4,500 x 90/365	=	\$ 1,110
Period of nonresidence:	\$4,500 x .6 x 275/365	=	<u>2,034</u>
Total			<u>\$ 3,144</u>

Calculate the Wisconsin source amount of interest income as follows:

Period of residence:	\$350 x 90/365	=	\$ 86
Period of nonresidence:	\$350 x .6 x 275/365	=	<u>158</u>
Total			<u>\$ 244</u>

For tax-exempt interest income, calculate the adjustment in column c and the amount determined under Wisconsin law in column d by multiplying the amounts from Schedule 5K by Shareholder B's 50% stock ownership percentage. Do not fill in column e.

The above example involves a multistate corporation that would file its return using the apportionment method if it weren't a tax-option (S) corporation. If the corporation were one required to file using the separate accounting method, the calculations are similar. The calculations for Shareholder A and for the period that Shareholder B was a Wisconsin resident are the same as in the example above. The calculations for the period that Shareholder B was a nonresident of Wisconsin differ in that the Wisconsin amount from the separate accounting schedule similar to Form 4C (as discussed earlier) is used instead of the Wisconsin amount from Schedule 5K and the Wisconsin apportionment percentage.

Forms 4B and 4B-1 – Apportionment Data

What Is Apportionment

Under the apportionment method, a corporation shows all income and deductions for the company as a whole and then assigns a part to Wisconsin according to a formula that determines Wisconsin net income.

Who Must Use Apportionment

A corporation engaged in business in and outside Wisconsin is required to report a portion of its total company net income to Wisconsin using the apportionment method if its Wisconsin operations are a part of a unitary business, unless the Department gives permission to use separate accounting. To use the apportionment method, a corporation must have business activity sufficient to create nexus in Wisconsin and at least one other state or foreign country.

“Nexus” means that a corporation's business activity is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income. Under Public Law 86-272, a state can't impose an income tax or franchise tax based on net income on a corporation selling tangible personal property if the corporation's only activity in the state is the solicitation of orders, which orders are approved outside the state and are filled by delivery from a point outside the state.

What Is a Unitary Business

A unitary business is one that operates as a unit and can't be segregated into independently operating divisions or branches. The operations are integrated, and each division or branch is dependent upon or contributory to the operation of the business as a whole. It isn't necessary that each division or branch operating in Wisconsin contribute to the activities of all divisions or branches outside Wisconsin.

What Is Nonapportionable Income

Nonapportionable income is that income which is allocable directly to a particular state. It includes income or loss derived from the sale of non-business real or tangible personal property or from rentals and royalties from nonbusiness real or tangible personal property. This income is assigned to the state where the property is located.

All income that is realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in **Wisconsin** shall be allocated to Wisconsin.

Except for the income from lottery prizes described above, the intangible income of a personal holding company is nonapportionable and is assigned to the state of incorporation.

Total nonapportionable income (loss) is removed from total company net income before the apportionment percentage is applied. The Wisconsin nonapportionable income (loss) is then combined with the Wisconsin apportionable income to arrive at Wisconsin net income.

What Is the Apportionment Percentage

For unitary, multistate businesses (except air carriers, motor carriers, railroads and sleeping car companies, pipeline companies, financial organizations, and public utilities whose incomes are apportioned by special rules of the Department), the apportionment percentage is determined by the weighted average of the following three ratios:

1. Wisconsin tangible property to total company tangible property.
2. Wisconsin payroll to total company payroll.
3. Wisconsin sales to total company sales. (This ratio is double-weighted.)

Air carriers, motor carriers, railroads and sleeping car companies, pipeline companies, and financial organizations (except insurance companies) should see the Form 4B-1 instructions.

Corporate Partners or LLC Members

A corporation that is a general or limited partner includes its share of the numerator and denominator of the partnership's apportionment factors in the numerator and denominator of its apportionment factors. A corporation that is a member of a limited liability company (LLC) treated as a partnership for federal tax purposes includes its share of the numerator and denominator of the LLC's apportionment factors in the numerator and denominator of its apportionment factors.

Note: Income from a partnership or LLC may be nontaxable under the principles of the U.S. Supreme Court decision in *Allied-Signal v. Director, Div. of Taxation*, 504 U.S. 768 (1992), if the investment is passive and does not serve an operational function. In this case, the corporation would not include its share of the partnership's or LLC's apportionment factors in the numerator and denominator of its apportionment factors.

Line-by-Line Instructions for Form 4B**Part I – Nonapportionable Income (Loss)**

■ **Line 1.** Enter rents and royalties received on nonbusiness tangible property in the appropriate column or columns. These are nonapportionable and follow the situs of the property.

■ **Line 2.** Enter any expenses that are directly or indirectly related to rents and royalties reported on line 1. Since such income is nonapportionable, the related expenses are nonapportionable.

■ **Line 4.** Enter all profits and losses from disposals of nonbusiness tangible property in the appropriate column or columns. Such profits and losses are nonapportionable and follow the situs of the property.

Also enter on line 4 all income that is realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in **Wisconsin**. This income is nonapportionable and must be allocated to Wisconsin.

■ **Line 5.** Enter the total net nonapportionable income or loss for both Wisconsin and the total company.

Part II – Apportionment Percentage

■ **Box A.** Check the box if the corporation is a public utility, other than a telecommunications company. Fill in Part II, but equally weight the property, payroll, and sales factors. Check the box on Form 5S, page 1, line 2; Schedule Q, line 4; and Schedule S, line 2.

■ **Box B.** Check the box if the corporation is a telecommunications company. Fill in Part II, except lines 30 through 33. Include receipts from the use of computer software and services on line 34. Equally weight the property, payroll, and sales factors. Check the box on Form 5S, page 1, line 2; Schedule Q, line 4; and Schedule S, line 2.

■ **Box C.** Check the box if the corporation is a carline company. Fill in Part II. Check the box on Form 5S, page 1, line 2; Schedule Q, line 4; and Schedule S, line 2.

■ **Lines 6 through 13.** Enter the undepreciated original cost of tangible property owned and used in producing apportionable income at the beginning and at the end of the taxable year. Group the property into the general categories listed for both Wisconsin and the total company.

Don't include construction in progress, idle property, or property used in producing nonapportionable income. Such property isn't used in the production of apportionable income and, therefore, isn't includable in the property factor.

Note: If any major acquisitions or dispositions occurred within the taxable year, the average monthly balances of property may be used (or required by the Department) instead of the average of the beginning and ending balance. In this case, attach a separate schedule showing the calculation rather than completing lines 6 through 13.

■ **Line 15.** Multiply the net annual rental for property used in the production of apportionable income by 8 and enter the result. "Net annual rental" is the annual rental paid less any annual rental received from subrentals unless this results in a negative or clearly inaccurate valuation. Net annual rental doesn't include incidental day-to-day expenses such as hotel or motel accommodations, daily rentals of autos, or royalties based on extraction of natural resources.

If the taxable year covers a period of less than 12 months, the net rent paid for the short period must be annualized. However, if the rental term is for less than 12 months, the rent must be adjusted accordingly.

Leases are given the same treatment in computing the property factor as they are in computing net income. Leases that have been capitalized in computing net income are included as property owned and used for property factor purposes. All other lease payments are included in the rentals times 8 computation.

■ **Line 20.** Enter, for Wisconsin and the total company, the compensation paid to the company's own employees for the performance of personal services. The compensation must be related to the production of apportionable income. Compensation related to the operation, maintenance, protection, or supervision of property used in the production of both apportionable and nonapportionable income or losses must be prorated, and only the portion related to the production of apportionable income is included for Wisconsin and the total company. Compensation includes wages, salaries, commissions, and any other form of remuneration paid to employees.

Compensation is paid in Wisconsin (included in the numerator of the payroll factor) if –

- The individual's service is performed entirely in Wisconsin.
- The individual's service is performed in and outside Wisconsin, but the service performed outside Wisconsin is incidental to the individual's service in Wisconsin.
- A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin.
- A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.
- A portion of the service is performed in Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin.
- The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides doesn't have jurisdiction to impose franchise or income taxes on the employer.

An individual is considered to be performing a service in Wisconsin during the year if that individual spends any portion of at least 5 days during the corporation's taxable year in Wisconsin performing services.

■ **Line 21.** Enter management or service fees paid to a related corporation for the performance of personal services. The fees must be related to the production of apportionable income. Payments made to independent contractors aren't includable.

■ **Lines 26 through 35.** For purposes of the sales factor, sales include, but aren't limited to, the following items related to the production of business income:

- Gross receipts from the sale of inventory.
- Gross receipts from the operation of farms, mines, and quarries.
- Gross receipts from the sale of scrap or by-products.
- Gross commissions.
- Gross receipts from personal and other services.
- Gross rents from real property or tangible personal property.

Line-by-Line Instructions (continued)

- Interest on trade accounts and trade notes receivable.
- A partner's share of the partnership's gross receipts or a member's share of the limited liability company's gross receipts.
- Gross management fees.
- Gross royalties from income producing activities.
- Gross franchise fees from income producing activities.

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

The following items are among those not included for sales factor purposes:

- Gross receipts and gain or loss from the sale of tangible business assets, except receipts from the sale of inventory, scrap, or by-products or from the operation of a farm, mine, or quarry.
- Gross receipts and gain or loss from the sale of nonbusiness real or tangible personal property.
- Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property isn't used in the production of business income.
- Royalties from nonbusiness real property or nonbusiness tangible personal property.
- Proceeds and gain or loss from the redemption of securities.
- Interest, except interest on trade accounts and trade notes receivable, and dividends.
- Gross receipts and gain or loss from the sale of intangible assets, except inventory.
- Dividends deductible in determining net income.
- Gross receipts and gain or loss from the sale of securities.
- Proceeds and gain or loss from the sale of receivables.
- Refunds, rebates, and recoveries of amounts previously expended or deducted.
- Foreign exchange gain or loss.
- Royalties and income from passive investments in patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, and technical know-how.
- Pari-mutuel wager winnings and purses.
- Other items not includable in apportionable income.

Enter on lines 26a and 26b the appropriate Wisconsin destination sales. Gross receipts from the sales of tangible personal property, except sales to the federal government, are Wisconsin sales if the property is delivered or shipped to a purchaser in Wisconsin. Sales of tangible personal property picked up by the purchaser, or the purchaser's agent, at the seller's Wisconsin business location and immediately transported to the purchaser's out-of-state business location aren't Wisconsin sales. However, if the seller doesn't have nexus with the state in which the purchaser's business is located, the sales are “thrown back” to Wisconsin as discussed later. Wisconsin sales include sales of tangible personal property that are picked up by the purchaser, or the purchaser's agent, at the seller's out-of-state business location and immediately transported to the purchaser's Wisconsin business location.

Enter on line 27a sales of tangible personal property delivered to the federal government, including its agencies and instrumentalities, in

Wisconsin if the property is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin. Sales to federal government locations in Wisconsin, which are shipped from an office, store, warehouse, factory, or other place of storage outside Wisconsin, aren't Wisconsin sales.

Enter on line 27b sales of tangible personal property delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin if the property is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin and the seller doesn't have nexus in the destination state. These sales are included in the numerator of the sales factor at 50%.

Enter on line 27c sales, other than sales to the federal government, that are “thrown back” to Wisconsin. These are sales of tangible personal property shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin to a state in which the seller doesn't have nexus. “Throwback” sales are included in the numerator of the sales factor at 50%.

Enter on line 28 the “double throwback” sales. These are sales, other than sales to the federal government, of tangible personal property by an office in Wisconsin to a purchaser in another state, but not shipped or delivered from Wisconsin, if the taxpayer doesn't have nexus in (1) the state from which the property is delivered or shipped, or (2) the destination state. “Double throwback” sales are included in the numerator of the sales factor at 50%.

Note: For purposes of throwback sales and double throwback sales, “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. A foreign country isn't a state.

Enter on line 30a gross receipts from the use of computer software that the purchaser or licensee uses at a location in Wisconsin. Computer software is used in Wisconsin if the purchaser or licensee uses the software in the regular course of business operations in Wisconsin, for personal use in Wisconsin, or if the purchaser or licensee is an individual whose domicile is in Wisconsin. If the purchaser or licensee uses the computer software in more than one state, the gross receipts are divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in Wisconsin, the Department may consider the number of users in each state where the software is used, the number of site licenses or workstations in Wisconsin, and any other factors that reflect the use of computer software in Wisconsin.

Enter on line 30b gross receipts from the use of computer software if the taxpayer is not subject to income tax in the state in which the gross receipts are considered received, but the taxpayer's commercial domicile is in Wisconsin. “Commercial domicile” means the location from which a trade or business is principally managed and directed, based on any factors the Department determines are appropriate, including the location where the greatest number of employees of the trade or business work, have their office or base of operations, or from which the employees are directed or controlled. These gross receipts are included in the numerator of the sales factor at 50%.

Enter on line 32a gross receipts from services if the purchaser of the service received the benefit of the service in Wisconsin. The benefit of the service is received in Wisconsin if any of the following applies:

- The service relates to real property that is located in Wisconsin.

- The service relates to tangible personal property that is located in Wisconsin at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in Wisconsin.
- The service is provided to an individual who is physically present in Wisconsin at the time that the service is received.
- The service is provided to a person engaged in a trade or business in Wisconsin and relates to that person's business in Wisconsin.

If the purchaser of a service receives the benefit of the service in more than one state, the gross receipts from the service are included in the numerator of the sales factor according to the portion of the service received in Wisconsin.

Enter on line 32b gross receipts from services, if the taxpayer is not subject to income tax in the state in which the benefit of the service is received, to the extent that the taxpayer's employees or representatives performed services from a location in Wisconsin. These gross receipts are included in the numerator of the sales factor at 50%.

Enter on line 34, for both Wisconsin and the total company, other gross receipts of apportionable income that are includable in the sales factor.

These gross receipts are attributable to Wisconsin if the income producing activity that gives rise to the receipts is performed in Wisconsin. If the income producing activity is performed partly in and partly outside Wisconsin, assign receipts to Wisconsin based on the ratio of direct costs of performance in Wisconsin to the direct costs of performance in all states having jurisdiction to tax the business.

■ **Line 39.** Add lines 19, 25, and 38. Enter the resulting percentage here and on Form 5S, page 1, line 2; Schedule Q, line 4; and Schedule S, line 2; and on Schedule 5K-1, item G.

Where it is shown to the satisfaction of the Department that the use of any one of the three factors gives an unreasonable or inequitable final average ratio because the corporation does not employ the factor to any appreciable extent in its trade or business in producing the income taxed, this factor may, with the Department's approval, be omitted in obtaining the final percentage which is to be applied to the apportionable income.

If both the numerator and denominator of a factor are zero, the factor shall be eliminated from the apportionment formula. If the numerator of the sales factor is a negative number and the denominator is a positive number, a negative number, or zero, the sales factor is zero. If the numerator of the sales factor is a positive number and the denominator of the sales factor is zero or a negative number, the sales factor is one.

Line-by-Line Instructions for Form 4B-1

Interstate air carriers, motor carriers, railroads and sleeping car companies, pipeline companies, and finance companies must complete the appropriate part of Form 4B-1. Enter the apportionment percentage computed on Form 5S, page 1, line 2; Schedule Q, line 4; and Schedule S, line 2; and check the box. Also enter the percentage on Schedule 5K-1, item G, if applicable.

Part III – Apportionment Percentage for Interstate Air Carriers

The apportionment percentage is the average of the following three ratios:

1. Aircraft arrivals and departures within Wisconsin scheduled by the carrier to total aircraft arrivals and departures scheduled.

2. Revenue tons handled by the carrier at airports within Wisconsin to total revenue tons handled.

3. Originating revenue within Wisconsin to total originating revenue.

See section Tax 2.46, Wisconsin Administrative Code.

Part IV – Apportionment Percentage for Interstate Motor Carriers

The apportionment percentage is the average of the following two ratios:

1. Gross receipts from carriage of persons or property first acquired for carriage in Wisconsin to total gross receipts from carriage of persons or property everywhere.
2. Ton miles of carriage in Wisconsin to ton miles of carriage everywhere.

If the above information isn't available, the Department may authorize or direct the substitution of a similar factor (for example, gross tonnage instead of gross receipts or revenue miles instead of ton miles).

See section Tax 2.47, Wisconsin Administrative Code.

Part V – Apportionment Percentage for Interstate Railroads and Sleeping Car Companies

The apportionment percentage is the average of the following two ratios:

1. Gross receipts from carriage of property or persons, or both, first acquired for carriage in Wisconsin to total gross receipts from carriage of property or persons, or both, everywhere.
2. Revenue ton miles of carriage in Wisconsin to revenue ton miles of carriage everywhere.

See section Tax 2.475, Wisconsin Administrative Code.

Part VI – Apportionment Percentage for Interstate Pipeline Companies

The apportionment percentages the average of the three ratios:

1. Net cost (for Wisconsin tax purposes) of tangible property owned and used in Wisconsin to produce apportionable income to total net cost of such property everywhere.
2. Traffic units (for example, barrel miles, cubic foot miles, or other appropriate measure of product movement) in Wisconsin to total company traffic units.
3. Total compensation paid to employees located in Wisconsin to total compensation paid to employees everywhere.

See section Tax 2.48, Wisconsin Administrative Code.

Part VII – Apportionment Percentage for Interstate Finance Companies

The apportionment percentage is the average of the following two ratios:

1. Gross receipts in Wisconsin to total gross receipts. Gross receipts include all business income associated with the lending of money in the normal course of business such as interest, discounts, finance charges or fees, and service charges or fees. Gains from sales of assets, charges to a related corporation for personal services of em-

employees, and miscellaneous income aren't includable in gross receipts for purposes of this factor. Gross receipts are assigned to Wisconsin if the transaction producing the income was principally negotiated in Wisconsin.

2. Total compensation paid to employees located in Wisconsin to total compensation paid to employees everywhere. Compensation paid includes deductible management or service fees paid to a related corporation for the performance of personal services.

See section Tax 2.49, Wisconsin Administrative Code.

Form 4C – Separate Accounting Data

Who Must Use

A corporation engaged in a nonunitary business in and outside Wisconsin is required to determine the amount of income attributable to Wisconsin by separate accounting. A nonunitary business is one in which the operations in Wisconsin aren't dependent upon or contributory to the operations outside Wisconsin.

A unitary business may use separate accounting only with the approval of the Department. An application for such approval must set forth, in detail, the reasons why separate accounting will more clearly reflect the corporation's Wisconsin net income. It should be mailed to the Wisconsin Department of Revenue, Mail Stop 5-144, P.O. Box 8906, Madison, WI 53708-8906 before the end of the taxable year for which the use of separate accounting is desired.

Since a tax-option (S) corporation does not compute its income in the same manner as a regular (C) corporation, a nonunitary, multistate tax-option (S) corporation cannot use Form 4C to determine its income attributable to Wisconsin. Instead, a tax-option (S) corporation should prepare a 5-column schedule that provides the following information: (a) a listing of all of the pro rata share items from Wisconsin Schedule 5K, column a, and any supplemental schedules, (b) the total amount from Wisconsin Schedule 5K, column d, for each of the share items, (c) the amount from column b attributable to Wisconsin, (d) the amount from column b attributable to other states, and (e) the basis for the allocation. The schedule should also include a detailed explanation of how income and expenses were allocated in and outside Wisconsin. For example, if the allocation is based on actual expenses, write "Actual" in column e. If the allocation is based on the percentage of sales at each location, enter the percentage in column e and provide details on how the percentage was computed.