

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

## New . . .

### ***You must disclose reportable transactions***

If you were required to file federal Form 8886, *Reportable Transaction Disclosure Statement*, with the Internal Revenue Service, you must file a copy of Form 8886 with the Department of Revenue. Similar requirements apply to material advisors who are required to disclose a reportable transaction under Section 6111 of the Internal Revenue Code, if that reportable transaction affects the taxpayer's Wisconsin income or franchise tax liability. See page 4 for details. **Significant penalties may apply for failure to disclose reportable transactions to the Department of Revenue.**

### ***Tax Avoidance Transactions Voluntary Compliance Program***

The Department will administer a Tax Avoidance Transactions Voluntary Compliance Program from January 1, 2008 through May 31, 2008. During this period, the Department will waive penalties on previously unpaid taxes attributable to tax avoidance transactions, including listed transactions that were required to be reported on federal Form 8886. See page 6 for details.

### ***Treatment of grantor trusts in composite returns***

Generally, estates and trusts are no longer eligible to use a composite income tax return (Form 1CNS) to report their tax-option (S) corporation income. However, if a grantor trust is not required to file Form 1041 for federal income tax purposes, the grantor of the trust is deemed to be the shareholder for purposes of eligibility for Form 1CNS. See page 8 for details.

### ***Shareholders may elect out of nonresident withholding***

Generally, a tax-option (S) corporation that has nonresident shareholders is subject to a withholding tax, which is reported on Form PW-1. However, a new law provided in 2007 Act 20 allows a nonresident to elect out of the withholding by completing an affidavit in the form and manner prescribed by the Department. See page 8 for details.

### ***File Form 5S electronically!***

Form 5S is now available for electronic filing through the Federal/State E-Filing Program. With approved third party software, you may electronically file Form 5S along with other Wisconsin and federal returns in a single submission. Or, you can use Federal/State E-Filing to file Form 5S alone. For details and a list of approved software vendors, visit <http://www.revenue.wi.gov/eserv/corp/index.html>.

## For More Information . . .

***Visit the Department of Revenue's Internet web site at [www.revenue.wi.gov](http://www.revenue.wi.gov)***

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 . . .

- Attach a copy of your federal Form 1120S.
- Attach any other required forms or schedules.
- Attach any supplemental statements. If you are filing electronically you must submit these statements as part of the return.
- 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

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|---------|---|
| 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.<br><br><b>Note:</b> 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 to Form 5S**

- Form 4B Multistate corporations using the apportionment method to compute Wisconsin income.
- Form 4B-1 Multistate corporations using a special apportionment method to compute Wisconsin income.
- Form 4U Corporations computing underpayment interest, extension interest, delinquent interest, penalties, and late filing fees.
- Sch. 5K-1 Tax-option (S) corporation shareholder's share of income, deductions, credits, etc.
- Sch. DC Corporations claiming a Wisconsin development zones credit.
- Sch. DI Corporations claiming a Wisconsin dairy and livestock farm investment credit.
- Sch. DM Corporations claiming a dairy manufacturing facility investment credit.
- Sch. EC Corporations claiming an enterprise zone jobs credit.
- Sch. HR Corporations claiming a Wisconsin historic rehabilitation credit.
- Sch. IE Corporations claiming an Internet equipment credit.
- Sch. MS Corporations having a Wisconsin manufacturer's sales tax credit carryforward.
- Sch. TC Corporations claiming a Wisconsin technology zone credit.
- Sch. VC Corporations claiming a Wisconsin early stage seed investment credit.

**How to Obtain Forms**

If you need forms or publications, you may:

- Download them from the Department's Internet web site at [www.revenue.wi.gov](http://www.revenue.wi.gov)
- Request them online at [www.revenue.wi.gov](http://www.revenue.wi.gov)
- Call (608) 266-1961
- Write to the Forms Request Office, Wisconsin Department of Revenue, Mail Stop 5-77, 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@revenue.wi.gov](mailto:corp@revenue.wi.gov)
- 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 2007 Wisconsin return must be filed by a corporation for calendar year 2007 or a fiscal year that begins in 2007. 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.

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, Wisconsin law provides an automatic extension of 7 months or until the original due date of the corporation's corresponding federal return, whichever is later.

### Where to File

File electronically through the Federal/State E-Filing Program.

If you choose to file Form 5S on paper, follow these mailing instructions carefully:

- **Do not fasten, staple or bind the pages of your return. Use paper clips instead.**
- **If you are submitting multiple returns, separate them with colored separator sheets.**
- Use the mailing address shown on page 2 of the form.

### Special Instructions for Corporations Required to Disclose a "Reportable Transaction"

If a tax-option (S) corporation was required to file federal Form 8886, *Reportable Transaction Disclosure Statement*, with the Internal Revenue Service (IRS) and that form was required to be filed with the IRS after October 27, 2007, you must file a copy of Form 8886 with the Department of Revenue within 60 days of the date you are required to file it for federal income tax purposes. Send a paper copy of Form 8886, separate from your Form 5S, to the following address: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

**Note:** See the instructions to federal Form 8886 to determine if you are required to file the form for federal purposes.

**CAUTION:** 2007 Wisconsin Act 20 enacted significant penalties for failure to disclose reportable transactions, including listed transactions, to the Wisconsin Department of Revenue.

### Special Instructions for Material Advisors Required to Disclose a "Reportable Transaction"

A "material advisor" means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction (as defined in the U.S. Treasury Regulations) and who, directly or indirectly, derives gross income from providing such aid, assistance, or advice in an amount that exceeds the threshold amount.

For a material advisor providing advice to an entity and not an individual, the "threshold amount" is any of the following:

- \$25,000 if the reportable transaction is a listed transaction (as defined in the U.S. Treasury Regulations)
- \$250,000 if the reportable transaction is not a listed transaction

For a material advisor providing advice to an individual, the "threshold amount" is any of the following:

- \$10,000 if the reportable transaction is a listed transaction (as defined in the U.S. Treasury Regulations)
- \$50,000 if the reportable transaction is not a listed transaction

A material advisor that is required to disclose a reportable transaction to the Internal Revenue Service after October 27, 2007 must file a copy of the disclosure with the Department of Revenue within 60 days of the date it is required for federal income tax purposes, if the reportable transaction affects the taxpayer's Wisconsin income or franchise tax liability. For federal purposes, the form required for this disclosure is Form 8264 or 8918.

If you are required to file Form 8264 or 8918 for federal income tax purposes and the reportable transaction to which the form relates affects the taxpayer's Wisconsin income or franchise tax liability, send a paper copy, separate from Form 5S, to the following address: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

**CAUTION:** 2007 Wisconsin Act 20 enacted significant penalties for failure to disclose reportable transactions, including listed transactions, to the Wisconsin Department of Revenue.

### 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. If you did not receive estimated tax vouchers, you may download vouchers from the Department’s web site at [www.revenue.wi.gov](http://www.revenue.wi.gov) or you may request vouchers by calling any Department of Revenue office.

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.revenue.wi.gov/eserv/eftgen.html](http://www.revenue.wi.gov/eserv/eftgen.html), e-mail [eft@revenue.wi.gov](mailto:eft@revenue.wi.gov), 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 are required to file federal information returns electronically, you must file Forms 9b electronically. For more information, call (608) 267-3327, e-mail [w2data@revenue.wi.gov](mailto:w2data@revenue.wi.gov), 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.

**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.

**Note:** If you need to amend a return to report unpaid tax that resulted from a tax avoidance transaction, see the section on the Tax Avoidance Transactions Voluntary Compliance Program on page 6.

### 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.

### 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.

### 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.revenue.wi.gov/html/sales.html](http://www.revenue.wi.gov/html/sales.html), call (608) 266-2776, e-mail sales10@revenue.wi.gov, 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. Further, if you fail to disclose reportable transactions as indicated in the special instructions on page 4, you may be subject to the penalties described in sec. 71.81, Wis. Stats., including a \$30,000 penalty for failure to disclose a listed transaction.

### Tax Avoidance Transactions Voluntary Compliance Program

The Department of Revenue will waive all penalties relating to tax avoidance transactions if those transactions are disclosed as specified in this section. The penalty waiver includes the penalties enacted by 2007 Act 20 relating to disclosure of reportable transactions (sec. 71.81(3), (4), and (5), Wis. Stats.)

A "tax avoidance transaction" is a plan, transaction or arrangement devised for the principal purpose of avoiding federal or Wisconsin income or franchise tax. This includes a listed transaction as provided under U.S. Treasury Regulations and may include a transaction that provides a tax benefit for Wisconsin income or franchise tax purposes without providing a similar benefit for federal income tax purposes.

If you were required to disclose a reportable transaction to the Internal Revenue Service for a taxable year beginning before January 1, 2007, and the reportable transaction to which the form relates affects your Wisconsin tax liability for **periods beginning on or after January 1, 2001**, and if you have not previously disclosed this transaction to the Department of Revenue by submitting a copy of Form 8886 with your originally filed Wisconsin return, disclose the transaction by using the Tax Avoidance Transactions Voluntary Compliance Program.

In order to participate, you must do the following:

- Complete an amended return for each period
- Complete Form WI-VCP (see page 3 for how to obtain forms)
- Make payment, in full, for the amount of unpaid tax attributable to the tax avoidance transaction
- Submit the above items to the Department of Revenue at the following address: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958

To be eligible for the penalty waiver, amended returns must be postmarked by **May 31, 2008**. For further information on this program, visit the Department's web site at [www.revenue.wi.gov](http://www.revenue.wi.gov).

## Definitions

**INTERNAL REVENUE CODE** – The computation of federal income for Wisconsin purposes for taxable years beginning in 2007 is the Internal Revenue Code as amended to December 31, 2006, with certain exceptions. Federal law changes enacted after December 31, 2006 do not apply for Wisconsin purposes, including the Small Business and Work Opportunity Act (P.L. 110-28) enacted May 25, 2007.

**Caution:** Wisconsin has not adopted any of the provisions of P.L. 109-432, Tax Relief and Health Care Act (TRHCA), enacted December 20, 2006.

You must report any differences between federal income and income for Wisconsin purposes on Form 5S, Schedule 5K, column c.

As of December 31, 2007, the following federal law changes do not apply for Wisconsin franchise and income tax purposes:

**Small business stock.** For federal purposes, an exclusion is allowed for 50% of the gain from the sale or exchange of qualified small business stock issued after August 10, 1993 and held for more than 5 years (sec. 13113 of P.L. 103-66). For Wisconsin purposes, this section does not apply.

**Installment method for accrual basis taxpayers.** For federal purposes, accrual basis taxpayers may report income from an installment sale under the installment method (P.L. 106-573). For Wisconsin purposes, accrual basis taxpayers cannot use the installment method. Gain from the sale of property must be recognized the year of the sale. This does not apply to dispositions of property used or produced in farming or for certain dispositions of timeshares or residential lots.

**Increase in section 179 expensing.** For federal purposes, the amount that may be expensed under sec. 179, IRC is \$125,000, the phase-out threshold is \$500,000, and off-the-shelf computer software is considered qualifying property. (sec. 101 of P.L. 109-222, sec. 202 of P.L. 108-27, sec. 8212 of P.L. 110-28). For Wisconsin purposes, the amount that may be expensed under sec. 179 is limited to \$25,000, the phase-out threshold is \$200,000, and off-the-shelf computer software is not qualifying property.

**Health savings accounts.** For federal purposes, certain individuals may establish health savings accounts. A deduction is allowed for contributions to the account. Amounts contributed by an employer to an employee's account are excluded from the employee's gross income. (P.L. 108-173, P.L. 109-432). For Wisconsin purposes, the health savings accounts provisions do not apply.

**Depreciation or amortization provisions enacted after December 31, 2000.** For Wisconsin purposes, depreciation or amortization is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000. For example, the following provisions do not apply for Wisconsin purposes because they were enacted after December 31, 2000:

- 30% bonus depreciation (sec. 101 of P.L. 107-147, sec. 201 of P.L. 108-27, sec. 403(a) of P.L. 108-311)
- 50% bonus depreciation (sec. 201 of P.L. 108-27)
- Accelerated depreciation for Indian reservation property (sec. 316 of P.L. 108-311)
- Modification of application of income forecast method of depreciation (sec. 242 of P.L. 108-357)
- Special expensing provisions for film and television productions (sec. 244 of P.L. 108-357)
- Special rules on depreciation for aircraft (sec. 336 of P.L. 108-357)

- Expansion of limitation on depreciation of certain passenger automobiles (sec. 910 of P.L. 108-357)
- Treatment of electric transmission property as 15-year property (sec. 1308 of P.L. 109-58)
- Expansion of amortization for certain atmospheric pollution control facilities (sec. 1309 of P.L. 109-58)
- Special expensing provisions for equipment used in refining liquid fuels (sec. 1323 of P.L. 109-58)
- Natural gas distribution lines treated as 15-year property (sec. 1325 of P.L. 109-58)
- Natural gas gathering lines treated as 7-year property (sec. 1326 of P.L. 109-58)
- Special rules for amortization of geological and geophysical expenditures (sec. 1329 of P.L. 109-58, sec. 503 of P.L. 109-222)
- Election to amortize musical works and copyrights over a 5-year period (sec. 207 of P.L. 109-222)

## Other provisions not adopted for Wisconsin purposes:

- Elimination of earnings and profits from pre-1983 S corporation years from an S corporation's accumulated earnings and profits (sec. 1311 of P.L. 104-188)
- Special expensing provisions for environmental remediation costs and extension of the termination date (sec. 162 of P.L. 106-554, enacted December 21, 2000; sec. 308 of P.L. 108-311)
- Exclusion for extraterritorial income (sec. 1, 3, 4, and 5 of P.L. 106-519), repeal of such exclusion (sec. 101 of P.L. 108-357), and binding-contract relief provisions (sec. 513 of P.L. 109-222) (**Note:** Foreign sales corporation (FSC) treatment is repealed for Wisconsin purposes for taxable years beginning on or after January 1, 2005.)
- Election to defer gain on disposition of transmission property to implement Federal Regulatory Commission or state electric restructuring (sec. 909 of P.L. 108-357, sec. 1305 of P.L. 109-58)
- Enhanced deduction for corporate donations of computer technology and extension of the termination date (sec. 165 of P.L. 106-554, sec. 306 of P.L. 108-311)
- Tax benefits for Gulf Opportunity (GO) Zones (sec. 101 of P.L. 109-135)
- Exceptions to imputed interest rules for loans to continuing care facilities (sec. 209 of P.L. 109-222)
- Special temporary dividends received deduction for reinvesting foreign earnings in the U.S. (sec. 422 of P.L. 108-357)
- Reform of tax treatment of certain leasing arrangements (sec. 847 of P.L. 108-357)
- Special rules for nuclear decommissioning costs (sec. 1310 of P.L. 109-58)
- Pass-through of deduction for costs incurred by small refiner cooperatives to comply with EPA sulfur regulations (sec. 1324 of P.L. 109-58)
- Expansion of research credit (sec. 1351 of P.L. 109-58)
- Special tax treatment of state ownership of railroad real estate investment trust (sec. 11146 of P.L. 109-59)
- **All provisions of P.L. 109-432, Tax Relief and Health Care Act of 2006, enacted December 20, 2006**

**Difference relating to built-in gains tax.** IRC section 1366(f), relating to the reduction in pass-through income 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.

**QUALIFIED 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 which permits the corporation’s income to be taxed to its shareholders rather than to the corporation itself, with certain exceptions. 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, 2006, 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 organizations, 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, 2006, 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, 2006, 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.

#### 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 Wisconsin 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.

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

- A shareholder that is exempt from Wisconsin income or franchise taxation, such as an IRC section 501(c)(3) organization having no unrelated business taxable income. 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 whose share of Wisconsin income from the tax-option (S) corporation is less than \$1,000.
- A shareholder who completes Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit*, and provides Part 2 of Form PW-2 to the tax-option (S) corporation. The completed Form PW-2 must be pre-approved by the Department of Revenue. See the Form PW-2 instructions for details.

The tax-option (S) corporation uses Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, 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. See the Form PW-1 instructions for details.

#### Composite Return for Nonresident Individual Shareholders

A tax-option (S) corporation that does business in Wisconsin and has **two or more** nonresident individual 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 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 a trust, including a qualified Subchapter S trust (QSST). However, if a grantor trust is not required to file Form 1041 for federal income tax purposes, the grantor of the trust is deemed to be the shareholder for purposes of eligibility for Form 1CNS.
- The shareholder files his or her individual income tax return on a fiscal year basis.
- The shareholder is a Wisconsin resident during any part of 2007.
- The shareholder derives taxable income from Wisconsin in 2007 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 tax credits, amounts deductible as itemized deductions, or the Internal Revenue Code Section 199 deduction for qualified domestic production activities income.

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, 2007, and December 31, 2007, is reported on a 2007 Form 1CNS. The composite return replaces the separate 2007 Wisconsin individual income tax returns that otherwise would be filed by each of the qualifying and participating nonresident shareholders. The 2007 Form 1CNS is due April 15, 2008.

### 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 the required taxable year, that election also applies for Wisconsin. Unlike for federal purposes, the corporation doesn't have to make required payments of Wisconsin tax.

### 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 as amended to December 31, 2006, 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, 2006, 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 this 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 Wis-

consin 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 information, 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*.

*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:** 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 2007 return for calendar year 2007 and fiscal years that begin in 2007. 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](http://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 2-letter postal abbreviation for the state 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. 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.

■ **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 individual 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 (S) corporation had during the taxable year.

■ **K. Number of Nonresident Shareholders** – Enter the total number of nonresident shareholders that the tax-option (S) 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.
- Bonds issued by the Wisconsin Aerospace Authority under sec. 114.70 or 114.74, Wis. Stats.

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, and enter on line 2 the apportionment percentage from Form 4B, line 39, or Form 4B-1. The instructions for Form 4B are included in this booklet.

**Note:** If 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 25).

**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** – Enter the manufacturer's sales tax credit carryforward from Schedule MS, line 5.

A tax-option (S) corporation that has \$25,000 or less of unused manufacturer's sales tax credit may claim a credit. A tax-option (S) corporation's credit carryforward consists of the following:

- Unused credits computed for taxable years beginning before January 1, 1998.
- Unused credits computed for taxable years beginning after December 31, 1997, that were not passed through to its shareholders.

**Caution:** You may not offset the credit against the built-in gains tax or the recycling surcharge.

■ **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.

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### Schedule Q – Additional Tax on Built-In Gains

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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 –

- a. It was a regular (C) corporation before making its current election to be treated as a tax-option (S) corporation,
- b. It made its current election after 1986,
- c. 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
- d. 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 –

- a. 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
- b. 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.

**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. Attach a schedule showing the computation details.

*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 using a special apportionment formula on Form 4B-1, be sure to check the box on line 4.

**Line-by-Line Instructions** (continued)

**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. Attach a schedule showing the computation 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.

**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.

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### Schedule S – Recycling Surcharge

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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 18, 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 on Amount on Line 1** – Fill in this line **only** if part or all of the interest income reported on Form 5S, line 1, was passed through from another entity of which you are a member **and** that entity withheld Wisconsin tax on that interest. Enter **only** the tax withheld on the interest income from your Wisconsin Schedule 3K-1. Do **not** include tax withheld on income that is passed through to and taxable to your shareholders. Attach Schedule 3K-1 to the Form 5S filed with the Department.

■ **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 as a negative number. 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 2007 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. 2008 Estimated Tax** – Enter the amount of any overpayment from line 19 that is to be credited to the corporation's 2008 estimated tax. The balance of any overpayment will be refunded.

**Amended Return:** If you have already filed your 2008 return, enter the overpayment that you claimed as a credit on your 2008 return from your previously filed original or amended 2007 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 Form 5S, page 2.

■ **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 identification number. A self-employed individual must enter “SSN” or “PTIN” and the social security number or preparer tax identification number in the space for the preparer’s federal employer identification number.

■ **Attachments** – Attach the following items to your Form 5S:

- Federal Form 1120S.
- Supporting schedules for Form 1120S, including Schedule M-3 if required for federal purposes.
- Supporting schedules for Form 5S (supporting schedules that are not Department-prescribed forms may be submitted as .pdf documents with electronic returns).
- Wisconsin Schedule 5K-1 for each shareholder.
- A list of your solely owned LLCs and QSubs.
- Any extension of time to file your return.
- If the tax-option (S) corporation has a nonresident shareholder who is not subject to income or franchise tax and would otherwise be subject to withholding tax based on income passed through to that shareholder, attach a statement from that shareholder stating why no tax was withheld.

If you are filing Form 5S on paper, **do not staple, fasten or bind these attachments to your return. Use paper clips instead.**

**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.

### Schedule 5K – Shareholders’ Pro Rata Share Items

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.

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

**Note:** Show additions as a positive number. Show subtractions as a negative number.

■ **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, 2006, and any changes enacted after that date don’t apply for Wisconsin purposes. See page 7 for details.

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

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 2007 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.

**Line-by-Line Instructions** (continued)

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:

	<b>Selling Price</b>	<b>Wisconsin Basis</b>	<b>Federal Basis</b>
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 –

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

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 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.

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:
- Dairy and livestock farm investment credit
  - Development zones credits
  - Technology zone credit
  - Internet equipment credit
  - Enterprise zone jobs credit
  - Dairy manufacturing facility investment credit
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 16 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.

■ **Line 13a.** Enter, in column d, the available dairy and livestock farm investment credit from Wisconsin Schedule DI, line 7. Tax-option (S) corporations that pay for certain modernization or expansion of their dairy or livestock farm in Wisconsin may compute this credit and pass it through to their shareholders. Attach Schedule DI to the Form 5S filed with the Department.

■ **Line 13b.** Enter, in column d, the available development zones credit from Wisconsin Schedule DC, line 5. Tax-option (S) corporations that are certified by the Wisconsin Department of Commerce based on qualifying activities in certain zones in Wisconsin may compute this credit and pass it through to their shareholders. See the instructions to Schedule DC for details. Attach Schedule DC to the Form 5S filed with the Department.

■ **Line 13c.** Enter, in column d, the available development opportunity zone investment credit from Schedule DC, line 13. Tax-option (S) corporations that are certified by the Wisconsin Department of Commerce based on qualifying activities in certain zones in Wisconsin may compute this credit and pass it through to their shareholders. See the instructions to Schedule DC for details. Attach Schedule DC to the Form 5S filed with the Department.

■ **Line 13d.** Enter, in column d, the available development opportunity zone or agricultural or airport development zone capital investment credit from Schedule DC, line 21. Tax-option (S) corporations that are certified by the Wisconsin Department of Commerce based on qualifying activities in certain zones in Wisconsin may compute this credit and pass it through to their shareholders. See the instructions to Schedule DC for details. Attach Schedule DC to the Form 5S filed with the Department.

■ **Line 13e.** Enter, in column d, the available technology zone credit from Wisconsin Schedule TC, line 6. Tax-option (S) corporations that are certified by the Wisconsin Department of Commerce based on qualifying activities in certain zones in Wisconsin may compute this credit and pass it through to their shareholders. See the instructions to Schedule TC for details. Attach Schedule TC to the Form 5S filed with the Department.

■ **Line 13f.** Enter, in column d, the available early stage seed investment credit from Wisconsin Schedule VC, line 10. Tax-option (S) corporations making payments to a qualified fund manager for investment in a qualified new business venture may compute this credit if they apply to the Wisconsin Department of Commerce. See the instructions to Schedule VC for details. Attach Schedule VC to the Form 5S filed with the Department.

■ **Line 13g.** Enter, in column d, the supplement to the federal historic rehabilitation tax credit from Wisconsin Schedule HR, line 5. Tax-option (S) corporations that rehabilitate certified historic structures located in Wisconsin and used for business purposes may compute this credit if they apply to the Wisconsin Historical Society. See the instructions to Schedule HR for details. Attach Schedule HR to the Form 5S filed with the Department.

■ **Line 13h.** Enter, in column d, the available Internet equipment credit from Wisconsin Schedule IE, line 3. Tax-option (S) corporations that obtained a sales tax exemption from the Department of Commerce for Internet equipment used in the broadband market may compute this credit and pass it through to their shareholders. See the instructions to Schedule IE for details. Attach Schedule IE to the Form 5S filed with the Department. **Caution:** You may not compute this credit for 2007 if your 2007 taxable year begins before July 1, 2007.

■ **Line 13i.** Enter, in column d, the available enterprise zone jobs credit from Schedule EC, line 16. Tax-option (S) corporations that are certified by the Wisconsin Department of Commerce based on qualifying activities in an area designated as a Wisconsin enterprise zone may compute this credit and pass it through to their shareholders. See the instructions to Schedule EC for details. Attach Schedule EC to the Form 5S filed with the Department. **Caution:** You may not compute this credit for 2007 if your 2007 taxable year begins before July 1, 2007.

■ **Line 13j.** Enter, in column d, the available dairy manufacturing facility investment credit from Schedule DM, line 6. Tax-option (S) corporations that modernize or expand a dairy manufacturing facility in Wisconsin and apply to the Wisconsin Department of Commerce may compute this credit and pass it through to their shareholders. See the instructions to Schedule DM for details. Attach Schedule DM to the Form 5S filed with the Department.

**Line-by-Line Instructions** (continued)

■ **Line 13k.** 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, the 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 13k 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 13l.** 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. Generally, this will be the amount the tax-option (S) corporation paid with Form PW-1. However, 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 13l, 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 ex-

pense 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 18.** 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 federal 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 19.** 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.

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

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### 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 and early stage seed investment 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 nondeductible expenses (that is, 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 and early stage seed investment 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 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.

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

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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 2007 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 information about 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 information about Form 4C, Separate Accounting Data, on page 25. 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 3, 5 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.

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

## Line-by-Line Instructions (continued)

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.

■ **Lines 13a through 13l.** Compute the credits in lines 13a through 13l 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 13a.** Enter in column d the shareholder's share, based on the percentage of stock ownership, of the dairy and livestock farm investment credit from Schedule DI.

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

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

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

■ **Line 13f.** 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. **Caution:** The shareholder's Wisconsin basis of the corporation's stock must be reduced by his or her proportionate share of the early stage seed investment credit computed.

■ **Line 13g.** 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.

■ **Line 13h.** Enter the shareholder's proportionate share of the Internet equipment credit from Schedule IE. **Caution:** You may not compute this credit for 2007 if your 2007 taxable year begins before July 1, 2007.

■ **Line 13i.** Enter the shareholder's proportionate share of the enterprise zone jobs credit from Schedule EC. **Caution:** You may not compute this credit for 2007 if your 2007 taxable year begins before July 1, 2007.

■ **Line 13j.** Enter the shareholder's proportionate share of the dairy manufacturing facility investment credit from Schedule DM.

■ **Line 13k.** 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 13k.

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 13k, 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.

■ **Line 13l.** If the tax-option (S) corporation filed Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, enter in column d and column e the tax withholding allocated to the shareholder, as reported on Form PW-1.

■ **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 profits.

■ **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 19, 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 19, 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 19, 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 19, 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 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 2007. Shareholder B was a resident of Wisconsin until moving to Illinois on April 1, 2007. Therefore, Shareholder B was a part-year resident of Wisconsin for 2007, having been a resident for 90 days and a nonresident for 275 days.

Schedule 5K for 2007 shows the following amounts on the lines indicated.

	(a) Pro rata share items	(b) Federal amount	(c) Adjustment	(d) Amt. under Wis. law
<b>1</b>	Ordinary income	\$ 10,000	\$ (1,000)	\$ 9,000
<b>4</b>	Interest income	200	500	700
<b>16a</b>	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
<b>1</b>	Ordinary income	\$ 5,000	\$ (500)	\$ 4,500	
<b>4</b>	Interest income	100	250	350	
<b>16a</b>	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
<b>1</b>	Ordinary income	\$ 5,000	\$ (500)	\$ 4,500	\$ 3,144
<b>4</b>	Interest income	100	250	350	244
<b>16a</b>	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:	$\$4,500 \times 90/365$	=	\$ 1,110
Period of nonresidence:	$\$4,500 \times .6 \times 275/365$	=	2,034
Total			<u>\$ 3,144</u>

Calculate the Wisconsin source amount of interest income as follows:

Period of residence:	$\$350 \times 90/365$	=	\$ 86
Period of nonresidence:	$\$350 \times .6 \times 275/365$	=	158
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.

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## Forms 4B and 4B-1 – Apportionment Data

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### 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 direct air carriers, motor carriers, railroads, sleeping car companies, pipeline companies, financial institutions, brokers-dealers, investment advisers, investment companies, underwriters, and telecommunications companies 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, representing 10% of the apportionment percentage.

2. Wisconsin payroll to total company payroll, representing 10% of the apportionment percentage.
3. Wisconsin sales to total company sales, representing 80% of the apportionment percentage.

Air carriers, motor carriers, railroads, sleeping car companies, pipeline companies, financial institutions, brokers-dealers, investment advisers, investment companies, underwriters, and telecommunications companies should obtain Form 4B-1 and its 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. The corporation should request a detailed breakdown of the partnership’s or LLC’s items and amounts to be included in the computation 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

■ **Omission of a Factor** – Check the box if you are omitting one of the apportionment factors. If both the numerator and the denominator of a factor are zero, the factor shall be eliminated from the apportionment formula.

Where it is shown to the satisfaction of the Department that the use of 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 computing the corporation’s apportionment percentage.

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.

For taxable years beginning in 2007, if one of the apportionment factors is omitted, the remaining factors shall be weighted as follows:

- If either the property factor or payroll factor is omitted, the other factor shall represent 11.1111% of the apportionment fraction and the sales factor shall represent 88.8889% of the apportionment fraction.
- If the sales factor is omitted, the property factor and the payroll factor shall each represent 50% of the fraction.

■ **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.

**Exception:** 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 17.** Divide line 16, column a, by line 16, column b, and multiply that amount by 100. Carry the result to 4 decimal places to the right of the decimal point.

■ **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.

■ **Line 23.** Divide line 22, column a, by line 22, column b, and multiply that amount by 100. Carry the result to 4 decimal places to the right of the decimal point.

■ **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 apportionable 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.
- 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.

## Line-by-Line Instructions (continued)

- 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. For additional information, see section Tax 2.39, Wisconsin Administrative Code.

■ **Line 36.** Divide line 35, column a, by line 35, column b, and multiply that amount by 100. Carry the result to 4 decimal places to the right of the decimal point.

■ **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.

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## Form 4C – Separate Accounting Data

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### 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.