

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

New for 2008:

Related Entity Expenses

Taxpayers must make modifications to federal income for interest or rent expenses paid, accrued, or incurred to a related entity. See pages 4 and 18 for details of how this new law affects Form 5S filers.

Schedule RT

Taxpayers must file Wisconsin Schedule RT if the total of certain related party expenses exceeds \$100,000. See page 4 for details.

Go Electronic!

Fast • Accurate • Secure

File Form 5S through the Federal/State E-Filing Program. With approved third party software, you can file Form 5S along with other Wisconsin and federal returns in a single filing. Or, you may use Federal/State E-Filing to file Form 5S separately. See *Filing Methods* on page 3 for details.

Visit us online at

www.revenue.wi.gov to...

- Obtain tax forms and instructions.
- Get answers to frequently asked questions (FAQs).
- Find out which third-party software you can use to file Form 5S electronically.
- Register for electronic funds transfer.
- Check out the *Wisconsin Tax Bulletin* quarterly newsletter.
- Read Department of Revenue publications which explain specific topics in detail.
- Register to receive e-mail news about new laws and procedures.
- Determine which e-mail address or telephone number to use to contact the Department about a specific question.

Remember to file these with Form 5S:

- Schedule 5K-1 for each shareholder
- A copy of your federal return, including supporting schedules
- A list of solely owned LLCs and QSubs
- Any extension of time to file
- Any other required forms or schedules, such as Schedule RT or Schedule CR



Do not staple attachments to your return. File electronically or use paper clips to submit these items.

Don't forget about use tax!

The corporation may owe use tax if it purchased tangible personal property or certain services for storage, use, or consumption in Wisconsin without paying a state sales or use tax. See page 6 for details.

Purpose of Form 5S

Form 5S is the Wisconsin franchise or income tax return applicable to corporations that elect to be treated as tax-option (S) corporations for Wisconsin purposes. Tax-option (S) corporations use Form 5S to report their income, gains, losses, deductions and credits and to compute their Wisconsin franchise tax, built-in gains tax, and recycling surcharge liability.

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General Franchise or Income Tax Return Instructions (All Corporations)

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 is not included in income under the income tax law.

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

Who Must File

“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”).

The following corporations are required to file a Wisconsin corporation franchise or income tax return:

- 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, or of a qualified subchapter S subsidiary that does business in Wisconsin.

Conversely, the following entities are **not** required to file a Wisconsin corporation franchise or income tax return:

- A single-owner entity that is disregarded as a separate entity under IRC section 7701. Instead, the owner of the disregarded entity is subject to the tax on or measured by the entity’s income and must file a Wisconsin franchise or income tax return if otherwise required.
- 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.

When and Where 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.

Short Period Returns. 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 re-

turns are due at the same time as the federal returns. Each short period is considered a taxable year, the same as for federal purposes.

Extensions. Any extension allowed by the Internal Revenue Service (“IRS”) 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 submit a copy of the federal extension with 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.

CAUTION: An extension for filing the return doesn’t extend the time to pay the franchise or income tax. Interest will be charged on the tax 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 due by that date. Submit your payment with Wisconsin Form 4-ES, *Corporation Estimated Tax Voucher*.

Filing Methods. File electronically through the Federal/State E-Filing Program. For a list of software vendors participating in this program, visit the Department’s web page at www.revenue.wi.gov/eserv/corp/third.html.

Paper filing is also permitted. If you choose to file your return 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 the form.

Period Covered by Return

The return must cover the same period as the corporation’s federal income tax return. A 2008 Wisconsin return must be filed by a corporation for calendar year 2008 or a fiscal year that begins in 2008. A fiscal year may end only on the last day of a month. The period covered by the return can’t exceed 12 months.

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.

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

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.

Accounting Methods and Elections

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 (IRC) in effect for Wisconsin, use a method authorized under the IRC in effect for Wisconsin.

Consolidated Filing Not Permitted. 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 and make its own estimated tax payments. Wisconsin law doesn’t permit corporations that are members of an affiliated group, as defined in IRC section 1504, to file consolidated returns.

Situations Where Installment Method Not Authorized for Wisconsin. For Wisconsin purposes, accrual basis taxpayers cannot generally use the installment method because Wisconsin did not adopt Public Law (“P.L.”) 106-573, which restored the installment method for accrual basis taxpayers for federal income tax purposes. See page 11 for further details.

Further, 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 IRC 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 that in the last year a corporation is subject to taxation by Wisconsin it must take into account all remaining adjustments required.

For the first taxable year for which the change applies, file with the Wisconsin return either a copy of the application for change in accounting method filed with the IRS and a copy of the IRS's consent, if applicable, 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 IRC in effect for Wisconsin. In situations where a corporation has an option under the IRC 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.

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 (EFT). Failure to make required estimated tax payments may result in an interest charge. You may download vouchers from the Department's web site at www.revenue.wi.gov, or you may request vouchers by calling any Department of Revenue office.

Quick Refund. 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 Payments. Section Tax 1.12, Wisconsin Administrative Code, requires the payment of certain taxes by EFT. A corpora-

tion 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. 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, send an e-mail to 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.

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

Tax Type	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

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.

Disclosure of Related Entity Expenses and Reportable Transactions

A corporation may be required to separately disclose certain expenses paid, accrued, or incurred to a related entity. A corporation or corporation's material advisor may also be required to separately disclose reportable transactions.

CAUTION: Wisconsin law provides that certain related entity expenses shall not be allowed as deductions if they are not timely disclosed as required by the Department of Revenue. Also, penalties may apply for failure to disclose reportable transactions to the Department.

Disclosure of Related Entity Expenses. If the corporation paid, accrued, or incurred more than \$100,000 of expenses to a related person or entity, the corporation must generally file Schedule RT, *Wisconsin Related Entity Expenses Disclosure Statement*, with its Wisconsin corporation return. **Note:** Schedule RT will not be accepted on an amended return after the extended due date of the corporation return. The Schedule RT instructions provide a detailed explanation of the filing requirements.

Corporation's Disclosure of Reportable Transactions. If a corporation was required to file federal Form 8886, *Reportable Transaction Disclosure Statement*, with the 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 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.

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

Material Advisor's Disclosure of Reportable Transactions. 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 IRS after October 27, 2007, must file a copy of the disclosure with the Department 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 8918.

If you are required to file Form 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 the Wisconsin return, to the following address: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

Internal Revenue Service Adjustments, Amended Returns, and Claims for Refund

Internal Revenue Service Adjustments. If a corporation's federal tax return is adjusted by the IRS and such adjustments affect the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net operating loss carryforward, or a Wisconsin capital loss carryforward of a shareholder, you must report such adjustments to the Department 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 within 90 days after filing the amended federal return.

To file an amended Wisconsin return, put a check mark in the space next to item E on the front of the return, complete the return, and include an explanation of any changes made. Show computations in detail, including any applicable supplemental forms or schedules. Also show how you figured your refund or additional amount owed.

For tax-option (S) corporations, if the change affects amounts reportable by your shareholders, you must file amended Schedules 5K-1 and provide a copy of the amended Schedule 5K-1 to each of your shareholders.

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.

Claims for Refund. 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 in-

formation.

Final Return

If the corporation liquidated during the taxable year, put a check mark on the appropriate line of item D on the front of the return. Enter the date of liquidation as the taxable year ending date at the top of the return. Submit a copy of your plan of liquidation along with a copy of federal Form 966 with your Wisconsin 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.

Recycling Surcharge

The recycling surcharge applies to 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*.

Information Returns

Transfers of Capital Stock. If one or more individual shareholders of the corporation who are Wisconsin residents transfer the corporation's capital stock during the calendar year, the corporation must file Wisconsin Form 8, *Transfers of Capital Stock*, for that calendar year. For more information, see the Form 8 instructions.

Miscellaneous Income. If the tax-option (S) corporation paid \$600 or more in rents, royalties, or certain nonwage

compensation to one or more individuals, the corporation must file an information return to report those payments. You may use Wisconsin Form 9b, *Miscellaneous Income*, or you may use federal Form 1099 instead of Form 9b. For more information, see the Form 9b instructions.

Wisconsin Use Tax

The corporation may be liable for 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 on use tax, visit the Department's web site at 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, 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.

Obtaining Forms and Assistance

If you need forms or publications, you may:

- Download them from the Department's Internet web site at www.revenue.wi.gov.
- Request them online at 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.
- E-mail your question to corp@revenue.wi.gov.
- Send a FAX to (608) 267-0834.
- Call (608) 266-2772 [TTY (608) 267-1049].
- Write to the Customer Service and Education Bureau, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949.
- Call or visit any Department of Revenue office.

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

General Instructions for S Corporations

Definitions Relating to S Corporations

Tax-Option (S) Corporation. For Wisconsin purposes, a "tax-option (S) corporation" is a corporation which is treated as an "S corporation" under Subchapter S of the Internal Revenue Code (IRC) as adopted for Wisconsin purposes, and has not elected out of tax-option corporation status under sec. 71.365(4)(a), Wis. Stats., for the current taxable year.

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 IRC which generally permits the corporation's income to be taxed to its shareholders rather than to the corporation itself. If the corporation incurs a loss, the loss is treated as the shareholders' loss.

To qualify for federal S corporation treatment under the IRC, a corporation must meet certain requirements. These requirements include, but are not limited to:

- 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; it cannot have another corporation or a tax-option (S) corporation as a shareholder.
- It must not have a nonresident alien as a shareholder.
- It must have only one class of stock.

This is a very brief summary of the federal requirements. For further details of the federal requirements, refer to IRC section 1361(b), as amended to December 31, 2006 (Note: Wisconsin has not adopted any amendments to the IRC enacted after December 19, 2006). Also refer to Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Cor-*

porations and Their Shareholders.

Qualified Subchapter S Subsidiary. A qualified subchapter S subsidiary (also called a "QSub" or a "QSSS") 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.

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.

Corporations and Shareholders 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.

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.

Tax-Option (S) Corporations With Nonresident Shareholders

A tax-option (S) corporation that has one or more nonresident shareholders is generally required to pay pass-through entity withholding. Additionally, the tax-option (S) corporation may file a composite individual income tax return on behalf of qualifying nonresident individual shareholders.

Pass-Through Entity Withholding. A tax-option (S) corporation is generally required to pay withholding tax on its distributable income which is allocable to a nonresident shareholder. A nonresident shareholder includes:

- An individual who is not domiciled in Wisconsin, or
- An estate or trust that is a nonresident under sec. 71.14(1) to (3m), Wis. Stats.

However, withholding is not required on behalf of the following nonresident shareholders:

- A shareholder who is not otherwise subject to Wisconsin income or franchise tax (such as a 501(c)(3) organization with no unrelated business taxable income).
- A shareholder whose share of 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. 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 tax-option (S) corporation's taxable year. See the Form PW-1 instructions for details of the filing procedures.

Composite Return for Nonresident Individual Shareholders. A tax-option (S) corporation that has two or more nonresident individual shareholders who derive no taxable income or deductible loss from Wisconsin other than their distributive shares from the tax-option (S) corporation may file a composite individual income tax return on behalf of those shareholders. The tax-option (S) corporation files this return on Form 1CNS, *Composite Individual Income Tax Return for Nonresident Shareholders*.

Individuals that are fiscal year filers or part-year Wisconsin residents may not participate in the composite return. No tax credits are allowed on the composite return other than a credit for pass-through entity withholding tax paid on behalf of each participating shareholder. Additionally, participating shareholders cannot claim the IRC section 199 deduction or any amounts deductible as itemized deductions on the composite return.

Shareholders that do not qualify to participate in the composite return must file a separate Wisconsin return to report the income from the tax-option (S) corporation.

For more information on eligibility for composite filing and composite filing procedures, see the Form 1CNS instructions.

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 IRC as adopted by Wisconsin, 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 IRC as adopted by Wisconsin will be involuntarily terminated if either of the following are true:

- 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 IRS may waive inadvertent termination and this waiver also applies for Wisconsin.

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

Election Out of Wisconsin Tax-Option Treatment

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.

Making the Wisconsin "Opt-Out" Election. 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*.

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 on Wisconsin Treatment of Tax-Option (S) Corporations

For more information on Wisconsin taxation of tax-option (S) corporations and their shareholders, see Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*. You may access this publication through the Department's web site at www.revenue.wi.gov/html/taxpubs.html#business.

Conformity With Internal Revenue Code and Exceptions

The Wisconsin income and franchise tax law applicable to tax-option (S) corporations is based on the federal Internal Revenue Code ("IRC"). The IRC generally applies for Wisconsin purposes at the same time as for federal purposes. However, significant exceptions apply. These exceptions are discussed below.

Note: The exceptions listed below are those in effect as of the publication date of these instructions. It is possible that subsequent changes in Wisconsin law may eliminate some of these exceptions applicable to the tax-option (S) corporation's 2008 return.

Amendments to Internal Revenue Code After December 19, 2006

Wisconsin has not adopted any amendments to the IRC enacted after December 31, 2006 nor any amendments to the IRC enacted by the final Act to amend the IRC in the year 2006 (P.L. 109-432, Tax Relief and Health Care Act). Thus, **Wisconsin has not adopted any amendments to the IRC enacted after December 19, 2006.**

Depreciation and Section 179 Expensing

If the tax-option (S) corporation has depreciation deductions or section 179 expense deductions, it is very likely that the amount of deduction will be different for Wisconsin purposes than for federal purposes.

Depreciation or Amortization Provisions Enacted After December 31, 2000. For Wisconsin purposes, depreciation or amortization is determined under the provisions of the IRC 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)

Section 179 Expense Limitations. For Wisconsin purposes, the allowable amount of section 179 expensing depends on whether the property is used in farming by a person actively engaged in farming. In either case, different maximum amounts and phaseout thresholds apply for Wisconsin purposes than for federal purposes. Additionally, off-the-shelf computer software is not considered qualifying property for Wisconsin purposes, although it is qualifying property for federal purposes.

In general, the maximum section 179 expense and phase out threshold amounts for taxable years beginning in 2008 are as follows:

Section 179 Property in General		
	Wisconsin Law	Federal Law
Maximum Section 179 Expense	\$25,000	\$250,000
Phase out Threshold (Amt. of qualifying property)	\$200,000	\$800,000

For property used in farming by a person actively engaged in farming, the maximum section 179 expense and phase out threshold amounts for taxable years beginning in 2008 are as follows:

Section 179 Property Used in Farming by a Person Actively Engaged in Farming		
	Wisconsin Law	Federal Law
Maximum Section 179 Expense	\$115,000	\$250,000
Phaseout Threshold (Amt. of qualifying property)	\$460,000	\$800,000

For purposes of Wisconsin section 179 expense, "farming"

has the meaning given in section 464(e)(1) of the IRC and “actively engaged in farming” has the meaning given in 7 CFR 1400.201.

Other Exceptions to Internal Revenue Code

The following federal provisions in effect as of December 19, 2006 are specifically excluded 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.

Note: Wisconsin law also provides a modification relating to installment obligations. See page 3 for details.

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.

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)
- 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.)

- 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)
- 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 re-investing 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, in addition to **any other amendments to the IRC enacted after December 19, 2006.**

How to Report Differences

You must report any differences between federal income and income for Wisconsin purposes in Schedule 5K, column c. For differences relating to depreciation and amortization, you must prepare schedules detailing the differences between the federal and Wisconsin computations and submit them with your return.

Specific Instructions for Form 5S

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, prepare separate sheets using the same size and format as the printed forms, and submit these sheets with your Form 5S.

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.

Note: Federal line numbers referenced in these instructions and on Form 5S may change.

Items A Through L

Before completing items A through L, fill in the tax-option (S) corporation's 2008 taxable year at the top of the form and the corporation's name and address.

■ **A. Federal Employer Identification Number** – Enter the tax-option (S) corporation's federal employer identification number (EIN).

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

■ **C. State of Incorporation and Year** – Enter the 2-letter postal abbreviation for the state (or name of the foreign country) under whose laws the tax-option (S) corporation was incorporated and the year of incorporation.

■ **D. First Return, Final Return, Change in Accounting 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" line. If the corporation ceased to exist or withdrew from Wisconsin during the year, check the "Final return" line and submit 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 line.

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

■ **F. Extended Due Date** – If the tax-option (S) corporation has an extension of time to file its Wisconsin return,

check here 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 here. Submit a complete copy of the corporation's federal return with your Form 5S.

■ **H. Filing Form 1CNS** – Check here if the tax-option (S) corporation is filing a composite Wisconsin individual income tax return (Form 1CNS) on behalf of its qualified and participating nonresident shareholders.

■ **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. 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, including individuals, estates, and trusts not domiciled in Wisconsin.

■ **L. Schedule RT Required** – Check here if the tax-option (S) corporation is filing Schedule RT, *Wisconsin Related Entity Expenses Disclosure Statement*, with its return. Schedule RT is generally required if the tax-option (S) corporation pays, accrues, or incurs more than \$100,000 of expenses to a related person or entity in the taxable year. See the Schedule RT instructions for details of the requirement to file Schedule RT.

Lines 1 Through 9

A foreign corporation subject to the Wisconsin income tax rather than the franchise tax (see page 2) should skip lines 1 through 8 and begin with line 9. All other tax-option (S) corporations subject to the Wisconsin franchise tax begin with line 1.

■ **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 multi-family 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.

■ **Line 2. Wisconsin Apportionment Percentage** – If the tax-option (S) corporation is not using apportionment, enter “100.0000%” on line 2. If the corporation is using apportionment, enter the apportionment percentage from Form 4B, line 11, or Form 4B-1. If you are using a special apportionment formula on Form 4B-1, check the designated space next to line 2.

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

CAUTION: A tax-option (S) corporation cannot offset a net operating loss carryforward from a year when it was a regular (C) corporation against the interest income reported on line 3. 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 3. A tax-option (S) corporation that had \$25,000 or less of unused manufacturer's sales tax credit as of the beginning of its 2006 taxable year may claim any remaining unused 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 shareholders.

CAUTION: You may not offset the manufacturer's sales tax 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.

Schedule Q – Additional Tax on Certain Built-In Gains

A tax is imposed on a tax-option (S) corporation that has a “recognized built-in gain” during the “recognition period.” A tax-option (S) corporation may be liable for the tax on built-in gains if *all* of the following are true:

- It was a regular (C) corporation before making its current election to be treated as a tax-option (S) corporation,
- It made its current election after 1986,
- It has a recognized built-in gain within 10 years from the first day of the first taxable year it became a tax-option (S) corporation under its current election

(the recognition period), and

- The net recognized built-in gains for prior taxable years don't exceed the net unrealized built-in gain.

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

Line 1. Enter the amount that would be the corporation's taxable income for the taxable year if only recognized built-in gains and recognized built-in losses were taken into account. This is the amount computed under IRC section 1374(d)(2)(A)(i), but determined using the Wisconsin basis of the assets. Prepare a schedule showing the computation details and submit it with your Form 5S.

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

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

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 –

- It owned the asset on the date that the current tax-option (S) election became effective, and
- 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. Submit with your Form 5S 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.

Line 4. If the tax-option (S) corporation is not using apportionment, enter "100.0000%" on line 4. (Line 4 is required if there are any amounts entered on Schedule Q.) If the corporation is using apportionment, enter the apportionment percentage from Form 4B, line 11, or Form 4B-1. If you are using a special apportionment formula on Form 4B-1, check the designated space next to line 4.

Line 5. Multiply the amount on line 3 by the percentage on line 4. 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. Prepare a schedule showing the computation details and submit it with your Form 5S.

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.

Schedule S – Recycling Surcharge

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

Line 1. Complete Schedule 5K and enter the income (loss) from Schedule 5K, line 19, column d. This is the net in-

come (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, don't include interest income that is exempt from state income tax under federal or Wisconsin law.

Line 2. If the tax-option (S) corporation is not using apportionment, enter "100.0000%" on line 2. If the corporation is using apportionment, enter the apportionment percentage from Form 4B, line 11, or Form 4B-1. If you are using a special apportionment formula on Form 4B-1, check the designated space next to line 2.

Line 3. Multiply the amount on line 1 by the percentage on line 2. 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.

Lines 11 Through 25

■ **Line 11. Endangered Resources Donation** – Your donation supports the preservation and management of more than 200 endangered and threatened 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, and 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. File a worksheet with 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 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. Do not include tax withheld on income that is passed through to and taxable to your shareholders. To substantiate the withholding claimed on line 15, you must file a copy of Schedule 3K-1 or 2K-1 (as applicable) from that other entity with your Form 5S.

CAUTION: Do not include any withholding on line 15 that is attributable to income you pass through to your shareholders on Schedule 5K-1.

■ **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 designated space 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. File Form 4U with 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 via EFT or mail your check with a 2008 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. 2009 Estimated Tax** – Enter the amount of any overpayment from line 19 that is to be credited to the corporation's 2009 estimated tax. The balance of any overpayment will be refunded. **Amended Return:** If you have already filed your 2009 return, enter the overpayment that you claimed as a credit on your 2009 return from your previously filed original or amended 2008 return. Otherwise, you may allocate the overpayment from line 19 between line 20 and line 21 as you choose.

■ **Line 22. Gross Receipts** – 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. Total Assets** – Enter the total company assets from the federal return.

■ **Line 24. Total From Schedule RT** – If the tax-option (S) corporation reports more than \$100,000 of expenses on its Form 5S which are amounts paid, accrued, or incurred to a related person or entity, the corporation must generally file Schedule RT, *Related Entity Expenses Disclosure Statement* with its Form 5S. On line 24, enter the total amount of expenses disclosed on Schedule RT. See the Schedule RT instructions for details of the Schedule RT filing requirements.

■ **Line 25. Total Nonresident Withholding Paid** – If the tax-option (S) corporation paid withholding tax on pass-through income reportable to nonresident shareholders for the 2008 taxable year, enter on line 25 the total amount of withholding paid for the 2008 taxable year. This amount should match the amount on Schedule 5K, line 13s.

Additional Information, Signatures, and Supplemental Schedules

■ **Additional Information Required** – Answer questions 1 through 6 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.

■ **Supplemental Schedules** – File the following items as supplemental schedules 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 Portable Document Format (*.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 an amended return, an explanation of the changes made, any supporting Department-prescribed forms or schedules, and a worksheet showing how you figured your refund or additional amount owed.

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

Specific Instructions for Schedule 5K

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

Schedule 5K, Columns b Through d

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

■ **Column c. Adjustment** – Enter in column c any adjustments to the federal amount necessary to arrive at the

amount under Wisconsin law. Show additions as a positive number. Show subtractions as a negative number.

However, 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.

For any adjustments you enter in column c, you must prepare an explanation and submit it with your return. See the section that follows for examples of the adjustments that you are required to enter in column c.

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

Adjustments Reportable on Schedule 5K, Column c

You must make adjustment on Schedule 5K, column c in the following situations:

1. Adjustments for IRC provisions not adopted for Wisconsin purposes. As mentioned earlier in these instructions, as of the publication date of these instructions, Wisconsin has not adopted any amendments to the Internal Revenue Code (IRC) enacted after December 19, 2006. If the federal amount in column b is affected by an IRC provision not adopted by Wisconsin, an adjustment must be computed in column c.

2. Differences between the federal and Wisconsin deductions for depreciation or amortization. These differences can happen because of IRC sections not adopted for Wisconsin purposes (see 1. above), and also because of differences that existed between Wisconsin and federal law for assets placed in service before January 1, 1987.

CAUTION: 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.

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

The differences in Wisconsin and federal depreciation and amortization that existed before January 1, 1987 continue to exist. These differences are described in items a. through i. below.

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 IRC 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 IRC as of December 31, 1980, or, in the alternative, the IRC applicable to the calendar year 1972.

However, the Wisconsin Tax Appeals Commission declared this provision unconstitutional in *Beatrice Cheese, Inc. vs. Wisconsin Department of Revenue* (February 24, 1993). Therefore, corporations have the option of either claiming the same depreciation deduction as for federal purposes, or continuing their present method of depreciation. For more information, see the tax release in *Wisconsin Tax Bulletin* 84 (October 1993, page 18).

f. A corporation electing to claim an investment tax credit for federal income tax purposes could either claim the credit and reduce the depreciable basis of the property by one-half of the credit, or claim a reduced investment credit and not reduce the depreciable basis of the property. These corporations weren't required to reduce the depreciable basis of the investment credit property 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 IRC in effect on December 31, 1980, or, in the alternative, the IRC 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, IRC: (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 Wisconsin purposes, before the 1987 taxable year, corporations (except regulated investment companies and real estate investment trusts) couldn't claim section 179 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.

3. Differences between the federal and Wisconsin bases of assets disposed of during the taxable year. Sales of assets with different Wisconsin basis than federal basis will also require you to make adjustments in column c. For example, a corporation sold the following assets, which had been held more than one year:

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

The gains (losses) realized on these transactions are –

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

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. Different elections for Wisconsin and federal purposes. For example, since Wisconsin does not allow a credit for foreign taxes paid or the federal work opportunity credit, foreign taxes and wages included in the computation of the federal work opportunity credit may be deducted for Wisconsin purposes. The corporation may elect to deduct these expenses on line 1, column c.

5. Additions for tax credit amounts. Certain tax credits computed by the tax-option (S) corporation are required to be added back to the tax-option (S) corporation's ordinary income (line 1). These credits include the following:

- Manufacturing investment credit (if based on manufacturer's sales tax credit carryforward reported at the tax-option (S) corporation's level)

- Dairy and livestock farm investment credit
- Film production credits
- Health Insurance Risk-Sharing Plan assessments credit
- Ethanol and biodiesel fuel pump credit
- Development zones credits
- Technology zone credit
- Internet equipment credit
- Enterprise zone jobs credit
- Dairy manufacturing facility investment credit

6. Additions for state taxes. For Wisconsin purposes, state taxes and taxes of the District of Columbia that are value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross income, gross receipts, or capital stock are not deductible by tax-option (S) corporations. These amounts are adjustments on line 1. Also show nondeductible taxes as additional nondeductible expenses on Schedule 5K, line 16c.

7. Adjustments for related entity interest and rental expenses. For taxable years beginning on or after January 1, 2008, a tax-option (S) corporation must make an addition modification to "add back" interest and rental expenses paid, accrued, or incurred to a related entity. After the tax-option (S) corporation makes this addition modification, the tax-option (S) corporation completes Schedule RT to determine if it is eligible for a deduction for any of the amount added back. The tax-option (S) corporation then makes a subtraction modification in the amount for which it is eligible for a deduction.

See the Schedule RT instructions for further details of the expenses that require this modification and the specific criteria that must be met in order to deduct related entity interest or rental expenses.

The tax-option (S) corporation reports the addition modifications for related entity expenses on Schedule 5K, lines 18a and 18b. For the amount eligible for a deduction, the tax-option (S) corporation enters the subtraction amount on Schedule 5K, lines 18c and 18d. Additionally, these amounts must be reported as adjustments in column c on the lines to which the expenses relate. For example, if the related entity rental expense is an item of ordinary income, the modifications must also be reported on Schedule 5K, line 1, column c.

8. Subtraction for expenses disallowed to related entity. If the tax-option (S) corporation has interest income or rental income from a related entity, and that related entity was ineligible to claim a deduction for the interest or rental expenses because it did not meet the criteria set forth in Schedule RT, the tax-option (S) corporation may make a

subtraction modification to exclude the income corresponding to the expense that the payor could not deduct. The tax-option (S) corporation makes the subtraction on the line of Schedule 5K corresponding to the type of income being modified.

9. Adjustments for 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. Thus, 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. The difference between the federal and Wisconsin built-in gains tax amounts must be reported in column c.

10. Additions for federal capital gains and excess net passive income taxes. If the tax-option (S) corporation reduced net long-term capital gain by an amount of federal capital gains tax or reduced items of passive investment income by an amount of federal excess net passive income tax, those tax amounts must be reported as additions in column c.

11. Differences in taxable interest income. Additions to or subtractions from the federal interest income 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.

12. Differences for other income and expense 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.

13. Differences in accounting for distributions. Adjustments to the federal amounts of property distributions and dividend distributions from accumulated earnings and profits 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 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.

Credits Reportable on Schedule 5K, Line 13

To determine if you are eligible for any of the credits in lines 13a through 13s, see Publication 123, *Business Tax Credits for 2008*, or refer to the instructions to the credit schedules referenced below. Except as otherwise indicated, you must file the credit schedule referenced below with your Form 5S in order to claim the credits on Schedule 5K.

■ **Line 13a. Manufacturing Investment Credit – Carryover at Shareholder Level** – Enter the amount of manufacturing investment credit for which the tax-option (S) corporation obtained certification from the Wisconsin Department of Commerce on behalf of a shareholder who had over \$25,000 of unused manufacturer’s sales tax credit carryforward. Submit a copy of the Department of Commerce certification with Form 5S. The tax-option (S) corporation is not required to complete Schedule MI if the underlying manufacturer’s sales tax credit carryforward is from credits passed through to shareholders.

■ **Line 13b. Manufacturing Investment Credit Carryover at Entity Level** – Enter the amount of manufacturing investment credit from Schedule MI, line 4. A tax-option (S) corporation files Schedule MI if the manufacturing investment credit is based on unused manufacturer’s sales tax credit that was computed for taxable years beginning before January 1, 1998, or after December 31, 1997 if the credit was not passed through to shareholders. Submit a copy of the Department of Commerce certification and a completed Schedule MI with Form 5S.

■ **Line 13c. Dairy and Livestock Farm Investment Credit** – Enter the available dairy and livestock farm investment credit from Wisconsin Schedule DI, line 7.

■ **Line 13d. Health Insurance Risk-Sharing Plan Assessments Credit** – Enter the available Health-Insurance Risk Sharing Plan assessment credit from Schedule HI,

line 4.

■ **Line 13e. Ethanol and Biodiesel Fuel Pump Credit** – Enter the available ethanol and biodiesel fuel pump credit from Schedule EB, line 5.

■ **Line 13f. Development Zones Credit** – Enter the available development zones credit from Wisconsin Schedule DC, line 5.

■ **Line 13g. Development Opportunity Zone Capital Investment Credit** – Enter the available development opportunity zone investment credit from Schedule DC, line 13.

■ **Line 13h. Development Zone Capital Investment Credit** – Enter the available development opportunity zone or agricultural or airport development zone capital investment credit from Schedule DC, line 21.

■ **Line 13i. Technology Zone Credit** – Enter the available technology zone credit from Wisconsin Schedule TC, line 6.

■ **Line 13j. Early Stage Seed Investment Credit** – Enter the available early stage seed investment credit from Schedule VC, line 10.

■ **Line 13k. Supplement to Federal Historic Rehabilitation Credit** – Enter the available supplement to the federal historic rehabilitation tax credit from Wisconsin Schedule HR, line 5.

■ **Line 13l. Film Production Company Investment Credit** – Enter the available film production company investment credit from Schedule FP, line 16.

■ **Line 13m. Nonrefundable Film Production Services Credit** – Enter the available nonrefundable film production services credit from Schedule FP, line 6.

■ **Line 13n. Internet Equipment Credit** – Enter the available Internet equipment credit from Wisconsin Schedule IE, line 3.

■ **Line 13o. Enterprise Zone Jobs Credit** – Enter the available enterprise zone jobs credit from Schedule EC, line 16.

■ **Line 13p. Dairy Manufacturing Facility Investment Credit** – Enter the available dairy manufacturing facility investment credit from Schedule DM, line 7.

■ **Line 13q. Refundable Film Production Services Credit** – Enter the available refundable film production services credit from Schedule FP, line 10.

■ **Line 13r. Credit for Tax Paid to Other States** – If the

tax-option (S) corporation does business in another state and either the tax-option (S) corporation or its shareholders must pay an income tax on the tax-option (S) corporation's income earned there, Wisconsin resident shareholders may be able to claim credit on their individual income tax returns for their pro rata shares of the tax paid. Credit is allowed only if the income taxed by the other state is considered taxable income by Wisconsin. Fill in line 13r 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 postal abbreviation of the state in the space provided and the amount of income tax paid to that state. If tax is paid to more than three states, enter "See Attached" on one of the entry lines, enter the total amount on that line, and submit a schedule listing all states and the amount of income tax paid to each state. Submit with Form 5S a copy of the income tax return filed with each state for which a credit is claimed.

■ **Line 13s. Wisconsin Tax Withheld** – If the tax-option (S) corporation is subject to withholding tax on the Wisconsin income of nonresident shareholders, enter 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 tax-option (S) corporation is a member of another pass-through entity that already withheld Wisconsin tax on income passed through to the tax-option (S) corporation, also include the tax withheld by that other entity on the tax-option (S) corporation's share of income.

CAUTION: On line 13s, do not include any withholding attributable to federal, state, and municipal government interest income passed through to the tax-option (S) corporation from another pass-through entity. Use line 15 to report this withholding.

“Other Items and Amounts” Reportable on Schedule 5K, Item 17d

For line 17d, submit a schedule showing 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. Amounts that may be included on this schedule include, but are not limited to, the following:

U.S. Government Interest. 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.

Disposal of Section 179 Property. 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 tax-option (S) corporation's basis reduction in the property due to the section 179 expense deduction); depreciation allowed or allowable (*excluding* the section 179 expense deduction); and both the federal and Wisconsin amount of section 179 expense deduction passed through in previous years for the property and the tax-option (S) corporation's taxable years for which the amounts were passed through.

Schedule 5K, Lines 18 Through 20

■ **Lines 18a Through 18d. Related Entity Interest and Rental Expenses** – On lines 18a and 18b, enter in column d the amounts attributable to interest and rental expenses paid, accrued, or incurred to a related entity. On lines 18c and 18d, enter the amounts eligible for a deduction as determined by the Schedule RT instructions. If the total of lines 18a and 18b exceeds \$100,000, the tax-option (S) corporation must file Schedule RT with its Form 5S. If the total of lines 18a and 18b is \$100,000 or less, the tax-

option (S) corporation may be required to file Schedule RT if its total related entity expenses, including interest and rent, exceed \$100,000. See the Schedule RT instructions for details.

■ **Line 19. Income (Loss)** – For each of columns b and d, combine lines 1 through 10. 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. 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.

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 tax-option (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.

■ **Line 20. Gross Income** – Enter the tax-option (S) corporation's gross income that is reportable to Wisconsin. Gross income is the total amount received from all activities, before deducting the cost of goods sold or any other expenses. Gross income includes gross receipts from trade or business activities, gross rents and royalties, interest and dividends, the gross sales price of assets, and all other gross receipts. If the tax-option (S) corporation is a member of one or more other pass-through entities, include gross income attributable to those other pass-through entities.

Specific Instructions for Schedule 5M

You must complete Schedule 5M to determine the Wisconsin tax effect of distributions from the corporation to its shareholders. The tax effect of the distributions depends upon the balances of the Wisconsin Accumulated Adjustments Account (AAA) and the Wisconsin Other Adjustments Account (OAA).

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. 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.

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 multi-state corporation's income, loss, and deductions attributable to Wisconsin.

If the tax-option (S) 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.

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.

The computation of Wisconsin AAA depends on whether the tax-option (S) corporation has accumulated earnings and profits from taxable years in which it operated as a C corporation:

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.

For corporations with accumulated earnings and profits, 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.

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. The Wisconsin OAA may not agree with the federal 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.

Treatment of Distributions

For Wisconsin, property distributions, including cash, are generally 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.

For more information on how to determine the Wisconsin tax treatment of distributions from a tax-option (S) corporation, see Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*. You may access this publication through the Department's web site at www.revenue.wi.gov/html/taxpubs.html#business.

Specific Instructions for Schedule 5K-1

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.

File each shareholder's Schedule 5K-1 along with the Form 5S you file 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 2008 Schedule 5K-1."

Federal Schedules K-1

Since the Wisconsin Schedule 5K-1 replaces the federal Schedule K-1, a tax-option (S) corporation doesn't have to also file a federal Schedule K-1 for each shareholder with Form 5S. However, you may submit copies of the federal Schedules K-1 instead of preparing Schedules 5K-1 in the following situations:

- If the tax-option (S) corporation operates only in Wisconsin and, on Schedule 5K, reports no adjustments in column c or credits in column d, you may use Schedules K-1 to report the Wisconsin tax-option (S) corporation items for all shareholders.
- If the tax-option (S) corporation operates in and outside Wisconsin and, on Schedule 5K, reports no adjustments in column c or credits in column d, you may use Schedules K-1 for **full-year Wisconsin resident** shareholders.

If you file federal Schedules K-1 instead of Wisconsin Schedules 5K-1, you must state on the shareholder's federal Schedule K-1 that there aren't any Wisconsin adjustments or credits.

Information About the Tax-Option (S) Corporation and Shareholder

■ **Items A Through D.** Enter the identifying number and name of the tax-option (S) corporation and the shareholder. 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 more information.

■ **Item G.** Check here 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. Enter the corporation's apportionment percentage from Form 4B, line 11, or Form 4B-1, if appropriate. Include Form 4B or Form 4B-1 with the Form 5S filed with the Department.

■ **Item H.** Check here 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. Include 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 this box if the shareholder is a nonresident who filed Form PW-2, *Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Affidavit*, to claim exemption from pass-through entity withholding. Check this box only if Form PW-2, Part 2 indicates it was

approved by the Department. You must keep a copy of the approved Form PW-2, Part 2 on file to substantiate the withholding exemption. However, the tax-option (S) corporation generally must still report that shareholder on Form PW-1 to disclose that the withholding exemption was claimed. See the Form PW-1 instructions for further details.

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

■ **Item K.** If the tax-option (S) corporation is aware that the shareholder is a disregarded entity (other than a QSST) or grantor trust, enter in item K the name of the member or grantor to whom the income on Schedule 5K-1 will be reported. If you enter this information, it is less likely that the Department will need to contact you or the shareholder to verify that the proper amount of income is reported.

■ **Item L.** 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.

Schedule 5K-1, Columns a Through e

Column a – Pro rata share items. These item descriptions are substantially identical to the item descriptions on federal Schedule K-1. However, on the lines for other income, other deductions, alternative minimum tax (AMT) items, nondeductible expenses, distributions, and other information, enter the actual description instead of the applicable code from the federal Schedule K-1.

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. On a separate schedule you submit with Schedule 5K-1, 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." Individual 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. Full-year Wisconsin resident shareholders, part-year resident shareholders, and

nonresident shareholders also use the information from column d to calculate the Wisconsin basis in the corporation's stock.

Column e – Wisconsin Source Amount. Fill in this column only for a nonresident or part-year Wisconsin resident. The Wisconsin source amount is the portion of the shareholder's amount in column d that is attributable to Wisconsin. If the tax-option (S) corporation is doing business in and outside Wisconsin, this generally will be the amount from column d multiplied by the tax-option (S) corporation's apportionment percentage from item G.

CAUTION: Do not fill in column e for a shareholder who is a full-year resident of Wisconsin.

Shareholders That Are 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. The amount determined under Wisconsin law for each item is the shareholder's share, based on his or her percentage of stock ownership, of the amount on Schedule 5K, column d. Do not fill in column e.

Shareholders That Are Nonresidents

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

If 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 amounts on Schedule 5K, columns c and d. Enter the amount from column d in column e.

If 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 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 in column d for that item by the apportionment percentage from item G.

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.

Itemized Deduction Amounts. 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. Don't multiply this result by the Wisconsin apportionment percentage or allocate it in and outside Wisconsin using separate accounting, regardless of the shareholder's state of residence.

For items claimed as subtraction modifications, the Wisconsin amount is limited to the amount actually allowed as an itemized deduction for federal purposes. For a nonresident or part-year resident shareholder of a multistate corporation, the Wisconsin amount is further limited to the portion 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.

Shareholders That Are Part-Year Residents

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 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 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.

Credits Reportable on Schedule 5K-1, Line 13

■ **Line 13a through 13q.** Compute the credits in lines 13a through 13q 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. For each credit, enter the shareholder's proportionate or specially allocated share of the amount on Schedule 5K. (**Note:** Only the early stage seed investment credit may be specially allocated. See the Schedule VC instructions for details.)

■ **Line 13r. Credit for Tax Paid to Other States** – Complete this line only for full-year Wisconsin resident shareholders and part-year Wisconsin resident shareholders. Enter zero for shareholders who are nonresidents of Wisconsin or corporations.

For a full-year resident, enter in column d the shareholder's proportionate share of the tax credits on Schedule 5K, line 13r. For a part-year resident, enter in column d the amount computed by multiplying the credit on Schedule 5K, line 13r, by the shareholder's profit and loss percentage, multiplied by the ratio of days that the shareholder was a resident of Wisconsin during the tax-option (S) corporation's taxable year to the total days in the tax-option (S) corporation's taxable year. Enter the result in column e.

■ **Line 13s. Wisconsin Tax Withheld** – If the tax-option (S) corporation was required to file Form PW-1 to withhold tax on behalf of its nonresident shareholders, enter in column d and column e the tax withholding allocated to the shareholder.

Schedule 5K-1, Lines 16 through 19

■ **Lines 16a Through 16c. Tax-Exempt Income and Nondeductible Expenses.** Enter the shareholder's proportionate 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.

■ **Lines 16d and 16e. Distributions and Loan Repayments** – Enter the distributions of money and property made to each shareholder. Do not fill in column e.

■ **Lines 17a Through 17c. Investment Income/Expense and Dividend Distributions** – Enter the shareholder's proportionate share of the federal amount, adjustment, and amount determined under Wisconsin law from Schedule 5K for each of these items.

■ **Line 17d. Other Items** – Complete as necessary. Include the federal amount, adjustment, amount determined under Wisconsin law, and Wisconsin source amount for each item when applicable. Prepare and submit 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).
- Information on the sale, exchange, or other disposition of property for which the section 179 expense deduction was claimed.
- If the tax-option (S) corporation is engaged in both farming and some other business activity, indicate the portion of each of the share items that is attributable to the farm operations. The shareholders use this information in applying the farm loss limitations.
- Any information needed by a shareholder to determine why the Wisconsin amount of any item differs from the federal amount.

Note: Tax-option (S) corporations whose Wisconsin shareholders may qualify for farmland preservation credit or farmland tax relief credit should provide a copy of the farmland property tax bill with the Schedule 5K-1 given to each Wisconsin shareholder. It isn't necessary for the tax-option (S) corporation to submit the property tax bill with the Schedules 5K-1 sent to the Department. Shareholders will compute their allowable credits based on their proportionate shares of the tax-option (S) corporation's property taxes. For additional information about farmland preservation credit, see the Wisconsin Schedule FC instructions. See the instructions for Wisconsin Form 1, 1NPR, 4, or 5 for details on the farmland tax relief credit. If the tax-option (S) corporation is a member of one or more other pass-through entities, gross income includes the gross income attributable to those other pass-through entities.

■ **Lines 18a Through 18d. Related Entity Interest and Rental Expenses** – Enter in column d the shareholder's proportionate share of the amounts from Schedule 5K.

■ **Line 19. Gross Income** – Enter the shareholder’s share, based on the percentage of stock ownership, of the corporation’s gross income that is reportable to Wisconsin. The shareholder will use this information to determine whether he or she must file a Wisconsin income tax return.

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 20, 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 20, 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 20, 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 20, 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.

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 2008. Shareholder B was a resident of Wisconsin until moving to Illinois on April 1, 2008. Therefore, Shareholder B was a part-year resident of Wisconsin for 2008, having been a resident for 90 days and a nonresident for 275 days.

Schedule 5K for 2008 shows the following amounts on the lines indicated:

Schedule 5K

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

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

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

Shareholder A’s Schedule 5K-1

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

These amounts are determined by multiplying the amounts on Schedule 5K by Shareholder A’s 50% stock ownership percentage. Column e is blank because shareholder A is a full-year Wisconsin resident.

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

Shareholder B’s Schedule 5K-1

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

The amounts in columns b, c, and 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. The computations of Shareholder B's amounts in column e are shown next:

Shareholder B's Line 1: Ordinary Income		
Period of residence	$\$4,500 \times 90/365$	= \$1,110
Period of nonresidence	$\$4,500 \times .6 \times 275/365$	= \$2,034
Total		= \$3,144

Shareholder B's Line 4: Interest Income		
Period of residence	$\$350 \times 90/365$	= \$86
Period of nonresidence	$\$350 \times .6 \times 275/365$	= \$158
Total		= \$244

This 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.

Determining Wisconsin Income of Multistate Tax-Option (S) Corporations

Who Must Use Apportionment

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

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.

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 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 ratio of Wisconsin sales to total company (corporation) sales.

For most companies, the apportionment percentage is computed on Form 4B. However, direct air carriers, motor carriers, railroads, sleeping car companies, pipeline companies, financial institutions, brokers-dealers, investment advisers, investment companies, underwriters, and telecommunications companies should see Form 4B-1 and its instructions.

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 nonbusiness 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.

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.

■ **Line 1.** Enter rents and royalties received on nonbusiness real and 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 real and 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.

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.

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 non-business real or tangible personal property.
- Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property isn't used in the production of business income.
- Royalties from nonbusiness real property or nonbusiness tangible personal property.
- Proceeds and gain or loss from the redemption of securities.
- Interest, except interest on trade accounts and trade

notes receivable, and dividends.

- Gross receipts and gain or loss from the sale of intangible assets, except inventory.
- Dividends deductible in determining net income.
- Gross receipts and gain or loss from the sale of securities.
- Proceeds and gain or loss from the sale of receivables.
- Refunds, rebates, and recoveries of amounts previously expended or deducted.
- Foreign exchange gain or loss.
- Royalties and income from passive investments in patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, and technical know-how.
- Pari-mutuel wager winnings and purses.
- Other items not includable in apportionable income.

■ **Lines 1a and 1b.** Enter the amounts of 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.

■ **Line 2a.** Enter the amount of 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.

■ **Line 2b.** Enter the amount of 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%.

■ **Line 2c.** Enter the amount of 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%.

■ **Line 3.** Enter the amount of "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 United States territory or possession. A foreign country isn't a state.

■ **Line 5a.** Enter the amount of 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.

■ **Line 5b.** Enter the amount of 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%.

■ **Line 7a.** Enter the amount of gross receipts from services if the purchaser of the service received the benefit of the service in Wisconsin. The benefit of the service is re-

ceived 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.

■ **Line 7b.** Enter the amount of 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%.

■ **Line 9.** For both Wisconsin and the total company, enter the amount of 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 11.** Divide line 10, column a, by line 10, column b, and multiply that amount by 100. Carry the result to 4 places to the right of the decimal point. Enter the percent-

age here and on Form 5S, page 1, line 2; Schedule Q, line 4 (if applicable); Schedule S, line 2; and on Schedule 5K-1, item G.

Separate Accounting

A corporation engaged in a nonunitary business in and outside Wisconsin must 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. Under separate accounting, the corporation must keep separate records of the sales, cost of sales, and expenses for the Wisconsin business.

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 C corporation, a tax-option (S) corporation cannot use Form 4C to determine its income attributable to Wisconsin. Instead, a corporation using separate accounting should prepare a 5-column schedule that provides the following information: (a) a listing of all of the distributive 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 a percentage of sales at each location, enter the percentage in column e and provide details on how the percentage was computed.