

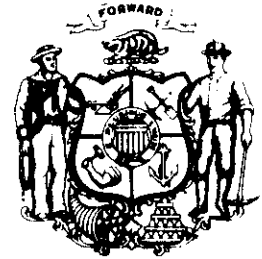
# WISCONSIN TAX BULLETIN

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## WISCONSIN TAX LAWS ENACTED IN 1978

*In 1978, many Wisconsin tax law changes were enacted. The purpose of this special issue of the Wisconsin Tax Bulletin is to provide brief explanations of the new 1978 special property/rent tax credit, individual income, corporation franchise/income, farmland preservation credit, homestead credit, inheritance, gift, sales and use, and excise tax laws.*

*The state law enacting the majority of 1978 changes is the Annual Review Budget Act (Assembly Bill 1220, Chapter 418, Laws of 1977), published on May 18, 1978. In addition, tax statutes were affected by 9 other laws (Chapters 200, 248, 250, 289, 291, 294, 313, 368 and 380, Laws of 1977).*

*This issue contains a brief description of the major 1978 tax law changes. Under each subject heading is the Assembly or Senate Bill (ex., A.B. 1220), Chapter Law (ex., Chapter 418, Laws of 1977), the sections of the Wisconsin Statutes that were affected, and the effective date of the new law.*

### I. 1978 Special Property/Rent Tax Credit

(AB 1220, Section 923(42) (b) of Chapter 418, Laws of 1977, effective for 1978 taxable year only. This provision is a "session law"; although it has the full force and effect of law, it is not part of Chapter 71, Wis. Stats.)

**Who May Claim Credit.** To qualify for the 1978 special property/rent tax credit, a claimant must meet all of these conditions:

1. Must be a natural person (estates, partnerships, trusts, and corporations do not qualify for the credit).

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2. Must have been a legal resident of Wisconsin for the entire 1978 calendar year.

3. Must have paid rent in 1978 for the right of occupancy of a Wisconsin homestead, or had property taxes accrued on his or her Wisconsin homestead for 1978, or both.

4. Was not claimed as a dependent on another person's 1978 federal income tax return. (This does not apply to claimants who were 62 years of age or over in 1978.)

Only one member of a "household" may claim the credit. (Household means claimant and his or her spouse.) Also, only one person in a dwelling unit is eligible for the credit. The right to file a claim does not survive a person's death; a claim filed on behalf of a deceased person will not be allowed.

**Amount Of Credit.** Claimants who paid rent in 1978 for the right of occupancy of a Wisconsin homestead will receive a \$40 credit, regardless of the amount of rent paid.

Claimants who have property taxes accrued on their Wisconsin homestead for 1978 will receive a credit equal to 10% of their property taxes accrued for 1978. However, the credit will not be less than \$40 or more than \$100.

Claimants who both paid rent in 1978 and have property taxes accrued for 1978 may elect to claim either \$40 or 10% of the property taxes accrued for 1978 (not to exceed \$100), whichever is greater.

**How To Claim Credit.** A person filing a 1978 Wisconsin income tax return, Form 1 or Form 1A, will claim the credit on his or her 1978 income tax return.

If a person files a Homestead claim, Schedule H, but not an income tax return, the credit will be claimed on Schedule H.

If a person does not file an income tax return or a Homestead claim, the credit will be claimed on a new form which will be developed for such persons.

**When To Claim Credit.** A person must claim the credit by December 31, 1979. No extensions are allowed.

## II. Individual Income Taxes

**A. Update Reference to Internal Revenue Code to December 31, 1977.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.02(2) (b) 3 and created s. 71.02(2) (b) 4, effective for the 1978 taxable year and thereafter.)

For the 1978 taxable year and thereafter, an individual, partnership, estate or trust will use the Internal Revenue Code in effect on December 31, 1977 in computing federal adjusted gross income and itemized deductions, with two exceptions:

1. Child care expenses will remain an itemized deduction for Wisconsin purposes; and
2. The special tax treatment of certain pollution control facilities as enacted in the federal "Tax Reform Act of 1976" (Sec. 2112 of P.L. 94-455) will not be allowed.

The Wisconsin standard deduction will remain at 15% with a \$2,000 maximum, plus any additional amount allowable for

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dependents, and the low-income allowance will remain at the levels established for 1977.

**B. Income Tax Credit for Alternative Energy Systems.** (AB 1019, Chapter 313, Laws of 1977, created s. 71.09 (12), s. 73.03 (14) and s. 79.25 (8m), effective for the 1977 through 1984 taxable years.)

**Who May Claim Credit.** Any natural person owning an alternative energy system installed on the person's property in Wisconsin may claim a tax credit for costs incurred in the taxable year in the design, construction, equipment and installation of an alternative energy system, provided such costs exceed \$500 in a single year. Only costs incurred during the period April 20, 1977 through December 31, 1984 will qualify for the credit.

If more than one person owns an alternative energy system eligible for the credit, such persons may divide the credit among themselves as desired. Once a credit is claimed, subsequent owners of the alternative energy system are not eligible for the credit for the same system. No tax credit may be allowed for an alternative energy system if a property tax credit has been granted for the system as an improvement under the Home Improvement Tax Relief Program in s. 79.25. (The property tax credit under s. 79.25 is not claimed on an income tax return.)

**Amount of Credit.** The amount of tax credit is based upon a percentage of the total costs incurred during the taxable year in the design, construction, equipment and installation of the system. If such costs exceed \$10,000, the percentage will be applied to \$10,000 rather than the actual costs. The percentage of credit varies, depending on whether the real property improvements on which the alternative energy system is installed appeared on the local tax roll prior to April 20, 1977, or on or after April 20, 1977.

% If Real Property Improvement on Property

Tax Roll:

<u>Credit for</u>	<u>Prior to</u>	<u>On or After</u>
<u>Taxable</u>	<u>April 20,</u>	<u>April 20,</u>
<u>Years</u>	<u>1977</u>	<u>1977</u>
1977 and 1978	30%	20%
1979 and 1980	24%	16%
1981 and 1982	18%	12%
1983 and 1984	12%	8%

Expenses incurred during the period April 20, 1977 through December 31, 1978 may be used to compute the credit in either the taxable year in which incurred or the next taxable year.

If the credit exceeds a person's income tax due, the amount of credit exceeding the tax due will be refunded without interest.

**How to Apply for Credit.** To claim the credit, a person must attach an appropriate Department of Revenue form to his or her Wisconsin income tax return. (A form has not yet been developed.)

**Certification Required.** To qualify for the tax credit (or the special write-off for corporations), the alternative energy system which is installed must meet certification requirements specified by administrative rule by the Department of Industry, Labor and Human Relations (DILHR). (A rule has not yet been adopted by DILHR.)

**Definitions.** The following definitions apply for purposes of the income tax credit and corporate special write-off:

"Alternative energy system" means a solar energy system, a waste conversion energy system or a wind energy system, but does not include any equipment which would be present as part of a conventional energy system.

"Solar energy system" means equipment which converts and then transfers or stores solar energy into usable forms of energy for space heating or cooling, crop drying, electricity generation or hot water heating.

"Waste conversion system" means equipment which converts waste into usable forms of energy but does not include solid fuel-consuming devices used for residential purposes.

"Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

**C. Credit for Taxes Paid to Other States.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (8) (a) and (b), and created s. 71.09 (8) (c) and (d), effective for the 1978 taxable year and thereafter.)

Wisconsin residents will be allowed a tax credit for tax paid to another state on all types of income (including intangible income, for which a credit was not allowed in prior years) provided the income is taxed by the other state and by Wisconsin.

**D. Income Tax Deduction for Adoption Costs.** (AB 899, Chapter 294, Laws of 1977, created s. 71.05 (1) (b) 7, effective for the 1978 taxable year and thereafter.)

A deduction, via a subtract modification, will be allowed to an adoptive parent or a prospective adoptive parent for amounts expended for adoption fees, court costs or legal fees relating to the adoption of a child, whether or not the adoption process is completed. The deduction will be allowed to the extent that such amounts, when added to allowable medical deductions under Section 213 of the Internal Revenue Code, exceed 3% of the person's federal adjusted gross income.

**E. Disposition of Property Acquired by Inheritance.** (AB 1220, Chapter 418, Laws of 1977, and AB 1146, Chapter 380, Laws of 1977, both amended s. 71.05 (1) (g), effective for sales, exchanges, abandonment or other dispositions occurring in the 1977 taxable year and thereafter.)

Section 71.05 (1) (g), Wis. Stats., provides for an add or subtract modification on the disposition of property acquired by inheritance, if such property has a different federal basis than Wisconsin basis. Under prior law (Chapter 29, Laws of 1977), property acquired by inheritance which was disposed of in the 1977 taxable year or thereafter had the same federal and Wisconsin basis, that is, the federal "carry-over basis" as provided in the federal Tax Reform Act of 1976.

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Under the new law, property acquired by inheritance which is disposed of in the 1977 taxable year or thereafter will have a Wisconsin basis determined under the Internal Revenue Code as of December 31, 1975.

### III. Corporation Franchise/Income Taxes

A. Update Reference to Internal Revenue Code. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.01 (4) (g) 2 and s. 71.02 (1) (a) 3 and created s. 71.01 (4) (g) 3 and s. 71.02 (1) (a) 4, effective for the 1978 taxable year and thereafter.)

For the 1978 taxable year and thereafter, net income of real estate investment trusts (REITS), regulated investment companies and certain domestic insurance companies will be determined under the Internal Revenue Code in effect on December 31, 1977, or the Code effective for the taxable year, at the option of the taxpayer.

B. Corporation Franchise/Income Tax Special Write-Off for Alternative Energy Systems. (AB 1019, Chapter 313, Laws of 1977, created s. 71.04 (16), s. 71.09 (12) and s. 73.03 (14), effective for the 1977 through 1984 taxable years.)

Expenses incurred during the period April 20, 1977 through December 31, 1984 for designing, constructing and installing an alternative energy system may be deducted in the year paid, may be depreciated or may be amortized over a period of 5 years. The election, once made by the corporation, may not be changed. However, expenses paid during the period April 20, 1977 through December 31, 1978 may be deducted in either the taxable year in which paid or the next taxable year.

To qualify for this special write-off, the alternative energy system must meet certification requirements of the Department of Industry, Labor and Human Relations (see II, B under "Individual Income Taxes" for information regarding definitions of terms used in this law and the certification required).

### IV. Farmland Preservation Credit

A. Claimant Not Required to Report Income on Federal Schedule F. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (a) 1 (intro.), effective for 1978 claims and thereafter.)

The requirement that a claimant must report farm income on a farm business schedule or corporate income schedule in filing a Wisconsin income or franchise tax return will be eliminated for 1978 claims and thereafter.

B. Definition of "Gross Farm Profits" Changed. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (a) 3 and created s. 71.09 (11) (a) 3m, effective for 1978 claims and thereafter.)

To qualify for the farmland preservation credit, farmland must produce at least \$6,000 in gross farm profits during the claim year or \$18,000 in gross farm profits during the claim year and the 2 years immediately preceding that year.

For 1977 claims filed in 1978, gross farm profits were determined in accordance with federal Schedule F.

The new law provides that for 1978 claims and thereafter, "gross farm profits" means gross receipts, excluding rent, from the land's agricultural use, less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the income year. "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming and vegetable raising (s. 91.01 (1)).

C. Eliminate Add-Back of Farm Property Taxes to Income. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (a) 6.a, effective for 1978 claims and thereafter.)

Claimants will not be required to add to income the amount of real property taxes deducted from farm business income.

D. Exclude First \$7,500 of Nonfarm Income From Income. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09

(11) (a) 6.a, effective for 1978 claims and thereafter.)

In determining an individual's income for farmland preservation credit purposes, the person will reduce such income by the first \$7,500 of nonfarm wages, tips and salaries earned by the household.

E. Property Taxes Used in Computing Credit Increased From \$4,000 to \$6,000. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (a) 7 and s. 71.09 (11) (b) 1 and 2, effective for 1978 claims and thereafter.)

The maximum "property taxes accrued" used in computing the credit will be increased from \$4,000 to \$6,000.

F. Maximum Credit Increased From \$2,600 to \$4,200. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (b) 2, effective for 1978 claims and thereafter.)

The maximum farmland preservation credit payable to a claimant will increase from \$2,600 to \$4,200.

G. Rollback Reduced From 20 to 10 Years. (AB 1220, Chapter 418, Laws of 1977, amended s. 91.19 (7) and (8), effective May 19, 1978.)

Upon relinquishment of a farmland preservation agreement or a transition area agreement, or upon removal of land from an exclusive agricultural zone, the Department of Agriculture, Trade and Consumer Protection is required to record a lien against the farm property formerly subject to the agreement or zoning for the total amount of the credits received by the claimants during the last 10 years that the land was eligible for such credit. (Prior to this law change, the period was the prior 20 years.)

H. Credits Received by Estates and Trusts are Taxable Income. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (c), effective May 19, 1978.)

The law clarifies that all amounts received as farmland preservation credit constitute income for estates and trusts. The law continues to provide that the credits are also income to individuals and corporations.

I. Property Taxes Reduced by Home Improvement Tax Relief Refunds. (AB 1220, Chapter 418, Laws of 1977,

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amended s. 71.09 (11) (a) 7, effective for 1978 claims and thereafter.)

The amount of "property taxes accrued" for the preservation credit must be reduced by any refund of property taxes received by a person under the Home Improvements Tax Relief Program in s. 79.25 (5).

**J. Alternative Farmland Preservation Credit Available.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (11) (b) 2, effective for 1978 claims and thereafter.)

The amount of farmland preservation credit will be the greater of the credit calculated under the law (a) in effect at the end of the claim year or (b) as it existed on the date on which the farmland came under the farmland preservation program by a current agreement or a zoning ordinance.

## V. Homestead Credit

**A. Social Security Title XX Payments Excluded From Income.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (7) (a) 1, effective for 1978 claims and thereafter.)

Payments made under Title XX of the federal Social Security Act to a claimant will be excluded from household income. Title XX payments are received by some persons in the form of cash and then such persons use the cash to purchase a service themselves, while others receive the actual service from a service provider. For 1977 and prior years' claims, cash payments under Title XX were includable in household income, whereas if the actual service was directly received by the claimant, the cost of such service was not includable in household income.

**B. Property Taxes Reduced by Home Improvement Tax Relief Refunds.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (7) (a) 8, effective May 19, 1978.)

Section 79.25 (5) provides for a partial refund of property taxes to certain homeowners who make improvements to their home or rental unit. The amendment to s. 71.09 (7) (a) 8 requires the amount of any such benefit received by a homestead claimant to be subtracted from the "prop-

erty taxes accrued" which are used to compute the homestead credit.

**C. Foster Care Payments Do Not Disqualify Claimants From Homestead Credit.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (7) (p), effective for 1978 claims and thereafter.)

A person will not be disqualified from homestead credit merely because of receiving foster care assistance under s. 49.19 (10) (a) or receiving assistance as a relative, other than a parent, with whom a dependent child is living, if the assistance does not aid to meet the needs of the claimant, or the claimant's spouse or children.

**D. Landlord May Not Charge Fee for Completing Rent Certificate.** (AB 1220, Chapter 418, Laws of 1977, created s. 71.09 (12), effective May 19, 1978.)

A landlord is prohibited from charging a fee for completing a rent certificate for homestead credit purposes.

**E. Persons Living in Exempt Housing.** (AB 1220, Chapter 418, Laws of 1977, amended s. 71.09 (7) (t), effective dates are indicated below.)

**1978 and Subsequent Years' Claims.** Homestead credit will not be allowed to any person who lived the entire year to which the claim relates in housing which is exempt from real estate taxes under Chapter 70, Wis. Stats., except if a person lived in housing for which payments in lieu of taxes are made under s. 66.40 (22).

If a person lived part of the year in housing subject to real estate taxes and part of the year in exempt housing, "property taxes accrued" or "rent paid for occupancy only" or both, will only include the rent or taxes relating to the housing subject to real estate taxes.

Another change for 1978 and subsequent years' claims is that a person will not be disqualified for homestead credit because he or she lived in exempt housing at the time the claim was filed.

Examples: A person rents exempt housing for all of 1978. Such person is not eligible for 1978 homestead credit.

In 1978, a person paid \$300 rent for living 3 months in exempt housing and paid \$900 rent for living 9 months in property subject to real estate taxes. Only the \$900 may be used in determining "rent paid for occupancy only."

**1977 Claims Filed in 1978.** A person was not eligible for 1977 homestead credit if he or she was living in exempt housing at the time of filing the 1977 claim, except if a person lived in housing for which payments in lieu of taxes are made under s. 66.40 (22). However, even though such a person may not have qualified for 1977 homestead credit under prior law, the new law provides that he or she may still qualify for 1977 homestead credit if the person lived in housing subject to real estate taxes for all or part of 1977.

Examples: A person lived in exempt housing all of 1977 and at the time of filing the 1977 claim. Such person is not eligible for 1977 homestead credit.

A person lived in exempt housing at the time of filing the 1977 claim in 1978, however, during part or all of 1977 he or she lived in housing subject to real estate taxes. Such a person is eligible for 1977 homestead credit and may file a claim on or before December 31, 1978. Only the rent or taxes relating to the housing subject to real estate taxes may be used in computing "rent paid for occupancy only" or "property taxes accrued", or both.

## VI. Sales and Use Tax

**A. Exempt Computer and Data Processing Services.** (AB 1220, Chapter 418, Laws of 1977, repealed s. 77.52 (2) (a) 13, effective July 1, 1978.)

Computer and data processing services which became taxable on August 1, 1977 by the enactment of s. 77.52 (2) (a) 13 in Chapter 29, Laws of 1977, will be exempt, beginning July 1, 1978. Computer and data processing services which will be exempt beginning July 1, 1978 include time-sharing, designing or converting systems, programming, consulting, training, reformatting of data and computer printing. (TIM S-38.2 will be revised to reflect this law change.)

**B. Exempt Shoppers Guides.** (AB 1220, Chapter 418, Laws of 1977, amended s. 77.54 (15), effective July 1, 1978.)

Shoppers guides which have 48 or more issues distributed in a 12-month period will be exempt from the sales/use tax. "Shoppers guides" means a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals.

**C. Exempt the Occasional Sales of Mobile Homes 45 Feet or Longer.** (AB 1220, Chapter 418, Laws of 1977, amended s. 77.51 (7) (am), s. 77.53 (17), s. 77.54 (7) and s. 77.61 (1) (a) and (c), effective July 1, 1978.)

Occasional sales of mobile homes which are 45 feet or more in length will be exempt from the sales/use tax.

**D. Exempt meat wrapping materials.** (AB 112, Chapter 368, Laws of 1977, amended s. 77.54 (6) (b), effective May 20, 1978.)

Meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials purchased for use in packing, packaging or shipping meat or meat products, regardless of whether such items are used to transfer merchandise to customers, are exempted from the sales/use tax.

**E. Exempt Railroad Lubricants.** (AB 1220, Chapter 418, Laws of 1977, amended s. 77.54 (12), effective July 1, 1978.)

Lubricants used for rail freight or passenger cars, locomotives or other rolling stock used in railroad operations will be exempt from the sales/use tax.

**F. Exempt Maple Syrup Equipment.** (AB 1220, Chapter 418, Laws of 1977, created s. 77.54 (29), effective July 1, 1978.)

Equipment used in the production of maple syrup will be exempt from the sales/use tax.

**G. Exempt Admission Fees to State Parks and Forests.** (AB 1220, Chapter 418, Laws of 1977, created s. 77.54 (10), effective July 1, 1978 to December 31, 1979.)

The sale of admission fees to state parks and forests will be exempt from sales/use tax for the period July 1, 1978 to December 31, 1979. Such admissions will again be taxable beginning January 1, 1980.

**H. Exempt Meals and Food Sold by Retirement Homes.** (AB 220, Chapter 250, Laws of 1977, amended s. 77.54 (20) (c) 4, effective April 25, 1978.)

Sales of meals, food, food products and beverages sold by retirement homes will be exempt from the sales and use tax. "Retirement home" for purposes of this exemption means a nonprofit residential facility where three or more unrelated adults or their spouses have their principal residence and where support services, including meals from the common kitchen, are available to residents.

**I. Sales and Use Tax Refunds of Less Than \$2.00 Permitted.** (AB 540, Chapter 200, Laws of 1977, amended s. 77.61 (8), effective March 15, 1978.)

Sales and use tax refunds of less than \$2.00 are permitted if specifically requested in writing by the taxpayer. Under prior law, the department was not allowed to issue sales and use tax refunds of less than \$2.00.

## VII. Inheritance and Gift Taxes

**A. Gift Tax Exemption Increased to \$100,000 for Interspousal Transfers.** (SB 401, Chapter 248, Laws of 1977, amended s. 72.82 (1) (intro.) and (a), effective retroactively to July 1, 1976 and thereafter.)

The lifetime personal gift tax exemption for transfers between spouses is increased to \$100,000. The annual exemption of \$3,000 is not changed. Under prior law, the lifetime personal exemption for transfers between spouses was \$15,000.

**NOTE:** If a gift was made and Wisconsin gift tax paid but the gift is exempted from gift tax by this law, a gift tax refund may be applied for. Amended gift tax returns should not be filed. The claim for refund should be in the form of a letter and should be mailed to: Wisconsin Department of Revenue, P.O. Box 8904, Madison, Wisconsin 53708.

**B. Gift Tax - Transfer of Real Estate Between Spouses.** (SB 401, Chapter 248, Laws of 1977, amended s. 72.85 (4), effective for transfers between May 14, 1972 and June 30, 1976.)

Transfers of real property into joint tenancy between spouses between May 14, 1972 and June 30, 1976 shall be considered exempt from gift tax. However, either spouse can elect to have the transfer deemed a gift by filing a gift tax return and paying any tax, with no penalty or interest, prior to the filing of an inheritance tax return of the first spouse to die.

Under prior law, (Chapter 222, Laws of 1975) such transfers of real property between spouses between May 14, 1972 and June 30, 1976 were considered gifts, however, if a gift tax return was filed by April 15, 1978, interest and penalties were not imposed.

**NOTE:** If a gift was made and Wisconsin gift tax paid but the gift is exempted from gift tax by this law, a gift tax refund may be applied for. Amended gift tax returns should not be filed. The claim for refund should be in the form of a letter and should be mailed to: Wisconsin Department of Revenue, P.O. Box 8904, Madison, Wisconsin 53708.

**C. Inheritances and Gifts to Mutually Acknowledged Parents.** (AB 1220, Chapter 418, Laws of 1977, created s. 72.01 (15m), amended s. 72.16 (1), effective for all transfers because of deaths or gifts occurring on or after January 1, 1976.)

A gift or inheritance to a mutually acknowledged parent by a mutually acknowledged child will be treated for gift and inheritance tax purposes the same as transfers by a natural child to a natural parent. Prior to this law, mutually acknowledged children were eligible for the preferential tax exemptions and tax rates accorded to natural children, but mutually acknowledged parents were taxed as if they were strangers to their mutually acknowledged children.

**D. Exempt \$2,500 of Household Furnishings From Inheritance Tax.** (AB 1220, Chapter 418, Laws of 1977, created s. 72.15 (4), effective for all transfers because of deaths occurring on or after January 1, 1978.)

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The first \$2,500 of household furniture, furnishings and appliances are exempt from inheritance tax.

E. Wisconsin Power of Appointment - Definition Conformed to Federal. (AB 1220, Chapter 418, Laws of 1977, repealed and recreated s. 72.01 (17) and s. 72.12 (5), amended s. 72.28 (1) (e) 1 and s. 72.75 (2), effective for transfers which occur or are completed on or after January 1, 1978.)

The Wisconsin definition of "power of appointment" for inheritance and gift tax purposes will conform to the federal estate and gift tax definitions.

F. Fractional Share Exclusion of Joint Tenancies From Inheritance Tax. (AB 1220, Chapter 418, Laws of 1977, amended s. 72.12 (6) (b) (title) and (c), effective for transfers because of deaths occurring on or after January 1, 1978.)

Under prior law (Chapter 222, Laws of 1975) a fractional share exemption was provided for one-half of the value of property held by two persons in joint tenancy with right of survivorship, provided the signatures of both joint tenants were required to transfer the entire property. Examples of such joint tenancy property are land, buildings, and stock certificates. If the property is owned by three joint tenants, two-thirds of the value of such property is exempt, or if four joint tenants, three-fourths is exempt.

The new law provides that the fractional share exemption for such joint tenancy property will be treated as an exclusion, rather than an exemption, from the distributee's receipt of property.

Example of Prior Law and New Law. A husband and wife own real property in joint tenancy with right of survivorship. The fair market value of the property on date of death is \$250,000. Assume that the husband dies and the wife thereby acquires the \$250,000 of property. The exemptions and tax should be computed as follows:

	Deaths Prior to January 1, 1978	Deaths on or After January 1, 1978
Joint Tenancy Property Qualifying for Ex- emption of Fractional Shares	\$250,000	\$250,000
Less: Fractional Share (1/2 of \$250,000)	(\$125,000)	(\$125,000)
Less: Personal Exemption for Spouses	(\$ 50,000)	(\$ 50,000)
Amount Subject to Tax Inheritance Tax:	\$ 75,000	\$ 75,000
	\$ 3,750	\$ 3,125

Computation of Tax - Deaths Prior to January 1, 1978. The fractional share exemption of \$125,000 and personal exemption of \$50,000 (total \$175,000) are taken out of the \$0 - \$25,000 (rate 1.25%), \$25,000 - \$50,000 (rate 2.5%), \$50,000 - \$100,000 (rate 3.75%) and \$100,000 - \$500,000 (rate 5%) brackets. Therefore, the tax on \$75,000 is computed at the 5% rate in the \$100,000 - \$500,000 bracket.

Computation of Tax - Deaths On or After January 1, 1978. The fractional share of \$125,000 is an exclusion and is not considered in computing the tax. The personal exemption of \$50,000 is taken out of \$0 - \$25,000 and \$25,000 - \$50,000 brackets. The tax on \$75,000 is computed as follows: 3.75% on \$50,000 (\$50,000 - \$100,000 bracket) = \$1,875 and 5% on \$25,000 (\$100,000 - \$500,000 bracket) = \$1,250 or a total tax of \$3,125.

## VII. Excise Taxes

A. Transporting Intoxicating Liquor or Wine into Wisconsin. (AB 1220, Chapter 418, Laws of 1977, amended s. 139.03 (5) (a), effective May 19, 1978.)

This amendment clarifies that a person may not bring into Wisconsin from another state any intoxicating liquor or wine. (This restriction does not apply to a person having a permit from the Department of Revenue to engage in the sale of intoxicating liquor or wine.)

B. Sale of Intoxicating Liquor Within One Mile of Mental Health Institutes. (AB 1220, Chapter 418, Laws of 1977, amended s. 176.30 (3), effective January 1, 1981.)

The sale, trafficking or giving away of intoxicating liquor or wine will not be allowed within one mile of any mental health institute. Current law prohibits such sales within one mile of state hospitals for the insane, except the Central State Hospital at Waupun. A person violating this provision shall be fined \$100 to \$250 or imprisoned not more than 6 months, or both.

C. Income Tax Confidentiality Laws Apply to Motor Fuel, Special Fuel and Cigarette Tax Returns. (AB 714, Chapter 289, Laws of 1977, repealed and recreated s. 78.80 (3), repealed s. 78.83, created s. 139.38 (6), effective May 9, 1978.)

The confidentiality provisions in s. 71.11 (44) (a) and (c) to (h) relating to income and gift tax returns will also apply to motor fuel, special fuel and cigarette tax returns and related information.

D. Cigarette Use Tax - Reporting and Penalties. (AB 714, Chapter 289, Laws of 1977, amended s. 139.33 (3) and (4), created s. 139.33 (5), effective July 1, 1978.)

Under prior law, no person other than a licensed cigarette distributor was allowed to import into Wisconsin more than 400 cigarettes on which the cigarette tax had not been paid and the container of which did not bear proper stamps. Within 3 days, the person importing such cigarettes into Wisconsin was required to file with the Department of Revenue a declaration of the amount imported and remit to the department a cigarette use tax of 16¢ per pack.

The new law does not change the restriction that no person other than a licensed distributor may import into Wisconsin more than 400 cigarettes on which the tax has not been paid. However, the time for reporting the receipt of such cigarettes is extended from 3 to 15 days. The department is also no longer required to issue a receipt for such payments. In addition, the new law provides that a penalty of \$25 per 200 cigarettes shall be imposed for late payment of this use tax and interest will be imposed upon late taxes and penalties at 1.5% per month. In administering this use tax on cigarettes, the

following income tax provisions apply: assessment procedures, hearing and appeal provisions, preparation of assessment and tax rolls, certification of taxes due, and collection and refund procedures.

E. Demanding Tax Reports From Motor Fuel and Special Fuel Nonfilers. (AB 714, Chapter 289, Laws of 1977, amended s. 78.68 (1) (a) and (b), effective May 9, 1978.)

The department will no longer be required to send a written demand within 10 days of the due date of the report. Also, the licensee will have 10 days from the date it receives the demand to file from the department to file a report and pay the tax and penalty. The demand may be sent by certified mail rather than registered mail.

F. Restrictions on Volume Discounts to Retailers. (AB 814, Chapter 291, Laws of 1977, repealed and recreated s. 66.054 (8a) (i) and s. 176.17 (5a), effective May 9, 1978.)

Prices charged by a wholesaler of fermented malt beverages or intoxicating liquors will have to be the same for all retailers making purchases in similar quantities from the wholesaler, regardless of whether the retailer is a "Class A" or "Class B" licensee. Any discount offered on fermented malt beverages or intoxicating liquors must be delivered to the retailer in a single transaction and single delivery, on a single invoice.

## IX. General

A. Grant Refunds During Waiver of Four-Year Period to Issue Individual Income and Corporation Franchise/Income Tax Assessments. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.10 (10) (a) and s. 71.11 (21) (title) and (d), effective for extensions in effect on May 19, 1978 and extensions entered into on or after May 19, 1978.)

If the department and the taxpayer enter into an agreement to extend the four-year period during which the department can make adjustments to tax returns, the department will be allowed to issue refunds (or assessments) determined by the department or claimed by the taxpayer during this extended period.

B. Failure to File Form 9c - \$25 Penalty. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.10 (18) (c), effective May 19, 1978.)

Persons who fail to file Form 9c, Report on Compensation Paid to Nonresident Entertainers, may be subject to a \$25 penalty (rather than a fine as provided in prior law). This penalty will be imposed in the same manner as income tax penalties are imposed.

C. Restrict Examination of Tax Returns. (AB 1220, Chapter 418, Laws of 1977, amended s. 71.11 (44) (a) and (c) (intro.), 3 and 6, repealed and recreated s. 71.11 (44) (c) 2, created s. 71.11 (44) (c) 7, s. 71.11 (44) (d) to (g), renumbered s. 71.11 (44) (d) to s. 71.11 (44) (h); amended s. 77.61 (5) (a) and (b) (intro.), 3 and 6, repealed and recreated s. 77.61 (5) (b) 2, created s. 77.61 (5) (b) 8 and s. 77.61 (5) (c) to (f), renumbered s. 77.61 (5) (c) to s. 77.61 (5) (g), effective May 19, 1978.)

Beginning May 19, 1978, only the following persons will be authorized to examine and receive information from Wisconsin individual income, corporation franchise/income, withholding, homestead credit, fiduciary, partnership, farmland preservation credit, gift and sales and use returns, and any schedules, exhibits, writings, or audit reports pertaining to such returns:

1. Secretary of Revenue, or any officer, agent or employee of the Department of Revenue.
2. Wisconsin Attorney General and Department of Justice employees.
3. District Attorneys, provided a court order is issued and other requirements are met. (If the department refers a tax case to a district attorney, the department can disclose tax information to a district attorney on its own motion.)
4. Employees of the State of Wisconsin, to the extent the Department of Revenue deems the examination necessary for such employees to perform their duties under contracts or agreements between the Department of Revenue and any other department, division, bureau, board or commission of Wisconsin relating to the administration of tax

laws or child support enforcement under s. 46.25.

5. Members of the Wisconsin legislative Joint Committee on Legislative Organization, Senate Committee on Organization and Assembly Committee on Organization or their authorized agents may examine tax returns under s. 71.11 (44). Only the Senate Committee on Organization and Assembly Committee on Organization or the authorized agents of either may examine sales and use tax returns under s. 77.61 (5).

6. Public officers of the federal government or other state governments (other than Wisconsin) or the authorized agents of such officers, where necessary in the administration of the laws of such governments, to the extent that such government accords similar rights of examination or information to the Wisconsin Department of Revenue.

7. The person who filed or submitted a return, or the person's authorized agent or attorney.

8. Any person examining a return pursuant to a court order duly obtained upon a showing to the court that the information contained in the return is relevant to a pending court action, or pursuant to a subpoena signed by a judge of a court of record ordering the Department of Revenue to produce a return in a court action pending before the judge.

9. Any person against whom the department asserts liability under Chapter 77, including a successor, guarantor or surety. (Such a person may only examine sales and use tax returns. Income and gift tax returns may not be examined.)