

NEW WISCONSIN TAX LAWS

This supplement to the October issue of the **Wisconsin Tax Bulletin** contains a brief description of the tax provisions in the 1979-1981 Budget Bill (Senate Bill 79, Chapter 34, Laws of 1979, published July 28, 1979).

I. INCOME TAX

A. Update Reference to Internal Revenue Code To December 31, 1978 (effective for 1979 taxable year and thereafter). For the 1979 taxable year and thereafter, an individual, partnership, estate or trust will use the Internal Revenue Code in effect on December 31, 1978 with these exceptions:

1. Child and dependent care expenses remain an itemized deduction for Wisconsin.
2. Special tax treatment of certain pollution control facilities as enacted in the federal "Tax Reform Act of 1976" (Section 2112 of P.L. 94-455) will not be allowed for Wisconsin.
3. Political campaign contributions remain an itemized deduction for Wisconsin.
4. Persons living abroad may claim the foreign earned income exclusion for Wisconsin, and not a deduction for expenses of living abroad as enacted by the federal "Revenue Act of 1978" (Sections 203 and 209 (c) of P.L. 95-615).
5. Changes by the federal "Revenue Act of 1978" (Section 164 of P.L. 95-600) concerning employers' educational assistance plans are not adopted for Wisconsin; therefore, employee benefits under an employer's nondiscriminatory educational assistance plan are taxable by Wisconsin although not under federal law.

B. Unemployment Compensation and Gain on Sale of Residence (effective for 1979 taxable year and thereafter). Senate Bill 1 enacted in February, 1979 provided that unemployment compensation benefits which are taxable for federal will also be taxable for Wisconsin. It also provided that \$100,000 of gain on the sale of a principal residence may be excluded if the taxpayer was 55 or older. As a result of updating the reference to the Internal Revenue Code to December 31, 1978 in Senate Bill 79, (which means that Wisconsin will automatically follow the 1978 federal law regarding unemployment compensation benefits and gain on sale of residence) sections 71.05 (1) (a) 11 and 12 in Senate Bill 1 are no longer needed and are therefore repealed in Senate Bill 79.

The creation of 71.05 (1) (K) and (L) in Senate Bill 79 provides that in determining the amount of taxable unemployment compensation and in computing the \$100,000 exclusion of gain from the sale of a residence under Section 121 of the Internal Revenue Code, married individuals may compute such amount, for Wisconsin purposes, on the same basis they do on a joint federal return.

C. Increase Wisconsin Standard Deduction for 1979 (effective for 1979 taxable year and thereafter). The Wisconsin standard deduction will be the larger of the low-income allowance or (1) \$2,300 for single persons or (2) for married persons—\$3,400 in total for husband and wife. The \$3,400 may be split between husband and wife in any manner they choose. (Note: The \$2,300

and \$3,400 standard deduction in Senate Bill 79 replaces the \$2,000 and \$2,900 standard deduction for 1979 enacted earlier in Senate Bill 1.)

D. Clarify 12% Property Tax and Rent Credit for Husband and Wife (effective for 1979 taxable year and thereafter). The method of two spouses calculating the 12% property tax and rent credit is clarified. The credit is computed by reference to a married couple's combined Wisconsin net tax liability; the married couple can then divide the total amount of credit between them as they choose. The credit remains a nonrefundable credit. For example, if a husband's total income is \$15,000 and his wife's is \$0 and the real estate tax on their jointly owned home is \$1,000, they compute their credit on the basis of \$1,000 ($\$1,000 \times 12\% = \120). They may divide the \$120 credit between themselves as they choose to reduce their income taxes.

E. Clarify that 12% Property Tax and Rent Credit is Not Allowed to an Estate, Fiduciary or Trust (effective for 1979 taxable year and thereafter). A definition of "claimant" is added to the law to clarify that this credit is available only to natural persons and not to a fiduciary, estate or trust. However, the new definition allows some other person (ex., surviving spouse or relative filing the decedent's income tax return) to file on behalf of a deceased natural person who is entitled to the credit.

F. Clarify Definition of Rent for 12% Property Tax and Rent Credit (effective for 1979 taxable year and thereafter) For the 12% property tax and rent credit, rent constituting property taxes shall not include any rent paid for the use of housing which was exempt from property taxation, except housing for which payments in lieu of taxes were made under s. 66.40 (22).

G. Convert Alternative Energy System Program for Individuals from a Tax Credit to a Direct Refund (effective for taxable years 1979 to 1984). Individuals who install an alternative energy system after the close of their 1978 taxable year will no longer be allowed a tax credit on their income tax return. Rather, for costs incurred on systems beginning with the 1979 taxable year, a direct refund will be made by the Wisconsin Department of Industry, Labor and Human Relations. This is the same agency which is responsible for certifying performance standards and costs for the alternative energy systems. (NOTE: Corporations will continue to file Schedule AE with the Department of Revenue to receive a rapid write-off tax benefit for expenditures for alternative energy systems.)

H. Allow 1978 Special Property Tax/Rent Credit to Joint Homeowners (Effective date: This applies to all persons eligible for the 1978 credit under this new law, however, the due date for filing a claim is December 31, 1979). If 2 or more individuals **not married to each other** jointly own and occupy (not rent) a homestead, each may claim the 1978 special property tax/rent credit for the portion of property taxes attributable to each person. The combined credit of these claimants shall not exceed the lesser of \$100 or 10% of total property taxes accrued on the homestead. (Note: Prior

to this law change in Senate Bill 79, only one occupant of a dwelling unit (whether owned or rented) was eligible for the credit. The law regarding occupants of rented dwelling units has not changed—only one occupant is eligible. Also, the law has not changed for husband and wife who jointly own a home.)

Example: Two brothers jointly own and occupy their homestead and both meet all qualifications for the credit. The total property taxes accrued for 1978 is \$900. Each brother can claim a 1978 special property tax/rent credit of \$45.

If a person has not yet claimed the credit but now is eligible under this new law, it is recommended that such person use Schedule PC to claim the credit. The due date for filing a claim for the credit is December 31, 1979.

I. Capital Gains of Nonresident Aliens (effective for 1980 taxable year and thereafter). A nonresident alien is required to make an add modification for net gains on the sale or exchange of capital assets with a Wisconsin situs under s. 71.07 (1), to the extent such gains are not included in federal adjusted gross income or federal taxable income, whether or not subject to tax under the internal revenue code.

II. CORPORATION FRANCHISE/INCOME TAXES

A. Disallow Corporate Deductions for Certain Business Expenses (effective for 1979 taxable year and thereafter). Corporations will not be permitted to deduct expenses which are not deductible under section 274 of the internal revenue code (ex., certain business entertainment, travel, gifts, and entertainment facilities). In addition, this provision codifies the department's policy of not allowing corporate deductions for athletic club, country club or social club dues, expenses, initiation fees, special assessments and taxes thereon, whether or not they are deductible under internal revenue code section 274.

B. Clarify Wisconsin Subchapter S Provisions. The following changes were made in Senate Bill 79 to clarify the Wisconsin law relating to Subchapter S corporations and are effective for the 1979 taxable year and thereafter.

1. Define Subchapter S Corporation as a "Tax-Option Corporation" A "tax-option corporation" is defined as a "corporation which has elected and qualified to be taxed under Subchapter S of the internal revenue code, and which has not terminated or had such election terminated". The term "tax-option corporation" replaces other terminology used to refer to Subchapter S corporations in the Wisconsin Statutes. (Note: In this supplement, "tax-option corporations" will be called Subchapter S corporations.)

2. Define "Net Income or Loss" of a Subchapter S Corporation. Net income or loss of a Subchapter S corporation is defined as gross income less:

- a. The allowable deductions under s. 71.04 of the Wisconsin statutes, except the deduction for deductible dividends under s. 71.04 (4); and
- b. A net business loss carry forward from taxable years prior to 1979. However, no such loss may be carried forward more than 5 years, nor may

gross income be reduced below zero. For Subchapter S corporations reporting under apportionment, a total company net business loss must be reduced by total company net income in each succeeding year, and any remaining loss may be offset against total company income of the Subchapter S corporation for 1979 and thereafter until entirely used or the 5-year carry forward period expires, whichever comes first.

3. Clarify the Deduction to be Taken by the Subchapter S Corporation and the Net Income or Loss to be Reported by Resident and Nonresident Shareholders. A profitable Subchapter S corporation may deduct net income as defined in s. 71.02 (1) (g) from gross income resulting in zero corporate net income, if resident and nonresident shareholders report their proper share of the corporation's net income. If the corporation is engaged in business in more than one state, the amounts reportable by resident and nonresident shareholders will differ, with the nonresident shareholder subject to tax on his or her proportionate share of the corporation's net income earned in Wisconsin. The resident shareholder will pay a tax on his or her share of the corporation's entire net income. If all shareholders do not report their proper share of net income, the corporation is subject to tax on its **entire** Wisconsin net income.

The section as amended also clarifies that shareholders may deduct their proportionate share of a corporation's net loss for the corporation's 1979 taxable year and thereafter but not in an amount greater than the shareholder's Wisconsin basis of the corporation's capital stocks and amounts receivable from the corporation. A nonresident shareholder may deduct only the proper share of the Wisconsin net loss.

4. Statement of Intent. The intent of all the statutes adopting federal Subchapter S language for Wisconsin is that no item of income, deduction or basis attributable to a given taxpayer shall be included in the taxpayer's taxable income more than once, nor may any such item be omitted. For example, a distribution of earnings and profits by a corporation to its shareholders may be either taxable as a dividend or an exempt distribution, depending upon whether or not the earnings and profits distributed were previously taxed to the shareholder.

5. Clarification of the Taxable Pre-1979 Earnings and Profits. The add modification for distributions received by a resident shareholder from a Subchapter S corporation's earnings and profits accumulated prior to the beginning of the 1979 taxable year has been clarified. Only distributions of such earnings **not** considered a taxable dividend for federal purposes when distributed are to be treated as an add modification on the shareholder's Wisconsin return.

6. Transitional Adjustment to Eliminate 1978 Subchapter S Income or Loss Included in Shareholders' 1979 Federal Adjusted Gross Income. An add or subtract "transitional" adjustment is provided to eliminate a shareholder's share of a Subchapter S corporation's 1978 federal undistributed taxable income or federal loss from 1979 federal adjusted gross income when the corporation's taxable year differs from the shareholder's tax year. For example, if the corporation's tax year ends on March 31, 1979 (a 1978 tax year) and a

shareholder reports on a calendar year basis, the shareholder's 1979 federal adjusted gross income will include the shareholder's share of the corporation's undistributed taxable income or tax loss for the year ended March 31, 1979. This amount must be removed from the shareholder's 1979 federal income by an add or subtract modification, as appropriate.

7. Clarify Modification for Difference in the Corporation's Federal and Wisconsin Net Income. The shareholder's share of the difference in a Subchapter S corporation's federal taxable income or loss and net income or loss computed under Chapter 71 of the Wisconsin statutes is added to or subtracted from the shareholder's federal adjusted gross income, as appropriate, so that all of the corporation's net income or loss computed under Chapter 71 is attributed to its shareholders. The amendment clarifies that net losses as well as net income are to be considered in making this modification. In addition, the amendment provides an add or subtract modification to prevent an item of income, deduction or basis from being included more than once or omitted from a shareholder's Wisconsin taxable income.

8. Nonresident Shareholders of Multistate Subchapter S Corporations. A nonresident shareholder of a Subchapter S corporation engaged in business in more than one state must report his or her share of the corporation's net income or loss derived from business transacted and property located in Wisconsin as computed under s. 71.07(2) of the statutes. On the other hand, a resident shareholder of such corporation must report his or her share of the corporation's entire net income or loss.

9. Copy of Subchapter S Corporation's Federal Return Required. All Subchapter S corporations must attach an exact copy of their federal income tax return to their Wisconsin income or franchise tax return. They must also submit to the Wisconsin Department of Revenue any other return or statement filed with or received from the Internal Revenue Service affecting the taxation of its shareholders.

III. HOMESTEAD CREDIT

A. Reduce Property Taxes or Rent if Claimant Received General Relief of \$400 or More in Any Month (effective for claims for 1979 and thereafter). Property taxes accrued or rent must be reduced 1/12 for each month for which a claimant receives general relief of \$400 or more from any municipality or county. (Note: This new law in Senate Bill 79 replaces a provision in Senate Bill 1 enacted earlier which required homestead credit claimants to prorate property taxes or rent if the claimant received general relief equal to or in excess of standards in s. 49.19 (11) (a).)

B. Remove References to Obsolete Section 79.25 (effective July 29, 1979). References to s. 79.25, entitled "Improvements tax relief", were deleted from the homestead credit law because the statute had been held unconstitutional and void by the Wisconsin Supreme Court.

IV. FARMLAND PRESERVATION CREDIT

A. Benefit Formulas Changed (effective for claims for 1979 and thereafter). The formulas used to determine Farmland Preservation Credit benefits have been revised to direct a greater amount of available benefits to those farmland owners with lower incomes and property taxes. (The 1979 farmland preservation credit tables will reflect these formula changes.)

B. Subchapter S Corporations (effective for claims for 1979 and thereafter). When eligible farmland is owned by a Subchapter S corporation, the shareholders (not the corporation) are to be the claimants for Farmland Preservation Credit benefits. Each shareholder's claim will be based on the property taxes accrued on the farmland as reflects the shareholder's percentage of ownership in the Subchapter S corporation.

C. Another Member of Claimant's Household Owning Farmland (effective for claims for 1979 and thereafter). Persons filing a farmland preservation credit claim may determine their benefit not only on the basis of taxes attributable to eligible farmland which they own, but also on the basis of taxes attributable to eligible farmland which any other member of their household owns.

V. SALES AND USE TAXES

A. Sellers of Electricity and Natural Gas Not Required to Obtain Exemption Certificates for 100% Exempt Sales (effective November 1, 1979 and thereafter) Senate Bill 1, which was enacted in February, 1979, provides a November through April (effective November 1, 1979) exemption for sales of electricity sold for farm or residential use, and for sales of natural gas sold for residential use.

The new law in Senate Bill 79 provides that a seller of electricity or natural gas is not required to obtain exemption certificates from accounts which are 100% exempt and which are properly classified as residential or farms pursuant to utility rate schedules which are filed for rate tariff purposes with the Public Service Commission and which are in force at the time of the sales or which are properly so classified for classification purposes as directed by the federal Rural Electrification Administration. (Note: Exemption certificates will be required for sales which are partly exempt and partly taxable.)

B. Chemicals and Supplies Used in a Waste Treatment Facility are Exempt (effective September 1, 1979 and thereafter). A sales and use tax exemption is provided for chemicals and supplies used or consumed in operating a waste treatment facility, including commercial and industrial waste treatment facilities. (Municipalities can purchase such items without tax under s. 77.54 (9a).)

C. Clarify Imposition of Sales/Use Tax on Occasional Sales of Boats Registered with U.S. Coast Guard (effective July 29, 1979 and thereafter). Section 77.51 (7) (am) was previously amended in Senate Bill 1 so that boats registered or required to be registered with the U.S. Coast Guard became subject to the tax. The amendment to s. 77.54 (7) in Senate Bill 79 clarifies

that tax imposition by clearly removing such boat sales from the occasional sale exemption.

D. Admission Fees or Stickers to State Parks and Forests are Exempt (effective July 29, 1979 and thereafter). Under prior law, gross receipts from admission fees to "state parks and forests" were exempt from the sales tax until December 31, 1979. The amendment to s. 77.54 (10) in Senate Bill 79 clarifies that the exemption applies to all admission fees or admission stickers to state parks and forests. The exemption, however, will not expire on December 31, 1979, but will become a continuing exemption.

VI. INHERITANCE AND ESTATE TAX

Clarify Law Allowing Instalment Payments of Inheritance and Estate Taxes when Estate Consists Largely of Interest in Closely Held Business (including farming) (effective for taxes arising from deaths occurring on or after July 1, 1979). The amendments to s. 72.22 (4) (a) are for clarification:

- 1) In the first sentence, "estate" is substituted for "distributee" because under federal law the tax applies to the estate (not to distributees) and an estate would make the election to pay in instalments.
- 2) The federal Internal Revenue Code in effect on December 31, 1978 has 2 sections under which an estate may elect to pay the tax in instalments. This amendment clarifies that the estate would be eligible for Wisconsin instalment payments if the estate is eligible for federal instalments under either federal section.
- 3) A sentence is added to clarify that the rate of interest to be charged for Wisconsin is 9% per year from the date of death until paid if an election is made to pay the Wisconsin tax in instalments.

The amendments to s. 72.62 conforms this provision to other laws which generally provide that the state estate tax is paid out of the residual portion of an estate.

VII. EXCISE LAWS

A. Require Department of Revenue to Administer Unfair Sales Act for Cigarette Sales (effective July 1, 1980 and thereafter). Administration of the Unfair Sales Act as it relates to sales of cigarettes is transferred to the Department of Revenue from the Department of Agriculture, Trade and Consumer Protection. Only the Department of Revenue may adopt rules applying to cigarette sales and may bring legal actions to enjoin violations of the Unfair Sales Act for cigarettes.

B. Codify Application of Unfair Sales Act to Wholesale Cigarette Sales (effective July 1, 1980 and thereafter). A provision is added to the Unfair Sales Act (s. 100.30) providing that the 3% minimum mark-up requirement for wholesalers does not apply to wholesale sales of cigarettes between distributors. "Distributor" is defined as a distributor, jobber, vending machine operator or multiple retailer as defined in s. 139.30 (the cigarette tax law).

C. Change Cigarette Law Definition of "Jobber", "Vending Machine Operator" and "Multiple Retailer" and Increase Permit Fees for "Jobber", "Vending Machine Operator", "Multiple Retailer" and "Distributor" (effective July 1, 1980 and thereafter). Prior law defined a cigarette jobber as a person who: (1) acquires stamped cigarettes from manufacturers or distributors (2) stores them and (3) sells them to retailers for resale. Another statute qualifies this by providing that no person may be issued a jobber permit if the person owns and operates a retail outlet unless a "substantial part" of the person's sales are at wholesale (s. 139.34 (5)).

The new law, effective July 1, 1980, modifies this definition most significantly in the 3rd point above, i.e., by providing to whom the jobber must sell in order to qualify for a permit. Under the revised definition, a "jobber" would be a person who: (1) acquires stamped cigarettes (2) sells them to a person other than the ultimate consumer and (3) sells to at least 25 retail outlets and sells at least 75% of total cigarette volume to retail outlets in which the person, and the person's spouse, children, parents, brothers and sisters, have a total ownership interest of 10% or less.

Prior law defined a "vending machine operator" as a person who: (1) acquires stamped cigarettes from manufacturers or permittees (2) stores them and (3) sells them through vending machines which the person owns, operates or services and which are located on premises which are owned or under the control of other persons.

The new law, effective July 1, 1980, modifies only the third item above. Under the revised definition, a person can qualify for a vending machine operator's permit only if the person sells through vending machines which are on at least 25 separate premises owned or under the control of other persons.

Prior law defined a "multiple retailer" as a person who: (1) acquires stamped cigarettes from manufacturers or permittees (2) stores them and (3) sells them to consumers through 10 or more retail outlets which the person owns and operates, both within and outside Wisconsin.

The new law, effective July 1, 1980, modifies only the third item above. The revised definition would require a person to qualify for a multiple retailer permit, to sell to consumers through 50 (not 10) or more retail outlets, at least 25 of which must be located in Wisconsin.

The new law, effective July 1, 1980, changes the amounts of fees charged for certain cigarette permits. The fee increase for permits issued to distributors will increase from \$50 to \$500 and the increase for permits issued to jobbers, vending machine operators and multiple retailers will increase from \$50 to \$250.

D. Limited Manufacturer's Intoxicating Liquor Permit (effective July 29, 1979 and thereafter). A "limited manufacturer's permit" may be issued by the secretary of revenue at an annual fee of \$10 to manufacturers of intoxicating liquor if the intoxicating liquor is used for fuel in an internal combustion engine. (The annual fee for a regular Wisconsin manufacturer's permit is \$750.) A limited manufacturer's permit holder may use or sell the intoxicating liquor produced only if it is rendered unfit for use as a beverage.