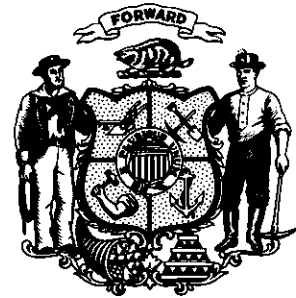


# WISCONSIN TAX BULLETIN

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## WISCONSIN ADOPTS FEDERAL IRA AND KEOGH CHANGES

One of the tax provisions in the budget adjustment bill, Chapter 317, Laws of 1981, provides that Wisconsin will follow the IRA (Individual Retirement Account) and Keogh retirement plan changes enacted by Congress in the Economic Recovery Tax Act of 1981. The major changes permit employees covered by employer-sponsored retirement plans to establish IRAs and increase the deduction limits. The federal changes will apply for Wisconsin purposes retroactive to January 1, 1982.

Additional information on IRAs will appear in the October issue of the Wisconsin Tax Bulletin.

## ADJUST DECLARATION PAYMENTS FOR 10% SURTAX

For taxable years 1982 and 1983, a surtax of 10% will be imposed on corporations. The surtax will be 10% of the corporation's tax, before reduction for any payments or credits, including the sales tax credit on fuel and electricity, farmland preservation credit, or declaration of estimated tax payments.

For the 1982 taxable year, any declaration payments that would have been due before July 1, 1982 solely because of the 10% surtax shall be prorated equally among, and paid with, any payments due on or after July 1, 1982. Any addition to tax penalty for underpayment of estimated taxes will be computed on the basis that the surtax for the 1982 taxable year was required to be included with installment payments due on or after July 1, 1982.

**Example:** A corporation filing on the calendar year estimated a \$10,000 tax liability (\$12,000 gross tax less

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\$2,000 sales tax credit) for 1982. Installment payments of \$2,500 were made on both March 15 and June 15, 1982.

The corporation's third and fourth installment payments are computed as follows:

\$10,000	estimated net tax liability before surtax
<u>1,200</u>	add: 10% surtax (10% x 12,000 gross tax)
\$11,200	estimated payments required for 1982
<u>5,000</u>	installment payments made prior to July 1, 1982
\$ 6,200	remaining estimated tax payments required
\$ 3,100	installment payments due September 15, 1982 and January 15, 1983 (6,200 ÷ 2 = \$3,100)

## HOWICK CASE - STATUS OF RULES 2.30 AND 2.97

The department is in the process of amending administrative rule Tax

2.30 and repealing rule Tax 2.97 relating to the determination of gain on assets acquired prior to becoming a Wisconsin resident. The changes to these rules are being proposed so that the principles established by the Wisconsin Supreme Court's decision in the Romain A. Howick case relating to losses will also apply for determining gains when property acquired before becoming a Wisconsin resident is sold by an individual while he or she is a Wisconsin resident. After the changes are adopted, the computation of both gains and losses from the disposition of such property will generally be determined in the same manner for Wisconsin as for federal purposes.

The standing committees of both houses of the Wisconsin Legislature have completed their review of the proposed rule changes and approved them. Therefore, the rule changes will probably be effective on August 1, 1982, if they are published by the Revisor of Statutes in July as scheduled.

(Note: As of the date of printing this WTB, the effective date of these rule changes was not known.)

## NEW WISCONSIN TAX LAWS

The April issue of the Wisconsin Tax Bulletin included explanations of new tax laws enacted in the budget adjustment bill, Senate Bill 783 (Chapter 317, Laws of 1981). In addition to the tax provisions in that bill, the Legislature also enacted other new tax laws in 1982 as explained below:

### Income Taxes And Corporation Franchise/Income Taxes

1. Deduction Allowed for Contributions Made to the Community Development Finance Authority

(Chapter 371, Laws of 1981, amends 71.02 (2) (f) and 71.60 (1) (a) (intro.), creates 71.04 (5m) and 71.09 (12m), effective July 1, 1982).

A deduction is allowed for contributions which individuals and corporations make to the Community Development Finance Authority. The deduction is an itemized deduction for individuals. For corporations it is a deduction from gross income. In both cases, the amount of deduction available must be reduced by any credit claimed under s. 71.09 (12m). (See item 2 below for an explanation of this new credit.)

For individuals this new itemized deduction will *not* be considered a tax preference item for purposes of computing adjusted itemized deductions subject to the Wisconsin minimum tax.

The Community Development Finance Authority is a newly authorized nonprofit public corporation which is being created to develop or redevelop blighted or impoverished areas in Wisconsin.

**2. Credit for Investment in Community Development Finance Company** (Chapter 371, Laws of 1981, creates 71.09 (12m), effective July 1, 1982).

Individuals and corporations making a contribution to the Community Development Finance Authority and, in the same year, purchasing common stock or a partnership interest in the Community Development Finance Company will be allowed to claim a credit against Wisconsin income/franchise taxes otherwise due. The credit is nonrefundable and the amount allowable is equal to 75% of the purchase price of the stock or partnership interest, but not to exceed 75% of the amount which was contributed to the Community Development Finance Authority. Any unused portion of a credit may be carried forward for an unlimited time, until it is completely used up.

The Community Development Finance Company is an entity which will be created by the Community Development Finance Authority described in item 1 above. The statutes specify that it must be organized as either a corporation or a limited partnership.

**3. Extend Deadline for Filing Refunds and Making Assessments**

**Caused by Adjustments to the Basis of Partnership Interest** (Chapter 139, Laws of 1981, amends 71.10 (10) (bn) and 71.11 (21) (bm), creates 71.10 (10) (h), effective only for 1975 taxable year).

Current Wisconsin law (s.71.05 (4) (b) as created by Chapter 277, Laws of 1979) provides that whenever a Wisconsin resident disposes of an interest in a partnership in a transaction in which gain or loss is recognized, a modification must be made to reflect any increases or decreases in the basis of the partnership interest which occurred in taxable years prior to 1975 as a result of losses or gains relating to business or property which had a situs outside of Wisconsin under the provisions of s. 71.07 in effect for years prior to 1975.

The law provides modification adjustments which have the effect of reversing any adjustments made to the federal basis of a partnership interest for distributive shares of pre-1975 income and losses derived from partnership business or property located outside of Wisconsin. For example, a taxpayer reports a gain of \$3,500 on his or her 1981 federal return for the following transaction:

Original investment	\$10,000
Distributive share of pre-1975 losses	(8,000)
Distributive share of pre-1975 income (not withdrawn)	3,000
Distributive share of 1975-80 losses	(1,500)
Distributive share of 1975-80 income (not withdrawn)	<u>2,000</u>
Basis of partnership interest on 1-1-81	5,500
Selling price on 1-1-81	<u>9,000</u>
Gain	<u>\$ 3,500</u>

In this example the taxpayer would claim a subtraction modification of \$5,000 on his or her 1981 Wisconsin income tax return. This would reverse the \$5,000 decrease (pre-75 loss of \$8,000 minus pre-75 gain of \$3,000) made in the federal basis for pre-1975 out-of-state income and losses.

When this modification in current law was created, in Chapter 277, Laws of 1979, it applied retroactive to the 1975 tax year. However, when Chapter 277 became effective on May 13, 1980, the filing deadline for 1975 tax year refunds (April 15, 1980) had already expired.

Under the new law in Chapter 139, Laws of 1981, an exception is created to the four year statute of limitations. Refunds may be claimed and assessments made for the 1975 taxable year if they relate to a change in the basis of a partnership interest under s. 71.05 (4) (b) and if the refund is claimed or the assessment is made before May 13, 1984.

#### Sales and Use Taxes

**1. Exemption for Motor Vehicles Transferred to a Corporation** (Chapter 264, Laws of 1981, amend 77.54 (7), effective January 1, 1983).

The transfer of a motor vehicle from an individual to a corporation which is solely owned by such individual is exempt from sales and use tax.

#### Excise Taxes

**1. Require Municipalities Which Issue Alcoholic Beverage Licenses to Issue Such Licenses to Private Golf, Tennis, Curling and Yachting Clubs** (Chapter 220, Laws of 1981, amends 125.51 (5) (a) 1 and 4, creates 125.51 (4) (j), effective July 1, 1982).

Private sports clubs holding "Class B" liquor licenses issued by the department on June 30, 1982 will be issued their "Class B" alcoholic beverage licenses by the local municipalities on and after the effective date of this act. The department will continue to issue "Class B" licenses only to those sports clubs located in municipalities which do not, by referendum, issue such licenses.

**2. Allow the Transfer of Retail Alcoholic Beverage Licenses to Licensee's Spouse** (Chapter 235, Laws of 1981, amends 125.01 (12) (b) 1, effective July 1, 1982).

This new law will enable a municipality, upon application, to transfer a locally issued retail alcoholic beverage license to a qualified licensee's spouse should the licensee become disabled. When such transfer occurs, the spouse is exempt from payment of license fees in the year of transfer.

**3. Provide for Municipally Issued Temporary Operator's Licenses for Bartenders** (Chapter 170, Laws of 1981, amends 125.17 (3), creates 125.17 (4), effective July 1, 1982).

Municipalities are allowed to issue temporary operator's licenses (one to fourteen days) to persons employed by, or donating services to, nonprofit organizations.

**4. Allow Unaccompanied Minors Present in Private Tennis Clubs** (Chapter 265, Laws of 1981, amends 66.054 (19) (c) and 176.32 (1) (c), effective April 27, 1982).

Unaccompanied minors are permitted to enter and remain on premises licensed for the sale of alcoholic beverages if such premises are private tennis clubs.

**NEW ISI & E DIVISION RULES AND RULE AMENDMENTS IN PROCESS**

Listed below, under parts A, B and C, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of June 15, 1982. Part D lists new rules and amendments which have been adopted in 1982.

**A. Rules At Legislative Council Rules Clearinghouse**

- 2.165 Change in taxable year (amendment)
- 2.39 Apportionment method (amendment)
- 2.40 Nonapportionable income (repealed and recreated)
- 2.82 Nexus (amendment)
- 11.01 Sales and use tax return forms (amendment)
- 11.03 Elementary and secondary schools and related organizations (amendment)
- 11.05 Governmental units (amendment)
- 11.08 Medical appliances, prosthetic devices and aids (amendment)
- 11.10 Occasional sales (amendment)
- 11.11 Waste treatment facilities (amendment)
- 11.16 Common or contract carriers (amendment)

- 11.17 Hospitals, clinics and medical professions (amendment)
- 11.26 Other taxes in taxable gross receipts and sales price (amendment)
- 11.38 Fabricating and processing (amendment)
- 11.49 Service station and fuel oil dealers (amendment)
- 11.57 Public utilities (amendment)
- 11.66 Communication and CATV services (amendment)
- 11.69 Financial institutions (amendment)
- 11.71 Automatic data processing (new rule)
- 11.84 Aircraft (amendment)
- 11.85 Boats, vessels and barges (amendment)
- 11.87 Meals, food, food products and beverages (amendment)
- 11.93 Annual filing of sales tax returns (amendment)
- 11.97 "Engaged in business" in Wisconsin (amendment)

**B. Rules At Legislative Standing Committees**

- 10.14 Valuation of United States treasury bonds (new rule)
- 11.56 Printing industry (new rule)

**C. Rules Approved By Legislature But Not Effective**

- 2.30 Property located outside Wisconsin—depreciation and sale (amendment)
- 2.97 Sale of constant basis assets acquired prior to becoming a Wisconsin resident (repeal)
- 5.01 Filing reports (amendment)
- 10.10 Taxation of savings, mortgage and credit life insurance (amendment)
- 10.11 Federal estate tax deduction (amendment)

- 10.12 Deductibility of income taxes (amendment)
- 10.13 Apportionment of property qualifying for exception (new rule)

**D. Rules Adopted In 1982 (In parentheses is the date the rule was adopted.)**

- 2.081 (3) Indexed income tax rate schedule for taxable year 1981 (1/1/82, new rule)
- 11.12 Farming, agriculture, horticulture and floriculture (1/1/82, amendment)
- 11.16 Common or contract carriers (1/1/82, amendment)
- 11.40 Exemption of machines and processing equipment (1/1/82, amendment)
- 11.53 Temporary events (2/1/82, new rule)

**HOW TO APPEAL AN ASSESSMENT**

Do you disagree with an assessment for additional taxes that you receive from the Department of Revenue? There are five steps in the appeal process which are available to a taxpayer who disagrees with an assessment of income, franchise, sales/use, gift, and withholding taxes. The five steps are taken in the following order: (1) Appellate Bureau of the Wisconsin Department of Revenue, (2) Wisconsin Tax Appeals Commission, (3) Circuit Court, (4) Court of Appeals, and (5) Wisconsin Supreme Court. This article discusses the first two steps.

**Appeals to Appellate Bureau**

Any taxpayer may appeal to the Appellate Bureau if the taxpayer disagrees with an office audit or field audit assessment, a notice of refund or a denial of a claim for refund. An appeal must be in writing and should state the specific reasons for objecting to the adjustments. The appeal should be mailed to the Wisconsin Department of Revenue, Appellate Bureau, P.O. Box 8906, Madison, WI 53708.

The appeal must be filed within 60 days of the date the taxpayer received the assessment notice, notice of refund or denial of claim for

refund. An appeal is considered "filed" with the Appellate Bureau if it is (1) actually received by the department within the 60 days, or (2) mailed in a properly addressed envelope with postage prepaid, which is postmarked before midnight of the 60th day and received by the department within 5 days of the 60th day. Except for the 2-year claim for refund procedure described below, an assessment becomes final if an appeal is not filed with the Appellate Bureau within this 60 day period.

(Note Regarding Office Audit Assessments: In the alternative, for an *office audit* assessment, a taxpayer may pay the full amount of the assessment without filing a timely objection. If the taxpayer later wishes to contest some or all of the adjustments a claim for refund may be filed. This claim for refund must be filed within 2 years from the date the assessment notice was issued. If the 60 days for appealing an assessment to the Appellate Bureau have expired and a taxpayer still wishes to contest an office audit assessment, payment of the assessment and a claim for refund is the only procedure available.

The claim for refund should be made by a letter addressed to the Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708. No special form is required. The letter should contain the taxpayer's name, address and social security number or corporation identification number, identify the tax year in question and state the facts and reasons for disagreeing with the assessment.

The Audit Bureau will notify the taxpayer in writing whether the claim for refund is approved or denied. If the claim is denied, the taxpayer may file an appeal with the Appellate Bureau within 60 days after receiving the denial notice. CAUTION: This claim for refund procedure may NOT be used if any part of the assessment was the subject of a timely filed appeal.)

In order to stop the accumulation of interest, a taxpayer may deposit the amount of an additional assessment, including any interest and penalty, with the Department of Revenue at the time the appeal is filed, or at any time before the Appellate Bureau issues a decision on the appeal. Any deposited amount which is later refunded will bear in-

terest at the rate of 9% per year. A taxpayer may also pay any portion of an assessment which he or she admits to be correct. Such payment shall then be considered an admission of the validity of that portion of the assessment and may not be recovered in an appeal or any other action or proceeding.

Most appeals to the Appellate Bureau are handled by correspondence. A conference may be held if requested by the taxpayer although in some cases it may be suggested by the Appellate Bureau because of complex issues. Conferences may be held in Madison, Milwaukee, Eau Claire or Appleton. Taxpayers may represent themselves or be represented by another person, such as an attorney or an accountant.

The conferences are informal. The taxpayer may present whatever facts or arguments he or she desires. These may be presented either orally or in writing or both.

The Appellate Bureau will notify the taxpayer in writing of its decision on the appeal.

#### Wisconsin Tax Appeals Commission

The Wisconsin Tax Appeals Commission is a five member panel. It is entirely separate from the Department of Revenue. If a taxpayer disagrees with a decision of the Appellate Bureau and wishes to appeal it, the appeal must be taken to the Commission.

The appeal is taken by filing a "petition for review" with the Commission. A \$5.00 filing fee must be submitted with each petition, except that there is no filing fee for appeals of homestead credit, farmland preservation credit, and 1978 Property Tax/Rent Credit cases. If assessments were issued against husband and wife (one assessment against each) and each desires to appeal the Appellate Bureau's decision, each spouse must file a separate petition with the Commission and submit the \$5.00 filing fee.

Late petitions are not permitted. A "petition for review" is timely "filed" with the Commission if it is:

a) Actually received by the Commission within 60 days of the date the taxpayer received the Appellate Bureau's decision; or

b) Mailed to the Commission by certified mail in a properly addressed envelope with postage prepaid by the 60th day after receipt of the Department of Revenue's notice of action.

The petition must summarize the facts involved in the appeal and must contain a statement of the tax laws involved. An original plus four copies of the petition must be filed with the Commission.

The Tax Appeals Commission will notify the taxpayer and the legal staff of the Department of Revenue of the time and place for the hearing on the petition.

The taxpayer may appear on his or her own behalf or may be represented by an attorney. However, the taxpayer is required to attend the hearing (an officer may appear for a corporation) and testify under oath about the facts involved in the dispute. An unexcused failure to appear may result in dismissal of the petition.

The hearing is conducted in a manner similar to a trial in court. The taxpayer, besides giving sworn testimony, may present witnesses and written evidence in support of his or her position. The Department of Revenue will be represented by an attorney who also may present witnesses and written evidence supporting the department's position.

If issues involving interpretations of the tax law are involved in the appeal, the Commission may ask the taxpayer and the Department of Revenue to file summaries of the law or briefs on the legal questions.

After reviewing the evidence and testimony, the Commission will issue a decision and order. Generally, a decision is in writing. However, with the consent of both parties, an oral decision may be given. A decision and order of the Commission is binding on both parties for that case unless an appeal is taken to Circuit Court.

If the Commission construes a statute adversely to the contention of the Department of Revenue, the department is deemed to have acquiesced in the construction of the statute unless it (1) appeals the decision to Circuit Court, or (2) issues a notice of nonacquiescence in the decision as provided for by s. 73.01 (4) (e) 2. The effect of nonac-

quiescence is that even though the Commission's decision and order is binding for that case, the rationale and construction of the statutes is not binding upon or required to be followed by the department in other cases.

In addition, another provision of the law permits both parties to agree in writing to waive the right to appeal an oral decision. In such case, the oral decision shall not be binding upon the department as to statutory construction in a subsequent matter.

Note: If the taxpayer chose not to deposit the taxes with the department at the time his/her case is before the Appellate Bureau, the taxpayer may at the time of the appeal to the Commission, elect to either deposit the total taxes and interest with the State Treasurer or pay the portion of the assessment not being appealed. Either election should be set forth in the petition for review with the Commission.

#### INTERSPOUSAL TRANSFERS EXEMPT FROM GIFT AND INHERITANCE TAX

Gifts made between spouses on or after July 1, 1982 are exempt from Wisconsin gift taxes. For the first six months of 1982 (January 1-June 30, 1982), gifts between spouses were subject to Wisconsin gift taxes, however, there was a lifetime personal exemption between spouses of \$100,000, plus the \$3,000 annual exemption.

Property inherited from a spouse is exempt from Wisconsin inheritance taxes for deaths occurring on or after July 1, 1982.

The interspousal exemption for both gift and inheritance taxes was passed by the Legislature in late 1981.

#### TAXPAYER ASSISTANCE AVAILABLE

Although most taxpayer assistance activity is concentrated in the January through April 15 filing season each year, the department does offer assistance in answering Wisconsin tax questions throughout the year. However, for the portion of the year after April 15, assistance in many of the department's offices is available on a more limited basis than during the filing season.

The schedule below indicates the locations of the various offices, their telephone numbers, and the times they will be open for the rest of 1982. It is suggested that persons who visit one of the offices indicated as being open only on Mondays call in advance and make an appointment.

#### Offices Providing Daily Assistance (Monday-Friday 7:45 AM to 4:30 PM)

Location	Address	Telephone
Appleton	265 W. Northland	(414) 735-5001
Eau Claire	718 W. Clairemont	(715) 836-2811
Madison	4638 University Avenue	(608) 266-2772
Milwaukee	819 N. Sixth St.	(414) 224-4000

#### Offices Providing Assistance on Mondays Only

Baraboo	1007 Washington	(608) 267-9089
Barron	Courthouse	(715) 537-3621
Beaver Dam	211 S. Spring St.	(414) 887-8108
Beloit	165 Liberty St.	(608) 362-0044
Elkhorn	300 S. Lincoln St.	(414) 723-4098
Fond du Lac	160 S. Macy St.	(414) 929-3985
Grafton	101 Falls Road	(414) 377-6700
Green Bay	1600 W. Shawano	(414) 497-4230
Hayward	221 Kansas Ave.	(715) 634-8478
Hudson	753 Sommer St. N.	(715) 386-8225
Janesville	115 S. Franklin	(608) 755-2750
Kenosha	5500 8th Ave.	(414) 656-7100
La Crosse	620 Main	(608) 785-9721
Lancaster	237 W. Hickory St.	(608) 723-2641
Manitowoc	1314 Memorial Drive	(414) 684-1909
Marinette	Courthouse	(715) 735-5498
Marshfield	630 S. Central Ave.	(715) 362-6749
Monroe	1220 16th Ave.	(608) 325-3013
Oshkosh	Courthouse	(414) 424-2100
Park Falls	1114 S. 4th Ave.	(715) 762-2160
Racine	616 Lake Ave.	(414) 636-3711
Rhineland	Sunrise Plaza	(715) 362-6749
Shawano	1456 E. Green Bay St.	(715) 526-5647
Sheboygan	504 S. 14th St.	(414) 459-3101
Superior	Courthouse	(715) 394-0204
Tomah	City Hall	(608) 372-3256
Watertown	415 E. Main St.	(414) 261-7700
Waukesha	261 South St.	(414) 544-8690
Waupaca	201 1/2 S. Main St.	(715) 258-9564
Wausau	Courthouse Annex	(715) 847-5380
West Bend	429 Walnut St.	(414) 338-4730
Wisconsin Rapids	1681 Second Ave. S.	(715) 421-0500

The offices providing assistance on Mondays only are open on Monday mornings, except for Green Bay, La Crosse, Kenosha, Racine, Waukesha and Wausau which are open from 7:45 AM to 4:30 PM on Mondays.