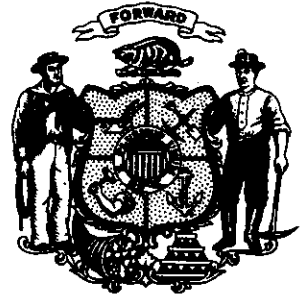


# WISCONSIN TAX BULLETIN

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## INCOME BRACKETS INDEXED FOR 1982

The income brackets for individuals, estates and trusts are indexed (adjusted) each year to reflect the percentage change which has occurred in the consumer price index from June of the preceeding year to June of the current year (s. 71.09 (2), Wis. Stats.). The index which is used for this purpose is the U.S. consumer price index for all urban consumers, U.S. city average. The maximum adjustment permitted for any single year is 10%. Only the income brackets are adjusted; the tax rates are not changed.

In June of 1981 the consumer price index was 271.3 and in June of 1982 it was 290.6. This represents a percentage change of 7.1%. The 1981 income brackets for individuals have therefore been adjusted by this percentage. The new income brackets for the 1982 taxable year are shown below, as well as the tax rate which applies to each bracket.

Income Brackets	Tax Rate
\$ 0 - 3,900	3.4%
3,900 - 7,700	5.2%
7,700 - 11,700	7.0%
11,700 - 15,500	8.2%
15,500 - 19,400	8.7%
19,400 - 25,800	9.1%
25,800 - 51,600	9.5%
51,600 and over	10.0%

Administrative rule Tax 2.081 is in the process of being revised to reflect the new brackets for 1982.

## IRA TREATMENT FOR WISCONSIN

**Federal:** The federal Economic Recovery Tax Act of 1981 provides new eligibility standards for individ-

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ual retirement accounts (IRA's). Beginning with the 1982 tax year, an individual who is an active participant in any qualified employer retirement plan will now be permitted to establish an IRA.

The person may deduct on his or her federal income tax return the amount contributed to the IRA. The maximum deduction allowable for contributions which an individual makes to his or her IRA is \$2,000 or 100% of the individual's earned income for the year, whichever amount is smaller. If husband and wife both work and meet the IRA qualifications, the maximum deduc-

tion available for contributions which they make to their IRA's is \$4,000 per year on a joint federal return, or \$2,000 each if they file separate federal returns.

A person with a nonworking spouse is subject to the \$2,000 annual maximum unless a spousal IRA is established for a nonworking spouse. If a regular IRA is established for the working spouse and a spousal IRA for the nonworking spouse, the total amount that may be deducted by husband and wife for contributions they make to both IRA's is \$2,250 or 100% of the working spouse's earned income, whichever amount is smaller. Assuming a married couple's total IRA deduction is \$2,250, the contribution they make to each spouse's IRA must be \$2,000 or less and the total contributions to both IRA's may not exceed \$2,250.

**Wisconsin:** Chapter 317, Laws of 1981 created s. 71.02 (2) (b) 8, Wis. Stats., to provide that individuals must compute their 1982 Wisconsin income and deductions (with a few exceptions), under the federal Internal Revenue Code in effect on December 31, 1981. This reference to the December 31, 1981 code means that Wisconsin follows the new federal IRA provisions.

On a 1982 Wisconsin income tax return, Form 1, each spouse will be allowed to claim a deduction for contributions made to his or her IRA account. (Form 1A, the short form, may not be used to claim IRA deductions.)

The maximum deduction allowable for contributions which an individual makes to his or her IRA is \$2,000 per spouse. In situations involving a

spousal IRA, a further limitation of \$2,250 in the aggregate for both spouses applies; however, a spouse may only deduct the contributions made to his or her IRA account.

**Example 1:** Spouse A has earned income of \$30,000 for 1982 and has established an IRA account for both himself and his nonworking spouse. Contributions totaling \$2,000 are made to his IRA during 1982 and \$250 is contributed to his nonworking spouse's IRA.

IRA deduction allowable on 1982 Wisconsin return, Form 1:

Spouse A: \$2,000  
Spouse B: \$250

**Example 2:** Same facts as in example 1, except that the contribution to Spouse A's IRA is \$1,125 and the contribution to the nonworking spouse's IRA is \$1,125.

IRA deduction allowable on 1982 Wisconsin return, Form 1:

Spouse A: \$1,125  
Spouse B: \$1,125

**Example 3:** Spouse A has earned income of \$10,000 and Spouse B has earned income of \$20,000. Each spouse makes contributions of \$2,000 to his or her IRA account.

IRA deduction allowable on 1982 Wisconsin return, Form 1:

Spouse A: \$2,000  
Spouse B: \$2,000

**NOTE:** In the above examples, one spouse may *not* claim an IRA deduction for contributions to the other spouse's IRA account. If Spouse B in examples 1 and 2 had no income, she would not receive any tax benefit for the IRA deduction on her 1982 Wisconsin return. Spouse A may not claim any of Spouse B's \$250 IRA deduction in example 1 or \$1,125 deduction in example 2.

#### HOWICK CASE: RULES 2.30 AND 2.97

In prior issues of the WTB it was reported that the department was in the process of amending administrative rule Tax 2.30 and repealing rule Tax 2.97. The changes were 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.

The action on these rules has been completed and the amendment of 2.30 and the repeal of 2.97 became effective August 1, 1982. The result of this action is that gains and losses from sales of property acquired prior to becoming a Wisconsin resident are to be determined in the following manner for Wisconsin income tax purposes:

##### (a) Sales prior to August 1, 1982

Losses are to be determined in the same manner for Wisconsin as for federal purposes.

Gains are to be determined in accordance with the provisions of administrative rules Tax 2.30 and 2.97 as these rules existed before the amendment and repeal which became effective August 1, 1982. (Copies of rules Tax 2.30 and 2.97 as they apply to transactions in which gain was recognized and which occurred prior to August 1, 1982 are included as Attachments A and B on pages 15 through 19 of this issue.)

##### (b) Sales on or after August 1, 1982

Losses are to be determined in the same manner for Wisconsin as for federal purposes.

Gains are to be determined in the same manner for Wisconsin as for federal purposes.

A copy of rule Tax 2.30 as it applies to transactions which occur on or after August 1, 1982 is included in this issue as Attachment C on page 20.

There are exceptions to the general rule that gains and losses from sales of assets which were acquired before becoming a Wisconsin resident are to be determined in the same manner for Wisconsin as for federal purposes. Examples of two exceptions were included in WTB number 23 on page 10. The two examples involve property which was sold in an installment sale while the seller was a nonresident of Wisconsin and property which was acquired in an involuntary conversion while an individual was a nonresident of Wisconsin.

#### CORPORATION DECLARATION FORMS CHANGED FOR 1983

For 1983 there will be a change in the manner in which declaration

forms are distributed to corporations. Under the new system, corporations will receive only a single mailing of declaration forms. The mailing will provide all declaration forms (including 4 pre-addressed payment vouchers) and instructions for the 1983 taxable year. Form 4-ES for 1983 will not be included in the 1982 corporate booklets.

Declaration forms for 1983 will automatically be mailed to all corporations who filed a Form 4-ES and made declaration payments for 1982. The 1983 declaration forms will be mailed at least 4 weeks before the due date of the corporation's first installment payment.

In prior years, Form 4-ES and instructions were provided in the corporate forms booklets. Any corporation that filed the Form 4-ES would later receive installment payment cards from the department for any remaining installments due.

#### MAJOR FORM CHANGES FOR 1982

Major changes which will be made to the Wisconsin tax forms for 1982 are as follows:

##### Individual Income Tax Forms

###### Form 1A

- A new line (line 23) has been added for married persons to indicate if they want one combined refund check rather than two separate refund checks if both spouses are receiving refunds. The combined refund check will be issued in both spouses' names. Mailing only a combined check will save time and costs.

Form 1 will also include a new line similar to line 23 on Form 1A.

(Note: Persons claiming deductions to an IRA (Individual Retirement Arrangement) must file Form 1 rather than Form 1A.)

###### Form 1

- Changes to the 1982 Form 1 were not finalized at the time the October issue of the Wisconsin Tax Bulletin was published. Descriptions of the changes made will be provided in the January, 1983 WTB.

**Homestead Credit Form****Rent Certificate**

- A new entry space has been added for entering the Social Security number of landlords who are individuals and the Federal Employer Identification number of landlords who are corporations or partnerships.

**Farmland Credit Form****Schedule FC**

- The two separate lines (lines 14 and 15 on the 1981 Schedule FC) which were previously used to indicate the type of credit, percentage of credit and amount of credit claimed have been combined into a single line. The new line (line 14 on the 1982 Schedule FC) is broken down into 3 categories: (a) regular (current law) credit, (b) 10% special minimum credit and (c) credit based on prior year's law.
- A worksheet is provided in the instructions for use by claimants who use prior year's law (the law in effect when they entered into a farmland preservation agreement) to compute their farmland credit. This worksheet must be attached to the Schedule FC filed.

**Corporation Forms****Form 5**

- A new entry line (line 26b) has been added to reflect a law change which added a 10% surtax to the franchise and income tax payable.
- Schedule Z has been revised to account for the increase in the sales tax rate from 4% to 5%.

**Form 4**

- Line 36b has been added to provide for the 10% surtax.
- Schedule Z has been revised to account for the sales tax rate increase.

**CAPITAL GAINS SUBJECT TO MINIMUM TAX FOR 1982**

Wisconsin's minimum tax first became effective for the 1981 taxable year. Individuals, estates and trusts are required to pay a minimum tax if the total of their tax preference items exceeds \$10,000. Adjusted itemized deductions, accelerated

depreciation on real property, and accelerated depreciation on personal property subject to a lease are examples of tax preference items.

Beginning with the 1982 taxable year, an individual, estate or trust may exclude a portion of net long-term capital gain income from Wisconsin taxable income which is reported on a Wisconsin Form 1 (or Form 2 for estates and trusts). The portion of the long-term capital gain excludable is 20% in 1982, 40% in 1983 and 60% in 1984 and thereafter. As a result of a new law enacted by the Legislature, the portion of net long-term capital gain excluded from Wisconsin taxable income is also considered a tax preference item for purposes of computing the minimum tax for 1982 and thereafter. For example, if an individual had a \$100,000 net long-term capital gain in 1982, \$20,000 ( $\$100,000 \times 20\% = \$20,000$ ) would be reported as a tax preference item on Wisconsin Schedule MT.

Schedule MT for 1982, the form used to compute the Wisconsin minimum tax, will include this new tax preference item for capital gains.

**TAXPAYERS CONVICTED FOR FAILING TO FILE**

Two individuals were recently convicted for failing to file Wisconsin income tax returns.

John P. Adams, Belleville, publisher of the Belleville Recorder, a weekly newspaper, was convicted in Dane County Circuit Court after he entered no contest pleas to three counts of failing to file Wisconsin income tax returns. He was ordered by Circuit Judge Mark A. Frankel to serve two years probation and fined \$1,500 for criminal violations of the Wisconsin income tax law. Adams had been charged with failing to file 1978, 1979 and 1980 returns reflecting gross incomes of \$39,000, \$49,000 and \$50,000, respectively.

Robert D. Stewart, Waukesha, was convicted in Dane County Circuit Court after he entered a guilty plea to one count of failing to file a Wisconsin income tax return. He was ordered by Reserve Circuit Judge William C. Sachtjen to pay a \$500 fine or serve 30 days in jail for criminal violation of the Wisconsin income tax law. Stewart had been charged with failing to file a 1979 return when

he had a gross income of more than \$145,000 for that year.

Both of these convictions were the result of investigations by the Intelligence Section of the Wisconsin Department of Revenue.

Failure to file a Wisconsin state income tax return is a crime punishable by a maximum fine of \$500 or imprisonment not to exceed six months or both. In addition to the criminal penalties provided by statute, Wisconsin law provides for substantial civil penalties on the civil law liability. Assessment and collection of the additional taxes, penalties and interest due follows conviction from criminal violations.

**BULK ORDERS OF TAX FORMS**

In early October, the department will mail out the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1982 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a handling charge on orders which they submit. No charge is made for forms which will be used for distribution to the general public (for example, in a bank, library or post office).

Orders should be placed as early as possible after you receive the order blank. By receiving the orders early, the department can better identify possible shortages of specific forms.

This year's mailing list of bulk order blanks contains the names of all persons and organizations who placed orders for 1981 forms. If you are not on this mailing list and do not receive a Form P-744, you may request the bulk order blank by contacting any department office or by writing to the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, WI 53708.

**TAX RETURN STATISTICS FOR 1981**

During the first six months of 1982, 1,990,000 Wisconsin income tax returns were filed for the taxable year 1981. Homestead Credit claims totaling 290,000 and 8,500 Farmland Preservation Credit claims were also filed for 1981.

The 1,990,000 income tax returns for 1981 were filed by 2,780,000 individuals. (The combined return of a

husband and wife is considered one return.) Itemized deductions were claimed by 20% of the individuals, and the standard deduction was claimed by 80%.

A total of 1,500,000 income tax refunds were issued to taxpayers, which averaged \$180 each. The average refund issued for 1980 returns was \$160.

Homestead Credit refunds averaged \$350 per claimant, an increase from the average refund of \$330 issued last year. Over 50% of the claimants were age 65 or older. Approximately 40% of the individuals claiming Homestead Credit were renters and 60% were homeowners.

An average payment of \$1,500 was issued to each Farmland Preservation claimant. The average payment for the previous year was \$1,600. As a result of Wisconsin's new 5% minimum tax which became effective for 1981, 1,250 persons made an average payment of \$1,000 each.

#### 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 August 1, 1982. Part D lists new rules and amendments which have been adopted in 1982.

#### A. Rules at Legislative Council Rules Clearinghouse

- 2.081 (5) Indexed income tax rate schedule for 1982  
- new rule
- 2.39 Apportionment method  
- amendment
- 2.40 Nonapportionable income  
- repealed and recreated
- 2.82 Nexus  
- amendment
- 2.945 Spousal individual retirement contributions  
- new rule
- 4.50 Assignment, use and reporting of Wisconsin state tax number  
- amendment
- 7.21 Labeling  
- amendment
- 7.22 Tied house law; volume and quantity discounts  
- repealed

- 7.23 Activities of brewers, bottlers and wholesalers  
- amendment
- 8.02 Revenue stamps-occupational tax  
- amendment
- 8.11 Reports  
- amendment
- 8.21 Purchases by the retailer  
- amendment
- 8.22 Purchases made outside of state  
- amendment
- 8.35 Interstate shipments  
- amendment
- 8.42 Wine containers  
- repealed
- 8.43 Empty containers  
- amendment
- 8.66 Merchandise on collateral  
- amendment
- 8.76 Salesperson  
- amendment
- 8.81 Transfer of retail liquor stocks  
- amendment
- 8.85 Procedure for apportionment of cost of administration of s. 176.05 (23), Stats.  
- amendment
- 8.86 Tied house law; volume and quantity discounts  
- repealed
- 9.12 Refunds-military  
- amendment
- 11.001 Definitions and use of terms  
- amendment
- 11.03 Elementary and secondary schools and related organizations  
- amendment
- 11.05 Governmental units  
- amendment
- 11.32 "Gross receipts" and "sales price"  
- amendment
- 11.66 Communications and CATV services  
- amendment
- 11.71 Automatic data processing  
- new rule
- 16.01 Administrative provisions  
- new rule
- 16.02 Eligibility  
- new rule
- 16.03 Application and review  
- new rule
- 16.04 Repayment of loan  
- new rule

#### B. Rules at Legislative Standing Committees

- 11.01 Sales and use tax return forms  
- amendment
- 11.08 Medical appliances, prosthetic devices and aids  
- amendment
- 11.10 Occasional sales  
- 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
- 11.56 Printing industry  
- new rule
- 11.57 Public utilities  
- amendment
- 11.66 Communication and CATV services  
- amendment
- 11.69 Financial institutions  
- amendment
- 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

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

- 2.165 Change in taxable year  
- amendment
- 11.11 Waste treatment facilities  
- amendment

#### 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

- 2.30 Property located outside Wisconsin - depreciation and sale (8/1/82)  
- repealed and recreated
- 2.97 Sale of constant basis assets acquired prior to becoming a Wisconsin resident (8/1/82)  
- repeal
- 5.01 Filing reports (8/1/82)  
- amendment
- 10.10 Taxation of savings, mortgage and credit life insurance (8/1/82)  
- amendment
- 10.11 Federal estate tax deduction (8/1/82)  
- new rule
- 10.12 Deductibility of income taxes (8/1/82)  
- amendment
- 10.13 Apportionment of property qualifying for exception (8/1/82)  
- 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

NOTE: In Wisconsin Tax Bulletin #28 it was indicated that rule Tax 10.14, Valuation of United States treasury bonds (new rule), was at the legislative standing committees. This rule has since been withdrawn.

Also, the proposed rules in Chapter Tax 16 relate to the Senior Citizen's Property Tax Deferral Loan Program.

## REPORT ON LITIGATION

*This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.*

*The last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: 1) "the department appealed", 2) "the department has not appealed*

*but has filed a notice of nonacquiescence" or 3) "the department has not appealed" (In this case the department has acquiesced to Commission's decision).*

The following decisions are included:

### Income and Franchise Taxes

- Irv Berlin vs. Wisconsin Department of Revenue  
Paul F. Hausman vs. Wisconsin Department of Revenue  
Tadeusz Jaworski and Halina Jaworski vs. Wisconsin Department of Revenue  
Kenneth M. Kenney vs. Wisconsin Department of Revenue  
Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue  
Kurz & Root Company vs. Wisconsin Department of Revenue  
Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue

### Sales/Use Taxes

- Richard or Alvin Hamland vs. Wisconsin Department of Revenue  
Hunter Heating and Air Conditioning, Inc. vs. Wisconsin Department of Revenue  
Edward Kraemer & Sons, Inc. vs. Wisconsin Department of Revenue  
Rause Enterprises, et. al. vs. Wisconsin Department of Revenue  
Eric F. Tamm vs. Wisconsin Department of Revenue

### Homestead

- Helen M. Raschick vs. Wisconsin Department of Revenue

### Gift Tax

- Carolyn Hribar vs. Wisconsin Department of Revenue  
Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue

### INCOME AND FRANCHISE TAXES

**Irv Berlin vs. Wisconsin Department of Revenue** (Wisconsin Tax Appeals Commission, May 26, 1982). The issue in this case is whether advances made by Irv Berlin in 1974 and 1975 to Compact Distributors of Wisconsin, Inc. represented contributions to capital or loans and if said advances represent

loans to the above corporation, whether they may be treated as deductible bad debts in 1976. Berlin incorporated Compact Distributors of Wisconsin, Inc. in 1974. Taxpayer was the sole shareholder. Berlin's initial capitalization was \$2,500.00. Taxpayer was president of Compact and his duties were to oversee its operations. He did not draw salary in 1974 and 1975. His employment with Compact was his sole employment, and he had no income from other sources except from investments.

Compact's operations were the door to door sales of vacuum cleaners. Compact employed four to six salespersons who were paid on a commission basis. Compact also employed an office staff of about seven persons. Compact's operations were based upon providing financing for purchasers. In 1974 and 1975 the sources of financing tightened up. The finance company with which Berlin was dealing could no longer provide money. Taxpayer sought other sources of financing but was not able to establish another long term source.

Berlin believed the lack of available financing would be temporary. However, Compact stopped doing business in April or May, 1975. Compact was not dissolved for insurance reasons. Taxpayer made a series of advances to Compact in 1974 and 1975 in order to keep the company going. He made these advances several times per month in 1974 and 1975. He received one-month to six-month notes from Compact at a 0% rate of interest. The first advance was made August 19, 1974, ten days after the company incorporated. No security was given for the notes.

Two of the notes were repaid. The remainder of the notes were never repaid. No account was established to pay back the advances. Taxpayer never attempted to collect on the notes. The advances were used for paying commissions, salaries and operating expenses. Berlin believed that Compact would be a profitable company and that once the company was profitable, he would begin to draw a salary and receive repayments of the advances at issue. Taxpayer deducted the unpaid loans in 1976 as bad debts.

The Commission held that the taxpayer's advances to Compact Dis-