

NEW WISCONSIN TAX LAWS ENACTED IN 1984

In the 1984 legislative session which ended April 6, 1984 a number of new laws were passed which affect Wisconsin taxes. Listed below is an index of the major income, corporation/franchise, homestead credit, farmland credit, sales/use, inheritance and gift tax provisions enacted in that 1984 session. Descriptions of each of the provisions are found on pages 23-34. Listed in parenthesis after each subject title are the sections of the Wisconsin Statutes which are affected and the effective date of the new law.

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EXPLANATIONS OF TAX PROVISIONS ENACTED IN 1984

A. INCOME TAXES

1. 10% Surtax Eliminated for 1984 (1983 Wis. Act 212, Amend s. 71.014, effective for 1984 tax year.)

The 10% surtax to the Wisconsin income tax and minimum tax rates has been eliminated for the entire 1984 tax year.

2. Update Internal Revenue Code Reference for 1984 Tax Year for Individuals, Estates and Trusts (1983 Wis. Act 212, Amend s. 71.02 (2)(b)9, create s. 71.02 (2)(b)10 and 71.05(1)(b)8, 9 and 10, effective for 1984 tax year and thereafter.)

For the 1984 tax year and thereafter, individuals, estates and trusts will use the Internal Revenue Code in effect on December 31, 1983 with the following exceptions:

- (a) The following Internal Revenue Code provisions which were in effect on December 31, 1983 will not apply for Wisconsin purposes:
- (1) Including a portion of social security and railroad retirement benefits in taxable income as required under Sections 86 and 72(r) of the Internal Revenue Code. These benefits will continue to be nontaxable for Wisconsin. (Up to one-half of social security and Tier 1 railroad retirement benefits received after December 31, 1983 may be includable in federal taxable income. Tier 2 railroad retirement benefits received after December 31, 1983 are also subject to federal income tax.)
  - (2) Including sick pay benefits paid under the Railroad Unemployment Insurance Act in taxable income as required by Section 105(i) of the Internal Revenue Code. These benefits continue to be nontaxable for Wisconsin. (Sick pay benefits received under the Railroad Unemployment Insurance Act after December 31, 1983, except for sickness as a result of on-the-job injury, must be included in federal gross income.)
  - (3) The deduction from gross income allowed two-earner married couples. (For federal purposes this deduction is equal to 10% of the lower-earning spouse's income, with a maximum of \$30,000 of earned income allowed to be used to compute the deduction.) This deduction is allowed under Section 221 of the Internal Revenue Code.
  - (4) The exclusion from income allowed for public utility dividends which are reinvested in the common stock of the utility as provided under Section 305(e) of the Internal Revenue Code.
  - (5) Charitable contribution deductions allowed to persons who do not claim itemized deductions. This deduction is allowed under Section 170(i) of the Internal Revenue Code.
  - (6) The incentive stock option provisions as provided under Section 422A of the Internal Revenue Code.
  - (7) The partial exclusion of interest income which will be allowed for federal purposes beginning in tax year 1985 under Section 128 of the Internal Revenue Code, as amended by Section 302(a) and (c) of Public Law 97-34.

(b) In addition to the above differences, Wisconsin and federal law for 1984 and thereafter will also differ with respect to the following items:

- (1) Political contributions continue to be allowed as an itemized deduction for Wisconsin purposes.
- (2) The foreign earned income exclusion which was allowed to persons who worked abroad, as provided by the Internal Revenue Code as of December 31, 1977, continues to apply for Wisconsin purposes. (The new foreign earned income exclusion limits and deduction provisions enacted in Sections 111 and 113 of Public Law 97-34 may not be used for Wisconsin purposes.)
- (3) The disability income exclusion of up to \$5,200 which was allowed to persons under age 65 who retired on disability and received disability income while permanently and totally disabled, under Section 105(d) of the Internal Revenue Code immediately prior to the repeal in 1983 by Public Law 98-21, continues to apply for Wisconsin. (For federal purposes, this exclusion has been replaced by a nonrefundable federal income tax credit for tax years beginning after December 31, 1983, pursuant to Section 122 of Public Law 98-21.)

3. Social Security Repayments Not Included in Itemized Deductions (1983 Wis. Act 212, Amend s. 71.02(2)(f), effective for 1984 tax year and thereafter.)

Repayments of social security benefits may not be claimed as itemized deductions for Wisconsin. (For federal purposes, an itemized deduction may be claimed under Section 165 of the Internal Revenue Code for repayments of social security benefits which had been included in gross income in a previous year.)

4. Child and Dependent Care Credit - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.09(12c)(a) and (b), effective for 1984 tax year and thereafter.)

As reported in Wisconsin Tax Bulletin #33, beginning with the 1984 tax year individuals may claim a nonrefundable Wisconsin child and dependent care credit equal to 30% of their federal child dependent care credit. The credit may only be claimed by full-year residents and part-year residents. Part-year residents must prorate their credit. Nonresidents are not eligible for this credit.

The term "Internal Revenue Code", as used in s. 71.09(12c) relating to the Wisconsin child and dependent care credit, will mean the Code in effect on December 31, 1983.

5. Earned Income Credit - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.09(12t)(a) and (b), effective for 1984 tax year and thereafter.)

As reported in Wisconsin Tax Bulletin #33, beginning with the 1984 tax year individuals may claim as a credit against Wisconsin income taxes due an amount equal to 30% of the federal earned income credit for which they are eligible. Only full-year residents may claim this credit. Part-year residents and non-residents are not eligible for this credit.

The term "Internal Revenue Code", as used in s. 71.09(12t) relating to the Wisconsin earned income credit, will mean the Code in effect on December 31, 1983.

6. Minimum Tax - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.60(1)(c), effective for 1984 tax year and thereafter.)

For the 1984 tax year and thereafter, the term "Internal Revenue Code" as used in the Wisconsin minimum tax provisions in s. 71.60 will mean the Code in effect on December 31, 1983.

7. Repeal Health Care Insurance Provisions (1983 Wis. Act 212, Repeal s. 71.05(1)(a)21 and 24, effective January 1, 1984.)

Under prior law enacted as part of 1983 Wisconsin Act 27, an employer would have been required to make additional modifications on a 1984 Wisconsin income tax return to include in Wisconsin taxable income certain amounts deducted as health care costs. Wisconsin Tax Bulletin #33 contained a description of those health care provisions enacted in 1983 Wisconsin Act 27.

The new law enacted in 1983 Wisconsin Act 212 repeals these health care provisions in 1983 Wisconsin Act 27.

8. Renewable Energy Resource System Refunds - Interest and Penalties (1983 Wis. Act 530, Nonstatutory provision, effective for 1982 and prior tax years.)

Notwithstanding sections 71.09(5)(a) relating to interest on assessments and 71.13(1) relating to interest on delinquent taxes, the Department of Revenue may not assess interest on income taxes due solely because of a failure to include renewable energy resource system refunds in income on returns filed for tax year 1982 and for any prior tax years. Also, the Department may not assess penalties in respect to income taxes due solely because of a failure to include renewable energy resource system refunds in income on returns filed for the tax year 1982 or any prior tax year.

9. Determining Wisconsin Residency - Contributions to Wisconsin Charitable Organizations Not Relevant (1983 Wis. Act 305, Amend s. 71.01(1), effective for 1984 tax year and thereafter.)

This amendment to s. 71.01(1) provides that contributions made to charitable organizations in Wisconsin are not relevant in determining whether or not an individual resides within Wisconsin for purposes of s. 71.01(1). (Note: s. 71.01(1) provides for the imposition of an income tax upon every natural person residing within Wisconsin.)

10. Marital Property Law Affects Income Taxes (1983 Wis. Act 186, Amend s. 71.02(2)(f) and (gp)6, 71.05(1)(g), 71.05(1)(k), 71.08(1), 71.09(1b)(intro.), (4)(a) and (6p)(d)2, 71.20(2m), 71.53(1)(c), create s. 71.03(7), 71.05(1)(a)25 and (b)8, 71.09(1c), (1d), (2c) and (7m), 71.10(19), 71.11(2), 71.21(20), 71.65(1)(fm), effective for 1986 tax year and thereafter).

Beginning with the 1986 tax year, joint income tax returns may be filed if certain conditions are met, a married persons' credit may be claimed and different income brackets and tax rates will apply to (a) single persons (b) married persons filing joint returns and (c) married persons filing separate returns. These provisions and some of the other major income tax changes in the marital property law (1983 Wisconsin Act 186) are described below.

## (a) Joint income tax returns (s. 71.10(19)).

- (1) Who may file joint returns? Only those married persons who file a joint federal income tax return under section 6013 of the Internal Revenue Code may file a joint Wisconsin income tax return.

## (b) Married persons' credit (s. 71.09(7m)).

- (1) Who may claim the credit? Only married persons who file a joint Wisconsin income tax return may claim this credit.
- (2) How is the credit determined? The credit is 1.5% of the "earned income" of the spouse with the lower earned income. The credit may not exceed \$450. "Earned income" for purposes of this credit means wages, salaries, tips, other employee compensation and net earnings from self employment. Earned income is reduced by any amount of net loss from self employment. Earned income is computed without regard to the fact that each spouse owns an undivided one-half interest in the whole of the marital property. Earned income does not include amounts received as a pension or annuity, or income to which section 871(a) (relating to the taxation of social security benefits received by nonresident aliens) of the Internal Revenue Code applies.

## (c) Income brackets and tax rates (s. 71.08(1), s. 71.09(1b)(intro), s. 71.09(1c) and (1d)).

There will be different income brackets and tax rates for (1) single persons (2) married persons filing joint Wisconsin income tax returns and (3) married persons filing separate Wisconsin returns.

## (d) Joint liability for penalties (s. 71.11(2)).

Married persons who file a joint Wisconsin income tax return will be jointly and severally liable for any penalties under s. 71.11 which are applicable to an income tax return. However, a person may be relieved of any liability in regard to a joint Wisconsin return in the manner specified in section 6013(e) of the federal Internal Revenue Code.

## (e) Joint declarations of estimated tax (s. 71.21(20)).

Married persons may file a joint declaration of estimated tax, regardless of whether or not they file a joint Wisconsin income tax return. If they file a joint declaration of estimated tax, the declaration of estimated tax provisions in s. 71.21 that apply to individuals will apply to the married persons jointly.

If married persons file separate Wisconsin returns for a taxable year but they file a joint declaration of estimated tax, they may allocate their payments of estimated tax between themselves in any manner they choose.

## (f) Conversions of marital and individual property (s. 71.03(7)).

Capital gain or loss shall not be recognized solely by reason of converting individual property to marital property or marital property to individual property. However, there is an exception in that if a gain or loss is recognized for federal income tax purposes because of an unequal division of marital property upon divorce, that amount of gain or loss shall be recognized for Wisconsin.

If a gain is not recognized upon a transfer under this provision (s. 71.03(7)), the basis of the property immediately before the transfer is the basis of the property immediately after the transfer.

If a capital gain or loss is recognized for federal income tax purposes because of the conversion of individual property of a spouse to marital property or because of the conversion of marital property to individual property, and such gain or loss is not recognized under s. 71.03(7), the person will be required to make an addition or subtraction modification on his or her Wisconsin return, as appropriate, to remove such capital gain or loss.

11. Compensation for Well Contamination Nontaxable (1983 Wis. Act 410, Create s. 71.03(2)(g), effective for 1985 tax year and thereafter.)

Under Wisconsin's new groundwater management law, awards of up to \$9,600 may be made by the Department of Natural Resources to persons who have a contaminated well. The purpose of the award is to enable the claimant to obtain an alternate water supply. The amount of any award received in accordance with s. 144.027 of this program will be excludable from the recipient's Wisconsin taxable income.

B. CORPORATION FRANCHISE/INCOME TAXES

1. 10% Surtax Eliminated for 1984 (1983 Wis. Act 212, Amend s. 71.013, effective for 1984 tax year.)

The 10% surtax to Wisconsin franchise/income tax rates has been eliminated for the entire 1984 tax year. Therefore, the surtax applies to corporations only for the 1982 and 1983 tax years.

2. Tax-Option (S) Corporation--Reference to Internal Revenue Code Updated to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.02(2)(b)9, create s. 71.02(2)(b)10, effective for 1984 tax year and thereafter.)

For the 1984 tax year and thereafter, the term "Internal Revenue Code", as used in s. 71.02(1)(f) and s. 71.042(1) relating to tax-option corporations, will mean the Internal Revenue Code in effect on December 31, 1983.

3. Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts - Update Reference to Internal Revenue Code to December 31, 1983 (1983 Wis. Act 212, Amend s. 71.01(4)(g)7 and 71.02(1)(a)8, create s. 71.01(4)(g)8 and 71.02(1)(a)9, effective for 1984 tax year and thereafter.)

Insurance companies, regulated investment companies and real estate investment trusts will compute their taxable income for the 1984 tax year and thereafter under the Internal Revenue Code in effect on December 31, 1983, with certain exceptions. The special rules for safe harbor leases provided by Section 168(f)(8) of the Internal Revenue Code may not be used for Wisconsin purposes and depreciation of out-of-state property placed in service on or after January 1, 1983 must be computed under the Internal Revenue Code as of December 31, 1980.

4. Clarify Deductibility of Cash Dividends Received in 1983 From 80% Owned Subsidiaries (1983 Wis. Act 212, Amend s. 71.04(4)(b), effective April 26, 1984.)

Under prior law, s. 71.04(4)(b) provided that 50% of cash dividends received from a corporation with respect to its common stock were deductible from gross income if the corporation receiving the dividends owned directly or indirectly during

the entire tax year at least 10% of the total combined voting stock of the payor corporation. 1983 Wisconsin Act 27 (the 1983-85 budget bill) amended this section to provide that 75% of such dividends are deductible for the 1984 tax year and 100% are deductible for 1985 and thereafter while deleting any reference to amounts deductible for years prior to 1984.

The amendment to s. 71.04(4)(b) in 1983 Wisconsin Act 212 merely clarifies that for the 1983 tax year 50% of such cash dividends are deductible for Wisconsin franchise/income tax purposes.

5. Repeal Health Care Insurance Provisions (1983 Wis. Act 212, Renumber s. 71.01(3)(a)1 to 71.01(3)(a), and 71.01(2)(c)1 to 71.01(3)(c), repeal s. 71.01(3)(a)2 and 3, 71.01(3)(c)2 and 3, and 71.04(2)(b)7 and 10, effective January 1, 1984.)

This Act repeals the provisions created by 1983 Wisconsin Act 27 which provided that employers would lose their tax-exempt status or deductions for health care costs if they failed to provide certain health care plans to employees. The health care provisions in 1983 Wisconsin Act 27 were explained in Wisconsin Tax Bulletin #33. This repeal is retroactive to January 1, 1984, when these provisions were to have become effective.

6. Insurance Companies - Loss Carrybacks (1983 Wis. Act 212, Amend s. 71.01(4)(a)1, effective April 26, 1984.)

The amendment to s. 71.01(4)(a)1 clarifies that insurance companies are treated the same as all other corporations and may not carry back losses for purposes of the Wisconsin franchise/income tax.

7. Insurance Companies - Elections Under Internal Revenue Code (1983 Wis. Act 212, Amend s. 71.01(4) (f), effective for 1984 tax year and thereafter.)

Insurance companies making an election under the Internal Revenue Code for federal tax purposes to claim a credit against federal tax liability, rather than a deduction from income, will not be deemed to have made the same election for Wisconsin, and thereby lose the deduction.

Example: On the federal tax return an insurance company electing to claim the Targeted Jobs Tax Credit is required to reduce its deduction for wages paid by the amount of the credit. On its Wisconsin franchise/income tax returns for 1984 and thereafter, a deduction may be claimed for total wages (no reduction is required for the Targeted Jobs Tax Credit claimed on the federal return), as if the credit had not been claimed on its federal tax return.

8. Deducting Payments to Deferred Payment Plans Made by Due Date of Tax Return (1983 Wis. Act 405, Create s. 71.041, effective for plan years beginning after September 2, 1974.)

Subject to the limitations of Section 404 of the Internal Revenue Code, contributions to deferred payment plans (e.g., pension, profit-sharing and stock bonus plans) which meet the requirements of Section 401 of the Code and that are made on or before the date on which a corporation is required to file its Wisconsin franchise/income tax return (including extensions) are deemed to have been made on the last day of the tax year for which that return is filed. Although this new law in s. 71.041 applies to plan years beginning after September 2, 1974, no adjustments may be made for this item unless the claim for refund or assessments are filed or made within the time periods specified in s. 71.10(10) and s. 71.11(21), Wis. Stats.

9. Tax-Free Exchange of Property (1983 Wis. Act 405, Amend s. 71.03(5)(a) and (b), effective for 1984 tax year and thereafter.)