

## A. WASTE TREATMENT FACILITIES - Corporations, Individuals, Estates and Trusts

Description: Corporations may elect a fast write-off of the cost of certified waste treatment plants and equipment located in Wisconsin, for three distinct periods of time: (1) prior to 1969, (2) 1969 through July 30, 1975, and (3) after July 30, 1975 (s. 71.04(2b) and (2g), 1985 Wis. Stats.).

Sections 71.05(1)(h) and (i), 1985 Wis. Stats., provide similar benefits to individuals, estates and trusts.

Prior to Taxable Year 1969: Section 71.04(2b), 1985 Wis. Stats., allows a corporation to write off in taxable year 1969 the remaining cost of a certified waste treatment plant or pollution abatement equipment installed prior to taxable year 1969.

Section 71.05(1)(h), 1985 Wis. Stats., allows individuals, estates and trusts a subtraction modification in taxable year 1969 for the federal adjusted basis, as of the end of taxable year 1968, of certified waste treatment plant or pollution abatement equipment.

Taxable Year 1969 Through July 30, 1975: For a certified waste treatment or pollution abatement plant or equipment purchased or constructed in taxable year 1969 and prior to July 31, 1975 (or purchased and constructed in fulfillment of a written construction contract or formal written bid made prior to July 31, 1975), a corporation may elect one of three methods of deducting the applicable costs. The three methods are as follows:

- (1) Deduct the entire cost in the year paid or accrued, or
- (2) Deduct one-fifth of the cost each year for a period of 5 years, or
- (3) Depreciate.

To be deductible, the property must be depreciable, but where wastes are disposed of through a lagoon process, both the cost of lagooning and the cost of the land containing the lagoons may be written off under one of the three above methods.

Section 71.05(1)(h), 1985 Wis. Stats., allows individuals, estates and trusts to deduct as a subtraction modification in the years paid or accrued, dependent on the method of accounting employed, the cost of certified waste treatment plant or pollution abatement equipment (less any federal depreciation or amortization taken). In subsequent years, addition modifications must be made to reverse any federal depreciation or amortization, or to correct gain or loss on disposition.

After July 30, 1975: Under s. 71.04(2g), 1985 Wis. Stats., a corporation may elect one of the three methods listed above to deduct the cost of an approved facility in Wisconsin to treat industrial wastes or air contaminants, for the purpose of abating or eliminating pollution of the air and water of this state. The cost of lagooning, including land, may also be written off under one of the three prescribed methods.

Section 71.05(1)(i), 1985 Wis. Stats., allows individuals, estates and trusts to deduct as a subtraction modification in the year paid or accrued, dependent on accounting method, the cost of depreciable property purchased or constructed as an approved waste treatment facility utilized for the treatment of industrial wastes or

air contaminants, for the purpose of abating or eliminating pollution of the air or water of this state. The cost of lagooning, including land containing lagoons, is considered deductible depreciable property for this purpose.

In subsequent years, addition modifications are required to reverse any federal depreciation or amortization, or to correct gain or loss on disposition.

When and How Election Made: For corporations, the election is made by either deducting, amortizing or depreciating the cost of the facility on a Wisconsin franchise/income tax return for the year in which the election is first available.

The election to take an immediate deduction is made on the tax return for the year in which the expenditures were paid or incurred, depending on the corporation's method of accounting.

Deductions for amortization or depreciation may begin either with the month following the month in which the facility is completed or acquired, or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired.

Individuals, estates and trusts make the election by claiming the subtraction modification on a tax return filed for the year or years in which the costs are paid or incurred, depending on the method of accounting employed.

Changing or Revoking the Election: For corporations, the election to deduct under any of the three methods, once made, is irrevocable.

If depreciation is taken under s. 71.04(15), 1985 Wis. Stats., prior to approval of the facility under s. 70.11(21)(a), 1985 Wis. Stats., such depreciation is not an election under s. 71.04(2g), 1985 Wis. Stats. Once the facility is approved, an election to deduct under any one of the three methods of s. 71.04(2g), 1985 Wis. Stats., may be made. If years have intervened between the expenditure for the facility and approval of the facility, amended returns may be filed to claim whichever method of deduction is elected under s. 71.04(2g), 1985 Wis. Stats. Such amended returns must be filed within the 4-year statutory period provided by s. 71.11(21)(bm), 1985 Wis. Stats.

For individuals, estates and trusts, an election may be made, changed or revoked anytime within the 4-year statutory period in s. 71.11(21)(bm), 1985 Wis. Stats., by filing an amended return. In such case, addition modifications may also be required to subsequent returns to reverse federal depreciation or amortization, or to correct gain or loss on disposition.

Alternative Federal Election for Individuals: For taxable years 1977 through 1981, Wisconsin's reference to the Internal Revenue Code (IRC) ". . . does not include the changes to the code enacted by section 2112 (relating to tax treatment of certain pollution control facilities) of P.L. 94-455. . ." (s. 71.02(2)(d)3, 4, 5, 6, and 7, 1985 Wis. Stats.).

Effective for taxable year 1982 and thereafter, the above prohibition to amortize pollution control facilities under IRC Section 169 has been eliminated.

Therefore, an individual, estate or trust may (as an alternative to the one-year write-off under s. 71.05(1)(i), 1985 Wis. Stats.) elect the federal 60-month amortization allowable for a pollution control facility added to or used in connection with a plant in operation before 1976, pursuant to IRC Section 169.

#### B. FOREST CROPLANDS - Corporations

Description: Under s. 71.04(11), 1985 Wis. Stats., a corporation may elect to deduct currently, or defer until the crop or property is sold or disposed of, certain expenses relating to forest croplands. Forest croplands are those which come within the provisions of Chapter 77, Wis. Stats.

The expenses which may be deducted currently, or deferred, are those expended for the following:

- (1) The purchase of seeds
- (2) The purchase of tree plants
- (3) Preparing land for planting
- (4) Planting and caring for forest crops
- (5) Maintaining forest crops
- (6) Fire protection for forest crops

When and How Election Made: Notice of the election to deduct currently or to defer until the crop is sold, must be given to the department by a signed statement attached to the tax return for the first year in which the corporation is engaged in this activity. The statement should explain which election is chosen.

If a statement is not submitted, the treatment accorded the deduction on the first return will be deemed the election chosen. For example, if the expenses are deducted on the first return, subsequent expenses must be deducted currently. If expenses are not deducted on the first return, the election to defer will be deemed to have been made and all subsequent expenses must be deferred until the crop or property, or any portion thereof, is sold or disposed of.

Changing or Revoking Election: The method, once elected, is irrevocable.

#### C. RENEWABLE ENERGY RESOURCE SYSTEMS - Corporations

Description: Under s. 71.04(16), 1985 Wis. Stats., expenses incurred by a corporation during the period April 20, 1977 through taxable year 1979, for designing, constructing (including the cost of equipment) and installing a renewable energy resource system may be deducted in one of three ways. Such expenses may be:

- (1) Fully deducted in year paid or incurred, or
- (2) Depreciated over the system's useful life, or
- (3) Amortized over a period of 5 years.

To qualify for the election, the system must be located in Wisconsin and be certified by the Department of Industry, Labor and Human Relations as meeting required performance standards.

When and How Election Made: The election is made on Wisconsin Schedule AE and filed with the franchise/income tax return for the taxable year in which expenses for the system were incurred.

If depreciation is claimed on a franchise/income tax return under s. 71.04(15), 1985 Wis. Stats., prior to the time of certification of the system under s. 101.57(3), 1981 Wis. Stats., such depreciation is not an election under 71.04(16), 1985 Wis. Stats. Once the system is certified under s. 101.57(3), 1981 Wis. Stats., an election to deduct under any one of the three methods in 71.04(16), 1985 Wis. Stats., may be made. If years have intervened between the expenditure for the system and certification of the system by the Department of Industry, Labor and Human Relations, amended returns may be filed to claim whichever method of deduction is elected under 71.04(16), 1985 Wis. Stats. Such amended returns must be filed within the 4-year statutory period provided by s. 71.11(21)(bm), 1985 Wis. Stats.

Changing or Revoking Election: The election, once made, is irrevocable.

#### D. RESEARCH OR EXPERIMENTAL EXPENDITURES - Corporations

Description: Section 71.04(2f), 1985 Wis. Stats., allows a corporation to elect one of three methods of deducting certain expenditures for research and development costs (in the experimental or laboratory sense), incurred in a taxable year beginning after December 31, 1969. The three methods are as follows:

- (1) Deduct the costs in the year paid or incurred, or
- (2) Amortize the expenses ratably over not less than 60 months if the property to which they relate has no determinable life, or
- (3) Depreciate over the useful life of the property to which the expenditures relate.

Wis. Adm. Code section Tax 3.48 explains the election in detail.

When and How Election Made: The election shall be made no later than the time (including extensions) prescribed by law for filing the return for the taxable year for which the method is to be adopted. The election to deduct the expenses currently (method 1 above) is made by claiming such expenses as a deduction on the franchise/income tax return for the year in which paid or incurred. The election to defer the deduction and to amortize over 60 months (method 2) is made by attaching a signed statement to the franchise/income tax return for the first taxable year to which the election applies. The signed statement shall include the following information required by Treas. Reg. section 1.174-4(b) (1):

- (1) Set forth the name and address of the taxpayer;
- (2) Designate the first taxable year to which the election is to apply;
- (3) State whether the election is intended to apply to all expenditures within the permissible scope of the election, or only to a particular project or projects, and, if the latter, include such information as will identify the project or projects as to which the election is to apply;
- (4) Set forth the amount of all research or experimental expenditures paid or incurred during the taxable year for which the election is made;
- (5) Indicate the number of months (not less than 60) selected for amortization of the deferred expenses for each project; and
- (6) State that the taxpayer will make an accounting segregation in its books and records of the expenditures to which the election relates.

**Changing or Revoking Election:** In order to change the method elected to deduct these expenses, or to change the amortization period, a written application must be sent to the Wisconsin Department of Revenue, Post Office Box 8906, Madison, Wisconsin 53708, and written approval received by the taxpayer before the change can be effected. The application shall include the name and address of the taxpayer, shall be signed by the taxpayer (or his duly authorized representative), and shall be filed no later than the last day of the first taxable year for which the change in method or period is to apply. The request for change of method must include the information required by Treas. Reg. section 1.174-3(b)(3), as follows:

- (1) State the first year to which the requested change is to be applicable;
- (2) State whether the change is to apply to all research or experimental expenditures paid or incurred by the taxpayer, or only to expenditures attributable to a particular project or projects;
- (3) Include such information as will identify the project or projects to which the change is applicable;
- (4) Indicate the number of months (not less than 60) selected for amortization of the expenditures, if any, which are to be treated as deferred expenses under section 174(b);
- (5) State that, upon approval of the application, the taxpayer will make an accounting segregation on its books and records of the research or experimental expenditures to which the change in method is to apply; and
- (6) State the reasons for the change.

If permission is granted to make the change, the taxpayer shall attach a copy of the letter granting permission to the franchise/income tax return for the first taxable year in which the different method is effective.

In addition to the above, an application for change to a different method or amortization period must set forth the following information required by Treas. Reg. section 1.174-4(b)(2), as follows:

- (1) Total amount of research or experimental expenditures attributable to each project;
- (2) Amortization period applicable to each project; and
- (3) Unamortized expenditures attributable to each project at the beginning of the taxable year in which the application is filed.

In addition, the application shall set forth the length of the new period or periods proposed, or the new method of treatment proposed, the reasons for the proposed change, and such information as will identify the project or projects to which the expenditures affected by the change relate. If permission is granted to make the change, the taxpayer shall attach a copy of the letter granting the permission to the franchise/income tax return for the first taxable year in which the different method or period is to be effective.

#### E. TRADEMARK OR TRADE NAME EXPENDITURES - Corporations

**Description:** A corporation may elect, under s. 71.04(2e), 1985 Wis. Stats., and Wis. Adm. Code section Tax 3.43, to treat as a deferred expense and amortize over a period of not less than 60 months, commencing with the first month of the first taxable year covered by the election, certain expenses relative to trademarks or trade names. The expenses are those:

- (1) Paid or incurred in a taxable year beginning after December 31, 1969, and
- (2) Directly connected with the acquisition, protection, expansion, registration (federal, state or foreign), or defense of a trademark or trade name, and
- (3) Chargeable to capital account, and
- (4) Not part of the consideration paid for a trademark, trade name or business.

**When and How Election Made:** The election is made no later than the due date (including extensions) for filing the franchise/income tax return for the taxable year during which the expenditures are paid or incurred. No election may be made on amended returns filed after the due date (including any extensions) of the original return. A statement indicating the election chosen shall be attached to the return, setting forth the following information as required by Treas. Reg. section 1.177-1(c):

- (1) Name and address of the taxpayer, and the taxable year involved;
- (2) An identification of the character and amount of each expenditure to which the election applies and the number of continuous months (not less than 60) during which the expenditures are to be ratably deducted; and
- (3) A declaration by the taxpayer that it will make an accounting segregation on its books and records of the trademark and trade name expenditures for which the election has been made, sufficient to permit an identification of the character and amount of each such expenditure and the amortization period selected for each expenditure.

Separate elections may be made with respect to each trademark or trade name expenditure.

**Changing or Revoking Election:** The election for a particular trademark or trade name expenditure, once made, is irrevocable. The period selected for amortization may not be changed after the date (including extensions) for filing the return, but must be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

#### F. ORGANIZATIONAL EXPENSES - Corporations

**Description:** A corporation may elect under s. 71.04(2d), 1985 Wis. Stats., and Wis. Adm. Code section Tax 3.44 to treat organizational expenditures as deferred expenses subject to amortization over a period of not less than 60 months, beginning with the month in which the corporation begins business. The term "organizational expenditures" means any expenditure which:

- (1) Is incident to the creation of the corporation;
- (2) Is chargeable to capital account; and
- (3) Is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

The following are not organizational expenditures:

- (1) Expenditures connected with issuing or selling shares of stock or other securities, such as commissions, professional fees and printing costs. This is true even where the particular issue of stock to which the expenditures relate is for a fixed term of years.

- (2) Expenditures connected with the transfer of assets to a corporation.
- (3) Expenditures connected with the reorganization of a corporation, unless directly incident to the creation of a new corporation, as possibly in the case of a split-up or consolidation (but not a merger of existing corporations).

The expenses must have been paid or incurred on or after February 19, 1970 and in a taxable year beginning after December 31, 1969.

**When and How Election Made:** The election is made no later than the due date (including extensions) for filing the franchise/income tax return for the year in which the corporation began business. No elections may be made on amended returns filed after the due date (including extensions) for filing the original return. A statement shall be attached to the return containing the following:

- (1) A description and amount of the expenditures to which the election applies;
- (2) The dates on which the expenditures were incurred;
- (3) The month in which the corporation began business;
- (4) The number of months selected for the amortization period (not less than 60).

**Changing or Revoking Election:** The period selected for amortization may not be changed after the due date (including extensions) for filing the returns, but must be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

#### G. ORDERED CHARGE DOWNS OR WRITE-OFFS - Corporations

**Description:** A corporation may elect under s. 71.04(8), 1985 Wis. Stats., to deduct the amount by which any asset has been charged down or written off by order of any state or federal regulatory authority, body, agency or commission which has the power to make such order, or by the examining committee of any state bank in accordance with s. 221.09. The deduction is not mandatory, but elective. An election to charge down or write off a single asset is deemed an election for purposes of all assets affected by the particular demand or order.

**When and How Election Made:** The election is made by deducting the amount charged down or written off, consistent with the demand or order, in the franchise/income tax return covering the first taxable year in which the charge-down or write-off is demanded or ordered. The entire amount is deducted in that year. Even though federal law may allow or require an amortization over a period of months, s. 71.04(8), 1985 Wis. Stats., provides for a one-year write-off.

The election is available any time within the 4-year statute of limitations pursuant to s. 71.11(21)(bm), 1985 Wis. Stats. If a deduction or amortization was claimed incorrectly on a return, amended returns may be filed as appropriate.

If no deduction is taken, no election is made, and the cost remains a capital asset.

Upon a subsequent sale, exchange, or other disposition of either the asset or the business to which it relates, the remaining adjusted cost basis of the asset is deductible in determining any recognized gain or loss, pursuant to s. 71.03(1)(g), 1985 Wis. Stats.

**Changing or Revoking Election:** The election, once made, is irrevocable.

#### H. CHARITABLE CONTRIBUTIONS - Corporations

**Description:** Section 71.04(5)(b), 1985 Wis. Stats., provides to corporations reporting on the accrual method the option of electing to deduct charitable contributions in the year of authorization rather than the year of payment under s. 71.04(5)(a), 1985 Wis. Stats. The election to take the deduction in the year of authorization is permissible if the following two conditions are met:

- (1) The contributions must have been authorized by the corporation's board of directors prior to the end of the taxable year, and
- (2) Payment must be made on or before the 15th day of the third month after the close of the taxable year.

The deduction is limited to an amount not in excess of 5% of the corporation's net income for the taxable year computed without the benefit of the deduction.

**When and How Election Made:** The election is made by claiming a deduction on the franchise/income tax return filed by the due date (including extensions) for the year of authorization. No election is permitted on amended returns filed after the due date (including extensions) of the original return. A written notice should be attached to the return specifying the date of authorization, the name and address of the contributee and the date of the actual payment.

**Changing or Revoking Election:** The election, once made, is irrevocable.

#### I. DEPRECIATION OR AMORTIZATION - Corporations

**Description:** Section 71.04(15), 1985 Wis. Stats., provides that for taxable year 1972 and thereafter, corporations are limited to depreciation or amortization on depreciable property in the amount allowable as a deduction from gross income under the Internal Revenue Code for federal income tax purposes. Exceptions are made for pollution abatement plants and equipment, waste treatment facilities, renewable energy resource systems, intangible drilling and development costs, certain public utility property, and safe harbor leases.

Corporations are granted an option to compute depreciation or amortization under the Internal Revenue Code in effect for the current year, or the Code for 1972 (s. 71.04(15)(b), 1985 Wis. Stats.).

Section 71.04(15)(b), 1985 Wis. Stats., was amended effective for property first placed in service on or after January 1, 1983. For property located outside of Wisconsin and placed in service on or after January 1, 1983, ACRS is not allowed for Wisconsin

franchise/income tax purposes. Instead, depreciation for out-of-state property first placed in service by a corporation on or after January 1, 1983 must be computed under the methods permitted by the Internal Revenue Code in effect on December 31, 1980 or, in the alternative, the IRC applicable to the calendar year 1972.

How the Option is Made: The option to compute depreciation under the Internal Revenue Code in effect for 1972, rather than for the current year, is made by taking the deduction on a franchise/income tax return and indicating thereon that the amount is computed under the Internal Revenue Code in effect for 1972.

Changing or Revoking Option: Generally, a change in the method of computing depreciation is a change in method of accounting. Since corporation depreciation generally is federalized, if the Internal Revenue Service grants approval for a depreciation change, such approval is automatic for Wisconsin. However, if the corporation is computing depreciation for Wisconsin tax purposes under the Internal Revenue Code in effect for 1972, and it desires to change to another method for Wisconsin purposes, approval for such change must be obtained from the Department of Revenue, pursuant to Wis. Adm. Code section Tax 2.16.

NOTE: Beginning with the taxable year 1983, section 48(q) of the Internal Revenue Code provides that the basis of assets, for purposes of computing depreciation or ACRS deductions and for gain or loss, must be reduced by one-half of the regular investment tax credit claimed and allowed. As an alternative to basis reduction, a corporation may claim a reduced investment credit and claim depreciation on the full cost of the assets. For Wisconsin franchise/income tax purposes, a corporation that claims the higher investment tax credit (and makes a reduction in the basis of its assets) can elect one of the following:

- (1) Claim the same depreciation for Wisconsin as it does for federal tax purposes and get a deduction for the basis difference in the year of disposition pursuant to s. 71.04(15)(e), 1985 Wis. Stats., or
- (2) Assume for Wisconsin tax purposes that the reduced tax credit was claimed for federal purposes and therefore claim depreciation on the higher basis.

If a corporation chooses to claim the reduced investment tax credit on its federal return, depreciation will be claimed on the same full cost of the assets for both federal and Wisconsin income purposes. Refer to *Wisconsin Tax Bulletin* 35, dated January 1984, for further details.

#### J. MINERAL ORES DEPLETION - Corporations

Description: Corporations engaged in Wisconsin in the mining, milling or smelting of lead, zinc, copper or other metals (including sulphur and iron from processing such metals) except iron, are allowed to deduct percentage depletion in lieu of cost depletion (s. 71.046, 1985 Wis. Stats.).

In order to claim a deduction for percentage depletion, the mine must have had gross income from sales of ore and ore products of at least \$100,000 in taxable year 1976. The deduction allowed in subsequent years is based on a diminishing percentage of the 1976 deduction, and the deduction is completely eliminated after nine years. The statute is effective until January 1, 1988.

The tax savings attributable to the depletion allowance must be used in prospecting for ore in Wisconsin, with proof furnished to the Department of Revenue (Wis. Adm. Code section Tax 3.38).

When and How Election Made: The election to deduct percentage depletion in lieu of cost depletion is made by claiming the deduction on a franchise/income tax return filed for the taxable year of claim.

Changing or Revoking Election: A change in the method of depletion is generally considered a change in the method of accounting and therefore approval is required from the Department of Revenue (Wis. Adm. Code section Tax 2.16).

#### K. IRON ORE DEPLETION - Corporations

Description: Corporations engaged in the mining of low grade iron ore in Wisconsin are allowed to deduct percentage depletion in lieu of cost depletion, pursuant to s. 71.047, 1985 Wis. Stats.

In order to claim a deduction for percentage depletion, the corporation must have had gross income from mining low grade iron ore, of at least \$100,000 in taxable year 1976. The deduction allowed in subsequent years is based on a diminishing percentage of the 1976 deduction, and the deduction is completely eliminated after nine years. The statute is effective until January 1, 1988.

When and How Election Made: The election to deduct percentage depletion in lieu of cost depletion is made by claiming the deduction on a franchise/income tax return filed for the taxable year of claim.

Changing or Revoking Election: A change in the method of depletion is generally considered a change in the method of accounting and therefore approval is required from the Department of Revenue (Wis. Adm. Code section Tax 2.16).

#### L. INSTALLMENT SALES - Corporations

Description: Subject to approval by the Department of Revenue, a corporation may elect to report the profit from the sale of real estate, or from a casual sale of personal property for a price exceeding \$1,000, on the installment method, pursuant to s. 71.11(8), 1985 Wis. Stats., and Wis. Adm. Code section Tax 2.19. To qualify for this method, payments in the first income year of sale may not exceed 30% of the selling price. The profit to be reported is the proportion of the installment payments received in the taxable year which the total gross profit bears to the contract price.

Corporations regularly engaged in the business of selling personal property and keeping records on the installment basis are required to report on the accrual basis for Wisconsin tax purposes.

When and How Election Made: The election to report gain from the sale of real estate or casual sales of personal property on the installment method is made by the corporation when it files its franchise/income tax return for the year in which the sale was made. It is not necessary to obtain authorization from the Department of Revenue. A corporation which elects to report qualifying gain on the installment method may assume that approval is granted unless notified otherwise by the department.