

In order to receive the 10% research credit, a claimant must submit, along with the tax return, a copy of the certification for tax benefits and a statement by the Department of Development verifying both the amount of investment and the eligibility of the investment.

The amount of each of the credits described above is required to be included in the Wisconsin taxable income of the claimant.

The Department of Revenue is given the authority to deny a portion of the credits explained above if granting the full amount claimed would bring the total of the credits granted to the claimant over the limits established by the Department of Development.

18. School Property Tax Credit Percentage Increased to 8.5% (1987 Act 419, amend s. 71.53(2), effective for taxable year 1988 and thereafter.)

A taxpayer may claim as a credit against, but not to exceed the amount of individual income tax, 8.5% of the first \$2,000 of property taxes or rent constituting property taxes (\$1,000 for married persons filing separately). In taxable year 1987, only 6.9% of property taxes or rent constituting property taxes was used to offset income taxes.

19. Alternative Minimum Tax - Federal Standard Deduction, Itemized Deductions and Personal Exemptions Not Subtracted Under the Tax Benefit Rule When Computing Alternative Minimum Taxable Income for Wisconsin (1987 Act 399, amend s. 71.60(4), effective for taxable year 1988 and thereafter.)

The starting point for the Wisconsin alternative minimum tax is federal alternative minimum taxable income. The federal alternative minimum taxable income may be reduced to prevent the inclusion of any amounts, except the federal standard deduction, itemized deductions, and personal exemptions, that do not reflect a benefit in respect to the Wisconsin income tax. Under prior law, an exception was not provided for the federal standard deduction, itemized deductions, and personal exemptions which resulted in these items being subtracted to arrive at Wisconsin alternative minimum taxable income.

20. When Department May Credit Overpayments Against Certain Liabilities of Taxpayer (1987 Act 393, repeal s. 71.09(10)(a) and (b), renumber s. 71.09(10)(intro.) to 71.09(10) and amend s. 71.09(10) as renumbered, and create s. 71.09(10m), effective May 3, 1988.)

For persons filing individual or separate Wisconsin returns, the department is authorized to presume that any overpayment, homestead or farmland credit, or refund on the individual or separate return is nonmarital property which may be used to offset any taxes due, a debt owed the state under s. 71.105, Wis. Stats., or delinquent support and maintenance payments under s. 46.255, Wis. Stats., owed by the filer. A 2-year period is provided for a spouse or former spouse of the filer to claim a refund of any incorrectly credited amount by showing by clear and convincing evidence that the overpayment, credit, or refund was nonmarital property of the nonobligated spouse.

For married persons filing a joint Wisconsin return, the department may credit overpayments, credits, or refunds against the liability of either or both spouses for taxes, debts to the state under s. 71.105, Wis. Stats., or delinquent child support obligations under s. 46.255, Wis. Stats., incurred during marriage after December 31, 1985, or after both spouses are domiciled in Wisconsin, whichever is later. However, the department may only credit a portion of the overpayments, credits, or refunds against certain debts to the state or certain delinquent child support obligations not subject to the family and marriage debt satisfaction provisions of s. 766.55(2)(b), Wis. Stats., and against pre-marital date or predetermination date tax liabilities of a spouse. The department is no longer required to credit overpayments, credits, or refunds in accordance with the marshaling provisions of s. 766.55(2)(d), Wis. Stats.

The department is required to provide notice to the spouses of its intent to use the crediting process and allow the nonobligated spouse 20 days after notice to prove that all or part of the amounts to be credited are the nonmarital property of the nonobligated spouse. Failure to provide notice will allow the spouse 2 years in which to file a claim for refund of any incorrectly credited amount.

21. Innocent Spouse Protection from Tax Liability Extended to Former Spouses (1987 Act 393, create s. 71.11(2r), effective for taxable year 1988 and thereafter.)

Current law provides innocent spouse protection when spouses file joint or separate returns. This innocent spouse protection is extended to include former spouses whether a former spouse files an individual return as a single person or a separate or joint return after remarriage. Section 66(c) of the Internal Revenue Code provides the following criteria for protecting an innocent spouse:

- a. The individual did not know and had no reason to know of an item of marital property income.
- b. It is inequitable to include such an item of marital property in the individual's gross income, taking into account all facts and circumstances.

22. Satisfaction of Tax Liability if Innocent Spouse Provisions Apply (1987 Act 393, amend s. 71.13(1)(d), effective May 3, 1988.)

When an innocent spouse is relieved of a tax obligation under s. 71.11(2), (2m), or (2r), Wis. Stats., the tax obligation of the other spouse or former spouse may be satisfied only under the marshaling provisions of s. 71.09(7)(e), (10), (10m), or (11)(e), Wis. Stats.

23. Addition-to-Tax Penalty Changed to Interest (1987 Act 399, amend ss. 71.21(1m)(am), (11), and (12)(intro.) and (c) and 71.23, effective for taxable year 1988 and thereafter.)

The addition-to-tax penalty imposed on the underpayment of estimated income taxes of individuals and fiduciaries is changed to interest at the

rate of 12% per year on the amount of the underpayment for the period of the underpayment.

24. Order of Computation Revised for Computing Tax Liability (1987 Act 399, 1987 Act 395 and 1987 Act 328, create s. 71.65(1)(fp), effective May 3, 1988, create s. 71.65(1)(fr), effective for taxable year 1989 for projects begun after December 31, 1988, and create s. 71.65(1)(go) and (gp), effective for taxable year 1988 and thereafter.)

All persons other than corporations shall compute their tax liability in the following order for the 1988 taxable year and thereafter.

- a. Tax under s. 71.09(1b), (1e), (1f), (1g), or (1h)
- b. Personal exemptions under s. 71.09(6p)
- c. Itemized deduction credit under s. 71.09(6r)
- d. School property tax credit under s. 71.53
- e. Historic structure credit under s. 71.09(12p)
- f. Historic rehabilitation credit under s. 71.09(12q)*
- g. Alternative minimum tax under s. 71.60
- h. Married couple credit under s. 71.09(7m)
- i. Development zones investment credit under s. 71.09(12di)
- j. Development zones location credit under s. 71.09(12dL)
- k. Payments to other states under s. 71.09(8)
- l. The total of claim of right credit under s. 71.09(12cr), farmland preservation credit under s. 71.09(11), homestead credit under s. 71.09(7), development zones sales tax credit under s. 71.09(12ds), development zones jobs credit under s. 71.09(12dj), estimated tax payments under s. 71.21, and taxes withheld under s. 71.19.

* The historic rehabilitation credit is only available for taxable year 1989 and 1990.

25. Publicly Traded Partnerships Treated as Corporations

See Item B3.

26. Tax Unrelated Business Income of Tax-Exempt Organizations and Trusts

See Item B4.

B. CORPORATION FRANCHISE OR INCOME TAXES

1. Exceptions to Definition of Internal Revenue Code for Corporations for 1987 (1987 Act 399, renumber s. 71.02(1)(bg)(intro.) to 71.02(1)(bf)1 and amend s. 71.02(1)(bf)1, as renumbered, effective for taxable year 1987.)

For corporations other than insurance companies, tax-option corporations, regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), and real estate investment trusts (REITs), for taxable year 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, as it applies to taxable year 1987, with the following exceptions:

- a. For 1987 taxable years that end after July 1 and before December 31, "Internal Revenue Code" does not include changes to the federal Internal Revenue Code made by sections 142 (limitations on deductions for meals, travel, and entertainment), 801 (limitations on use of cash method of accounting), 802 (simplified dollar-value LIFO method for certain small businesses), and 803 (capitalization and inclusion in inventory costs of certain expenses) of the Tax Reform Act of 1986 (P.L. 99-514).
 - b. Changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.
 - c. The Internal Revenue Code is modified as provided in s. 71.02(1)(bg), Wis. Stats.
2. Reference to Internal Revenue Code for Corporations Updated for 1988 (1987 Act 399, renumber s. 71.02(1)(bg)(intro.) to 71.02(1)(bf)1 and amend s. 71.02(1)(bf)1 as renumbered, and create s. 71.02(1)(bf)2 and 3, and (bg)(intro.) and nonstatutory provision, see effective dates below.)

The law changes described below apply to corporations other than insurance companies, tax-option corporations, regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), real estate investment trusts (REITs), and nonprofit corporations subject to a tax on unrelated business income.

- a. For taxable years that end after July 1, 1988, and before December 31, 1988, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, with the following exceptions:
 - (1) Changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.
 - (2) The Internal Revenue Code is modified as provided in s. 71.02(1)(bg), Wis. Stats.
- b. For taxable years that begin after December 31, 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1987, with the modifications provided in s. 71.02(1)(bg), Wis. Stats.

c. The transitional rules under section 10223(d) of the Revenue Act of 1987 (P.L. 100-203), relating to mirror subsidiaries, apply for Wisconsin tax purposes as they apply for federal tax purposes.

3. Publicly Traded Partnerships Treated as Corporations (1987 Act 399, renumber s. 71.02(1)(a) to 71.02(1)(at), amend ss. 71.09(11)(a)1.c and (12r)(L) and 71.10(2)(d) and (3)(a) and (b), and create s. 71.02(1)(af) and (2)(ej) and nonstatutory provision, effective May 17, 1988.)

Publicly traded partnerships treated as corporations in section 7704 of the Internal Revenue Code will also be treated as corporations for Wisconsin franchise or income tax purposes. The transitional rules under section 10211 of the Revenue Act of 1987 (P.L. 100-203), relating to existing partnerships, apply for Wisconsin purposes as they apply for federal purposes.

Publicly traded partnerships must file a Wisconsin corporate franchise or income tax return rather than a Wisconsin partnership return. The return is due on or before the 15th day of the 3rd month following the close of the taxable year. Publicly traded partnerships are taxable at the Wisconsin corporate tax rate of 7.9%. Other Wisconsin provisions relating to the treatment of corporations apply to publicly traded partnerships. For example, publicly traded partnerships may qualify for farmland preservation credit and the research credits.

The partners of publicly traded partnerships treated as shareholders for federal purposes will also be treated as shareholders for Wisconsin purposes.

4. Tax Unrelated Business Income of Tax-Exempt Organizations and Trusts (1987 Act 399, amend ss. 71.01(3)(a), 71.02(1)(f), 71.07(2)(intro.), and 71.10(1)(intro.) and create ss. 71.02(1)(bhm), 71.04, 71.07(2)(f), and 71.10(1m), effective for taxable year 1988 and thereafter.)

Beginning with the 1988 taxable year, every organization exempt from Wisconsin franchise or income tax under s. 71.01(3)(a), Wis. Stats., that is required to report unrelated business income for federal purposes on federal Form 990-T, must report unrelated business income to Wisconsin if the gross income from an unrelated trade or business is \$1,000 or more. In addition, trusts which are exempt from federal taxation under section 501(a) of the Internal Revenue Code, including certain pension, profit-sharing, and stock bonus plans, and individual retirement arrangements (IRAs), and required to report unrelated business income for federal purposes on federal Form 990-T must report unrelated business income to Wisconsin if the gross income from unrelated trade or business is \$1,000 or more.

The unrelated business taxable income subject to the Wisconsin tax is the amount computed under section 512 of the Internal Revenue Code as amended to December 31, 1987. All three of the following conditions must be met before it can be determined that a tax-exempt organization or trust is engaged in an unrelated trade or business:

- a. The activity must be a trade or business. A trade or business is any activity carried on for the production of income from selling goods or performing services.
- b. The trade or business must be carried on regularly. Business activities are regularly carried on if they show a frequency and continuity, and are pursued in a manner similar to comparable commercial activities of nonexempt organizations.
- c. The trade or business must not be substantially related to the organization's exempt purpose or function. "Not substantially related" means that the activity that produces the income does not contribute importantly to the exempt purposes of the organization, other than the need for funds.

Those tax-exempt organizations and trusts which are required to file a federal return and have an unrelated trade or business in Wisconsin must file a Wisconsin tax return. A special Wisconsin form will be developed. The return will be due at the same time as for federal purposes: the 15th day of the 5th month after the end of the organization's taxable year, except an employees' trust or an IRA must file by the 15th day of the 4th month after the end of the taxable year.

All organizations subject to the tax on unrelated business taxable income, except trusts and IRAs, are taxable at the Wisconsin corporate tax rate of 7.9%. All exempt trusts and IRAs are taxable at the Wisconsin income tax rates that apply to trusts. Other provisions relating to the treatment of corporations or trusts, as appropriate, apply to tax-exempt organizations and trusts.

- 5. Definition of Internal Revenue Code for Corporations Changed for 1988 (1987 Act 399, repeal s. 71.02(1)(bg)18 and repeal and recreate s. 71.02(1)(bg)17, effective for taxable year 1988 and thereafter.)

The "Internal Revenue Code" for the taxable year 1988 and thereafter for purposes of computing net income of a corporation does not include sections 501 to 511 and 513 to 528 of the federal Internal Revenue Code (relating to exempt organizations), except as they pertain to the definition of unrelated business taxable income in section 512. Exempt organizations for Wisconsin tax purposes are those qualifying under s. 71.01(3)(a), Wis. Stats. (See Item B4.)

- 6. Exception to Definition of Internal Revenue Code for Insurance Companies for 1987 (1987 Act 399, amend s. 71.01(4)(g)11, effective for taxable year 1987.)

For insurance companies for taxable year 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, as it applies to taxable year 1987, except that changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.

7. Reference to Internal Revenue Code for Insurance Companies Updated for 1988 (1987 Act 399, amend s. 71.01(4)(g)11 and create s. 71.01(4)(g)12, effective for taxable years that begin after December 31, 1987.)

For insurance companies for taxable years that begin after December 31, 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1987.

8. Exceptions to Definition of Internal Revenue Code for Regulated Investment Companies, Real Estate Mortgage Investment Conduits, and Real Estate Investment Trusts for 1987 (1987 Act 399, amend s. 71.02(1)(c)12, effective for taxable year 1987.)

For regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), and real estate investment trusts (REITs), for taxable year 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, as it applies to taxable year 1987, with the following exceptions:

- a. For taxable years that end after July 1, 1987, and before December 31, 1987, "Internal Revenue Code" does not include changes to the federal Internal Revenue Code made by sections 142 (limitations on deductions for meals, travel, and entertainment), 801 (limitations on use of cash method of accounting), 802 (simplified dollar-value LIFO method for certain small businesses), and 803 (capitalization and inclusion in inventory costs of certain expenses) of the Tax Reform Act of 1986 (P.L. 99-514).
 - b. Changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.
 - c. Property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.
9. Reference to Internal Revenue Code for Regulated Investment Companies, Real Estate Mortgage Investment Conduits, and Real Estate Investment Trusts Updated for 1988 (1987 Act 399, amend s. 71.02(1)(c)12 and create s. 71.02(1)(c)13 and 14, see effective dates below.)

The law changes described below apply to regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), and real estate investment trusts (REITs).

- a. For taxable years that end after July 1, 1988, and before December 31, 1988, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, with the following exceptions:
 - (1) Changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.

- (2) Property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.
 - (3) Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis of property disposed of during the taxable year for federal and Wisconsin tax purposes.
- b. For taxable years that begin after December 31, 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1987, with the following exceptions:
 - (1) Property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.
 - (2) Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis of property disposed of during the taxable year for federal and Wisconsin tax purposes.
- 10. Treatment of Corporate Partner's Share of Partnership Gross Receipts, Income, or Loss (1987 Act 399, repeal s. 71.07(1m)(b)15 and (2)(cr)15 and amend s. 71.07(1m)(b)14 and (2)(cm)8, effective for partners' taxable year 1988 and thereafter.)

 Apportionable income includes a partner's share of the partnership's income or loss. Sales for purposes of the sales factor includes a partner's share of the partnership's gross receipts.
- 11. Gross Receipts and Gain From Sale of Intangibles Are Not Sales for Purposes of Sales Factor (1987 Act 399, amend s. 71.07(2)(cr)7, effective May 17, 1988.)

 The amendment to s. 71.07(2)(cr)7, Wis. Stats., clarifies that gross receipts and gain or loss from the sale of intangible assets, except gross receipts from the sale of inventory, are not "sales" for purposes of computing the Wisconsin sales factor.
- 12. Pari-Mutuel Wager Winnings and Purses Are Apportionable Income but Excluded From Sales Factor (1987 Act 354, create s. 71.07(1m)(b)24 and (2)(cr)16, effective taxable year 1988 and thereafter.)

 Income of corporations from pari-mutuel wager winnings and purses subject to s. 567.065(3)(a) and (b) and (3m)(a) and (b), Wis. Stats., is considered apportionable income. However, "sales" for purposes of computing the Wisconsin sales factor, does not include such winnings or purses.
- 13. Credit for Contributions to Wisconsin Housing and Economic Development Authority (1987 Act 399, amend s. 71.09(12m)(a), effective May 17, 1988, and amend s. 71.65(2)(f) and create s. 71.09(12m)(title), effective July 1, 1988.)

The Act abolishes the Community Development Finance Authority (CDFA) on July 1, 1988, and requires the Wisconsin Housing and Economic Development Authority (WHEDA) to assume the responsibilities of CDFA. Prior law provided a tax credit to corporations who contributed money to CDFA and bought stock or a partnership interest in the Community Development Finance Company. The Act retains the tax credit for taxpayers who contribute money to WHEDA and buy stock or a partnership interest in the Community Development Finance Company.

14. Carryback of Capital Losses by Corporations - Special Statute of Limitations (1987 Act 399, amend s. 71.10(10)(d) and create s. 71.10(10)(em), effective for capital losses carried back to taxable year 1987 and thereafter.)

If a corporation utilizes the federal capital loss carryback provisions for Wisconsin corporation franchise or income tax purposes and the carryback results in an overpayment of tax, a corporation may claim a refund within 4 years after the due date, including extensions, for filing the return for the taxable year of the capital loss that is carried back.

15. Addition-to-Tax Penalty Changed to Interest (1987 Act 399, amend s. 71.22(1)(a), (7), and (8)(intro.) and 71.23, effective for taxable year 1988 and thereafter.)

The addition-to-tax penalty imposed on the underpayment of estimated income or franchise taxes of corporations has been changed to interest at the rate of 12% per year on the amount of the underpayment for the period of the underpayment.

16. Quick Refund of Estimated Taxes Paid by Corporations (1987 Act 399, create s. 71.22(3m), effective May 17, 1988.)

The department may refund estimated taxes after the completion of the taxable year to which the estimated taxes relate if the refund is at least 10% of the taxes estimated for that taxable year and is at least \$500.

17. Exception to Corporate Estimated Tax Requirements Changed (1987 Act 399, amend s. 71.22(8)(b), effective for taxable year 1989.)

In the case of any underpayment of estimated tax, no interest (see item B15) is required to be paid by a corporation if the preceding taxable year was 12 months, the corporation had no liability under s. 71.01, Wis. Stats., for that year, and the corporation has a Wisconsin net income of less than \$250,000 for the current taxable year.

18. Development Zones - Tax Benefits for Taxpayers Located in Development Zones

See Item A17.