

A. INDIVIDUAL AND FIDUCIARY INCOME TAXES

1. Reference to Internal Revenue Code for Individuals, Estates, and Trusts Updated for 1989 (1989 Act 31, create secs. 71.01(6)(d) and (7r), effective for taxable years beginning after December 31, 1988.)

For taxable years that begin after December 31, 1988 (1989 and subsequent year tax returns), "Internal Revenue Code" for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 1988, with the following exception:

- a. At the taxpayer's option, for purposes of computing amortization or depreciation, "Internal Revenue Code" means either the federal Internal Revenue Code as amended to December 31, 1988, or the federal Internal Revenue Code in effect for the taxable year for which the return is filed, except that property depreciated for taxable year 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.

In addition, the "non-Code" provisions of the federal Tax Reform Act of 1986 (P.L. 99-514), Revenue Act of 1987 (P.L. 100-203), and Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) apply to the extent that they affect provisions of the Internal Revenue Code that are applicable for Wisconsin purposes. Non-Code provisions are provisions that don't amend the Internal Revenue Code itself but instead provide special interpretations, transitional rules, or exceptions to general effective dates of the amendments to the Internal Revenue Code.

2. Exceptions to Definition of Internal Revenue Code for Individuals, Estates, and Trusts Provided for 1988 (1989 Act 31, amend sec. 71.01(6)(b) and (c), see effective dates below.)

The law described below applies to individuals, estates, and trusts, except nuclear decommissioning trust or reserve funds.

- 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) and the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) apply for Wisconsin purposes at the same time as for federal purposes.
 - (2) The non-Code provisions of P.L. 99-514, P.L. 100-203, and P.L. 100-647 apply to the extent that they affect provisions of the Internal Revenue Code that are applicable for Wisconsin purposes.
- b. For taxable years that begin after December 31, 1987, and before January 1, 1989, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1987, with the following exceptions:

- (1) At the taxpayer's option, "Internal Revenue Code" includes any revisions to section 67(c) of the Internal Revenue Code adopted after January 1, 1988, that relate to the indirect expenses of regulated investment companies, including mutual funds.
 - (2) Changes to the federal Internal Revenue Code made by the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) apply for Wisconsin purposes at the same time as for federal purposes.
 - (3) The non-Code provisions of P.L. 99-514, P.L. 100-203, and P.L. 100-647 apply to the extent that they affect provisions of the Internal Revenue Code that are applicable for Wisconsin purposes.
3. Exceptions to Definition of Internal Revenue Code for Individuals, Estates, and Trusts Provided for 1987 (1989 Act 31, amend sec. 71.01(6)(a), effective for taxable year 1987.)

For individuals, estates, and trusts, except nuclear decommissioning trust or reserve funds, for taxable year 1987 (years ending after July 1, 1987, and on or before June 30, 1988), "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), 802 (simplified dollar-value LIFO method for certain small businesses), 803 (capitalization and inclusion in inventory costs of certain expenses), and Subtitle A of Title XI (pensions and deferred compensation) 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) and the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) apply for Wisconsin purposes at the same time as for federal purposes.
 - c. The non-Code provisions of P.L. 99-514, P.L. 100-203, and P.L. 100-647 apply to the extent that they affect provisions of the Internal Revenue Code that are applicable for Wisconsin purposes.
4. Exception to Definition of Internal Revenue Code for Individuals, Estates, and Trusts Provided for 1986 and Prior (1989 Act 31, create nonstatutory provision, effective for taxable year 1986 and previous taxable years.)

Effective for taxable years ending on or before June 30, 1987, changes to the federal Internal Revenue Code made by P.L. 100-647 apply for Wisconsin purposes at the same time as for federal purposes.

5. Wisconsin Taxable Years Conformed to Federal Taxable Years (1989 Act 31, repeal sec. 71.03(3)(b); renumber sec. 71.03(3)(a) to sec. 71.03(3) and amend sec. 71.03(3) as renumbered; amend secs. 71.01(12), 71.03(6)(a), 71.05(5), 71.07(2fd)(a), (b), and (c), 71.09(14), (15)(a) and (b), 71.13(2)(b), 71.58(3), (4), (6), and (7)(b), 71.59(2)(a), 71.70(1), 71.75(3), and 71.83(1)(a)2; and create secs. 71.06(2m), 71.58(9), and nonstatutory provision; effective for taxable years beginning on or after August 1, 1988.)

"Taxable year" means the taxable period upon the basis of which the taxable income of the taxpayer is computed for federal income tax purposes. The taxable year of a taxpayer who keeps his or her accounting records on the basis of a 52-53 week period ends on the last day of the month closest to the end of the 52-53 week period. Under prior law, "taxable year" meant the calendar year or any fiscal year ending after June 30 in that calendar year and before July 1 in the following calendar year.

As a result of this law change, taxpayers having taxable years beginning after July 31, 1988, and before January 1, 1989, must file two 1988 returns covering different taxable periods: one for the taxable year beginning in August through December 1987 and ending in July through November 1988, and a second 1988 return for the taxable year beginning in August through December 1988 and ending in July through November 1989. A 1989 tax return must be filed for the calendar year ending December 31, 1989, or any fiscal year beginning in 1989.

If a federal income tax return is filed for a fractional part of a year, the person also must file a Wisconsin income tax return for that fractional year. The income must be computed and reported on the basis of the period for which that return is filed, and that fractional year will constitute a taxable year. The net income for the short period must be placed on an annual basis using the method applicable for federal income taxes under IRC sec. 443(b)(1).

Returns for less than a full taxable year must be filed with the department on or before the date applicable for federal income taxes. Under prior law, a short-period return would have been due the 15th day of the fourth month following the close of the person's normal taxable year.

A claimant may claim the farmers' drought credit on only one return if the claimant files more than one 1988 return. The credit may not be claimed on a return for any year beginning after July 31, 1988.

If a tax rate under sec. 71.06(1) or (2), Stats., changes during a taxable year, the tax for that taxable year must be computed using the method under IRC sec. 15.

6. Determining Domicile for Wisconsin Income Tax (1989 Act 31, renumber sec. 71.02 to sec. 71.02(1) and amend sec. 71.02(1) as renumbered and create sec. 71.02(2)(a) to (e), effective for taxable years beginning on or after January 1, 1989.)

For taxable years beginning on or after January 1, 1989 (1989 and subsequent year tax returns), the following are not relevant in determining whether or not an individual is domiciled within Wisconsin for purposes of the Wisconsin income tax:

- a. Contributions made to charitable organizations in Wisconsin. (Note: This item was not relevant in determining domicile, beginning with the 1984 taxable year.)
- b. Directorships in corporations operating in Wisconsin.
- c. Accounts (as defined in sec. 710.05(1)(a), Wis. Stats.) held in financial institutions (as defined in sec. 710.05(1)(c), Wis. Stats.) located in Wisconsin.
- d. Corpuses of trusts, in which the individual is a trustee or a beneficiary, located in Wisconsin.
- e. Retention of professional services of brokers (as defined in sec. 408.303, Wis. Stats.) and of attorneys and accountants located in Wisconsin.

7. Payroll Factor of Apportionment Formula Clarified (1989 Act 31, amend sec. 71.04(6)(e), effective August 9, 1989.)

This provision clarifies that if the payroll factor is eliminated from the apportionment formula either by permission from the department or by order of the department, the sales factor of the apportionment formula must still be double weighted. (Note: A nonresident individual or fiduciary will generally use the apportionment formula when such person is engaged in business in and outside of Wisconsin and the Wisconsin operations are part of a unitary business.)

8. Sales Factor Modified for Sales to the Federal Government (1989 Act 31, renumber sec. 71.04(7)(b) to sec. 71.04(7)(b)(intro.) and amend sec. 71.04(7)(b)(intro.) as renumbered; amend sec. 71.04(7)(a) and (b)2; and create sec. 71.04(7)(b)2m and 3, see effective dates in Item B.17.)

See Item B.17.

9. Taxation of Nonresident's Winnings From Multistate Lottery (1989 Act 31, amend sec. 71.04(1)(a), effective August 9, 1989.)

Income of nonresident individuals, estates, and trusts from any multistate lottery under ch. 565, Wis. Stats., is taxable by Wisconsin if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer as defined in sec. 565.01(6), Wis. Stats., or from the Wisconsin Lottery Board.

10. Interest Income or Original Issue Discount From Higher Education Bonds (1989 AB 233, repeal sec. 18.04(4); amend secs. 18.04(6)(a), 18.06(6) and (7)(d), 18.55(5), 18.56(1), 20.866(intro.), 20.867(3)(w) and 71.05(6)(a)1; repeal and recreate sec. 18.55(4); and create Subchapter IV of Chapter 18 and sec. 20.866(2)(yz) , effective day after publication.)

Interest income or original issue discount derived from higher education bonds issued by the state building commission under subch. IV of ch. 18 of the Wisconsin Statutes is exempt from Wisconsin income tax.

CAUTION: AB 233 has been enacted by the Legislature but, as of the date this publication went to print, has not been signed by the Governor. The October issue of the Wisconsin Tax Bulletin will include information on the status of this bill.

11. Wisconsin Net Operating Loss Changes (1989 Act 31, amend secs. 71.01(14) and 71.05(8)(b), effective for computation of net operating losses and of modified taxable income for taxable year 1988.)

There are two provisions relating to net operating losses. The first provision relates to the computation of the amount of loss which may be carried forward from the year in which the loss is incurred. The second provision relates to the amount of loss which is considered to be used up in years after the loss year.

The effect of these provisions will first be reflected on 1989 Wisconsin tax returns when a net operating loss is carried forward from 1988.

- a. The Wisconsin net operating loss is the federal net operating loss as computed under the federal Internal Revenue Code with certain modifications. For losses incurred on the 1987 tax return, the federal net operating loss was adjusted to allow the Wisconsin 60% capital gain exclusion. 1989 Act 31 provides that effective for computing a net operating loss from amounts on 1988 tax returns and thereafter, the federal net operating loss is no longer adjusted for the Wisconsin 60% capital gain exclusion.

Example: For a loss incurred on the 1988 tax return, a taxpayer computes a federal net operating loss of \$20,000. This figure includes \$10,000 of capital gain from the sale of an asset held two years. Assuming there are no additional adjustments, under the provisions in 1989 Act 31 the Wisconsin net operating loss is the same as the federal net operating loss. (Under Wisconsin law prior to this provision, the Wisconsin net operating loss is \$26,000, which is comprised of the federal net operating loss of \$20,000 and the \$6,000 Wisconsin capital gain exclusion.)

In addition to the Wisconsin capital gain exclusion, the federal net operating loss is also not adjusted for the following items:

1. The amount allowed as a farm loss carryover.
2. The amount of recapture of the development zone investment credit.
3. The amount recognized as a gain under sec. 1001(c) of the Internal Revenue Code if a surviving spouse and a distributee exchange their interests in marital property under sec. 857.03(2), Wis. Stats. (1987-88).

- b. A Wisconsin net operating loss may be carried forward against Wisconsin taxable incomes of the next 15 years to the extent that it has not been offset against other income in the loss year and to the extent that it has not been offset against Wisconsin modified taxable income of any year since the loss year. 1989 Act 31 provides that effective for the computation of Wisconsin modified taxable income from the 1988 return, the Wisconsin 60% capital gain exclusion is added back to Wisconsin taxable income when calculating Wisconsin modified taxable income.

Example: A single taxpayer has a net operating loss carryover from 1987 of \$50,000. His Wisconsin taxable income is as follows:

	<u>1988</u>
Wages	\$ 5,000
Long-term capital gain	4,000
Wisconsin capital gain exclusion	(2,400)
Allowable NOL	
$(5,000 + 4,000 - 2,400 - 5,200 = 1,400)$	(1,400)
Wisconsin total income	\$ 5,200
Less standard deduction	5,200
Wisconsin taxable income	\$ -0-

The amount of NOL used up for 1988 is equal to Wisconsin modified taxable income computed as follows:

	<u>Current Law</u>	<u>1988 Per 1989 Act 31</u>
Wisconsin total income	\$5,200	\$ 5,200
Net operating loss deduction	1,400	1,400
Capital gain exclusion	-0-	2,400
Total	\$6,600	\$ 9,000
Less standard deduction	5,200	4,990
Modified taxable income	\$1,400	\$ 4,010
(The \$4,010 represents the amount of NOL used up in 1988 per the provisions in 1989 Act 31.)		

12. Application of Rules Governing Courts' Transferring of Jurisdiction Over Trusts Created at Death Limited (1989 Act 31, amend sec. 71.14(2), effective August 9, 1989.)

This provision clarifies that Wisconsin courts have jurisdiction over trusts created at death by will, contract, declaration of trust, or implication of law only when the decedent was a Wisconsin resident at the time of death.

13. Filing Requirement and Standard Deduction for Dependents With Unearned Income (1989 Act 31, amend secs. 71.03(2)(a)3 and 71.05(22)(d) and (f), effective for taxable years beginning on or after January 1, 1989.)

For taxable years beginning on or after January 1, 1989 (1989 and subsequent year tax returns), a person who can be claimed as a dependent on another taxpayer's Wisconsin income tax return is required to file a Wisconsin income tax return if he or she has unearned income of \$500 or more. The \$500 filing requirement applies whether or not the person was actually claimed as a dependent on another taxpayer's Wisconsin income tax return.

A dependent is allowed a minimum standard deduction of \$500. The \$500 minimum standard deduction is allowed to full-year residents, part-year residents, and nonresidents.

14. Tax Tables for Income Tax - Technical Changes (1989 Act 31, amend sec. 71.06(3)(intro.), (b), and (c), effective August 9, 1989.)

The amendments to sec. 71.06(3)(intro.), (b), and (c), Wis. Stats. (1987-88), in 1989 Act 31 delete the outdated references to having tax tables up to \$10,000 and rounding to 10 cents.

Also, sec. 71.06(3)(c), Wis. Stats. (1987-88), states that the tax payable for each bracket shall be shown before allowance of any deduction for personal exemptions or exemptions for dependents. Since there are other credits which also reduce the tax, and not everyone is allowed a personal exemption, the outdated references to personal exemptions and exemptions for dependents are deleted and replaced with a reference to allowance of any credit.

15. School Property Tax Credit Increased (1989 Act 31, amend sec. 71.07(9)(b), effective for taxable years beginning on or after January 1, 1989.)

Effective for taxable years beginning on or after January 1, 1989 (1989 tax return), the rate of school property tax credit is increased from 8.5% to 10% of the first \$2,000 of property taxes or rent constituting property taxes (\$1,000 for married persons filing separately.)

16. Additional Interest May Be Used in Computing Itemized Deduction Credit (1989 Act 31, amend sec. 71.07(5)(intro.) and (a)7, effective for taxable years beginning on or after January 1, 1990.)

For taxable years beginning on or after January 1, 1990 (1990 and subsequent year tax returns), 100% of interest paid on a loan to purchase or refinance real property which has been sold on a land contract may be used in computing the Wisconsin itemized deduction credit.

Under prior law, interest paid on a loan to purchase real property which was subsequently sold on a land contract had to be combined with other personal interest which was then limited to \$1,200 (\$600 if married filing separately) for purposes of computing the credit, unless the real property sold was either the seller's principal residence, a secondary residence located in Wisconsin or was originally purchased on a land contract.

(Note: This change does not affect interest paid on a second home located outside Wisconsin. Under both old law and new law, interest paid on a second home located outside Wisconsin may not be used in computing the Wisconsin itemized deduction credit.)

Example: Taxpayer Z purchased an apartment building in 1975 with a mortgage. In January 1990, Z sells the apartment building on a land contract. The sale does not include the sale of any tangible personal property. Z continues to pay interest on the 1975 mortgage on the apartment building. The entire amount of interest paid on the mortgage may be used in computing the Wisconsin itemized deduction credit for 1990.

17. Married Couple Credit - Percentage Reduced to 2% (1989 Act 31, amend sec. 71.07(6)(a), effective for taxable years beginning on or after January 1, 1989.)

For taxable years beginning on or after January 1, 1989 (1989 and subsequent year tax returns), married persons filing a Wisconsin joint return may claim as a credit against Wisconsin net income taxes due an amount equal to 2% of the earned income of the spouse with the lower earned income. The maximum allowable credit is \$300. (On the 1988 tax return, the percentage was 2.5% and the maximum credit was \$450.)

18. Married Couple Credit - Earned Income From Working for Spouse (1989 Act 31, amend sec. 71.07(6)(a), effective for taxable years beginning on or after January 1, 1989.)

For taxable years beginning on or after January 1, 1989 (1989 and subsequent year tax returns), amounts received by an individual for services performed in the employ of the individual's spouse are used to compute the married couple credit. When computing the credit on the 1987 and 1988 tax returns, such amounts received from a spouse could not be used.

19. Development Zone Credits Amended (1989 Act 31, repeal sec. 71.07(2dj)(a) and (e)2. and (2ds)(d)3.; amend secs. 71.05(6)(a)15., and 71.07(2di)(a)(intro.), 1., 2., and 3., (b), (d)2, (e), and (g), (2dj)(am)1., 2., 4., 4e., and 7., (c), and (e)3., (2dL)(e), and (2ds)(a)2. and 3. and (b); repeal and recreate secs. 71.07(2di)(f) and (2dL)(a) and 73.03(35); and create secs. 71.07(2di)(dm), (2dj)(am)4e., 4g., 4m., and 4t., (2dL)(ag), (ar), (aw), and (bm), and (2ds)(dm) and 71.21(4); effective for taxable years beginning on or after August 1, 1988.)

See Item B.20.

20. Development Zone Jobs Credit Amended (1989 AB 60, amend sec. 71.07(2dj)(am)1., effective for business closings and mass layoffs that occur after day of publication for employers that employ 100 or more persons and on the 60th day after day of publication for employers employing fewer than 100 persons.)

For purposes of the development zone jobs credit, a "member of a targeted group" includes a person unemployed as a result of a business action subject to sec. 109.07(1m). Under sec. 109.07(1m), an employer

of 50 or more persons in Wisconsin must generally provide notice of a business closing or mass layoff.

CAUTION: AB 60 has been enacted by the Legislature but, as of the date this publication went to print, has not been signed by the Governor. The October issue of the Wisconsin Tax Bulletin will include information on the status of this bill.

21. Historic Structure Credit Amended (1989 Act 31, repeal sec. 71.07(9m)(b), amend secs. 71.07(9m)(title), (a), (d), (e), and (f) and 71.10(4)(dm), and create sec. 71.07(9m)(c), effective for taxable years beginning on or after August 1, 1988.)

See Item B.22.

22. State Historic Rehabilitation Credit Amended (1989 Act 31, repeal sec. 71.07(9r)(d) and (e), amend secs. 71.07(9r)(title), (a), (b)2., 3.b., 4., 5., and 7., (c), and (g) and 71.10(4)(dr), and create secs. 71.07(9r)(h), (i), and (j) and 71.74(8)(d), effective for taxable years beginning on or after August 1, 1988.)

- a. The credit applies for taxable years beginning on or after August 1, 1988. Under prior law, the credit was to be available only for the 1989 and 1990 taxable years.
- b. It is clarified that the credit applies only to property located in Wisconsin.
- c. The credit applies to rehabilitation projects begun after December 31, 1988. "Begun after December 31, 1988" means that the physical work of construction, or destruction in preparation for construction, must begin after December 31, 1988. This provision codifies an emergency rule adopted by the Department of Revenue.
- d. The maximum amount of the credit is reduced from \$50,000 to \$10,000 for any preservation or rehabilitation project. The maximum amount is \$5,000 for married persons filing separately.
- e. The credit applies to human burial sites, archaeological sites, and owner-occupied personal residences or other property not eligible for the federal supplement credit provided that the residence or other property is not actively used in a trade or business, held for the production of income, or held for sale or other disposition in the ordinary course of the claimant's trade or business. Under prior law, the credit was available for nondepreciable property.
- f. Claimants must obtain the approval of the Historical Society that the completed preservation or rehabilitation substantially complies with the previously-approved plan for the project.
- g. Claimants must complete the rehabilitation work within a specified period of time. The date that the physical work of construction, or destruction in preparation for construction, begins will be the starting date for the time period.