

- (2) It is clarified that the Department of Revenue has the authority to deny claims for development zone credits if such claims would violate the requirement under sec. 560.75(9), Wis. Stats., that a certain percentage of the total development zone credits must be used exclusively for the jobs credit.
- (3) The Department of Development can certify business incubators to participate in the development zone program if the incubator meets special criteria and is located within 5 miles of the boundary of the development zone. It is clarified that the special criteria do not apply to business incubators that are located in a development zone. Business incubators located in a development zone can be certified using the same criteria applicable to other businesses located in a development zone.
- (4) If the Department of Development determines that the amount of tax benefits claimed by businesses in a particular development zone will equal or exceed the allocation of tax benefits available to that development zone, the Department of Development can set a new expiration date for the development zone. The expiration is 90 days after the determination is made by the Department of Development. Under prior law, the expiration was December 31 of the calendar year in which the determination is made.

The Department of Development is given the authority to withdraw the designation of an area as a development zone in cases where (a) no persons are certified to claim tax benefits within the first 12-month period of the zone's existence and the local governing body is not following the development zone plan, or (b) no persons are certified for tax benefits within the first 24-month period of the zone's existence. The expiration of the development zone in such cases is effective immediately.

b. Investment Credit

- (1) The investment credit may be claimed only for purchases made after the person is certified by the Department of Development to claim tax benefits.
- (2) To qualify for the investment credit, tangible personal property must be depreciable property.
- (3) To qualify for the investment credit, at least 50% of the use of the property must be in the conduct of the business operations for which the person is certified by the Department of Development to claim tax benefits. In cases where property is used partially for purposes other than the conduct of the business operations in a development zone for which the person is certified by the Department of Development to claim tax benefits, the purchase price must be reduced by the percentage of nonqualified use during the taxable year the property is first placed into service.

- (4) It is clarified that only partners or shareholders may claim the investment credit based on purchases of qualified property by a partnership or tax-option corporation.
- (5) If the investment credit is claimed for used property, the claimant may not have used the property for business purposes outside the development zone. In addition, for credits attributable to a partnership or tax-option corporation, the entity may not have previously used the property for business purposes outside the development zone. Under prior law, the claimant may not have previously used the property for any purpose outside the development zone.
- (6) It is clarified that eligibility for and the amount of the investment credit attributable to a partnership or tax-option corporation is based on the economic activity of the entity, not that of the partners or shareholders. The entity must compute the amount of credit that may be claimed by each partner or shareholder and must provide that information to each of its partners or shareholders.
- (7) It is clarified that, in the case of credits attributable to a partnership or tax-option corporation, the investment credit can be used to offset the partner's or shareholder's tax attributable to the partner's or shareholder's income from the entity's business operations in a development zone and the entity's directly-related business operations.
- (8) For purposes of recapture of the investment credit, the determination of whether or not property is 3-year property is based on the recovery periods under sec. 168 of the current Internal Revenue Code.
- (9) Amounts of investment credit not used to offset tax may be carried forward for up to 15 years, even if the development zone expires. Under prior law, all carryovers of unused amounts expired following the expiration of the development zone. This change in the carryover rule for the investment credit also applies to the location and additional research credits.

It is clarified that if a person who is certified under sec. 560.765(3), Wis. Stats., for tax benefits ceases business operations in the development zone during any of the taxable years that the zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused development zone credits from the taxable year during which operations cease or from previous taxable years.

c. Jobs Credit

- (1) The categories of individuals eligible for the jobs credit are expanded to include all dislocated workers specified under 29 U.S.C. 1652(a) for purposes of the federal Job Training Partnership Act (JTPA) program. The jobs credit now applies to

all self-employed individuals who are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters and to individuals who are long-term unemployed and have limited opportunities for employment in their former occupation, including older individuals who may have substantial barriers to employment by reason of their age.

- (2) The jobs credit may be claimed only for wages paid to Wisconsin residents.
- (3) JTPA organizations can act as the designated local agency and certify that individuals are eligible for the jobs credit if the Department of Development approves the criteria used for certification.
- (4) The jobs credit may be claimed only for wages paid after the employer is certified by the Department of Development to claim tax benefits.
- (5) The federal rules for the targeted jobs credit relating to on-the-job training and work supplementation payments also apply to payments made with funds provided by the state. Thus, state payments may not be included in the amount of qualified wages for the state jobs credit and the jobs credit does not apply to wages paid during the period in which the employer receives the state payments.
- (6) The termination provision for the federal targeted jobs credit under IRC sec. 51(c)(4) does not apply to the development zone jobs credit.
- (7) Employees must work for certain minimum periods of time to be eligible for the jobs credit. For leased or rented employees, the minimum time periods apply to their work in a development zone for a single lessee or renter, not to their employment by the leasing agency. Thus, work for several lessees or renters cannot be combined for purposes of meeting the minimum time period test.

In the case of employees of a leasing agency who perform services directly for the leasing agency in a development zone, the minimum time period applies to their work directly for the agency.

Note: The jobs credit for leased or rented employees may be claimed only by a leasing agency certified by the Department of Development to claim tax benefits. In order to be certified, the leasing agency must be located in a development zone. The employees must work at a location in a development zone either for a lessee or renter or directly for the leasing agency (such as staff of the agency). The lessee or renter does not have to be certified by the Department of Development for tax benefits; however, the work services performed by the employees for the lessee or renter must be at a location in a development zone. Wages paid for work outside of a development zone do not qualify for the jobs credit.

- (8) It is clarified that eligibility for and the amount of the jobs credit attributable to a partnership or tax-option corporation is based on the economic activity of the entity, not that of the partners or shareholders. The entity must compute the amount of credit that may be claimed by each partner or shareholder and must provide that information to each of its partners or shareholders.
- (9) Claimants of the jobs credit are not required to submit federal withholding forms or equivalent information to the Department of Revenue for the wages paid to employees for whom the jobs credit is claimed. Claimants are required to have their claims for the jobs credit verified by the Department of Development before submitting those claims to the Department of Revenue.
- (10) The federal Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) made two changes to the federal targeted jobs credit that will apply to the development zone jobs credit since the general reference to the Internal Revenue Code is being updated (see Items A.1., B.1., B.3., B.5., B.7., and C.1.).
 - (a) The category of economically disadvantaged youths applies to individuals aged 18-22 instead of 18-24.
 - (b) The special credit for summer youth employees is equal to 40% of the first \$3,000 in qualified wages instead of 85%.

d. Location Credit

- (1) In cases where the location credit is claimed for amounts expended to construct, rehabilitate, remodel, or repair property, the claimant must have begun the physical work of construction, or destruction in preparation for the physical work, after the area in which the property is located was designated a development zone. The completed project must be placed in service after the claimant is certified by the Department of Development to claim tax benefits. The term "physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing the property to prevent deterioration.
- (2) In cases where the location credit is claimed for amounts expended to acquire property, the property must be acquired after the claimant is certified by the Department of Development to claim tax benefits and the property must not have been owned by the claimant or a related person under IRC sec. 267 during the period that the development zone is in existence or two years prior to the designation of the development zone. For purposes of the location credit, IRC sec. 267(b) is modified so that any ownership percentage, rather than 50% ownership, makes a claimant subject to IRC sec. 267(a)(1).

No credit is allowed until the property, either in its original state as acquired by the claimant or as subsequently constructed, rehabilitated, remodeled, or repaired, is placed in service.

- (3) In cases where property is used partially for purposes other than the conduct of the business operations in a development zone for which the person is certified by the Department of Development to claim tax benefits, the amount of eligible expenditures for an acquisition of a property must be reduced by the percentage of the area of the property used for nonqualified purposes. The amount of eligible expenditures for the construction or other improvement of a property is limited to the expenditures for the portion of the property used in the conduct of the business operations for which the person is certified by the Department of Development to claim tax benefits.
- (4) It is clarified that eligibility for and the amount of the location credit attributable to a partnership or tax-option corporation is based on the economic activity of the entity, not that of the partners or shareholders. The entity must compute the amount of credit that may be claimed by each partner or shareholder and must provide that information to each of its partners or shareholders.
- (5) The location credit can be used to offset the tax attributable to the claimant's income from business operations in a development zone and directly-related business operations. It is clarified that, in the case of credits attributable to a partnership or tax-option corporation, the limitation applies to the tax attributable to the partner's or shareholder's income from the entity's business operations in a development zone and the entity's directly-related business operations.

e. Sales Tax Credit

- (1) Sales tax paid on construction materials and supplies qualifies for the sales tax credit only if the construction or other improvement of the property for which the materials are used is to the portion of the property eligible for the location credit. Sales tax paid on materials used to improve a nonqualified portion of the property does not qualify for the sales tax credit.
- (2) It is clarified that the sales tax credit applies to sales tax paid on leased or rented property if the property would be eligible for the investment credit if the property were purchased by the claimant. (The investment credit applies only to purchases of property.)
- (3) It is clarified that eligibility for and the amount of the sales tax credit attributable to a partnership or tax-option corporation is based on the economic activity of the entity, not that of the partners or shareholders. The entity must compute the amount of credit that may be claimed by each partner or

shareholder and must provide that information to each of its partners or shareholders.

- (4) Claimants of the sales tax credit are not required to submit to the Department of Revenue with their claims for the sales tax credit invoices or receipts for the amount of sales tax paid. Claimants are required to have their claims for the sales tax credit verified by the Department of Development before submitting those claims to the Department of Revenue.
- (5) The amount of sales tax paid on construction materials and other supplies must be reduced in cases of partial nonqualified use of the property in the manner prescribed for the location credit. The amount of sales tax paid on purchases, leases, or rentals of investment credit property must be reduced in cases of partial nonqualified use of the property in the manner prescribed for the investment credit.

f. Additional Research Credit

- (1) Persons who conduct research in a development zone and are certified by the Department of Development to claim tax benefits are eligible to claim an additional development zone research credit, which is a separate 5% credit computed independently of the 5% basic research credit. Under prior law, persons who conducted research in a development zone could claim a 10%, rather than a 5%, research credit.
 - (2) Any wages used to compute the jobs credit may not be included in the amount of qualified research expenses for either the basic research credit or the additional development zone research credit.
 - (3) The additional development zone research credit applies to qualified research expenses incurred after the person is certified by the Department of Development to claim tax benefits. Any claims for the additional research credit affected by this limitation must be computed using annualization rules.
 - (4) Qualified research expenses incurred at a location in a development zone, or at a location in an area that is subsequently designated a development zone, are included in the person's base period expenses for purposes of computing the additional development zone research credit.
21. Development Zone Jobs Credit Amended (1989 AB 60, amend secs. 71.28(1dj)(am)1. and 71.47(1dj)(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.

22. Historic Structure Credit Amended (1989 Act 31, repeal secs. 71.28(6)(b) and 71.47(5)(b); amend secs. 71.28(6)(title), (a), (d), (e), and (f), 71.30(3)(ep), 71.47(5)(title), (a), (d), (e), and (f), and 71.49(1)(er); and create secs. 71.28(6)(c) and 71.47(5)(c), effective for taxable years beginning on or after August 1, 1988, except as indicated below.)

- a. The historic structure credit is renamed the supplement to the federal historic rehabilitation credit. The federal supplement credit can be claimed only for projects that are eligible for the federal historic rehabilitation credit.
- 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.

According to the rule, "physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing the property to prevent deterioration.

In order to qualify for the credit, the rehabilitated property must be placed in service after June 30, 1989.

- d. The 15-year carryforward provision for the federal supplement credit is replaced with a reference to the 15-year carryforward rule for the credit for increasing research expenditures. In addition, a reference to the annualization rule for the research credit is deleted since the federal supplement credit is not computed on an annualized basis.
- e. For projects begun after August 8, 1989, the claimant must submit with the claimant's return documentation that the proposed rehabilitation was approved by the State Historical Society (on behalf of the U.S. Secretary of the Interior) prior to the date that the physical work of construction began.
- f. Claimants of the credit must reduce their Wisconsin adjusted basis of the building by the amount of credit claimed, since the credit applies only to buildings and their structural components. Under prior law, the Wisconsin adjusted basis of the entire property was required to be reduced by the amount of the credit.

It is clarified that the Wisconsin adjusted basis of a partner's interest in a partnership or a shareholder's stock in a tax-option corporation must be adjusted to take into account adjustments made to the basis of property held by the partnership or tax-option corporation.

- g. It is clarified that partnerships and tax-option corporations cannot claim the credit, but the individual partners or shareholders may claim a credit based on their proportionate share of the eligible costs incurred by the entity. The entity must compute the amount of credit that may be claimed by each partner or shareholder and must provide that information to each of its partners or shareholders.

23. State Historic Rehabilitation Credit Amended (1989 Act 31, repeal secs. 71.28(7)(d) and (e) and 71.47(6)(d) and (e); amend secs. 71.28(7)(title), (a), (b)2., 3.b., 4., 5., and 7., (c), and (g), 71.30(3)(er), and 71.47(6)(title), (a), (b)2., 3.b., 4., 5., and 7., (c), and (g); and create secs. 71.28(7)(h), (i), and (j), 71.47(6)(h), (i), and (j), 71.49(1)(et), and 71.74(8)(d), effective for taxable years beginning on or after August 1, 1988.)

See Item A.22.

24. Farmland Tax Relief Credit Created (1989 Act 31, amend secs. 20.835(2)(dm)(title), 71.30(3)(f), 71.49(1)(f), 71.59(1)(a), 71.61(1), 71.74(8)(a), (b) and (c), 71.80(3) and (3m)(intro.), 71.82(1)(c) and (2)(c), 71.83(2)(b)4. and 71.88(1)(b) and (2)(b) and create secs. 20.835(2)(q), 71.28(2m), and 71.47(2m), effective for property taxes accrued during 1989 and thereafter.)

See Item A.23.

C. TAX-OPTION (S) CORPORATIONS

1. Definition of Internal Revenue Code Updated for Tax-Option Corporations for 1989 (1989 Act 31, create sec. 71.34(1g)(d), effective for taxable years beginning after December 31, 1988.)

For tax-option corporations for taxable years that begin after December 31, 1988 (1989 and subsequent year tax returns), "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1988, except that IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.

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 Tehnical 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, with certain exceptions. Non-Code provisions are provisions that don't amend the Internal Revenue Code itself but instead provide special interpretations, transitional rules, or exceptions to the general effective dates of the amendments to the

Internal Revenue Code. The non-Code provisions that require changes in the treatment of inventory property, reserves for bad debts, sales under revolving credit plans, discount coupon redemption costs, and income from utility services to be treated as changes in the method of accounting under IRC sec. 481 do not apply for Wisconsin purposes (secs. 803(d)(2)(B), 805(d)(2), 812(c)(2), 821(b)(2), and 823(c)(2) of P.L. 99-514 and section 1008(g)(5) of P.L. 100-647). For Wisconsin purposes, these five items should have been treated as transitional adjustments.

2. Exceptions to Definition of Internal Revenue Code for Tax-Option Corporations for 1987 and 1988 (1989 Act 31, amend sec. 71.34(1g)(a), (b), and (c), see effective dates below.)

a. For tax-option corporations for taxable year 1987 (years that end after July 1, 1987, and before July 1, 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:

- (1) For 1987 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 secs. 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).
- (2) 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.
- (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, with certain exceptions. The non-Code provisions that require changes in the treatment of inventory property, reserves for bad debts, sales under revolving credit plans, discount coupon redemption costs, and income from utility services to be treated as changes in the method of accounting under IRC sec. 481 do not apply for Wisconsin purposes. Instead, these five items should have been treated as Wisconsin transitional adjustments.
- (4) IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.

b. For tax-option corporations 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, with certain exceptions. The non-Code provisions that require changes in the treatment of inventory property, reserves for bad debts, sales under revolving credit plans, discount coupon redemption costs, and income from utility services to be treated as changes in the method of accounting under IRC sec. 481 do not apply for Wisconsin purposes. Instead, these five items should have been treated as Wisconsin transitional adjustments.
 - (3) IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- c. For tax-option corporations 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) 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.
 - (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, with certain exceptions. The non-Code provisions that require changes in the treatment of inventory property, reserves for bad debts, sales under revolving credit plans, discount coupon redemption costs, and income from utility services to be treated as changes in the method of accounting under IRC sec. 481 do not apply for Wisconsin purposes. Instead, these five items should have been treated as Wisconsin transitional adjustments.
 - (3) IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
3. Reference to Internal Revenue Code Updated for Tax-Option (S) Corporation Depreciation Purposes (1989 Act 31, amend sec. 71.365(1m), effective for taxable years beginning on or after January 1, 1989.)

A tax-option (S) corporation may compute depreciation under either the Internal Revenue Code as amended to December 31, 1988, or the federal