

Internal Revenue Code in effect for the taxable year for which the return is filed, except that property placed in service prior to January 1, 1987, must continue to be depreciated under the method allowable for Wisconsin purposes for the year in which it was placed in service.

4. Tax-Option Corporations Denied a Deduction for State Taxes Paid (1989 Act 31, renumber sec. 71.34(1)(a) to sec. 71.34(1)(ar) and create sec. 71.34(1)(ag), effective for taxable years beginning on or after January 1, 1989.)

For taxable years that begin on or after January 1, 1989 (1989 and subsequent year tax returns), tax-option corporations and their shareholders cannot deduct state taxes and taxes of the District of Columbia on or measured by all or a portion of net income, gross income, gross receipts, or capital stock.

Under prior law, for taxable year 1987 and 1988, tax-option corporations and their shareholders could deduct state income taxes paid if those taxes were deductible in computing federal ordinary (nonseparately stated) income and were not claimed by the shareholders as a credit for taxes paid to other states.

5. Built-In Gains Tax Amended (1989 Act 31, amend s. 71.35, effective for taxable year 1987 and thereafter.)

A built-in gains tax is imposed on every tax-option (S) corporation, except a corporation that qualifies for the exception under IRC sec. 1374(c)(1), that has a net recognized built-in gain, as defined in IRC sec. 1374(d)(2), during a recognition period, as defined in IRC sec. 1374(d)(7). The exception under IRC sec. 1374(c)(1) does not apply to a federal S corporation which has elected to change its status under sec. 71.365(4)(a), Stats. For a federal S corporation which has changed its status under sec. 71.365(4)(a) and subsequently elects to become a Wisconsin tax-option corporation, the recognition period begins with the first day of the first taxable year for which the subsequent tax-option election is made.

#### D. HOMESTEAD CREDIT

1. Increase Maximum Household Income Limitation and Maximum Allowable Property Taxes (1989 Act 31, amend sec. 71.54(1)(b)(intro.) and (2)(b)1 and create sec. 71.54(1)(c) and (2)(b)2, effective for 1989 and subsequent years' claims filed in 1990 and thereafter.)

The maximum household income limitation, above which no homestead credit is allowed, is increased from \$16,500 to \$18,000.

The maximum allowable property taxes or rent constituting property taxes that may be claimed in computing homestead credit is increased from \$1,200 to \$1,350.

In addition, the formula for computing the amount of credit is changed. If household income is \$8,000 or less (was \$7,600 or less for 1988 claims), the credit is 80% of property taxes or rent constituting

property taxes. If household income is more than \$8,000, the credit is 80% of the amount by which property taxes or rent constituting property taxes exceed 13.5% (was 13.483% for 1988 claims) of household income exceeding \$8,000.

2. Allow Deduction From Income for Dependents (1989 Act 31, amend sec. 71.52(5), effective for 1989 and subsequent years' claims filed in 1990 and thereafter.)

In computing household income, a claimant may deduct \$250 for each dependent, as defined in section 152 of the internal revenue code, who has the same principal abode as the claimant.

3. Application of Homestead Credit Against Other Liabilities (1989 Act 31, amend secs. 71.53(1)(a) and 71.55(1), effective for 1989 and subsequent years' claims filed in 1990 and thereafter.)

In applying a homestead credit against other liabilities, a reference is made to sec. 71.80(3) (crediting of overpayments on individual or separate returns) and sec. 71.80(3m) (crediting of overpayments on joint returns).

#### E. FARMLAND PRESERVATION CREDIT

1. Allow Farmland Preservation Credit on Farmland Which Became Subject to Extraterritorial Zoning (1989 Act 31, create sec. 71.60(1)(c)6m, applicable retroactively to taxable years beginning on or after January 1, 1988.)

If farmland is located in an area zoned for exclusive agricultural use under a certified county or town ordinance for part of a year but not at the close of the year because the farmland became subject to a city or village extraterritorial zoning ordinance, a farmland preservation credit may be computed as if the farmland were subject to a county or town exclusive use ordinance at the close of the year.

2. Application of Farmland Preservation Credit Against Other Liabilities (1989 Act 31, amend sec. 71.61(1), effective for claims based on property taxes accrued during 1989.)

In applying a farmland preservation credit against other liabilities, a reference is made to sec. 71.80(3) (crediting of overpayments on individual or separate returns) and sec. 71.80(3m) (crediting of overpayments on joint returns).

#### F. SALES AND USE TAXES

1. Telecommunication Services (1989 Act 31, repeal sec. 77.52(2)(a)3 and 4, amend sec. 77.51(4)(a)4 and (15)(a)4, and create sec. 77.52(2)(a)5, effective October 1, 1989.)

The sale of interstate telecommunication services that originate in Wisconsin and are charged to a telephone or subscriber located in Wisconsin are subject to Wisconsin sales tax. Previously, only

interstate service which originated in Wisconsin and was charged to a telephone located in Wisconsin was subject to sales tax.

2. Time-Share Property (1989 Act 31 create sec. 77.51(4)(c)6 and amend sec. 77.52(2)(a)1, effective August 9, 1989.)

The furnishing of rooms or lodging through the sale of a time-share property, as defined in sec. 707.02(32), Wis. Stats., is subject to sales and use tax if the use of the rooms or lodging is not fixed at the time of the sale as to the starting day or the lodging unit, and is for a continuous period of less than one month.

3. Exempt Elastic Hose (1989 Act 31, create sec. 77.54(22)(f), effective October 1, 1989.)

Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer are exempt from sales and use tax.

4. Exempt Camping Fees in State Parks (1989 Act 31, amend secs. 27.01(10)(d)1 to 6 and 77.54(10), effective September 1, 1989.)

Camping fees in Wisconsin state parks are exempt from sales tax.

5. Exempt Certain Donations From Use Tax (1989 Act 31, create sec. 77.56(3), effective August 9, 1989.)

This provision exempts from use tax the donation to an entity specified in sec. 77.54(9a), Wis. Stats., of property that the donating person has purchased tax-free for resale or with a valid exemption certificate.

The following entities are specified in sec. 77.54(9a), Wis. Stats.:

- a. State of Wisconsin or any agency thereof
- b. Any county, city, village, town, or school district in Wisconsin
- c. A county-city hospital established under sec. 66.47, Wis. Stats.
- d. A sewerage commission organized under sec. 144.07(4), Wis. Stats., or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.
- e. Any other unit of government in Wisconsin or any agency or instrumentality of one or more units of government in Wisconsin
- f. Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation.

6. Manufacturing Machinery and Equipment Exemption (1989 Act 31, create sec. 77.54(6r), effective October 1, 1989.)

The sales and use tax exemption for manufacturing machinery and equipment under sec. 77.54(6) is to be strictly construed.

7. Farm Machinery Exemption (1989 Act 31, renumber sec. 77.54(3) to 77.54(3)(a) and amend, create sec. 77.54(3)(b) and (c), effective October 1, 1989.

Exempt from sales and use tax are the gross receipts from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, fuel, and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture, and custom farming services.

This exemption does not include:

- a. Automobiles, trucks, and other motor vehicles for highway use,
- b. Personal property that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement of real property, or
- c. Tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that the personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine.

For purposes of this sales and use tax exemption, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to, or built into real property:

- a. Auxiliary power generators
- b. Bale loaders
- c. Barn cleaners and elevators
- d. Conveyors
- e. Feed elevators and augers
- f. Grain dryers and grinders
- g. Milk coolers
- h. Milking machines; including piping, pipeline washers, and compressors
- i. Powered feeders, but not including platforms or troughs constructed from ordinary building materials

j. Silo unloaders (top and bottom)

For purposes of this sales and use tax exemption, the following definitions apply.

"Building" means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals, or plants, for storing property or for working, office, parking, sales, or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to that real property; that, except for a few structures, is covered by a roof, or encloses space; that is not readily moved or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

"Machine" means an assemblage of parts that transmits force, motion, and energy from one part to another in a predetermined manner.

"Used exclusively" means used to the exclusion of all other uses except for other uses not excluding 5% of total use.

(Note: Under prior law (i.e., prior to October 1, 1989), the exemption for farm machinery in sec. 77.54(3) reads as follows:

(3) The gross receipts from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments, fuel and parts therefor, used directly in farming, including dairy farming, agriculture, horticulture or floriculture, but excluding automobiles, trucks, and other motor vehicles for highway use, when engaged in by the purchaser or user as a business enterprise, but the purchaser of property exempt under this subsection shall be liable for the sales tax under s. 77.57 at the time any more than nominal other use, including job contracting other than the performance of farm services by one farmer for another with machinery customarily used by the performing farmer in his own farming operation, is made of such property.)

8. Occasional Sales by Nonprofit Organizations - Clarify Certain Provisions (1989 Act 31, amend sec. 77.54(7) and (7m), effective January 1, 1990.)

The amendments to sec. 77.54(7) and (7m), Wis. Stats., clarify the following:

- a. Sales at events involving entertainment will not be exempt occasional sales if the entertainment in the aggregate costs at least \$300, unless access to the event may be obtained without payment of a direct or indirect admission fee.
- b. The exemption for occasional sales in sec. 77.54(7), Wis. Stats., does not apply to nonprofit organizations, but rather nonprofit organizations determine their exemption for occasional sales under sec. 77.54(7m), Wis. Stats.

9. Penalties for Operators of Swap Meets or Similar Events That Fail to Comply With Reporting Requirements (1989 Act 31, amend sec. 73.03(38), effective August 9, 1989.)

If any operator of a swap meet, flea market, craft fair, or similar event fails to report to the Department of Revenue the required information on each vendor, the department, after notification to the operator, shall impose a penalty of \$200 for the first failure and \$500 for each subsequent failure. The penalty shall be assessed and collected in the same manner as income and franchise taxes.

10. Local Government Licensing Requirements Changed (1989 Act 31, amend sec. 77.61(11), effective August 9, 1989.)

An official of a city, village, or town may not issue licenses or permits to a person required to hold a seller's permit unless (1) the person in fact has a seller's permit or (2) the official has information from the Department of Revenue that a permit will be issued to that person.

11. Refunds Under "Lemon Law" (1989 Act 31, repeal sec. 20.835(2)(eq), amend sec. 218.015(2)(e) and (f), and create secs. 73.03(37) and 218.015(2)(f)4, effective August 9, 1989.)

Under prior law governing repair, replacement, and refund under a new motor vehicle warranty (commonly called the "lemon law"), a consumer may return a defective motor vehicle to its manufacturer for a refund of the purchase price, including sales tax. The lemon law also directs the Department of Revenue to refund the sales tax paid on a returned motor vehicle to the manufacturer or, in certain limited cases, the consumer directly. The Department of Revenue makes the refunds from an appropriation specifically designated for sales tax refunds under the lemon law.

This provision repeals the specific appropriation, allowing the Department of Revenue to make sales tax refunds associated with the lemon law in the same manner that it generally makes sales tax refunds. Also, a consumer is permitted to collect a sales tax refund directly from the Department of Revenue whenever the manufacturer fails to refund the sales tax.

#### G. INHERITANCE AND GIFT TAXES

1. Update Reference to Internal Revenue Code for Power of Appointment, Qualified Retirement Plans, and Installment Payments (1989 Act 31, amend secs. 72.01(17), 72.12(4)(c)1 and 72.22(4)(a), effective for deaths occurring on or after January 1, 1989.)

The Wisconsin Statutes relating to powers of appointment, employee death benefits, and installment payment of inheritance taxes are updated to the Internal Revenue Code as of December 31, 1988. This change first applies to transfers because of deaths occurring on January 1, 1989.

2. Update Internal Revenue Code Reference for Gift Tax Exemption (1989 Act 31, amend sec. 72.76(4), effective for gifts made on or after August 9, 1989.)

This provision provides that no gift tax is imposed on the transfer of amounts by an employer to a former employee's distributee or estate if the amounts qualify as an employee death benefit taxable as income under the Internal Revenue Code as amended to December 31, 1988, or excluded from gross income under IRC sec. 101(b) as amended to December 31, 1988.

Previously, the statute referenced the Internal Revenue Code of 1954 as amended for taxable income and gave no particular IRC reference for excludable income.

#### H. EXCISE TAXES

1. Gasoline Used in Aircraft Exempt From Motor Fuel Tax (1989 Act 31, amend sec. 78.73(1)(dm) and create secs. 78.01(2)(f) and 78.73(1)(dr), effective August 9, 1989.)

Gasoline used in an aircraft is exempt from the motor fuel tax (20.8¢ rate) if purchased by a licensed general aviation fuel dealer for aircraft use. Improper use of this exemption may result in penalties of being fined not more than \$500 or imprisoned not more than 6 months or both.

2. Motor Vehicle Fuel Tax Refund Requirements Changed (1989 Act 31, repeal sec. 78.75(1)(d); renumber secs 78.20(1) and 78.75(1)(a), (b), (c), (e) and (f) to secs. 78.20(1m) and 78.75(1m)(a), (b), (c), (e) and (f) and amend secs. 78.20(1m)(a)1, 2 and 3, (c) and (e) and 78.75(1m)(a) as renumbered; amend sec. 78.20(3) and (4); and create sec. 78.20(1) and 78.75(1), effective August 9, 1989.)

Invoice requirements are relaxed for persons applying for motor fuel tax refund and for a retailer applying for a service station shrinkage refund.

A tax refund is not allowed on fuel used in an aircraft. No tax refund on less than 100 gallons of motor fuel will be made.

3. Fuel Tax Paid on Motor Fuel Used in an Amphibious Vehicle is Refundable (1989 Act 31, amend sec. 78.75, effective August 9, 1989.)

Clarifies that a person operating amphibious vehicles on privately owned lands is eligible for motor fuel tax refund on fuel purchased on or after August 9, 1989, and consumed on such land.

4. Change in Requirements Relating to Alcohol Beverages Licensing, Agents of Corporate Alcohol Beverages Licensees, Fermented Malt Beverage Wholesaler Registration, and Local Referenda Concerning Sale of Alcohol Beverages (1989 Act 31, repeal sec. 125.04(4)(c) and 125.05(1)(b)7; renumber sec. 125.04(3)(a)4 and (d) to 125.04(3)(a)6 and (d)1 and amend sec. 125.04(3)(d)1 as renumbered; amend secs. 125.04(6)(a)1, (b)2 and (c) to (e) and (12)(a), 125.05(1)(b)8 and 11 and 125.51(1)(c)1; repeal

and recreate sec. 125.04(3)(c) and (4)(title) and (a); and create secs. 125.04(3)(a)4 and 5 and (3)(d)2 and 125.28(3), effective August 9, 1989.)

The department is no longer responsible for supplying application forms for most alcohol beverages licenses. The department is to furnish one copy of each kind of license application to municipalities for duplication.

Municipal clerks are no longer required to provide the department with a copy of each application for a license to sell alcohol beverages. The municipal clerks must furnish the department a list of alcohol beverage license holders annually.

Beer wholesalers are to register with the department after they have received a wholesaler's license from a municipal governing body.

5. Penalty for Tampering With a Cigarette Meter (1989 Act 31, create sec. 139.44(1m), effective August 9, 1989.)

A penalty of imprisonment for not less than one year nor more than 10 years may be imposed on persons who tamper with a cigarette meter.

6. Department Has Power to Enforce Tobacco Products Tax (1989 Act 31, amend sec. 139.08(3) and create secs. 139.39(1m) and 139.832, effective August 9, 1989.)

The department has police power to enforce violations of Chapter 139, Wis. Stats., relating to tobacco products tax.

7. Security Requirements for Purchases of Cigarette Tax Stamps and Indicia on Credit Changed (1989 Act 31, amend sec. 139.32(6), effective August 9, 1989, and repeal and recreate sec. 139.32(6) as amended by 1989 Act 31, effective November 1, 1989.)

The department may allow security other than surety bonds, from manufacturers and distributors of cigarettes who purchase cigarette stamps on credit. The Secretary of Revenue may also waive the security requirement for manufacturers and distributors who have established a good filing record.

8. Change the Licensing Requirements so Wineries May Obtain Tavern License for the Sale of Wine (1989 Act 30, renumber and amend sec. 125.69(1)(c); amend sec. 125.51(1)(a), sec. 125.51(3)(a) and (b), sec. 125.51(3)(f) and (4)(a)1, sec. 125.53(1) and sec. 125.69(1)(a) and (b)1; and create sec. 125.51(3)(am), sec. 125.69(1)(b)4 and sec. 125.69(1)(c)1 to 3, effective August 3, 1989.)

Wineries may be issued local municipal licenses if the winery holds a permit from the Department of Revenue and is capable of producing 5,000 gallons of wine per year in not more than two locations. The municipal license authorizes the sale of wine to be consumed by the glass or in opened containers only on the premises where sold; it also authorizes the sale of wine in the original container to be consumed off the



premises. Such licensed premises may not remain open for the sale of liquor between 9:00 p.m.-8:00 a.m.

9. Reduce Passenger Capacity of Vessels and Require Food to be Served in Order to be Eligible for Alcohol Beverage Permits (1989 Act 16, amend secs. 125.27(2)(a) and 125.51(5)(c)1., effective June 13, 1989.)

In order to be eligible for a permit authorizing the sale of alcohol beverages on a vessel, the passenger capacity must be 40 persons or more, the vessel must serve food, and the sale of alcohol beverages cannot exceed 50% of the receipts from all food and beverage sales. Previously, the passenger capacity had to be 100 persons or more, food was not required to be served, and the sale of alcohol beverages could constitute up to 50% of all receipts, including admission charges.

#### I. OTHER

1. Information Returns for Deduction of Rent or Royalties (1989 Act 31, amend sec. 71.70(1) and (2), effective August 9, 1989.)

This provision clarifies that persons other than corporations (e.g., individuals, estates, and trusts) deducting rent or royalties in determining Wisconsin taxable income and corporations doing business in Wisconsin shall furnish information returns to the Department of Revenue showing:

- a. The amounts and the names and addresses of all natural persons who are residents of Wisconsin and to whom royalties of \$600 or more were paid during the taxable year.
- b. The amounts and the names and addresses of all natural persons to whom rent of \$600 or more was paid during the taxable year for property having a situs in Wisconsin.

2. Statute of Limitations for Credits Clarified (1989 Act 31, amend sec. 71.77(2), effective August 9, 1989.)

This provision clarifies that the 4-year statute of limitations provided by statute with respect to assessments of tax applies for assessments to recover all or a part of any tax credit allowed under Chapter 71 of the Wisconsin Statutes.

3. Setoff of Delinquent Child Support or Spousal Support Obligations Submitted By an Agency of Another State (1989 Act 31, amend sec. 71.93(1)(a) and (b), (2), and (3), effective August 9, 1989.)

The Department of Health and Social Services may certify to the Department of Revenue for setoff any properly identified debt exceeding \$20 that is a delinquent child support or spousal support obligation submitted by an agency of another state.

No child support or spousal support obligation submitted by an agency of another state may be set off until all debts owed to and certified by Wisconsin agencies have been set off.

4. Department Not Deemed to Have Acquiesced to Tax Appeals Commission Decision When It Withdraws an Appeal in Circuit Court (1989 Act 31, amend sec. 73.01(4)(e)1, effective with decisions made on or after August 9, 1989.)

An order or decision of the Wisconsin Tax Appeals Commission is not a precedent if the Department of Revenue seeks a review of that order or decision and:

- a. the department later withdraws its petition for review;
  - b. the department later settles the case; or
  - c. the merits of the case are for other reasons not determined by judicial review.
5. Delinquent Taxes Written Off After 6 Years (1989 Act 31, amend sec. 73.03(27)(e), effective August 9, 1989.)

The time after which delinquent taxes resulting from a default or estimated assessment may be written off as uncollectible is reduced from 10 years to 6 years.

6. Administrative Fee for Court Costs (1989 Act 31, amend sec. 73.03(33), effective August 9, 1989.)

The Department of Revenue is authorized to collect an administrative fee each time the department issues a warrant in respect to income, franchise, and other taxes. This provision authorizes the department to set the administrative fee at an amount not to exceed the amount the department is charged for filing and docketing warrants. Prior to this provision, the administrative fee was \$3.

7. Offsets Against Lottery Winnings (1989 Act 31, amend secs. 20.566(1)(h) and 565.30(5), effective August 9, 1989.)

This provision clarifies that the executive director of the state lottery will send all amounts withheld for delinquent state taxes, child support, or other debts owed the State of Wisconsin to the Department of Revenue. The department will distribute the proper amounts to the proper state agency and charge its administrative expenses to the state agency for which the debt has been collected.

8. Offsets of Assessments Under Chapter 646, Wis. Stats., Limited (1989 Act 31, amend sec. 646.51(7)(b), effective August 9, 1989.)

The Wisconsin insurance security fund protects insureds from loss in the event of liquidation of insurers. To provide this protection, assessments are made under Chapter 646, Wis. Stats., against all insurers who transact business in Wisconsin. If the premium rates on a class of business are fixed, so that it is not possible for an insurer to recoup its assessments by increasing its premium rates, a domestic insurer may offset 20% of the amount of the Wisconsin portion of the assessment against its tax

liabilities to Wisconsin, other than real property taxes, in each of the 5 calendar years following the year in which the assessment was paid.

Under prior law, 20% of the entire assessment against domestic insurers could be offset against tax liabilities, other than real property taxes, in each of the 5 calendar years following the year in which the assessment was paid. Since most property and casualty insurers are able to raise their rates to recoup the assessment, the credit rarely applies.

9. Exclusive Jurisdiction of Small Claims Court Removed (1989 Act 31, repeal sec. 799.01(3m) and (4)(d), renumber secs. 799.01(intro.), (1), (2), (3) and (4)(intro.) and (a) to (c) and 814.62(1) to secs. 799.01(1)(intro.), (a), (b), (c), (d)(intro.) and 1 to 3 and amend secs. 799.01(1)(intro.) and (d)3 and 814.62(1)(a) as renumbered; amend secs. 425.205(1)(intro.), 943.245(8) and 943.51(6); and create secs. 799.01(2) and 814.62(1)(b), effective for civil actions or proceedings commenced on or after August 9, 1989.)

Any civil action for tax recovery may use small claims court procedures or large claims court procedures. Previously, civil actions for tax recovery where the amount claimed was \$2,000 or less had to use small claims court procedures.