

25. Certain Credits Not Considered In Calculation of Alternative Minimum Tax (1991 Act 39, amend sec. 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 1991).

An individual or fiduciary is subject to the Wisconsin alternative minimum tax if the computed alternative minimum tax is more than the regular income tax imposed under sec. 71.02, Wis. Stats. For purposes of this comparison, "regular tax" may not be reduced by certain credits. This provision adds the 1988 farmer's drought credit and the earned income credit to the list of credits which are not deducted from regular tax. Thus, for alternative minimum tax purposes, the regular income tax imposed under sec. 71.02, Wis. Stats., is not reduced by any refundable credit.

26. Modify Development Zone Credits for Certain Claimants Doing Business on an Indian Reservation (1991 Act 39, renumber secs. 71.07(2di)(b) to 71.07(2di)(b)1. and 71.07(2dL)(c) to 71.07(2dL)(c)1. and amend sec. 71.07(2di)(b)1. and (2dL)(c)1. as renumbered; amend sec. 71.07(2di)(c) and (2dL)(d); and create sec. 71.07(2di)(b)2., (2dj)(am)4c., and (2dL)(c)2., effective for taxable years of partnerships, tax-option (S) corporations, or persons that begin on or after January 1, 1991, and for the appropriate taxable year of a partner or tax-option (S) corporation shareholder to conform the partner's or shareholder's treatment of a tax credit that is passed through by a partnership or tax-option (S) corporation to the partnership's or tax-option (S) corporation's treatment of the tax credit.)

See Item B.14.

## B. CORPORATION FRANCHISE OR INCOME TAXES

1. References to the Internal Revenue Code Updated for 1991 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits (1991 Act 39, amend secs. 71.22(4)(e) and (4m)(c), 71.26(2)(b)5. and (3)(y), 71.34(1g)(e), 71.365(1m), 71.42(2)(d), and 71.45(2)(a)13. and create secs. 71.22(4)(f) and (4m)(d), 71.26(2)(b)6., 71.34(1g)(f), and 71.42(2)(e), effective for taxable years beginning on or after January 1, 1991).

For taxable years that begin on or after January 1, 1991, "Internal Revenue Code" for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate investment trusts (REITs), and real estate mortgage investment conduits (REMICs) means the federal Internal Revenue code as amended to December 31, 1990, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- a. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 1991, depreciation or amortization may be computed under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1990, at the taxpayer's option.

- b. For corporations (except nonprofit organizations, RICs, REITs, and REMICs) and tax-option (S) corporations, the non-Code provisions created by Public Law 99-514 and Public Law 100-647 that required certain 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.
  - c. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the Internal Revenue Code is modified by Wis. Stat. sec. 71.26(3).
  - d. For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in passthroughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under Wis. Stat. sec. 71.35 for the taxes under IRC secs. 1374 and 1375.
  - e. For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
  - f. For RICs, REITs, and REMICs, 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. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.
2. Federal Laws Enacted During 1990 Adopted to Apply Simultaneously for Wisconsin Purposes (1991 Act 39, amend secs. 71.22(4)(a), (b), (c), (d), and (e) and (4m)(a), (b), and (c), 71.26(2)(b)1., 2., 3., 4., and 5., 71.34(1g)(a), (b), (c), (d), and (e), and 71.42(2)(a), (b), (c), and (d) and create nonstatutory provision, effective for taxable years beginning before January 1, 1991).

The federal Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), which was enacted November 5, 1990, applies for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, the requirement that a distributing corporation must recognize gain when it distributes certain appreciated property, stock, or securities in a subsidiary applies for both federal and Wisconsin purposes for distributions after October 9, 1990, subject to transitional rules.

3. Interest Imposed on Excessive "Quick Refunds" (1991 Act 39, amend sec. 71.29(1)(a), (3m), and (7)(intro.) and create sec. 71.84(2)(c), effective for taxable years ending on or after August 15, 1991).

Currently, a corporation, nonprofit organization, or insurance company that has overpaid its estimated franchise or income tax may request a "quick refund" from the Department of Revenue after the end of its taxable year and prior to filing its Wisconsin tax return. The overpayment must be at least 10% of the expected Wisconsin franchise or income tax liability and at least \$500.

Under this provision, if such a "quick refund" results in a tax liability when the taxpayer files its Wisconsin franchise or income tax return, the taxpayer is subject to 12% interest on the amount of the unpaid tax liability for the period beginning on the date the refund is issued and ending on the 15th day of the third month following the close of the taxable year, or the date on which the liability is paid, whichever is earlier.

Note: Any tax unpaid on the unextended due date of the tax return continues to be subject to 12% or 18% interest, as appropriate.

For example, Corporation X pays \$30,000 of estimated tax for calendar year 1991. Prior to filing its Wisconsin tax return, Corporation X requests a "quick refund" of \$10,000, which is issued on February 15, 1992. Corporation X computes a \$3,000 balance due (net tax minus estimated tax payments of \$20,000) on its Wisconsin franchise or income tax return, which it files on March 15, 1992. Corporation X is subject to 12% interest on the \$3,000 for the period beginning February 15, 1992, and ending March 15, 1992. If Corporation X does not pay the \$3,000 tax due by March 15, 1992, it will be subject to 18% interest on the \$3,000 from March 15, 1992, until the date paid.

4. Use of Previous Year's Apportionment Percentage for Computing Estimated Tax Payments Expanded (1991 Act 39, amend sec. 71.29(10)(c), effective for taxable years beginning on or after January 1, 1991).

A multistate corporation or nonprofit organization that has Wisconsin net income of \$250,000 or more and that calculates its estimated franchise or income taxes under the annualized income method may use its apportionment percentage for the previous taxable year if

- a. it files the previous year's return by the due date of the third quarterly estimated installment due,
- b. the apportionment percentage on that previous year's return is greater than zero, and
- c. the apportionment percentage used in the computation of the first two installments is not less than the apportionment percentage used on that previous year's return.

Thus, a corporation may calculate its estimated franchise or income taxes for the current taxable year using information relating to the previous taxable year even if it has received an extension for filing its previous year's return.

Under prior law, a corporation or nonprofit organization was required to use the current year information unless the previous year's return was filed before the due date of the installment payment for which the income was being annualized and the apportionment percentage on that previous year's return was greater than zero.

5. Franchise and Income Tax Exemption Repealed for Railroads, Sleeping Car Companies, and Car Line Companies (1991 Act 39, amend secs. 71.22(11), 71.25(6) and (10)(title) and (c), and 71.26(1)(a) and create nonstatutory provision, effective for taxable years beginning on or after January 1, 1991).

Railroads, sleeping car companies, and car line companies (companies which lease railroad cars) are no longer exempt from Wisconsin franchise and income taxes. A multistate railroad, sleeping car company, or car line company must apportion its income to Wisconsin based on rules to be promulgated by the Department of Revenue.

6. Net Business Loss Carryforward Limited (1991 Act 39, amend sec. 71.26(4), effective for taxable years beginning on or after January 1, 1991).

In computing its Wisconsin net income, a corporation may not carry forward a net operating loss sustained in a taxable year in which it was not subject to Wisconsin franchise or income taxation.

7. Deduction Disallowed for Federal Environmental Tax (1991 Act 39, amend sec. 71.26(3)(h) and create secs. 71.26(3)(hd) and 71.45(2)(a)5m., effective for taxable years beginning on or after January 1, 1991).

When computing net income for Wisconsin franchise or income tax purposes, corporations (other than nonprofit organizations, RICs, REITs, and REMICs) and insurance companies may not deduct the federal environmental tax imposed under IRC sec. 59A.

8. Credit Reductions for Excluded Discharge of Indebtedness Income Modified (1991 Act 39, amend sec. 71.26(3)(c), effective for taxable years beginning on or after January 1, 1991).

For a corporation that excludes income from the discharge of indebtedness from gross income for Wisconsin franchise or income tax purposes and must apply such excluded income to reduce its tax attributes as provided in IRC sec. 108, the reduction rate for Wisconsin credit carryovers is 7.9 cents for each dollar excluded from gross income.

Under prior law, IRC sec. 108 was modified so that the Wisconsin net business loss, not the federal net operating loss, and the Wisconsin credits, not the federal credits, were affected. The reduction rate for a Wisconsin credit carryover was the federal rate of 33 1/3 cents for each dollar excluded from gross income.

9. Three-Month Extension Allowed for Foreign Corporations With No Office in the United States (1991 Act 39, amend secs. 71.24(7) and 71.44(3), effective for taxable years beginning on or after January 1, 1992).

If a foreign corporation does not have an office or place of business in the United States, the Department of Revenue may allow an extension not to exceed 3 months for filing its Wisconsin franchise or income tax return.

Under prior law, the Department generally could allow a corporation a 30-day extension for filing its Wisconsin franchise or income tax return. However, a DISC or cooperative could request a 6-month extension. Since the due date for filing the federal income tax return of a foreign corporation that has no office or place of business in the United States is the 15th day of the 6th month following the close of the taxable year, the Wisconsin tax return of a foreign corporation was due before its federal return.

10. Computation of Research Credit and Development Zone Research Credit Modified (1991 Act 39, amend sec. 71.28(4)(a) and (am) and renumber sec. 71.47(3) to 71.47(4) and amend sec. 71.47(4)(a) and (am) as renumbered, effective for taxable years beginning on or after January 1, 1991).

The manner of computing the Wisconsin research credit and the development zone research credit has been modified to more closely conform to that for the federal credit for increasing research activities. The federal changes made to IRC sec. 41 by Public Law 101-239 with respect to the "base amount" and the computation of the research credit apply to the Wisconsin credits, except as indicated below. The reference to the federal termination provision, which does not apply for Wisconsin purposes, is changed from sec. 41(i) to sec. 41(h) to reflect the renumbering of the Internal Revenue Code by Public Law 101-239. In addition, the wording of the development zone research credit is modified to make it identical for corporations and insurance companies.

The Wisconsin research credit is 5% of the excess of the claimant's "qualified research expenses" for the current taxable year (the credit year) over its "base amount." "Qualified research expenses" are defined in IRC sec. 41 as amended to December 31, 1990, but include only expenses incurred for research conducted in Wisconsin, other than compensation used to compute the development zone jobs credit. The development zone research credit is based on qualified research expenses incurred for research conducted in a Wisconsin development zone.

The corporation's "base amount," which is defined in IRC sec. 41(c) as amended to December 31, 1990, is the product of (a) the claimant's "fixed-base" percentage and (b) the average annual gross receipts (net of returns and allowances) of the claimant for the 4 taxable years preceding the credit year. The base amount may not be less than 50% of the qualified research expenses for the credit year. The "fixed-base" percentage is computed by dividing the total of qualified research expenses for all taxable years beginning after December 31, 1983, and ending before January 1, 1989, by the total gross receipts for the same periods. The fixed-base percentage cannot exceed 16%, and it is deemed to be 3% for start-up companies.

For Wisconsin purposes, the gross receipts used in calculating the base amount are the gross receipts attributable to Wisconsin under Wis. Stat. sec. 71.25(9)(b)1. and 2. and (d). Sales of tangible personal property are attributable to Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin. Other sales are in Wisconsin if the income-producing activity is performed in Wisconsin.

Under prior Wisconsin law, a 5% credit was allowed for the smaller of (a) "qualified research expenses" incurred by the claimant for research conducted in Wisconsin for the current year that exceeded the claimant's expenses for the "base period" or (b) 50% of the "qualified research expenses" for the current year. "Qualified research expenses" were defined in IRC sec. 41 as amended to December 31, 1989, for Wisconsin credits for taxable years beginning on or after January 1, 1990. However, the "base period research expenses" were computed under IRC sec. 41(c) in effect on December 31, 1988. The "base period" was the 3 taxable years immediately before the current taxable year and the "base period research expenses" were the average of the qualified research expenses for each year in the base period.

11. State Historic Rehabilitation Credit Repealed for Corporations, Tax-Option (S) Corporation Shareholders, Nonprofit Organizations, and Insurance Companies (1991 Act 39, repeal secs. 71.28(7), 71.30(3)(er), 71.47(6), and 71.49(1)(et) and amend secs. 44.02(24) and 71.74(8)(d), effective for taxable years beginning on or after January 1, 1991).

Corporations, shareholders of tax-option (S) corporations, nonprofit organizations, and insurance companies may no longer claim a credit for rehabilitating or preserving human burial sites, archeological sites, or certain other historic property.

These taxpayers may continue to claim the Wisconsin supplement to the federal historic rehabilitation tax credit for rehabilitating historic buildings used for the production of income.

12. Tax Credits Available to Insurance Companies Renumbered (1991 Act 39, renumber sec. 71.47(2b) to 71.47(3), 71.47(4) to 71.47(5), sec. 71.47(5) to 71.47(6), and sec. 71.49(1)(er) to 71.49(1)(ep) and amend secs. 71.47(5)(b) and (6)(e) and 71.49(1)(ep) as renumbered and amend secs. 71.45(2)(a)10., 71.47(1d)(c) and (h), (1dj)(g), (1dL)(d) and (g), (1ds)(f), and (1fd)(e), 71.49(1)(b), (c), and (d), 71.74(8)(b) and (c), 73.03(35), and 560.70(7) and (8), effective for taxable years beginning on or after January 1, 1991).

The tax credits that are available to insurance companies are renumbered. (Also see Items B.10 and 11.) In sec. 71.49(1), the order for claiming the nonrefundable credits is modified as follows:

- (b) Manufacturing sales tax credit under sec. 71.47(3).
- (c) Research credit under sec. 71.47(4).
- (d) Research facilities credit under sec. 71.47(5).
- (ep) Supplement to federal historic rehabilitation credit under sec. 71.47(6).

13. Jobs Credit Reference to Federal Definition of a "Dislocated Worker" Corrected (1991 Act 39, amend secs. 71.28(1dj)(am)1. and 71.47(1dj)(am)1., effective for taxable years beginning on or after July 1, 1989).

For purposes of the Wisconsin development zones jobs credit, a "dislocated worker" is defined in 29 USC sec. 1651(a). The federal definition of dislocated worker was renumbered from sec. 1652(a) to sec. 1651(a) by Public Law 100-418.

14. Modify Development Zone Credits for Certain Claimants Doing Business on an Indian Reservation (1991 Act 39, renumber secs. 71.28(1di)(b) to 71.28(1di)(b)1., 71.28(1dL)(c) to 71.28(1dL)(c)1., 71.47(1di)(b) to 71.47(1di)(b)1., and 71.47(1dL)(c) to 71.47(1dL)(c)1. and amend secs. 71.28(1di)(b)1. and (1dL)(c)1. and 71.47(1di)(b)1. and (1dL)(c)1. as renumbered; amend secs. 71.28(1di)(c) and (1dL)(d) and 71.47(1di)(c) and (1dL)(d); and create secs. 71.28(1di)(b)2., (1dj)(am)4c., and (1dL)(c)2. and 71.47(1di)(b)2., (1dj)(am)4c., and (1dL)(c)2., effective for taxable years of corporations or tax-option (S) corporations that begin on or after January 1, 1991, and for the appropriate taxable year of a partner or tax-option (S) corporation shareholder to conform the partner's or shareholder's treatment of a tax credit that is passed through by a partnership or tax-option (S) corporation to the partnership's or tax-option (S) corporation's treatment of the tax credit.)

The development zone investment and location credits are refundable credits if the claimant certified for tax credits under the development zone program is an American Indian, an Indian business, or a tribal enterprise, and the business is located on an Indian reservation development zone.

The development zone jobs credit may be claimed for individuals related to the claimant if the claimant certified for the credits under the development zone program is an American Indian, an Indian business, or a tribal enterprise, and the business is located on an Indian reservation development zone.

15. Exempt Interest Income From Certain WHEDA Bonds (1991 Act 37, create secs. 71.26(1)(g) and 71.45(1m), effective August 2, 1991.)

Interest income from bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) to fund an economic development loan under sec. 234.65 (professional sports and entertainment home stadiums exempt from property tax under sec. 70.11(36)) of the Wisconsin Statutes is exempt from the franchise and income tax.

C. HOMESTEAD, FARMLAND PRESERVATION AND FARMLAND TAX RELIEF CREDITS

1. Extend Deadline for Filing Claims for Homestead, Farmland Preservation, and Farmland Tax Relief Credits (1991 Act 39, repeal secs. 71.07(3m)(b)3, 71.28(2m)(b)3, 71.47(2m)(b)3, 71.53(3), and 71.59(3), amend secs. 71.03(title), 71.07(3m)(b)2.a, 71.28(2m)(b)2.a, 71.47(2m)(b)2.a, 71.53(2)(a), and 71.59(2)(a), and create secs. 71.03(6m), 71.55(6m), and 71.61(3m), effective August 15, 1991, for sec. 71.03(title); effective for tax years beginning on or after January 1, 1991, for secs. 71.07(3m)(b)2.a and 3, 71.28(2m)(b)2.a and 3, and 71.47(2m)(b)2.a and 3; and effective for claims based on property taxes accrued or rent constituting property taxes accrued in taxable years beginning on or after January 1, 1991, for secs. 71.03(6m), 71.53(2)(a) and (3), 71.55(6m), 71.59(2)(a) and (3), and 71.61(3m).)

The deadline for filing claims for these 3 credits is changed. The effect of this change is to allow claims to be filed at any time up to 4 years after the unextended due date of the appropriate tax return.

For example, an individual having a calendar-year taxable year and filing a 1991 income tax return and homestead credit claim could file a homestead credit claim at any time up to April 15, 1996 (i.e., 4 years after the income tax due date of April 15, 1992); a trust having a fiscal taxable year ending November 30, 1992, and filing a 1991 fiduciary tax return and farmland preservation credit claim could file a farmland preservation credit claim at any time up to March 15, 1997 (i.e., 4 years after the income tax due date of March 15, 1993); a corporation having a fiscal taxable year ending November 30, 1992, and claiming a 1991 farmland tax relief credit could claim a farmland tax relief credit at any time up to February 15, 1997 (i.e., 4 years after the franchise tax due date of February 15, 1993).

A homestead, farmland preservation, or farmland tax relief credit claim filed by an individual not required to file an income tax return must be filed on a calendar-year basis. For example, an individual without an income tax filing requirement but desiring to claim a homestead credit for 1991 could file the claim any time up to April 15, 1996.

Income tax provisions relating to assessments, refunds, appeals (except the \$5 filing fee for appeals to the Wisconsin Tax Appeals Commission does not apply), and collection also apply to these credits.

Under prior law, the deadline for filing a claim for any of these three credits was 12 months after the close of the taxable year to which the claim related, and no extension was permitted.

2. Include Nontaxable State and Municipal Bond Interest in Household Income (1991 Act 39, amend sec. 71.52(6), effective for claims based on property taxes accrued or rent constituting property taxes accrued in taxable years beginning on or after January 1, 1991.)

"Income" for homestead credit and farmland preservation credit purposes includes all nontaxable interest from state and municipal bonds. Under prior law, only taxable state and municipal bond interest was includable.

Examples of nontaxable state or municipal bond interest include interest from Wisconsin Higher Education Bonds and Wisconsin Housing Finance Authority bonds.

(Note: This change does not affect farmland tax relief credit, as the computation of that credit is not based on income.)

3. Use of Land for Ice Age Trail Considered a Permitted Exception for Farmland Preservation Credit Eligibility (1991 Act 39, create sec. 71.59(1m), effective August 15, 1991.)

The Department of Natural Resources may designate Wisconsin farmland as part of the Ice Age Trail under sec. 23.17, Wis. Stats. Use of farmland for that purpose, if it is so designated, is a permitted use under a farmland preservation agreement or a zoning certificate. That farmland may therefore be used in the computation of a farmland preservation credit.