

14. Create a New Tax Rate Schedule for Illegal Drugs. (1991 Act 39, amend secs. 139.87(2), 139.88(2), 139.89, 139.91 and 139.95; create secs. 139.87(5) and (6), 139.88(1g) and (1r); and repeal secs. 139.87(1) and 139.88(3), effective October 1, 1991.)

A tax rate schedule is created for illegal drugs containing more than 14 grams of mushrooms containing psilocin or psilocybin or more than 100 milligrams of any material containing lysergic acid diethylamide.

15. Allow Beverage Servers to Qualify for Licensure Through Completion of an EAB Approved Training Course (1991 Act 39, amend sec. 125.17(6)(a) (intro.), effective August 15, 1991.)

Under prior law, in order to receive an operator's license, the applicant was required to complete a beverage server training course offered by a VTAE district. This provision permits applicants to complete other comparable training courses which have been approved by the Educational Approval Board (EAB).

16. Permit Brewers and Wholesalers to Purchase Products From and Provide Items of Value to Retailers (1991 Act 39, create sec. 125.33(2)(m) and (n), effective August 15, 1991.)

Brewers and beer wholesalers are allowed to purchase products from Class "B" (on-sale) licensees without restriction; brewers and beer wholesalers may also provide \$75/day business entertainment to Class "B" licensees and permittees. This includes tickets or free admissions, as well as ground transportation to athletic events, concerts or similar activities, food, and beverages.

17. Prohibit Issuance of Class "B" License on Premises Where Other Business is Conducted (1991 Act 39, create sec. 125.32(3m), effective August 15, 1991.)

Limitations are imposed on businesses for which Class "B" licenses may be issued. No other business may be conducted on Class "B" premises, except that this restriction doesn't apply if the other business is conducted by a secondary doorway that is not the primary entrance to the Class "B" premises. It also doesn't apply to hotels, restaurants, grocery stores, novelty stores, bowling alleys/recreation premises, clubs, societies or lodges, or to sporting goods stores in towns, villages, and fourth class cities.

18. Create a "Class C" Restaurant Wine License for Use in Municipalities That Have Reached Their On-premises Quota (1991 Act 39, create secs. 125.05(1)(a)3m, 125.07(3)(a)6m, and 125.51(3m); amend secs. 125.04(3)(g)(intro.), 125.10(4), 125.17(6)(a)2, 125.51(1)(a) and (8), 125.68(1)(title), (a)(intro.) and 3 and (b), (2), (2m)(a), (4)(c)(title) and 1, (5), and (8)(a)3, and 125.69(1)(b)1, effective August 15, 1991.)

A new "Class C" license is created for the retail sale of wine for on-premise consumption. Licenses may be issued only for restaurants in which the sale of alcohol beverages accounts for less than 50% of gross receipts, and which do not have a barroom, if the municipality's quota prohibits the issuance of a "Class B" liquor license to the applicant.

19. Change References to Use the Term "Bowling Center" (1991 Act 28, amend secs. 125.07(3)(a)3, 125.32(3)(c), 125.32(4)(a)6, and 125.68(4)(c)4, effective July 13, 1991.)

The term "bowling alley" as used in the statutes is changed to "bowling center."

G. OTHER

1. Recycling Fee Replaced With Temporary Surcharge (1991 Act 39, repeal sec. 77.92(1m) and (2), amend secs. 73.03(27)(intro.) and (36), ch. 77(title), subch. VII(title) of ch. 77, 77.93(title), (intro.), and (1) through (3), 77.94(2)(b), 77.95, 77.96(1), (2), (3), and (4), and 77.97, repeal and recreate sec. 77.94(title) and (1), and create secs. 77.92(3) and (4), 77.93(5), 77.94(4), and 77.96(5) and (6), and nonstatutory provision, see effective dates below.)

The recycling fee that was to apply for taxable years ending after April 1, 1991, and before April 1, 1993, has been repealed for taxable years ending after April 1, 1991. If an entity pays the recycling fee under secs. 77.93 and 77.94, Stats. (1989-90), the department shall recalculate such recycling fee under the temporary surcharge provisions as provided by this Act. The department shall refund any overpayment and collect any underpayment determined under the recalculation. Interest and penalties may not be imposed on an underpayment which is caused solely by the recalculation.

For taxable years ending after April 1, 1991, and before April 1, 1999, corporations, partnerships, and sole proprietorships are subject to a temporary surcharge for the privilege of doing business in Wisconsin. The temporary surcharge is imposed on the gross tax liability of a corporation, on the net income of a tax-option (S) corporation, and on the net business income of an individual, partnership, estate, or trust. For years that end after April 1, 1991, and before April 1, 1992, the temporary surcharge ranges from a minimum of \$25 to a maximum of \$9,800.

Who Is Subject to the Temporary Surcharge?

- Corporations that are required to file a Wisconsin franchise or income tax return, Form 4 or 5.
- Tax-option (S) corporations that are required to file a Wisconsin franchise or income tax return, Form 5S.
- Insurance companies that are required to file a Wisconsin franchise tax return, Form 4I.
- Exempt organizations that are subject to the tax on unrelated business taxable income and must file a Wisconsin franchise or income tax return, Form 4T.
- Partnerships that are required to file a Wisconsin income tax return, Form 3.

- Individuals who are required to file a Wisconsin income tax return, Form 1 or 1NPR, and who have a profit or loss from a trade or business, as defined in IRC sec. 1402(c) for federal income tax purposes, or who are statutory employees, as defined in IRC sec. 3121(d)(3). The temporary surcharge is imposed on each individual regardless of marital property law and regardless of whether married individuals file joint or separate Wisconsin income tax returns.

Note: Individuals who are tax-option (S) corporation shareholders or partners are not subject to an additional surcharge on their pro rata shares of net business income which the entity passes through to them. However, if a tax-option (S) corporation's or a partnership's temporary surcharge is delinquent, its shareholders or partners are jointly and severally liable for it.

- Trusts and estates that are required to file a Wisconsin income tax return, Form 2, and that have a profit or loss from a trade or business, as defined in IRC sec. 1402(c), for federal income tax purposes.

What Is the "Gross Tax Liability"?

"Gross tax liability" means a corporation's (including an insurance company's) Wisconsin franchise or income tax liability under ch. 71 without regard to any tax credit.

What Is "Net Business Income"?

For a partnership, "net business income" means ordinary income from trade or business activities as reported under subch. III of ch. 71.

For an individual, estate, or trust, "net business income" means profit from a trade or business as defined in IRC sec. 1402(c), not including farming, for federal income tax purposes and net income as a statutory employee as defined in IRC sec. 3121(d)(3).

What Is a "Trade or Business"?

For purposes of the temporary surcharge, "trade or business" is defined in IRC sec. 1402(c), relating to self-employment income. In that section, "trade or business" has the same meaning, with certain exceptions, as when used in IRC sec. 162, relating to the deduction of trade or business expenses in computing taxable income.

What Is a "Statutory Employee"?

A "statutory employee" is defined in IRC sec. 3121(d)(3) and means any individual, other than an individual who is an employee under sec. 3121(d)(1) or (2), who performs services for remuneration for any person --

- a. as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for his or her principal,

- b. as a full-time life insurance salesperson,
- c. as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person which are required to be returned to that person or that person's designee,
- d. as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations,

if the contract of service contemplates that substantially all of these services in a. through d. above are to be performed personally by that individual. An individual is not a "statutory employe" if he or she has a substantial investment in facilities used in connection with the performance of these services, other than facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

What Is "Farming"?

For purposes of the temporary surcharge, "farming" is defined in IRC sec. 464(e)(1). "Farming" means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees, other than trees bearing fruit or nuts, are not treated as an agricultural or horticultural commodity. Raising or harvesting Christmas trees is not considered farming under IRC sec. 464(e)(1).

Period Covered by the Temporary Surcharge

The temporary surcharge is imposed for the same period covered by the taxpayer's Wisconsin franchise or income tax return. The temporary surcharge is first imposed for taxable years ending after April 1, 1991, and it will expire for taxable years beginning after April 1, 1999.

Due Date of the Temporary Surcharge

The temporary surcharge is due on the date on which the entity's Wisconsin franchise or income tax return is due.

- Corporations: 15th day of 3rd month following close of taxable year
- Tax-option (S) corporations: 15th day of 3rd month following close of taxable year
- Insurance companies: 15th day of 3rd month following close of taxable year
- Exempt corporations: 15th day of 5th month following close of taxable year

- Publicly-traded partnerships taxed as corporations: 15th day of 3rd month following close of taxable year
- Partnerships (except publicly-traded partnerships): 15th day of 4th month following close of taxable year
- Individuals: 15th day of 4th month following close of taxable year
- Estates or trusts: 15th day of 4th month following close of taxable year
- Exempt employes' trusts or IRAs: 15th day of 4th month following close of taxable year

For returns due on or after December 1, 1991, an entity that receives an extension of time to file its Wisconsin franchise or income tax return must pay an estimated surcharge, as explained in the following section.

Payment of Estimated Surcharge

Entities are not required to make quarterly estimated payments to prepay the temporary surcharge. However, if an entity receives an extension of time to file its Wisconsin franchise or income tax return, the entity must, on or before the unextended due date of the return, pay an estimate of the temporary surcharge based on the entity's gross tax liability or net business income for the previous year. After the tax return is filed, any overpayment of the temporary surcharge will be refunded or the entity will be billed for the difference between the estimated payment and the amount due.

Interest and Penalties

The interest and penalty provisions in ch. 71 that apply to Wisconsin franchise or income taxes also apply to the temporary surcharge, including any estimated payment of the temporary surcharge.

Administrative Provisions

The administrative provisions, including those relating to audits and assessments, claims for refund, statutes of limitations, Internal Revenue Service adjustments, confidentiality, appeals, collections, and setoffs for debts owed other state agencies, that apply for Wisconsin franchise and income tax purposes also apply to the temporary surcharge.

Computation of the Temporary Surcharge

For taxable years ending after April 1, 1991, and before April 1, 1992, the temporary surcharge is equal to one of the following amounts:

- Corporations (except tax-option (S) corporations), insurance companies, and exempt organizations taxable as corporations that are subject to the tax on unrelated business taxable income: The greater of \$25 or 5.5% of gross tax liability, but not more than \$9,800.

- Tax-option (S) corporations: The greater of \$25 or 0.4345% of Wisconsin net income, but not more than \$9,800.
- Partnerships, except partnerships engaged only in farming: The greater of \$25 or 0.4345% of net business income as allocated or apportioned to Wisconsin by means of the methods under sec. 71.04, Stats., but not more than \$9,800.

Note: Partnerships that have less than \$1,000 of gross receipts are not subject to the temporary surcharge.

- Individuals, estates, trusts, and exempt organizations taxable as trusts which are subject to the tax on unrelated business taxable income: The greater of \$25 or 0.4345% of net business income as allocated or apportioned to Wisconsin by means of the methods under sec. 71.04, Stats., but not more than \$9,800.

Note: Individuals, estates, trusts, and exempt organizations taxable as trusts having less than \$1,000 of gross receipts are not subject to the temporary surcharge.

- Individuals, estates, trusts, exempt organizations taxable as trusts, and partnerships engaged in farming: \$25, regardless of whether the entity is subject to a surcharge based on nonfarm net business income.

Note: The \$25 surcharge does not apply if the net farm profit is less than \$1,000.

Use of the Temporary Surcharge

The Department of Revenue is required to deposit the temporary surcharge, interest, and penalties collected in the recycling fund under sec. 25.49, Stats.

Note:

- 1) Entities filing an income or franchise tax return on a fiscal year basis who have a fiscal year ending in April through November of 1991, must report the temporary surcharge on a special form. In October of 1991 the department will mail the special form to entities which appear to be subject to the temporary surcharge based on prior year income or franchise tax returns filed.
- 2) Since the special form for reporting the temporary surcharge will not be available until October, 1991, entities having a fiscal year ending in April, May, June, or July of 1991 are granted an automatic extension until November 15, 1991, to file the special form and pay the surcharge. (This automatic extension will not apply to the Wisconsin franchise or income tax return.) No interest, penalties, or late filing fees will be charged on the temporary surcharge during this special extension period. If you have either a federal or state extension of time to file your franchise or income tax return, that will automatically extend the due date of the temporary surcharge.

3) If you have any further questions about the temporary surcharge, please contact any Wisconsin Department of Revenue office.

2. Allow Taxpayer To File Claim For Refund During Waiver Period (1991 Act 39, amend secs. 71.75(2) and 71.77(5), and renumber sec. 77.59(3)(a) to 77.59(3m) and amend sec. 77.59(3m) as renumbered, effective August 15, 1991.)

If the taxpayer and department have executed a waiver agreement to extend the time in which the department may make an assessment or refund, the taxpayer may file a claim for refund within the waiver period.

Example: The 1987 calendar tax year of John Doe would be closed to adjustment, by the four-year statute of limitations, on April 15, 1992. On March 1, 1992, John Doe and the department execute a waiver agreement which extends the statute of limitations for making an assessment or refund by one year, to April 15, 1993. This provision provides that John Doe may file a claim for refund for the 1987 year during the waiver period of April 16, 1992 to April 15, 1993.

3. Time Period For Department To Act On Claim For Refund May Be Extended (1991 Act 39, amend secs. 71.75(7) and 77.59(4)(intro.), effective August 15, 1991, for sec. 71.75(7), effective for claims for refund filed on or after October 1, 1991, for sec. 77.59(4)(intro.).)

The one-year time period during which the department is directed to act on any claim for refund or claim for credit may be extended if the taxpayer consents in writing to an extension.

4. Prohibit Refund Claims After Field Audit Notice of Refund or No Tax (1991 Act 39, amend sec. 71.75(4), effective for field audit notices issued on or after October 1, 1991.)

A taxpayer may not file a claim for refund for any year covered by a field audit which resulted in either no change in the tax owed, a refund, or an assessment of additional tax that has become final under secs. 71.88(1)(a) or (2)(a), 71.89(2), 73.01, or 73.015, provided the department notifies the taxpayer that the field audit is final, unless the taxpayer appeals the result of the field audit.

Under prior law, a taxpayer could file a claim for refund for a year covered by a field audit that resulted in a refund or in no change in tax.

5. Modify Civil Penalty for Intent to Defeat or Evade Income and Franchise Taxes (1991 Act 39, amend sec. 71.83(1)(b)1, effective August 15, 1991.)

Repeated late filing of an income or franchise tax return evinces an intent to defeat or evade the income or franchise tax assessment required by law.

6. Provide That Nonresident Entertainers Must File Surety Bond 7 Days Prior to Performance (1991 Act 39, amend sec. 71.80(15)(b), effective for performances occurring on or after August 25, 1991.)

Entertainers and entertainment corporations not otherwise employed or regularly engaged in business in Wisconsin are required to file a surety bond, to guarantee payment of Wisconsin taxes with the department, at least seven days prior to a Wisconsin performance.

Under prior law, the bond had to be filed at least two days prior to the performance.

Changing the time from two to seven days gives the department an opportunity to notify the Wisconsin employer that a surety bond has been filed prior to the time the performance is to take place.

7. Permit Civil Action for Recovery Under Levy Law (1991 Act 39, amend sec. 71.91(6)(d)1 and 2, effective August 15, 1991.)

The department may enforce collection of a liability or penalty imposed on a third party for failure to surrender levied (seized) property by issuing an assessment against the third party or by bringing a civil action against the third party in the Circuit Court.

Under prior law, only the assessment method of recovery was available.

8. Expand Reporting Requirements for Internal Revenue Service and Other State Adjustments (1991 Act 39, amend sec. 71.76, effective for changes or corrections to a federal income tax return that become final on or after August 15, 1991, and for amended federal and state returns filed on or after that date.)

If the Internal Revenue Service adjusts a taxpayer's federal net income tax payable, a federal credit, a federal net operating loss carried forward, or a capital loss carried forward, the taxpayer is required to report the adjustment to the Department of Revenue within 90 days after it becomes final, if the adjustment affects the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net operating loss or net business loss carried forward, or a Wisconsin capital loss carried forward.

A taxpayer filing an amended return with the Internal Revenue Service, or with another state if a credit was allowed for Wisconsin for taxes paid to that state, is required to file an amended Wisconsin return if any information on the federal or other state amended return affects the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net operating loss or net business loss carried forward, or a Wisconsin capital loss carried forward.

In prior years, only IRS adjustments to taxable income were required to be reported.

9. Require Use of Magnetic Media (1991 Act 39, amend secs. 71.65(2)(a) and (b) and (5), 71.66(1)(f), 71.70, 71.71(2), 71.72, 71.73(2), and 71.80(14)(a), and create sec. 71.80(20), effective January 1, 1992.)

Persons (including corporations) required to file federal wage statements and information returns on magnetic media or in other machine-readable form with the Internal Revenue Service must also file comparable Wisconsin wage statements and information returns in the same manner with the Department of Revenue.

10. Withholding From Pari-Mutuel Wager Winnings To Be Deposited On The Same Basis as Withholding From Wages (1991 Act 39, amend sec. 71.67(5)(b), effective October 1, 1991.)

Amounts withheld from pari-mutuel wager winnings must be deposited on the same basis that employers deposit income tax withheld from employees' wages. This may be semimonthly, monthly, quarterly, or annually. This means, for example, that when amounts withheld during any calendar quarter exceed \$5,000, the Department of Revenue may require semimonthly deposits to be made.

Under prior law, deposits of amounts withheld from pari-mutuel wager winnings were required to be made on a monthly basis.

11. Permit Assessment of Fees to Persons Owing Delinquent Taxes (1991 Act 39, repeal sec. 73.03(33), create sec. 73.03(33m), and create a nonstatutory provision, effective July 1, 1992, for each account that is delinquent on June 30, 1992, or thereafter.)

The department may assess all persons who owe delinquent taxes, a fee for each delinquent account of the greater of \$25 or 4.5% of the taxes, fees, interest, and penalties owed on that account. For delinquent accounts existing on June 30, 1992, the fee is computed based on the balance as of June 30, 1992. For accounts that become delinquent on or after July 1, 1992, the fee is computed based on the amount owed on that account as of the due date specified in the assessment, notice of amount due, or notice of redetermination.

12. Clarify Law Allowing Refund of Overpaid Interest and Penalties (1991 Act 39, amend sec. 71.75(5), effective August 15, 1991.)

The department is authorized to refund allocable interest and penalties on claims for refund of overpaid tax assessments.

(Note: This law change merely codifies the department's prior policy of refunding allocable interest and penalties.)

13. Send Copy of Delinquent Tax Warrant Satisfaction to Taxpayer Only If Requested (1991 Act 39, amend sec. 71.91(5)(f), effective August 15, 1991.)

The department is required to send a copy of a satisfaction of delinquent tax warrant to a taxpayer only if the taxpayer requests a copy.

Under prior law, the department was required to send a copy to the taxpayer in all cases.

14. Responsible Person Assessments Include Penalties and Interest (1991 Act 39, amend sec. 71.83(1)(b)2, effective for failures to withhold, account for, or pay over a tax imposed under ch. 71, Wis. Stats., on or after August 15, 1991.)

Any person who intentionally fails to withhold income, franchise, or mining taxes, or account for or pay over such taxes to the department is liable for a penalty equal to the amount of tax, interest, and penalties. Previously, the penalty was only the amount of the tax.

"Person" includes an officer, employe, or other responsible person of a corporation and a member, employe, or other responsible person of a partnership who is under a duty to perform the act in respect to which the violation occurs.

15. Department of Revenue Exempt from Photocopying Fees Charged by Registers of Deeds (1991 Act 39, amend sec. 59.57(4), effective August 15, 1991.)

County Registers of Deeds are authorized under sec. 59.57(4), Wis. Stats., to charge a fee for copies of their records or papers. The Department of Revenue is exempt from those fees.

16. Require the Department of Revenue to Publicize Property Tax Deferral Loan Program on Homestead Credit Form (1991 Act 39, create sec. 73.03(40m), effective August 15, 1991.)

Information about the property tax deferral loan program must be included on the homestead credit claim form, Schedule H.

17. References to "Franchise Tax" Added to Wisconsin Statutes (1991 Act 39, amend secs. 19.50(5), 20.566(1)(a), 59.071(2), 59.39(7), 66.30(2m)(e), 66.39(7)(m), 66.521(1)(a), 66.94(5)(c), 70.375(4)(e) and (em), 70.39(4), 70.40(3), 70.42(3), 70.421(3), 70.51(2), 71.24(6)(b), (7), (9)(b), and (10), 71.26(1)(e), 71.28(2m)(b)1.a., 71.30(8)(b), 71.39(1)(b), 71.40, 71.44(1)(c), (2)(b), (3), and (4)(c), 71.45(2)(b)2. and 3., 71.47(2m)(b)1.a., 71.57, 71.59(1)(a), 71.74(6), (8)(a), (b), and (c), (12), (13)(a), and (14), 71.80(1)(e), (2), (8), (9), (16)(a) and (b), and (17), 71.83(1)(a)3., 6., and 7., (b)2. and 6., and (3), 71.88(2)(b), 71.89(2) and (5), 71.91(5)(c) and (j), (5m)(a), and (7)(d), 71.92(2), (3), (4), and (6), 72.86(4), 72.87(2), 73.01(5)(a), 73.03(20), 75.521(3)(am)2., 76.38(12)(a), 76.39(4)(c) and (5), 76.48(1r) and (6), 77.26(3), 77.51(4)(b)4., 77.52(6), 77.53(4), 77.54(4), 77.59(6)(b), 78.70(6), 78.80(3), 101.583(1m), 139.11(4), 139.38(6), 139.82(6), 144.027(4m)(b) and (c), 163.11(1)(intro.), 163.90, 185.50, 218.01(3)(a)3., 218.11(6)(c), 218.22(3)(c), 218.32(3)(c), 218.41(3)(c), 218.51(4)(c), 230.08(4)(b)1., 551.235(5)(d)1., 565.10(14)(a)(intro.), 701.20(12)(d)4., 806.11(intro.), (1), and (4), 859.02(2)(a), and 893.33(5) and repeal and recreate secs. 20.566(1)(a), 66.30(2m)(e), 73.03(20), 75.521(3)(am)2., 859.02(2)(a), and 893.33(5), effective August 15, 1991, except the repeals and recreations take effect on January 1, 1992).

Under current law, sec. 71.23(2) provides that all provisions of chs. 71 and 73 relating to income taxation of corporations shall apply to franchise taxes imposed under sec. 71.23(2) unless the context requires otherwise. The franchise tax is a Wisconsin tax that is imposed on

corporations for the privilege of doing business in the state and is measured by net income. These provisions revise references to the "income tax" to include references to the "franchise tax."

18. Standardize Administrative Provisions Relating to Credits (1991 Act 39, amend secs. 71.74(8)(a), (b), and (c), 71.80(3m)(c) and (d), 71.82(1)(c) and (2)(c), 71.83(2)(b)4, and 71.88(1)(b) and (2)(b), see effective dates below.)

Under prior law, certain administrative provisions relating to income and franchise tax credits applied to some, but not all, of the available tax credits. This Act applies those administrative provisions to all income and franchise tax credits. The affected provisions are as follows:

Adjustment of Credits

- a. If an audit of a claim for a credit indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor within 4 years of the last day prescribed by law for filing the claim (sec. 71.74(8)(a), Stats.).

Under prior law, this provision applied only to the farmland tax relief credit, the married persons credit, homestead credit, farmland preservation credit, and all credits available to corporations and insurance companies. This change is effective for taxable years beginning on or after January 1, 1991.

- b. If a claim for a credit is false or excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid or a credit has been allowed against income or franchise taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income or franchise taxes are assessed (sec. 71.74(8)(b), Stats.). If a claim for a credit is excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid or credited against income or franchise taxes otherwise payable, the credit shall be reduced or canceled and the proper portion of any amount paid shall be recovered by assessment as income or franchise taxes are assessed (sec. 71.74(8)(c), Stats.).

Under prior law, these provisions applied only to the claim of right credit, community development finance authority credit, farmland tax relief credit, itemized deduction credit, married persons credit, other state tax credit, personal exemption credit, research credit, research facilities credit, homestead credit, and farmland preservation credit. These changes are effective for taxable years beginning on or after January 1, 1991, as they relate to the farmland tax relief credit and to insurance company credits, and on August 15, 1991, for all other credits.

Crediting of Overpayments on Joint Returns

The department is required to notify the spouses when it intends to reduce any state tax refund or refundable credit from a joint return and apply such amount to offset any liability of either spouse owed the department. If the spouse does not receive the notice and the department incorrectly credits the state tax overpayment, refund, or refundable credit of a spouse or spouses against a liability, a claim for refund of the incorrectly credited amount may be filed within 2 years after the notice (sec. 71.80(3m)(c) and (d), Stats.).

Under prior law, references were to homestead and farmland preservation credit rather than to refundable credits. These changes are effective August 15, 1991.

Interest

Any assessment made as a result of the adjustment or disallowance of a claim for a credit, except in the case of fraud or negligence, shall bear interest at 12% per year from the due date of the claim. Any assessment made as a result of the disallowance of a claim for a credit made with fraudulent intent, or of a portion of a claim that was excessive and was negligently prepared, shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month. (Section 71.82(1)(c) and (2)(c), Stats.)

Under prior law, these provisions applied only to the farmland tax relief credit, married persons credit, community development finance credit (corporations and insurance companies), homestead credit, and farmland preservation credit. These changes are effective for taxable years beginning on or after January 1, 1991.

Criminal Penalties

A claimant who filed a claim for a credit that is false or excessive and was filed with fraudulent intent and any person who assisted in the preparation or filing of the false or excessive claim or supplied information upon which the false or excessive claim was prepared, with fraudulent intent, may be fined not more than \$10,000 or imprisoned for not more than 5 years, or both, together with the cost of prosecution (sec. 71.83(2)(b)4, Stats.).

Under prior law, this provision applied only to the farmland tax relief credit, married persons credit, community development finance credit (corporations and insurance companies), homestead credit and farmland preservation credit. This change is effective for taxable years beginning on or after January 1, 1991.

Time for Filing an Appeal

Any person feeling aggrieved by the determination made by the department to adjust a credit may, within 60 days after receipt, petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is

filed and notify the claimant. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive (sec. 71.88(1)(b), Stats.).

Under prior law, this provision applied only to the farmland tax relief credit, married persons credit, community development finance credit (corporations and insurance companies), homestead credit, and farmland preservation credit. This change is effective for taxable years beginning on or after January 1, 1991.

19. Provide Exemption from Penalties and Interest for Certain Members of the Reserves (1991 Act 2, create sec. 71.85(3), effective March 28, 1991.)

A member of a reserve component of the U.S. Armed Forces may exclude from Wisconsin income all or a portion of basic, special, and incentive pay income or compensation received from the federal government for services performed for Operation Desert Shield or Operation Desert Storm in the Desert Shield or Desert Storm theater of operations. (See Item A.21)

For persons eligible for this exclusion, no penalty or interest that has been imposed by the department under Subchapter XII of Chapter 71 of the Wisconsin Statutes will accrue while the taxpayer is in the theater and for 180 days after the taxpayer leaves the theater.

CKWTB/73(184)