

6. Joint Return Permitted After Separate Returns Filed (1991 Act 301, amend sec. 71.03(2)(i)3., effective May 14, 1992).

If the Department of Revenue consents, spouses who have filed separate income tax returns may file a joint return after the Department has sent a notice of adjustment in income tax liability to either spouse.

Under prior law, spouses who had filed separately could not change to a joint return if a notice of an income tax adjustment had been mailed to either spouse and that spouse filed a petition for redetermination with respect to that notice.

7. Confidentiality of Tax Return Information Amended (1991 Act 301, amend sec. 71.78(1), (4)(k), and (5) and create sec. 71.78(4m), effective May 14, 1992).

This Act makes the following changes to the statutes relating to the confidentiality of tax return information:

- (a) It clarifies that "any return" includes joint returns of a spouse or former spouse, separate returns of a spouse, and individual returns of a spouse or former spouse.
- (b) It clarifies that the Department of Revenue makes the determination whether tax-related information has reasonable probative value in a contested matter involving the Department and, therefore, may be offered or submitted by the Department into evidence.
- (c) It permits the spouse or former spouse of a person who filed a tax return or claim to examine the return or claim if the Department has issued an assessment or denial of a claim to the spouse or former spouse regarding that return or claim. Under prior law, the Department could not disclose the returns in question until the hearing on the dispute, unless the parties consented, even though assessments are based on the returns.
- (d) It allows the Department to disclose to the spouse or former spouse of a person who has filed a tax return or claim whether an extension for filing the return or claim was obtained, the extended due date for filing the return or claim, and the date on which the return or claim was filed.
- (e) It allows the Department, under certain circumstances, to furnish a copy of a tax return or claim to the spouse or former spouse of a person who filed the return or claim. In those same circumstances under prior law, the spouse or former spouse would be allowed to examine the return or claim but not copy it.

8. Time Period Limited for Claims for Refunds of Overpayments Incorrectly Offset Against Debts (1991 Act 301, amend sec. 71.80(3m)(d), effective May 14, 1992).

For married persons filing a joint return, the Department of Revenue may offset overpayments, credits, or refunds against the liability of either or both spouses in certain situations. However, the nonobligated spouse may limit this offset procedure by showing, within 20 days of the Department's notice to the spouses of an intent to use the offset procedure, that all or part of the overpayment, credit, or refund on a joint return is nonmarital property of the nonobligated spouse.

If a spouse does not receive notice of the intent to offset and the Department incorrectly makes an offset, this amendment clarifies that the spouse may claim a refund of the incorrectly credited amount within two years of the date of the offset.

9. Development Zone Jobs Credit Treatment of Leased or Rented Employees Changed (1991 Act 292, renumber secs. 71.07(2dj)(am)4. to 71.07(2dj)(am)4.a. and 71.07(2dj)(e)3. to 71.07(2dj)(e)3.a. and amend sec. 71.07(2dj)(am)4.a. and (e)3.a. as renumbered; amend sec. 71.07(2dj)(am)4t.; and create sec. 71.07(2dj)(am)4.b. and (e)3.b., effective for a taxable year of a partnership, tax-option (S) corporation, or person that begins on or after January 1, 1992, 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 the partnership or tax-option (S) corporation to the partnership's or tax-option (S) corporation's treatment of the tax credit).

For purposes of the Wisconsin development zone jobs credit, a leased or rented employee is considered to be working at his or her base of operations, not at the location at which the leased employee performs services. This law change, which conforms the treatment of leased and rented employees to that for mobile employees, applies to taxpayers who are certified by the Department of Development for development zone tax benefits on or after January 1, 1992.

Under prior law, an employee leasing agency was eligible for the jobs credit for hiring an employee whom the agency leases or rents to another business only if that business uses the employee at a location in a development zone and the employee works at that location for the minimum employment period.

B. CORPORATION FRANCHISE OR INCOME TAXES

1. References to the Internal Revenue Code Updated for 1992 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 269, amend secs. 71.22(4)(f) and (4m)(d), 71.26(2)(b)6. and (3)(y), 71.34(1g)(f), 71.365(1m), 71.42(2)(e), and 71.45(2)(a)13. and create secs. 71.22(4)(g) and (4m)(e), 71.26(2)(b)7., 71.34(1g)(g), and 71.42(2)(f), effective for taxable years beginning on or after January 1, 1992.)

For taxable years that begin on or after January 1, 1992, "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, 1991, 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, 1992, 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, 1991, at the taxpayer's option.
 - (b) For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the Internal Revenue Code is modified by Wis. Stat. sec. 71.26(3).
 - (c) 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.
 - (d) For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
 - (e) 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 1991 Adopted to Apply Simultaneously for Wisconsin Purposes** (1991 Act 269, amend secs. 71.22(4)(d), (e), and (f) and (4m)(b), (c), and (d), 71.26(2)(b)4., 5., and 6., 71.34(1g)(d), (e), and (f), and 71.42(2)(c), (d), and (e), effective for taxable years beginning after December 31, 1988 and before January 1, 1992).

The federal Tax Extension Act of 1991 (Public Law 102-227), which was enacted on December 11, 1991, applies for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, the rules relating to the allocation of research and experimental expenditures under IRC §864(f) apply for both federal and Wisconsin purposes for the first three taxable years beginning after August 1, 1989, and on or before August 1, 1992.

3. **Definition of Pari-Mutuel Wager Winnings or Purses Expanded for Apportionment Purposes** (1991 Act 269, amend sec. 71.25(5)(a)24. and (9)(f) 16., effective May 1, 1992).

Apportionable income includes all pari-mutuel wager winnings or purses from racing operations administered by the Wisconsin Gaming Commission under ch. 562. However, such winnings or purses are not included in "sales" for purposes of computing the Wisconsin sales factor. Under prior law, this treatment applied to pari-mutuel wager winnings and purses subject to sec. 562.065(3)(a) and (b) and (3m)(a) and (b).

4. Development Zone Jobs Credit Treatment of Leased or Rented Employees Changed (1991 Act 292, renumber secs. 71.28(1dj)(am)4. to 71.28(1dj)(am)4.a., 71.28(1dj)(e)3. to 71.28(1dj)(e)3.a., 71.47(1dj)(am)4. to 71.47(1dj)(am)4.a., and 71.47(1dj)(e)3. to 71.28(1dj)(e)3.a. and amend secs. 71.28(1dj)(am)4.a. and (e)3.a. and 71.47(1dj)(am)4.a. and (e)3.a. as renumbered; amend secs. 71.28(1dj)(am)4t. and 71.47(1dj)(am)4t.; and create secs. 71.28(1dj)(am)4.b. and (e)3.b. and 71.47(1dj)(am)4.b. and (e)3.b., effective for a taxable year of a partnership, tax-option (S) corporation, or corporation that begins on or after January 1, 1992, 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 the partnership or tax-option (S) corporation to the partnership's or tax-option (S) corporation's treatment of the tax credit).

For purposes of the Wisconsin development zone jobs credit, a leased or rented employee is considered to be working at his or her base of operations, not at the location at which the leased employee performs services. This law change, which conforms the treatment of leased and rented employees to that for mobile employees, applies to taxpayers who are certified by the Department of Development for development zone tax benefits on or after January 1, 1992.

Under prior law, an employee leasing agency was eligible for the jobs credit for hiring an employee whom the agency leases or rents to another business only if that business uses the employee at a location in a development zone and the employee works at that location for the minimum employment period.

C. SALES AND USE TAXES

1. Clarify That "Tangible Personal Property" Includes Computer Programs, Except Custom Programs (1991 Act 269, amend sec. 77.51(20), effective May 1, 1992.)

This provision amends the definition of "tangible personal property" to include computer programs, except custom computer programs.

Section Tax 11.71(1)(e), Wis. Adm. Code, defines "custom programs" as utility and application software which accommodate the special processing needs of the customer. Criteria used in determining whether a computer program is a custom program are described in sec. Tax 11.71(1)(e)1 through 7, Wis. Adm. Code.

Important: The amendment to sec. 77.51(20), Wis. Stats., does not change the sales and use tax treatment of computer programs. Sales of "custom" programs continue to be nontaxable while "canned" programs are considered to be tangible personal property and taxable.

The tax release titled "Taxability of Computer Software" which appeared in Wisconsin Tax Bulletin 72, page 16, (July 1991), includes examples of the Wisconsin sales and use tax treatment of computer software.

2. Revise Computation of Retailers' Discount (1991 Act 269, amend sec. 77.61(4)(c), effective for taxes payable on returns filed for periods that end on or after January 1, 1993.)

For reporting the Wisconsin sales tax and collecting and reporting the use tax imposed on the retailer under sec. 77.53(3), Wis. Stats., a retailer may deduct from the tax imposed, a retailers' discount equal to 0.5% of the sales and use tax payable on retail sales, if it timely remits the tax to the department.

Previously, the retailers' discount was 2% of the first \$10,000 of sales and use tax payable each year, 1% of the second \$10,000 of sales and use tax payable each year, and 0.5% of the sales and use tax payable each year exceeding \$20,000.

3. Clarify That Purchasers of Vehicles From Non-Dealers File a Sales Tax Return (1991 Act 269, amend sec. 77.61(1)(c), effective May 1, 1992.)

This provision clarifies that a sales tax return must be filed prior to the registration or titling of a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle, or aircraft purchased from a non-dealer.

Prior law referred to a sales tax report, which is on an outdated word for return.

4. Increase Penalty to 25% on Estimated Assessments (1991 Act 269, amend sec. 77.59(9), effective July 1, 1992.)

If the department makes an estimated assessment of a person's sales or use tax liability because of that person's failure to file a sales and use tax return, a penalty of 25% of the estimated tax will be added to the tax assessed.

Previously, the penalty was 10%.

5. Increase Negligence Penalty to 50% for Filing Incorrect Sales and Use Tax Return When Registering a Motor Vehicle, Boat, Etc. (1991 Act 269, amend sec. 77.60(3), effective for returns filed on or after May 1, 1992.)

When a person purchases a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle, or aircraft from a non-dealer who has not charged Wisconsin sales or use tax, the person purchasing the vehicle is required to report and pay Wisconsin sales or use tax when registering the item in Wisconsin.

The amendment to s. 77.60(3) provides that if the person, due to neglect, files an incorrect return, a penalty shall be imposed equal to 50% of the tax finally determined for that item, exclusive of interest or other penalty.

Previously the penalty was 25%.

6. Conform Language in Exemption for Gross Receipts From Charges for Searching for and Copying Records (1991 Act 269, amend sec. 77.54(32), effective May 1, 1992.)

Section 77.54(32), Wis. Stats., which is a sales and use tax exemption for gross receipts from charges for searching for and copying certain records, is amended to change the statutory reference from sec. 19.35(1), Wis. Stats., to sec. 19.35(1)(a), Wis. Stats. Also the words "public" and "confidential" are removed from the exemption language in sec. 77.54(32), Wis. Stats.

7. Clarify That Departments of Transportation and Natural Resources May Administer County Sales and Use Taxes on Transfers of Motor Vehicles, Boats, Etc. (1991 Act 269, amend sec. 77.76 (1), effective May 1, 1992.)

This provision codifies that the Wisconsin Department of Transportation and Wisconsin Department of Natural Resources may levy, enforce, and collect Wisconsin county sales and use taxes for the Department of Revenue on motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, or aircraft which those agencies register or title.

D. EXCISE TAXES

1. Increase Cigarette Tax Rate (1991 Act 269, amend sec. 139.31(1)(a) and (b), effective May 1, 1992.)

The cigarette tax rate is increased from 30¢ to 38¢ per package of 20 cigarettes.

2. Indexing of Motor Fuel and Special Fuel Tax Rates Suspended for 1992 (1991 Act 119, create nonstatutory provision, effective March 28, 1992.)

The indexing of rates for motor fuel and special fuel taxes is suspended for one year (i.e., April 1, 1992 through March 30, 1993). The Department of Revenue is directed to calculate the rates for those taxes that go into effect on April 1, 1993, by calculating the rate that would have gone into effect on April 1, 1992, but for 1991 Act 119, and then adjusting those rates as specified in secs. 78.015(1) and 78.405, Wis. Stats. (1989-90).

3. Update Wisconsin Statute Reference for Alcohol Beverage Raffles (1991 Act 269, amend sec. 125.06(10), effective May 1, 1992.)

No alcohol beverage license or permit is needed for the awarding of alcohol beverages in original, unopened packages, containers or bottles as a prize in a raffle conducted by an organization licensed to conduct the raffle under Ch. 563, to any person who has attained the legal drinking age.

4. Allow Unaccompanied Underage Persons on Picnic Beer Premises (1991 Act 269, create sec. 125.07(3)(a)12 and amend sec. 125.26(6), effective May 1, 1992.)

Unaccompanied underage persons may enter and remain on temporary Class "B" premises licensed under sec. 125.26(6), Wis. Stats., if authorized by the municipal governing body that issued the license.

5. Require Municipalities to Issue Provisional Operators' Licenses (1991 Act 269, amend sec. 125.17(5)(a) and create sec. 125.17(6)(b), effective May 1, 1992.)

A municipal governing body shall issue provisional operators' licenses to persons enrolled in a "responsible beverage server" course who meet the standards established by the municipality by ordinance, if any.

E. HOMESTEAD CREDIT

1. Allow Full Property Taxes for Certain Partially-Owned Homesteads (1991 Act 195, amend sec. 71.52(7), effective for taxable years beginning on or after January 1, 1992.)

If a claimant has inherited a partial interest in his or her homestead and is required by the terms of the decedent's will to pay all of the property taxes on the homestead, the claimant may use the entire property tax to compute a homestead credit.

Under prior law only the portion of the property taxes on the homestead which reflected the ownership percentage of the claimant was allowed to be used to compute the claimant's homestead credit.

F. OTHER

1. Certain Members of the Clergy Exempted From Temporary Recycling Surcharge (1991 Act 269, amend secs. 77.92(4), 77.93(2), and 77.96(6) and create sec. 77.92(5), effective for taxable years beginning on or after January 1, 1992).

For purposes of the temporary recycling surcharge, "trade or business" for an individual is defined in IRC sec. 1402(c), relating to self-employment income. The law change provides that for taxable years beginning on or after January 1, 1992, "trade or business" does not include service performed by a person under IRC sec. 1402(c)(4) and service performed, not as an employee, by a person under IRC sec. 1402(c)(5).

Section 1402(c)(4) relates to the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by that order.

Section 1402(c)(5) relates to the performance of service by an individual in the exercise of his or her profession as a Christian Science practitioner.

2. Increase Late Filing Fee (1991 Act 269, amend sec. 71.83(3), effective for assessments, determinations, or other actions taken on or after May 1, 1992, regardless of the taxable year to which they apply.)

If any corporation, tax-option (S) corporation, or insurance company that is required to file a Wisconsin franchise or income tax return fails to file the return within the time prescribed by law, including extensions, it will be subject to a late filing fee of \$30. Under prior law, the late filing fee was \$10, or \$20 if the return was 60 or more days late.

For taxpayers other than corporations (e.g., individuals), the late filing fee for income tax returns which are 60 or more days late is increased from \$20 to \$30.

3. **Change Late Filing Fee Procedures** (1991 Act 190, amend sec. 71.83(3), effective for taxable years beginning on or after January 1, 1992.)

The department is prohibited from imposing a late filing fee if a taxpayer files a Wisconsin income or franchise tax return under a federal extension but fails to attach a copy of the federal extension request or approval to such Wisconsin return. In addition, a late filing fee that is imposed under sec. 71.83(3), Wis. Stats., for failing to timely file a Wisconsin income or franchise tax return may be appealed by the taxpayer.

4. **Absolve Certain Taxpayers of Liability for Interest and Penalties** (1991 Act 219, create sec. 73.03(47), effective May 7, 1992.)

A taxpayer who shows that a liability for penalties and interest resulted from erroneous written advice from the Department of Revenue is absolved of that liability, provided the taxpayer shows that adequate and accurate information had been given to the department when the advice was requested.

5. **References to Lottery Board and Related Statutes Changed** (1991 Act 269, amend secs. 71.02(1), 71.04(1)(a), as affected by 1991 Act 39, 71.04(7)(f)16, 71.25(5)(a)24 and (9)(f)16, 71.67(4), 71.78(4)(L), and 77.61(5)(b)9, effective May 1, 1992.)

Various references in Chapters 71 and 77 to the Lottery Board and its related statutes are changed as follows:

- (a) "lottery board" is changed to "gaming commission".
- (b) "executive director of the lottery" is changed to "administrator of the lottery division in the gaming commission."
- (c) references to "sec. 562.065(3)(a) and (b) and (3m)(a) and (b)" are changed to "ch. 562."

6. **Modify Guidelines for Distributing Information About Physician Acceptance of Medicare Assignment** (1991 Act 232, amend sec. 71.55(10)(b)1.b and (c)2, effective May 7, 1992.)

The household income limitation which applies for purposes of the department's distribution of PartnerCare enrollment cards and information about Medicare assignment is increased from \$18,000 to \$19,154.

7. **Controlled Substances Tax Revised for Dealers of Marijuana Plants** (1991 Act 208, amend sec. 139.87(2) and create sec. 139.88(1d), effective July 1, 1992.)

A dealer who possesses, manufactures, produces, ships, transports, delivers, imports, sells, or transfers to another person more than 5 marijuana plants is subject to the controlled substances tax at the rate of \$1,000 per marijuana plant, regardless of the weight of the plants.

Under prior law, marijuana was subject to the controlled substances tax based on weight (\$3.50 per gram or part of a gram). Marijuana in a form other than a plant continues to be taxed by weight.

8. **Administration of Property Tax Deferral Loan Program Transferred to Department of Administration** (1991 Act 269, repeal Subchapter IV(title) of Chapter 77 and secs. 20.566(8)(title), (q), (v), (w), and (wa), 25.38, and 77.64(2) and (8); renumber secs. 77.63 to 16.993, 77.64(intro.), (1), (3), (4), (5), (6), and (7) to 16.994(intro.), (1), (3), (4), (5), (6), and (7), 77.65 to 16.995, 77.655 to 16.9955, 77.66 to 16.996, and 77.67(title), (1), (2), (2m), (3), (4), (5), and (6) to 16.997(title), (1), (2), (2m), (3), (4), (5), and (6); amend secs. 16.994(intro.), (5), (6), and (7), 16.995(intro.), (1), and (3), 16.9955, 16.996(1) to (3), (4)(intro.), and (b) and (5) to (9), 16.997(1), (2), (2m), (3), (4), and (5) as renumbered; and create nonstatutory provision, effective July 1, 1992.)

Responsibility for administering Wisconsin's Property Tax Deferral Loan Program is transferred from the Department of Revenue to the Department of Administration. The Property Tax Deferral Loan Program allows homeowners age 65 and older to convert equity in their homes into cash for paying property taxes.