

Annualized farm loss	\$ (120,000)
(\$ (30,000) x 12 ÷ 3)	

Because annualized nonfarm income is greater than \$55,000, but not more than \$75,000, the taxpayer's farm loss for the year is limited to \$20,000. Therefore, an add modification of \$25,000 is required (\$120,000 annualized farm loss less \$20,000 allowable loss x 3/12 which is the proration for the number of months in the short period).

Annualized taxable income is computed as follows:

Federal adjusted gross income	\$ (14,000)
Add modification for farm loss limitation	<u>25,000</u>
Wisconsin taxable income for the short period	\$ 11,000
Multiply by 12	<u>x 12</u>
	\$ 132,000
Divide by months in short period	<u>÷ 3</u>
Annualized taxable income	\$ 44,000

Facts and Question 3: Section 1398(g), IRC, provides that the tax attribute of a net operating loss carryforward is transferred to the bankruptcy estate.

Does this apply for Wisconsin tax purposes?

Answer 3: Yes. The tax attribute of a net operating loss, determined as of the first day of the debtor's tax year in which the bankruptcy case begins, goes to the bankruptcy estate. The estate may use all or any part of a net operating loss carryforward to offset income of the estate. Any remainder of the carryforward reverts back to the individual debtor upon termination of the bankruptcy estate. Therefore, if a bankruptcy estate terminates and did not use the entire net operating loss carryforward, the individual debtor could use the carryforward remaining after termination to offset taxable income.

Note: Section 1398, IRC, does not apply if the bankruptcy case is subsequently dismissed, nor does it apply at the partnership level.

Question 4: How is the Wisconsin alternative minimum tax (AMT) computed for a short period return?

Answer 4: Wisconsin alternative minimum taxable income (line 13 of 1991 Wisconsin Schedule MT) must first be annualized. The appropriate exemption amounts are then subtracted, and the tax rate (6.5% for 1991) applied. The result is the annualized tentative AMT. If the annualized tentative AMT is greater than the annualized regular tax, the difference is the annualized AMT. The annualized AMT is added to the annualized regular tax, and the

resulting total is then prorated for the number of months in the short period.

Example: A single taxpayer files a short period return for the period January 1, 1991, to February 28, 1991. The taxpayer has taxable income of \$1,000 and alternative minimum taxable income of \$6,000. The taxpayer's net tax is computed as follows:

Income for the short period	\$ 1,000.00
Multiply by 12	<u>x 12</u>
	\$ 12,000.00
Divide by months in the short period	<u>÷ 2</u>
Annualized taxable income	\$ 6,000.00
Gross tax on annualized income	\$ 294.00
Annualized AMT*	<u>96.00</u>
Annualized net tax	\$ 390.00
Prorate tax for short period	<u>x 2/12</u>
Net tax for short period	\$ 65.00

* Computation of annualized AMT:

Wisconsin alternative minimum taxable income	\$ 6,000.00
Multiply by 12	<u>x 12</u>
	\$ 72,000.00
Divide by months in short period	<u>÷ 2</u>
Annualized alternative minimum taxable income	\$ 36,000.00
Less exemption amount	<u>30,000.00</u>
	\$ 6,000.00
Tax rate 6.5%	<u>.065</u>
Tentative AMT	\$ 390.00
Less annualized regular tax	<u>294.00</u>
Annualized AMT	\$ 96.00

Question 5: Is a farmer eligible to claim a farmland preservation credit and a farmland tax relief credit for a short period as a result of a bankruptcy action? If yes, must the credit be prorated for the period of the short period return?

For example, a farmer files a short period return for January 1, 1991, to March 31, 1991. On April 1, 1991, the bankruptcy action commences and the farmland is transferred to the bankruptcy estate.

Answer 5: The farmer is no longer the owner of the farmland at the time it is transferred to the bankruptcy estate. Up until the termination of the bankruptcy estate, the estate may qualify to claim the farmland preservation credit and the farmland tax relief credit as long as the taxes relating to that claim are levied while the estate is the owner. No proration of the property taxes is required

because of the transfer of the farmland in the taxable year. If the estate would terminate prior to the taxes being levied, and the property is transferred back to the farmer, the farmer is eligible to claim the credits provided all other qualifications are met.

Facts and Question 6: A taxpayer files a short period return for the period January 1, 1991, to June 30, 1991, and a second short period return for the period July 1, 1991, to December 31, 1991, as a result of bankruptcy proceedings. The taxpayer retains ownership of his farmland for the entire year. Taxes of \$4,000 were levied in November 1991. Household income for the first short period is \$5,000 and \$10,000 for the second short period.

How does the taxpayer compute the farmland preservation credit?

Answer 6: Section 71.58(6), Wis. Stats. (1989-90), states that household income is attributable to the taxable year and sec. 71.03(3), Wis. Stats. (1989-90), provides that a short period constitutes a taxable year. Therefore, the taxpayer could file a farmland preservation credit claim for each short period. However, because no property taxes were levied in the first short period there is no basis for filing a claim. In the second short period the taxpayer would file a claim annualizing household income. However, property taxes would not be annualized since they already reflect one year. In this situation, the taxpayer's household income is \$20,000 computed as follows:

Household income for the short period	\$ 10,000
Multiply by 12	<u>x 12</u>
	\$ 120,000
Divide by months in short period	<u>÷ 6</u>
Annualized household income	\$ 20,000

The taxpayer is allowed the farmland preservation credit based on \$20,000 household income and \$4,000 of property taxes.

Facts and Question 7: A taxpayer files a short period return for the period January 1, 1991, to June 30, 1991, and a second short period return for the period July 1, 1991, to December 31, 1991, as a result of bankruptcy proceedings. The taxpayer paid rent of \$300 for each month in 1991. Actual household income for the first short period was \$5,000 and for the second short period it was \$7,000.

May the taxpayer file a homestead credit claim for each short period? How is the credit computed?

Answer 7: The taxpayer may not file a claim for each short period. Section 71.51(5), Wis. Stats. (1989-90), provides that household income is determined for a calendar year; therefore, claims must reflect a calendar year. The taxpayer could file a claim after the second short period using actual household income for the year of \$12,000 and rent paid of \$3,600. □

3 Taxation of Indians — Wisconsin Individual Income Tax

Statutes: Sections 71.02 and 71.07(6), Wis. Stats. (1989-90)

Background: A portion of the tax release titled "Wisconsin Taxation of Indians," in *Wisconsin Tax Bulletin* 69 (October 1990), page 27, has been overturned as a result of a decision by the Wisconsin Tax Appeals Commission (Commission), in *Lee A. and Beverly J. Anderson vs. Wisconsin Department of Revenue* (August 28, 1992). In that decision, the Commission ruled that the Wisconsin Marital Property Act, Chapter 766, Wis. Stats., cannot change the character of income earned on a reservation by an Indian living on the reservation, to be classified as taxable marital property income of a non-Indian spouse.

As a result of this decision, Question and Answer 8 of Part I (Taxation of Indians — Wisconsin Individual Income Tax) of the tax release titled "Wisconsin Taxation of Indians" is revoked. □

INDIVIDUAL INCOME AND CORPORATION FRANCHISE AND INCOME TAXES

4 Extension of Time to File Franchise and Income Tax Returns

Statutes: Sections 71.03(7), Wis. Stats., as amended by 1991 Wisconsin Acts 269 and 305, 71.24(7), Wis. Stats., as amended by 1991 Wisconsin Act 39, 71.44(3) and 71.84(2), Wis. Stats. (1989-90), and 71.83(3), Wis. Stats. as amended by 1991 Wisconsin Acts 190 and 269

Note: Various effective dates are provided in the tax release.

Wisconsin Law

A. Individuals, partnerships, and fiduciaries (estates and trusts) — Section 71.03(7), Wis. Stats. as amended by 1991 Wisconsin Acts 269 and 305, provides that any

extension of time granted by federal law or by the Internal Revenue Service (IRS) for filing the federal income tax return extends the time for filing the Wisconsin income tax return, provided:

1. Wisconsin tax estimated to be due on a return for which an extension is being obtained is paid by the original (unextended) due date, in the manner prescribed by federal law for federal income taxes, and
2. A copy of any request for an extension required by the IRS is filed with the Wisconsin return.

To satisfy the payment requirement set forth in paragraph 1 above, taxpayers must make a reasonable estimate of their tax for the year. An estimate will be considered reasonable if it is based on all information available at the time the estimate is made, providing a bona fide attempt was made to locate and gather information needed to make a proper estimate of total tax liability. If a reasonable estimate of tax was made, an extension of time to file will be allowed even though the return may show a balance due when it is filed.

The requirement to pay an estimate of tax by the original due date to obtain an extension is effective for taxable years beginning on or after January 1, 1992.

- B. Corporations (including tax-option (S) corporations and insurance companies) — Section 71.24(7), Wis. Stats. as amended by 1991 Wisconsin Act 39 (sec. 71.44(3), Wis. Stats. (1989-90), for insurance companies), provides that any extension of time granted by the IRS for filing a federal return extends the time for filing the Wisconsin franchise or income tax return if a copy of any extension requested of the IRS is filed with the return.

The department may also allow a corporation additional time for filing its franchise or income tax return. This Wisconsin extension granted by the department may not exceed 30 days, except for:

1. Cooperatives or domestic international sales corporations (DISCs) — an extension of up to 6 months may be allowed.
2. Foreign corporations that do not have an office or place of business in the United States — an extension of up to 3 months may be allowed. (Note: The 3-month extension provision for foreign

corporations is effective for taxable years beginning on or after January 1, 1992.)

(Note: Unlike individuals and the other types of entities identified in Part A, corporations are not required to pay the estimated balance due on a return as a condition of receiving an extension of time to file that return.)

Federal Law

Section 6081(a), Internal Revenue Code (IRC) as of December 31, 1991, provides that the IRS may grant a reasonable extension of time for filing a return. Except in the case of taxpayers who are abroad, an extension cannot be for more than 6 months.

Federal regulations give the conditions for extensions (Regs. § 1.6081-1 through 1.6081-5). Taxpayers generally must make an estimate of tax and remit any unpaid amount, along with the extension form, by the original due date of the return.

The following extensions are available for filing federal income tax returns:

A. Individuals

1. Form 4868 — This is an automatic 4-month extension of time to file federal returns. Payment of federal tax is required.
2. Form 2688 — This is a 2-month extension of time to file federal returns which may be granted by the IRS in cases where the taxpayer has already obtained the automatic 4-month extension of time to file but still needs additional time.
3. An automatic 2-month extension of time to file federal returns is allowed to:
 - U.S. citizens or residents living outside the United States and Puerto Rico whose main place of business or post of duty is outside the United States and Puerto Rico on April 15, and
 - U.S. citizens or residents in military or naval service who are on duty outside the United States and Puerto Rico on April 15.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension.

4. Form 2350 — The IRS may grant an extension of time to file federal returns until 30 days after meeting the bona fide residence or physical presence test to qualify for the foreign earned income exclusion and the foreign housing exclusion or deduction. Payment of federal tax is required.

5. Persons serving in a combat zone are allowed an automatic extension of time to file federal returns until 180 days after the later of:

- The last day the taxpayer is in a combat zone (or the last day the area qualifies as a combat zone), or
- The last day of any continuous qualified hospitalization for injury from service in a combat zone.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension. (This extension is provided by sec. 7508, IRC.)

B. Partnerships, trusts (except trusts subject to tax on unrelated business income), and real estate mortgage investment conduits (REMICs)

1. Form 8736 — This is an automatic 3-month extension of time to file federal returns. Payment of federal tax is required for trusts and REMICs.

2. Form 8800 — This is a 3-month extension of time to file federal returns which may be granted by the IRS in cases where the taxpayer has already obtained the automatic 3-month extension of time to file but still needs additional time.

3. An automatic 2-month extension of time to file federal returns is allowed to partnerships which are required to file returns on the 15th day of the fourth month following the close of the partnership's taxable year and which keep their records and books of the account outside the United States and Puerto Rico. No special form is required to apply for the extension. (Note: The automatic 2-month extension does not apply to trusts and REMICs.)

C. Estates and trusts subject to tax on unrelated business income

Form 2758 — This form is used to apply for an extension of time to file federal returns for up to 6 months. Sufficient need must be shown for requests of more than 60 days. Payment of federal tax is required.

D. Corporations (not including REMICs)

1. Form 7004 — This is an automatic 6-month extension of time to file a federal corporate return. Payment of federal tax is required.

2. An automatic 3-month extension of time to file federal returns is allowed to:

- Domestic corporations which transact their business and keep their records and books of the account outside the United States and Puerto Rico,
- Foreign corporations which maintain an office or place of business within the United States, and
- Domestic corporations whose principal income is from sources within the possessions of the United States.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension.

Questions and Answers

Facts and Question 1: Taxpayer has an extension of time to file its federal return.

Does the federal extension extend the time for filing the Wisconsin franchise or income tax return?

Answer 1: Any extension of time granted for the filing of the federal income tax return extends the time for filing the Wisconsin franchise or income tax return provided:

- A. A copy of any request for the federal extension is filed with the Wisconsin return, and
- B. In the case of individuals and fiduciaries, a reasonable estimate of any Wisconsin tax to be due on the return is paid by the original due date of the return if required (see Part A under "Wisconsin Law" and the following chart).

EXTENSION REQUIREMENTS

Federal Extension	Attach to Wisconsin Return When Filed	Must Wisconsin Tax Be Paid by Due Date?
Individuals		
Automatic 4 months	Form 4868	Yes
Additional 2 months	Form 2688	Yes
Automatic 2 months when living outside U.S. or Puerto Rico on April 15	Statement indicating how qualifications are met	No
Until 30 days after meeting bona fide resident or physical presence test	Form 2350	Yes
Combat zone	Statement indicating how qualifications are met	No
Partnerships and REMICs		
Automatic 3 months	Form 8736	No
Additional 3 months	Form 8800	No
Automatic 2 months for certain partnerships (see Part B.3 under "Federal Law")	Statement indicating how qualifications are met	No
Estates filing Wisconsin Form 2		
Up to 6 months	Form 2758	Yes
Trusts filing Wisconsin Form 2		
Automatic 3 months	Form 8736	Yes
Additional 3 months	Form 8800	Yes
Trusts subject to tax on unrelated business income filing Wisconsin Form 4T		
Up to 6 months	Form 2758	Yes
Corporations (not including REMICs)		
Automatic 6 months	Form 7004	No
Automatic 3 months for certain corporations (see Part D.2 under "Federal Law")	Statement indicating how qualifications are met	No

Any required payment of Wisconsin tax should be made using a Wisconsin estimated tax voucher, Form 1-ES (Form 4-ES for trusts subject to tax on unrelated business income). Payment should be sent to the address printed on the Form 1-ES (or Form 4-ES).

If the taxpayer is unable to obtain Form 1-ES (or Form 4-ES) by the original due date of the Wisconsin return,

payment should be submitted with a letter giving the taxpayer's name, address, and social security number (federal employer identification number for trusts). The letter should also clearly state that the payment is to meet the extension of time to file requirement.

Individuals, estates, and trusts, except trusts with unrelated business income, should mail the estimated tax payment

and letter to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903. The mailing address for trusts with unrelated business income is Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

Taxpayers should take credit for extension payments as estimated tax payments when the tax return is filed.

Facts and Question 2: The taxpayer will not be requesting an extension of time to file its federal return, but needs additional time to file its Wisconsin return.

What extensions are available for Wisconsin purposes?

Answer 2:

A. Individuals, partnerships, estates, and trusts — Any of the extensions of time available to individuals, partnerships, estates, and trusts for filing a federal return are available for Wisconsin, even if an extension is not requested for federal purposes.

To use a federal extension provision for Wisconsin purposes only, the taxpayer must:

1. Make the required payment of Wisconsin tax by the original due date of the Wisconsin return, as indicated in the chart in Answer 1, and
2. Attach the appropriate federal extension form or statement, as indicated in the chart, to the Wisconsin return when filed. In lieu of the federal form, the taxpayer may attach a statement to the front of the return indicating that a federal extension provision is being used for Wisconsin purposes only.

(Note: When the federal extension form is submitted for Wisconsin purposes only, it is not necessary to complete the lines on the form that apply only to the federal return, such as lines for entering federal tax amounts or federal withholding.)

B. Corporations — A corporation may request a 30-day extension of time to file its franchise or income tax return by submitting Wisconsin Form IC-830, Application for Extension of Time to File, to the department on or before the original due date of the return. A cooperative or DISC may request a 6-month rather than a 30-day extension. A foreign corporation that does not have an office or place of business in the United States may request a 3-month extension.

Interest and Late Filing Fees

A. Interest

Provisions applicable to individuals, fiduciaries, and corporations — Franchise and income taxes do not become delinquent during an extension period, but are subject to 12% interest per year during the extension period (see exception in Part C for certain corporations). Franchise and income taxes not paid by the extended due date are delinquent and subject to interest at the rate of 18% per year until paid.

B. Late Filing Fee

Returns filed after the due date, including any extension of time to file, are subject to a late filing fee (sec. 71.83(3), Wis. Stats. as amended by 1991 Wisconsin Acts 190 and 269). The late filing fee for corporations is \$30. The late filing fee for individuals and fiduciaries is:

- \$2 when the tax is less than \$10,
- \$3 when the tax is \$10 or more but less than \$20,
- \$5 when the tax is \$20 or more, but
- \$30 if the return is 60 or more days late, regardless of the amount of tax.

C. Consequences of Not Providing Copy of Federal Extension Granted by IRS

If a taxpayer files a Wisconsin franchise or income tax return under a federal extension but fails to attach a copy of the federal extension request or approval to the Wisconsin return, the department does not have knowledge that a federal extension was obtained. The department will impose a late filing fee and 18% delinquent interest. Assuming that any required payment of Wisconsin tax was made by the original due date of the return, if the taxpayer subsequently provides information to the department showing that the taxpayer had an extension of time to file for federal purposes (for example, by providing the department with a copy of federal Form 4868 or Form 7004), the late filing fee and delinquent interest (see "Exception" below) will be cancelled. (Note: This cancellation of the late filing fee under these circumstances first applies to 1992 returns.)