



Wisconsin TAX BULLETIN

New Wisconsin Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This issue of the *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, farmland preservation credit, sales/use, excise, and local exposition district tax provisions.

These provisions are contained in the following Acts:

1993 Act 199 - Published 4/20/94	1993 Act 312 - Published 4/28/94
1993 Act 204 - Published 4/20/94	1993 Act 332 - Published 4/29/94
1993 Act 205 - Published 4/20/94	1993 Act 378 - Published 5/4/94
1993 Act 226 - Published 4/22/94	1993 Act 408 - Published 5/5/94
1993 Act 232 - Published 4/22/94	1993 Act 420 - Published 5/6/94
1993 Act 246 - Published 4/22/94	1993 Act 437 - Published 5/9/94
1993 Act 259 - Published 4/25/94	1993 Act 471 - Published 5/12/94
1993 Act 263 - Published 4/25/94	1993 Act 472 - Published 5/12/94
1993 Act 308 - Published 4/28/94	

The description for each provision indicates the Act which contains the law change, the sections of the statutes affected, and the effective date of the new provision.

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code Reference Updated for 1994 for Individuals, Estates, and Trusts (1993 Act 437, repeal sec. 71.01(6)(a), amend sec. 71.01(6)(h) and (7r) and create sec. 71.01(6)(i), effective for taxable years beginning on or after January 1, 1994.)

For taxable years that begin on or after January 1, 1994, "Internal Revenue Code" for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 1993, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

The following provisions of federal Public Law 103-66, although enacted before the December 31, 1993 date prescribed by Wisconsin law, do not apply for Wisconsin purposes:

- a. Section 13215 of Public Law 103-66 relating to the taxation of up to 85% of social security benefits.
- b. Section 13113 of Public Law 103-66 relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years.

For property placed in service in taxable years beginning on or after January 1, 1994, individuals and fiduciaries may compute depreciation or amortization 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, 1993, at the taxpayer's option.

2. Federal Laws Enacted During 1993 Apply Simultaneously for Wisconsin Purposes (1993 Act 437, amend sec. 71.01(6)(d), (e), (f), (g), and (h), effective for taxable years beginning after December 31, 1988 and before January 1, 1994.)

Except as indicated below, the federal Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), which was enacted on August 10, 1993, applies for Wisconsin income tax purposes at the same time as for federal purposes. For example,

the increase from \$10,000 to \$17,500 in the amount of property that can be expensed under section 179 applies for both federal and Wisconsin purposes to taxable years beginning on or after January 1, 1993.

The following six provisions of federal Public Law 103-66 do not apply for Wisconsin:

- a. The extension for the period July 1, 1992, through December 31, 1993, of section 127 of the Internal Revenue Code relating to the exclusion from gross income for up to \$5,250 of educational assistance benefits furnished by an employer under an educational assistance program.
- b. The extension for the period July 1, 1992, through December 31, 1993, of section 162(L) of the Internal Revenue Code relating to the deduction for 25% of the amounts paid for health insurance costs by self-employed individuals.
- c. The repeal of the tax preference (for alternative minimum tax purposes) for contributions of tangible personal property made after June 30, 1992, and contributions of other property made after December 31, 1992.
- d. The 50% exclusion of gain realized on the disposition of qualified small business stock issued after August 10, 1993, and the treatment of the exclusion as a tax preference for alternative minimum tax purposes.
- e. The exclusion for certain income realized from the discharge of qualified real property indebtedness occurring after December 31, 1992.
- f. The increase in exemption amounts for alternative minimum tax purposes for taxable years beginning on or after January 1, 1993.

3. Addition Modification Created for Certain Moving Expenses (1993 Act 437, create sec. 71.05(6)(a)18, effective for expenses incurred on or after January 1, 1994.)

For federal tax purposes, moving expenses incurred on or after January 1, 1994, are allowed as a deduction when computing federal adjusted gross income.

Certain moving expenses are not allowed as a deduction for Wisconsin tax purposes. The following moving expenses must be added back to federal adjusted gross income when computing Wisconsin taxable income:

- Moving expenses that result in the taxpayer changing his or her domicile from Wisconsin to another state.
- Moving expenses incurred by a nonresident of Wisconsin, unless such move is to Wisconsin and the taxpayer changes his or her domicile to Wisconsin as a result of the move.

4. Definition of Gross Income Clarified (1993 Act 204, amend sec. 71.03(1), effective for taxable years beginning on or after January 1, 1994.)

The definition of "gross income", as that term relates to income from the sale of property, is clarified by deleting the phrase "gains derived from dealings in property."

As a result of this change, "gross income" from the sale of property is defined as the gross selling price without reduction for the cost of the asset sold, expenses of sale, or any other amounts.

5. Fiduciaries May Not Deduct Real Estate Taxes Paid by a Cooperative Housing Corporation (1993 Act 204, amend sec. 71.05(6)(a)13, effective for taxable years beginning on or after January 1, 1994.)

Fiduciaries use federal taxable income as the starting point to determine their Wisconsin taxable income. This provision requires any deduction reflected in federal taxable income for a fiduciary's tenant-stockholder share of real estate taxes paid or incurred by a cooperative housing corporation to be added back to income for Wisconsin purposes.

6. Tenant-Stockholder's Share of Real Estate Taxes Not Allowed for Itemized Deduction Credit (1993 Act 204, amend sec. 71.07(5)(a)2, effective for taxable years beginning on or after January 1, 1994.)

An individual who is a tenant-stockholder of a cooperative housing corporation may not use his

or her share of the real estate taxes the corporation paid or incurred on the property in the computation of the itemized deduction credit.

7. Interest Income From Local Exposition District Bonds Exempted From Tax (1993 Act 263, create sec. 71.05(1)(e), effective April 26, 1994.)

Interest income received on bonds issued by a local exposition district under Subchapter II of Chapter 229, Wis. Stats., is exempt from Wisconsin income tax.

8. Treatment of Partnership Agreements Clarified (1993 Act 204, amend sec. 71.04(3)(c)(intro.), effective April 21, 1994.)

This amendment clarifies that for purposes of determining the situs of partnership income of partners, a partner shall disregard all provisions in partnership agreements that do any of the following:

- a. Characterize the consideration for payments to the partner as services or the use of capital.
- b. Allocate to a partner, as income from or gain from sources outside Wisconsin, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside Wisconsin to partnership income or gain from all sources.
- c. Allocate to a partner a greater proportion of a partnership item of loss or deduction from sources in Wisconsin than the partner's proportionate share of total partnership loss or deduction.
- d. Determine a partner's distributive share of an item of partnership income, gain, loss, or deduction for federal income tax purposes if the principal purpose of that determination is to avoid or evade the tax under Chapter 71, Wis. Stats.

9. Estimated Tax Provisions Amended (1993 Act 204, amend sec. 71.09(13)(a)2 and repeal and recreate sec. 71.09(1)(am), effective for taxable years beginning on or after January 1, 1994.)

- a. For estimated tax purposes, "return" is defined as a return that would show the tax properly due.

Under prior law, "return" was defined several ways, depending on whether the return was timely filed, the percentage of the actual tax due that was paid with the return that was filed, and on how much underpayment interest was due.

The prior law definition of "return" did not provide for refunding underpayment interest previously paid if a taxpayer's income was reduced as a result of an amended return or credit adjustment. The department was also limited as to when it could assess additional underpayment interest if a taxpayer's income was increased as a result of an amended return or audit adjustment. The new definition of "return" will permit refunds or assessments of underpayment interest based on the taxpayer's correct tax liability, regardless of whether the correct tax liability is determined on the original return, an amended return, or by audit adjustments.

- b. The safe-harbor rule for avoiding underpayment interest by making estimated tax payments based on the tax shown on the return for the preceding year is clarified for married persons as follows:

- (1) If a husband and wife who filed separate returns for the preceding taxable year file a joint return, the tax shown on the return for the preceding year is the sum of the taxes shown on the separate returns of the husband and wife.
- (2) If a husband and wife who filed a joint return for the preceding taxable year file separate returns, the tax shown on the return for the preceding year is the husband's or wife's proportion of that tax based on what their respective tax liabilities for that year would have been had they filed separately.

10. State Historic Rehabilitation Credit Revised (1993 Act 471, repeal sec. 71.07(9r)(j)1; renumber sec. 71.07(9r)(k) to 71.07(9r)(k)(intro.) and amend as renumbered; amend sec. 71.07(9r)(a) and (b) 2 and 3.a; and create sec. 71.07(9r)(k)1 to 5, effective taxable years beginning on or after January 1, 1994.)

The state historic rehabilitation credit is modified as follows:

- a. The state historic rehabilitation credit may be credited against taxes otherwise due under sec. 71.02, Wis. Stats. Under prior law, the statutory reference was to Chapter 71.
- b. The cost of preservation or rehabilitation of historic property includes architectural fees and costs incurred in preparing nomination forms for listing in the National Register of Historic Places in Wisconsin or the State Register of Historic Places, if the nomination is made within 5 years prior to submission of a preservation or rehabilitation plan.
- c. "Historic property" includes outbuildings that contribute to the significance of the historic property. An outbuilding of an otherwise eligible property must be certified by the State Historic Preservation Officer as contributing to the historic significance of the property.
- d. The property may qualify for the credit if it is determined by the State Historical Society to be eligible for listing on the National Register of Historic Places in Wisconsin or the State Register of Historic Places.
- e. If, within 5 years after the date on which the preservation or rehabilitation work is completed, the person either sells or conveys the property by deed or land contract or the State Historical Society certifies to the Department of Revenue that the historical property has been altered to the extent it does not comply with the standards, the person shall add a percentage of the credit to his or her tax liability.

The applicable percentages are:

- 100% if the sale, conveyance or noncompliance occurs during the first year after

the date on which the preservation or rehabilitation is completed.

- 80% if the sale, conveyance or noncompliance occurs during the 2nd year after the date on which the preservation or rehabilitation is completed.
- 60% if the sale, conveyance or noncompliance occurs during the 3rd year after the date on which the preservation or rehabilitation is completed.
- 40% if the sale, conveyance or noncompliance occurs during the 4th year after the date on which the preservation or rehabilitation is completed.
- 20% if the sale, conveyance or noncompliance occurs during the 5th year after the date on which the preservation or rehabilitation is completed.

B. Corporation Franchise or Income Taxes

1. **Internal Revenue Code References Updated for 1994 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits** (1993 Act 437, repeal secs. 71.22(4)(a), 71.26(2)(b)1, 71.34(1g)(a), and 71.42(2)(a), amend secs. 71.22(4)(h) and (4m)(f), 71.26(2)(b)8 and (3)(y), 71.34(1g)(h), 71.365(1m), 71.42(2)(g), and 71.45(2)(a)13, and create secs. 71.22(4)(i) and (4m)(g), 71.26(2)(b)9, 71.34(1g)(i), and 71.42(2)(h), effective for taxable years beginning on or after January 1, 1994).

For taxable years that begin on or after January 1, 1994, "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, 1993, 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, 1994, 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, 1993, at the taxpayer's option.
- b. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- 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 sec. 71.35, Wis. Stats., 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 1993 Apply Simultaneously for Wisconsin Purposes** (1993 Act 437, amend secs. 71.22(4)(d), (e), (f), (g), and (h) and (4m)(b), (c), (d), (e), and (f), 71.26(2)(b)4, 5, 6, 7, and 8, 71.34(1g)(d), (e), (f), (g), and (h), and 71.42(2)(c), (d), (e), (f), and (g), effective for taxable years beginning after December 31, 1988, and before January 1, 1994).

Except as indicated below, the federal Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66) applies for Wisconsin franchise and