



# Wisconsin TAX BULLETIN

## New Wisconsin Tax Laws

In the legislative session which ended June 30, 1995, the Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, temporary recycling surcharge, sales/use, excise and estate tax provisions. All of the provisions are in 1995 Act 27, except item B.9 which is in 1995 Act 2, and items E.3 and E.4 which are in 1995 Act 23.

The description for each provision indicates the sections of the statutes affected, and the effective date of the new provision.

### Wisconsin Tax Bulletin

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	Effective Date	Page
<b>A. Individual and Fiduciary Income Taxes</b>		
1. Internal Revenue Code Reference Updated for 1995 for Individuals, Estates, and Trusts	Taxable years beginning on or after January 1, 1995	4
2. Federal Laws Enacted During 1994 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning after December 31, 1992, and before January 1, 1995	4
3. Earned Income Credit Revised	Various effective dates	4
4. Social Security Benefits — Subtraction Modification Created	Taxable years beginning on or after January 1, 1995	5
5. Qualified Rehabilitation Expenditures — Reference Corrected	July 29, 1995	5
6. Alternative Minimum Tax — Certain Credits Not Considered In Calculation	Taxable years beginning on or after January 1, 1995	5
7. Order of Computation Revised to Include New Credits	Taxable years beginning on or after January 1, 1995	5
8. Minnesota-Wisconsin Reciprocity Study	July 29, 1995	6
9. Enterprise Development Zones Created	Taxable years beginning on or after January 1, 1995	6

	Effective Date	Page
<b>A. Individual and Fiduciary Income Taxes (Cont'd.)</b>		
10. Development Zones Day Care Credit Created	Taxable years beginning on or after January 1, 1995	6
11. Development Zones Environmental Remediation Credit Created	Taxable years beginning on or after January 1, 1995	6
<b>B. Corporation Franchise or Income Taxes</b>		
1. Internal Revenue Code References Updated for 1995 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits	Taxable years beginning on or after January 1, 1995	6
2. Federal Laws Enacted During 1994 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning after December 31, 1992, and before January 1, 1995	7
3. Health Maintenance Organizations and Limited Service Health Organizations — Exemption Repealed	Taxable years beginning on or after January 1, 1996	7
4. University of Wisconsin Hospitals and Clinics Authority Income Exempted From Franchise and Income Tax	July 29, 1995	7
5. Franchise Tax Exemption Repealed for Certain State Bond Interest	Taxable years beginning on or after January 1, 1995	7
6. Income Tax Exemption Clarified for Certain State and Municipal Bond Interest	Taxable years beginning on or after January 1, 1995	8
7. Foreign Sales Corporations — Tax Treatment Federalized	Taxable years beginning on or after January 1, 1995	8
8. Tax-Option Corporations Subjected to Franchise Tax Measured by Certain State and Municipal Bond Interest	Taxable years beginning on or after January 1, 1995	8
9. Development Opportunity Zone Created	April 28, 1995	9
10. Enterprise Development Zones Created	Taxable years beginning on or after January 1, 1995	9
11. Development Zones Day Care Credit Created	Taxable years beginning on or after January 1, 1995	9
12. Development Zones Environmental Remediation Credit Created	Taxable years beginning on or after January 1, 1995	10
13. Supplement to the Federal Historic Rehabilitation Credit — Reference to the Internal Revenue Code Corrected	July 29, 1995	11
14. Order of Claiming the Tax Credits Modified for Corporations and Insurance Companies	Taxable years beginning on or after January 1, 1995	11

	Effective Date	Page
<b>C. Temporary Recycling Surcharge</b>		
1. Corporations With Less Than \$4,000 of Total Receipts Exempted From Temporary Recycling Surcharge	Taxable years beginning on or after January 1, 1995	11
<b>D. Sales and Use Taxes</b>		
1. Central Office Equipment of Telephone Companies — Exemption Repealed	September 1, 1995	12
2. Motor Vehicles Used by Dealer — Measure of Tax Changed	September 1, 1995	12
3. Exemption for Sales to University of Wisconsin Hospitals and Clinics Authority	July 29, 1995	13
<b>E. Excise Taxes</b>		
1. Cigarette Tax Rate Increased	September 1, 1995	13
2. Department of Revenue to Collect Petroleum Inspection Fees	Fees for inspections of petroleum products received on or after January 1, 1996	13
3. Certain Corporation and Limited Liability Company Agents Not Required to Complete Responsible Beverage Server Course Requirements	July 15, 1995	14
4. Create Provisional Retail Licenses	July 15, 1995	14
5. Above Quota Liquor Licenses	July 29, 1995	14
6. Penalties for Retailers Purchasing Intoxicating Liquor From Unauthorized Sources Revised	July 29, 1995	14
<b>F. Estate Taxes</b>		
1. Installment Payments	Transfers because of deaths that occur on or after July 29, 1995	14
<b>G. Other</b>		
1. Delinquent Account Fee Increased	December 31, 1995	15
2. Refund Setoff Provisions Expanded	July 29, 1995	15
3. Business Registration Certificate Required	Various effective dates	15
4. Confidentiality Provisions Modified	July 29, 1995	16
5. Allow Electronic Filing of Tax Warrants	July 29, 1995	16

## A. Individual and Fiduciary Income Taxes

### 1. Internal Revenue Code Reference Updated for 1995 for Individuals, Estates, and Trusts (1995 Act 27, repeal sec. 71.01(6)(b), amend sec. 71.01(6)(i) and (7r) and create sec. 71.01(6)(j), effective for taxable years beginning on or after January 1, 1995.)

For taxable years that begin on or after January 1, 1995, "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, 1994, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- Although enacted **after** December 31, 1994, the amendment made by federal Public Law 104-7 restoring the self-employed health insurance deduction will also apply for Wisconsin. (**Note:** Wisconsin's adoption of this provision simplifies the preparation of the Wisconsin return for self-employed persons. They will not be required to complete a 1995 Wisconsin Schedule I to remove the federal self-employed health insurance deduction.)
  - Although enacted **before** December 31, 1994, section 13113 of federal 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 does not apply for Wisconsin.
  - For property placed in service in taxable years beginning on or after January 1, 1995, 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, 1994, at the taxpayer's option.
- ### 2. Federal Laws Enacted During 1994 Apply Simultaneously for Wisconsin Purposes (1995 Act 27, amend sec. 71.01(6)(h) and (i), effective for taxable years beginning after December 31, 1992, and before January 1, 1995.)

The Social Security Independence and Program Improvements Act of 1994 (federal Public Law 103-296), National Defense Authorization Act for Fiscal Year 1995 (federal Public Law 103-337), and Uruguay Round Agreements Act (federal Public Law 103-465) apply for Wisconsin income tax purposes at the same time as for federal purposes. For example, Public Law 103-465 requires a partner to recognize gain upon the distribution of marketable securities to the extent that the sum of the fair market value of marketable securities and money received exceeds the partner's basis in the partnership interest. This provision applies for both federal and Wisconsin purposes for partnership distributions after December 8, 1994.

### 3. Earned Income Credit Revised (1995 Act 27, amend sec. 71.07(9e)(ad)(intro.), (ah)(intro.), (ap)(intro.), and (at)1.(intro.) and 3.(intro.); repeal sec. 71.07(9e)(at)2; and create sec. 71.07(9e)(ac) and (af), various effective dates.)

#### *Taxable years beginning in 1995*

The Wisconsin earned income credit is equal to a percentage of the federal earned income credit as follows:

- If the person has one qualifying child who has the same principal place of abode as the person, 4% of the federal credit.
- If the person has two qualifying children who have the same principal place of abode as the person, 16% of the federal credit.
- If the person has three or more qualifying children who have the same principal place of abode as the person, 50% of the federal credit.

#### *Taxable years beginning on or after January 1, 1996:*

The Wisconsin earned income credit is equal to a percentage of the federal credit as follows:

- If the person has one qualifying child who has the same principal place of abode as the person, 4% of the federal credit.

- If the person has two qualifying children who have the same principal place of abode as the person, 14% of the federal credit.
- If the person has three or more qualifying children who have the same principal place of abode as the person, 43% of the federal credit.

The Wisconsin earned income credit is only available to persons who have at least one qualifying child.

**4. Social Security Benefits — Subtraction Modification Created** (1995 Act 27, create sec. 71.05(6)(b)21, effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, there is a change in the manner in which the difference in the amount of social security taxable for federal and Wisconsin purposes is reported on the Wisconsin income tax return.

For 1995 returns and thereafter, the difference between the amount of social security taxable for federal and Wisconsin purposes is claimed as a subtraction from federal adjusted gross income (Schedule 2 of Form 1). (Note: For federal purposes up to 85% of social security benefits may be taxable. The maximum amount of social security benefits taxable for Wisconsin is 50%.)

For 1994 returns, Wisconsin Schedule I was completed to report the difference between the amount of social security taxable for federal and Wisconsin purposes.

**5. Qualified Rehabilitation Expenditures — Reference Corrected** (1995 Act 27, amend sec. 71.07(9m)(a), July 29, 1995.)

For purposes of the Wisconsin supplement to the federal historic rehabilitation credit, "qualified rehabilitation expenditures" are defined in sec. 47(c)(2) of the Internal Revenue Code. (Note: The federal definition of qualified rehabilitation expenditures was renumbered from sec. 48(g)(2) to sec. 47(c)(2) by federal Public Law 101-508.)

**6. Alternative Minimum Tax — Certain Credits Not Considered In Calculation** (1995 Act 27, amend sec. 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 1995.)

The amendment to sec. 71.08(1)(intro.), Wis. Stats., provides that the newly created development zones day care and environmental remediation credits (see Items B.11 and B.12) may not be deducted from regular tax in determining whether an individual or fiduciary is subject to the Wisconsin alternative minimum tax.

**Note:** An individual or fiduciary is subject to the Wisconsin alternative minimum tax if the computed alternative minimum tax is more than the regular income tax imposed under sec. 71.02, Wis. Stats., after such tax is reduced by certain credits.

**7. Order of Computation Revised to Include New Credits** (1995 Act 27, amend sec. 71.10(4)(i) and create sec. 71.10(4)(gd), (ge), (gs), and (gt), effective for taxable years beginning on or after January 1, 1995.)

An individual or fiduciary income tax liability is computed in the following order:

- a. Tax under sec. 71.06
- b. Personal exemption credits under sec. 71.07(8)
- c. Itemized deduction credit under sec. 71.07(5)
- d. School property tax credit under sec. 71.07(9)
- e. Supplement to federal historic rehabilitation credit under sec. 71.07(9m)
- f. State historic rehabilitation credit under sec. 71.07(9r)
- g. Alternative minimum tax under sec. 71.08
- h. Married persons credit under sec. 71.07(6)
- i. Development zones jobs credit under sec. 71.07(2dj) if the credit is based on activity in an enterprise development zone (new for 1995)

- j. Development zones sales tax credit under sec. 71.07(2ds) if the credit is based on activity in an enterprise development zone (new for 1995)
- k. Development zones investment credit under sec. 71.07(2di)
- l. Development zones location credit under sec. 71.07(2dL)
- m. Development zones day care credit under sec. 71.07(2dd) (new for 1995)
- n. Development zones environmental remediation credit under sec. 71.07(2de) (new for 1995)
- o. The total of claim of right credit under sec. 71.07(1), farmland preservation credit under subch. IX, homestead credit under subch. VIII, farmland tax relief credit under sec. 71.07(3m), development zones sales tax credit under sec. 71.07(2ds) unless the credit is based on activity in an enterprise development zone, development zones jobs credit under sec. 71.07(2dj) unless the credit is based on activity in an enterprise development zone, earned income tax credit under sec. 71.07(9e), estimated tax payments under sec. 71.09, and taxes withheld under subch. X.

**8. Minnesota-Wisconsin Reciprocity Study (1995 Act 27, repeal and recreate 20.005(3), effective July 29, 1995.)**

As part of a Minnesota and Wisconsin study to determine the revenue effect of the Minnesota-Wisconsin reciprocity agreement, the 1995 Wisconsin individual income tax returns will include questions for all taxpayers to answer indicating whether they have income from services performed in Minnesota during the tax year and to enter the amount of that income.

**9. Enterprise Development Zones Created (1995 Act 27, amend sec. 71.07(2dj)(d) and (2ds)(c) and create sec. 71.07(2dj)(h) and (2ds)(h), effective for taxable years beginning on or after January 1, 1995.)**

See Item B.10.

**10. Development Zones Day Care Credit Created (1995 Act 27, amend sec. 71.05(6)(a)15 and create sec. 71.07(2dd), effective for taxable years beginning on or after January 1, 1995.)**

See Item B.11.

**11. Development Zones Environmental Remediation Credit Created (1995 Act 27, amend sec. 71.05(6)(a)15 and create sec. 71.07(2de), effective for taxable years beginning on or after January 1, 1995.)**

See Item B.12.

**B. Corporation Franchise or Income Taxes**

**1. Internal Revenue Code References Updated for 1995 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Non-profit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits (1995 Act 27, repeal secs. 71.22(4)(b), 71.26(2)(b)2, and 71.34(1g)(b), amend secs. 71.22(4)(i) and (4m)(g), 71.26(2)(b)9 and (3)(y), 71.34(1g)(i), 71.365(1m), 71.42(2)(h), and 71.45(2)(a)13, and create secs. 71.22(4)(j) and (4m)(h), 71.26(2)(b)10, 71.34(1g)(j), and 71.42(2)(i), effective for taxable years beginning on or after January 1, 1995.)**

For taxable years that begin on or after January 1, 1995, "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, 1994, 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, 1995, 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, 1994, 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 1994 Apply Simultaneously for Wisconsin Purposes** (1995 Act 27, amend secs. 71.22(4)(h) and (i) and (4m)(f) and (g), 71.26(2)(b)8 and 9, 71.34(1g)(h) and (i), and 71.42(2)(g) and (h), effective for taxable years beginning after December 31, 1992, and before January 1, 1995.)

The Social Security Independence and Program Improvements Act of 1994 (federal Public Law 103-296), National Defense Authorization Act for Fiscal Year 1995 (federal Public Law 103-337), and Uruguay Round Agreements Act (federal Public Law 103-465) apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, under certain circumstances, partners must recognize gain on the distribution of marketable securities for both federal and Wisconsin purposes for distributions made after December 8, 1994.

**3. Health Maintenance Organizations and Limited Service Health Organizations — Exemption Repealed** (1995 Act 27, amend secs. 71.26(1)(a) and (2)(a), 71.45(1) and (2)(a)(intro.), 185.981(5), 613.81, and 614.80, and create sec. 71.45(5), effective for taxable years beginning on or after January 1, 1996.)

This provision repeals any franchise or income tax exemptions that may be available for income from health maintenance organizations (HMOs), as defined in sec. 609.01(2), Wis. Stats., and limited service health organizations (LSHOs), as defined in sec. 609.01(3), Wis. Stats. For taxable years beginning on or after January 1, 1996, the following tax-exempt entities are subject to Wisconsin franchise or income tax to the extent that they derive income from an HMO or LSHO:

- Cooperative sickness care associations organized under sec. 185.981, Wis. Stats.
- Service insurance corporations organized under chapter 613, Wis. Stats.
- Religious, scientific, educational, benevolent, or other corporations or associations of individuals not organized or conducted for pecuniary profit.

The net income of a cooperative sickness care organization organized under sec. 185.981, Wis. Stats., or of a service insurance corporation organized under chapter 613, Wis. Stats., that is derived from an HMO or an LSHO is the net income that would be determined if the cooperative sickness care association or service insurance corporation were subject to federal income taxation and as if that income were that of an insurance company.

**4. University of Wisconsin Hospitals and Clinics Authority Income Exempted From Franchise and Income Tax** (1995 Act 27, create sec. 71.26(1)(be), effective July 29, 1995.)

Income of the University of Wisconsin Hospitals and Clinics Authority is exempt from Wisconsin franchise and income tax.

**5. Franchise Tax Exemption Repealed for Certain State Bond Interest** (1995 Act 27, repeal secs. 71.26(1)(g) and (h) and 71.45(1m) and

(1s), effective for taxable years beginning on or after January 1, 1995.)

Interest income from the following obligations is included in the measure of net income for corporations and insurance companies subject to the franchise tax:

- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).
- Bonds issued by a local exposition district under subchapter II of chapter 229, Wis. Stats.

**6. Income Tax Exemption Clarified for Certain State and Municipal Bond Interest** (1995 Act 27, amend secs. 71.26(3)(b) and 71.45(2)(a)3, and create secs. 71.26(1m) and 71.45(1t), effective for taxable years beginning on or after January 1, 1995.)

Interest and income derived from the following obligations are exempt only from the corporate income tax imposed under secs. 71.23(1) and 71.43(1):

- Municipal housing authority bonds issued under sec. 66.40, Wis. Stats.
- Municipal redevelopment authority bonds issued under sec. 66.431, Wis. Stats.
- Housing and community development authority bonds issued under sec. 66.4325, Wis. Stats.
- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).

- Bonds issued by a local exposition district under subchapter II of chapter 229, Wis. Stats.

**7. Foreign Sales Corporations — Tax Treatment Federalized** (1995 Act 27, repeal sec. 71.26(3)(r), effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, the treatment of foreign sales corporations (FSCs) is federalized. Corporations that qualify as FSCs will compute their taxable income as provided under secs. 921 to 927 of the Internal Revenue Code. Under the Internal Revenue Code, a portion of the foreign trade income of a FSC is treated as foreign source income not effectively connected with the conduct of a trade or business within the United States and is exempt from tax. This income will also be excluded from Wisconsin taxable income.

**8. Tax-Option Corporations Subjected to Franchise Tax Measured by Certain State and Municipal Bond Interest** (1995 Act 27, amend sec. 71.36(1m), effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, a tax-option (S) corporation's net income for franchise tax purposes includes interest income from the following obligations:

- Municipal housing authority bonds issued under sec. 66.40, Wis. Stats.
- Municipal redevelopment authority bonds issued under sec. 66.431, Wis. Stats.
- Housing and community development authority bonds issued under sec. 66.4325, Wis. Stats.
- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).

- Bonds issued by a local exposition district under subchapter II of chapter 229, Wis. Stats.

**9. Development Opportunity Zone Created** (1995 Act 2, renumber sec. 560.795(3)(a) to 560.795(3)(a)1 and amend sec. 560.795(3)(a)1 as renumbered, amend secs. 71.28(1d)(i), (1dj)(i), (1dL)(i), (1ds)(i), and (4)(am)2 and 560.795(2)(a) and (b)1, and create sec. 560.795(1)(c), (2)(b)3, and (3)(a)2, effective April 28, 1995.)

A development opportunity zone is created in the city of Eau Claire. Corporations (except insurance companies) conducting economic activities in a development opportunity zone may qualify for the development zone tax credits.

**10. Enterprise Development Zones Created** (1995 Act 27, amend secs. 71.28(1dj)(d) and (1ds)(c), 71.47(1dj)(d) and (1ds)(c), and 73.03(35) and create secs. 71.28(1dj)(h) and (1ds)(h), 71.47(1dj)(h) and (1ds)(h), and 560.797, effective for taxable years beginning on or after January 1, 1995.)

A new enterprise development program is created that allows the Department of Development to designate up to 50 areas as enterprise development zones. The program is modeled after the current development zone program. A business certified to operate in an enterprise development zone may claim the development zone tax credits available to businesses located in development zones, with one difference. For claimants operating in enterprise development zones, the jobs credit and sales tax credit are nonrefundable credits rather than refundable credits.

The enterprise development zone jobs credit and sales tax credit may be offset only against the amount of the tax attributable to income from the business operations of the claimant in the enterprise development zone and against tax attributable to income from directly related business operations. Unused credits may be carried forward for up to 15 years. In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

**11. Development Zones Day Care Credit Created** (1995 Act 27, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10, 73.03(35), 77.92(4), and 560.70(7) and create secs. 71.28(1dd), 71.47(1dd), and 560.797(1)(d), effective for taxable years beginning on or after January 1, 1995.)

Eligible persons may claim a nonrefundable credit of up to \$1,200 of employment-related day care expenses for each qualifying individual. The credit is available to:

- a person that is certified for development zone tax benefits and begins business operations in a development zone after July 29, 1995,
- a corporation that is entitled to development opportunity zone tax benefits and begins business operations in a development opportunity zone after July 29, 1995, and
- a person that is certified for enterprise development zone tax benefits.

“Day care center benefits” means benefits provided at a day care facility that is licensed under sec. 48.65 or 48.69, Wis. Stats., and that for compensation provides care for at least 6 children.

“Employment-related day care expenses” means amounts paid or incurred by a claimant for providing or making day care center benefits available to a qualifying individual in order to enable a member of a targeted group to be employed by the claimant.

“Member of a targeted group” means a person who is a member of a targeted group for purposes of the development zones jobs credit.

“Qualifying individual” means:

- a dependent of a member of a targeted group who is employed by a claimant and with respect to whom the member is entitled to a deduction under sec. 151(c) of the Internal Revenue Code for federal income tax purposes,