



# Wisconsin TAX BULLETIN

## New Wisconsin Tax Laws

The Wisconsin Legislature in October 1997 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, homestead credit, sales/use, withholding and excise tax provisions.

All of these provisions are contained in 1997 Wisconsin Act 27.

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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**Note:** This Wisconsin Tax Bulletin includes the provisions in 1997 Wisconsin Act 27 relating to updating the reference to the Internal Revenue Code to December 31, 1996. (See Items A.1 on page 7 and B.1 and B.3 on pages 14 and 15.) However, in a September 29, 1997, letter to the Department of Revenue, Legislators Ben Brancel and Charles Chvala state that their intent is to further update the reference to the Internal Revenue Code during the Legislative floor period of November 4-6, 1997. At this November floor period, the updating of the Internal Revenue Code reference for Wisconsin would adopt those provisions of Public Laws 105-33 and 105-34 that took effect for federal purposes for the 1997 tax year or earlier tax years. The issue of whether federal laws passed in 1997 should be adopted for the tax year 1998 and later years will be considered during the Spring 1998 Legislative session.

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## A. Individual and Fiduciary Income Taxes

### 1. Internal Revenue Code Reference Updated for 1997 for Individuals, Estates, and Trusts (1997 Act 27, repeal sec. 71.01(6)(d), amend sec. 71.01(6)(k) and (7r), and create sec. 71.01(6)(L), effective for taxable years beginning on or after January 1, 1997.)

For taxable years that begin on or after January 1, 1997, "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, 1996, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- Section 1311 of federal Public Law 104-188 relating to the reduction of an S corporation's accumulated earnings and profits by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, does not apply for Wisconsin.
- 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, 1997, 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, 1996, at the taxpayer's option.

### 2. Federal Laws Enacted During 1996 Apply Simultaneously for Wisconsin Purposes (1997 Act 27, amend secs. 71.01(6)(e), (f), (g), (h), (i), (j), and (k) and 71.77(3) and

(5), effective for taxable years beginning before January 1, 1997, at the same time as for federal tax purposes.)

Except as indicated below, the following federal laws enacted during 1996 apply for Wisconsin income tax purposes at the same time as for federal purposes:

- The Small Business Job Protection Act of 1996 (Public Law 104-188), enacted August 20, 1996.
- The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), enacted August 21, 1996.
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), enacted August 22, 1996.

The following provisions of Public Law 104-188 do not apply for Wisconsin income tax purposes for taxable years beginning before January 1, 1997:

- Section 1123 relating to the exclusion for the value of lodging furnished by an academic health center.
- Section 1202 relating to the extension of the exclusion for employer-provided educational assistance program benefits and the limitation of the exclusion to education below the graduate level.
- Section 1204 relating to the research credit.
- Section 1311 relating to the reduction of an S corporation's accumulated earnings and profits by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983.
- Section 1605 relating to the repeal of the exclusion for punitive damages and for damages not attributable to physical injuries or sickness.

**Note:** See the *Wisconsin Tax Bulletin* 100 (January 1997), pages 46 through 50, for a description of the various provisions of Public Law 104-188 and Public Law 104-191 which affected taxable years which began before January 1, 1997.

**3. Taxation of Nonresidents and Part-Year Residents** (1997 Act 27, create sec. 71.06(2s), effective for taxable years beginning in 1997.)

For nonresident individuals, including individuals changing their domicile into or from Wisconsin during the taxable year, the income tax brackets shall be multiplied by a fraction, the numerator of which is Wisconsin adjusted gross income and the denominator of which is federal adjusted gross income.

For married persons filing separately, "adjusted gross income" means the separate adjusted gross income of each spouse. For married persons filing jointly, "adjusted gross income" means the total adjusted gross income of both spouses.

If an individual and that individual's spouse are not both domiciled in Wisconsin during the entire taxable year, the tax brackets on a joint return shall be multiplied by a fraction, the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

**Example:** The 1997 tax brackets for a single individual are:

- the first \$7,500 of taxable income is taxed at 4.9%,
- the second \$7,500 of taxable income is taxed at 6.55%, and
- taxable income over \$15,000 is taxed at 6.93%.

Assume a single individual is a nonresident of Wisconsin for 1997. The individual has

Wisconsin adjusted gross income of \$15,000 and federal adjusted gross income of \$30,000. The ratio of Wisconsin adjusted gross income to federal adjusted gross income is 50% ( $\$15,000 \div \$30,000 = 1/2$  or 50%).

The 1997 tax brackets for this individual are:

- the first \$3,750 ( $\$7,500 \times 50\%$ ) of taxable income is taxed at 4.9%,
- the second \$3,750 ( $\$7,500 \times 50\%$ ) of taxable income is taxed at 6.55%, and
- taxable income over \$7,500 ( $\$15,000 \times 50\%$ ) is taxed at 6.93%.

**4. Subtraction Allowed for Long-Term Care Insurance** (1997 Act 27, amend sec. 71.07 (5)(a)15, effective October 14, 1997; and create sec. 71.05 (6)(b)26, effective for taxable years beginning on or after January 1, 1998.)

For taxable years beginning on or after January 1, 1998, a subtraction from federal adjusted gross income is allowed when computing Wisconsin adjusted gross income for the amount paid by a person for a long-term care insurance policy, determined as follows:

- (a) Subtract the amounts deducted from gross income for a long-term care insurance policy in the calculation of federal adjusted gross income from the amount paid by the person for a long-term care insurance policy.
- (b) For a person who is a nonresident or a part-year resident of Wisconsin, modify the amount calculated under (a) by multiplying the amount by a fraction the numerator of which is the person's wages, unearned income, and net earnings from a trade or business that are taxable by Wisconsin and the denominator of which is the person's total wages, unearned income, and net earnings from a trade or business.



- (c) Reduce the amount calculated under (a) or (b) above (whichever applies) to the person's aggregate wages, unearned income, and net earnings from a trade or business that are taxable by Wisconsin.

"Long-term care insurance policy" means a disability insurance policy or certificate advertised, marketed, offered or designed primarily to provide coverage for care that is provided in the insured person's home or in institutional and community-based settings and that is convalescent or custodial care or care for a chronic condition or terminal illness. The term does not include a medicare supplement policy or medicare replacement policy or a continuing care contract. "Long-term care insurance policy" applies to a policy that covers the person and his or her spouse.

**Note:** The amount claimed as a subtraction for a long-term care insurance policy cannot be used in the computation of the Wisconsin itemized deduction credit.

**5. Penalty Imposed on Certain Distributions From Medical Savings Accounts** (1997 Act 27, amend sec. 71.10(4)(j), and repeal and recreate sec. 71.83(1)(c), effective for taxable years beginning on or after January 1, 1997.)

For federal purposes, an additional tax of 15 percent is imposed under sec. 220(f)(4) of the Internal Revenue Code on any amount paid or distributed out of a medical savings account which is not used exclusively to pay the qualified medical expenses of the account holder.

A penalty is imposed on such distributions for Wisconsin tax purposes. The Wisconsin penalty is equal to 33 percent of the federal penalty tax. The department shall assess, levy, and collect the penalty in the same manner as it assesses, levies, and collects taxes under Chapter 71.

**6. Provisions Relating to Medical Savings Accounts Repealed** (1997 Act 27, repeal secs.

71.05(6)(a)19 and (b)24, and 71.07(5)(a)7, effective for taxable years beginning on or after January 1, 1997.

The provisions in the Wisconsin Statutes relating to Wisconsin medical savings accounts are repealed. (**Note:** These provisions were never implemented.)

**Note:** For taxable years beginning on or after January 1, 1997, Wisconsin has adopted the federal Internal Revenue Code (with some exceptions) as amended to December 31, 1996 (see Item A.1). Therefore, any exclusion from income or deduction relating to medical savings accounts which applies for federal tax purposes also applies for Wisconsin.

**7. Excess Distributions From Passive Foreign Investment Companies** (1997 Act 27, create sec. 71.05(6)(a)20, effective for taxable years beginning on or after January 1, 1997.)

The amount of any excess distribution from a passive foreign investment company is added to federal adjusted gross income when computing Wisconsin taxable income.

**8. Federal S Corporation Law Changes Adopted** (1997 Act 27, repeal sec. 71.01(15), renumber sec. 71.125 to 71.125(1) and amend sec. 71.125(1) as renumbered, amend sec. 71.05(6)(intro.), and create secs. 71.122 and 71.125(2), effective for taxable years beginning on or after January 1, 1997.)

See Item B.3.

**9. Estimated Tax Provisions for 1997 Modified** (1997 Act 27, create a nonstatutory provision, effective October 14, 1997.)

Any increase in estimated tax payments that are due before October 14, 1997, solely because of Act 27 shall be prorated among, and paid with, estimated payments that are due after October 14, 1997.

- 10. Income Tax Rates Reduced** (1997 Act 27, renumber sec. 71.06(2s), as created by 1997 Act 27, to 71.06(2s)(a) and amend as renumbered, amend secs. 71.06(1)(intro.), (2)(intro.), (a)(intro.) and (b)(intro.), and (2m) and 71.67(4)(a) and (5)(a), and create sec. 71.06(1m), (2)(c) and (d), and (2s)(b), effective for taxable years beginning on or after January 1, 1998, and create sec. 71.06(2e), effective for taxable years beginning on or after January 1, 1999.)

***For taxable years beginning on or after January 1, 1998***

- a. The tax rates for single persons, heads of households, and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, are as follows:
  - (1) On all taxable income from \$0 to \$7,500, 4.85%.
  - (2) On all taxable income exceeding \$7,500 but not exceeding \$15,000, 6.48%.
  - (3) On all taxable income exceeding \$15,000, 6.87%.
- b. The tax rates for married persons filing jointly are as follows:
  - (1) On all taxable income from \$0 to \$10,000, 4.85%.
  - (2) On all taxable income exceeding \$10,000 but not exceeding \$20,000, 6.48%.
  - (3) On all taxable income exceeding \$20,000, 6.87%.
- c. The tax rates for married persons filing separately are as follows:
  - (1) On all taxable income from \$0 to \$5,000, 4.85%.
  - (2) On all taxable income exceeding \$5,000 but not exceeding \$10,000, 6.48%.

- (3) On all taxable income exceeding \$10,000, 6.87%.

See Item A.3. for the treatment of nonresident and part-year resident individuals.

***For taxable years beginning on or after January 1, 1999***

The maximum dollar amount in each tax bracket, and the corresponding minimum dollar amount in the next bracket shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the year before the previous year, as determined by the federal Department of Labor. Each amount that is revised shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such amount shall be increased to the next higher multiple of \$10. The Department of Revenue shall annually adjust the changes in dollar amounts and incorporate the changes into the income tax forms and instructions.

- 11. Gain Excluded on Disposition of Certain Business and Farming Assets** (1997 Act 27, create secs. 71.05(6)(b)25, 71.78(4)(p), and 71.83(1)(d), effective for taxable years beginning on or after January 1, 1998.)

Gain, as computed under the Internal Revenue Code, on the sale or disposition of business assets or on assets used in farming, including shares in a corporation or trust, is excluded from Wisconsin taxation if the following conditions are met:

- The assets must have been held more than one year.
- The assets are disposed of to persons who are related to the seller or transferor by blood, marriage, or adoption within the 3rd degree of kinship.

- The gain is treated as capital gain for federal income tax purposes. The exclusion does not apply to amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason.
- The gain is not also excluded under the provision in Wisconsin law (sec. 71.05(6)(b)9, Wis. Stats.) which allows an exclusion for 60 percent of net capital gain on assets held more than one year.
- For shares in a corporation or trust, the following standards must be met by the corporation or trust in order for gain on the disposition of shares in the corporation or trust to qualify for the exclusion:
  - Its shareholders or beneficiaries do not exceed 15 in number. Lineal ancestors and descendants and aunts, uncles and first cousins thereof count collectively as one shareholder or beneficiary, but this collective authorization shall not be used for more than one family in a single corporation or trust.
  - It does not have more than two classes of shares.
  - All its shareholders or beneficiaries, other than any estate, are natural persons.

If the related person who purchases or otherwise receives the assets on which the gain is excluded sells or otherwise disposes of the assets within two years, the person is subject to a penalty. The penalty is equal to the following:

- The amount of the capital gains exclusion received by the transferor under this provision multiplied by a fraction, the denominator of which is 24 and the numerator of which is the difference between 24 and the number of months between the date on which the person who is liable for the penalty purchased or otherwise received the assets and the

month in which the person sells or otherwise disposes of the assets.

The department shall assess, levy, and collect the penalty as it assesses, levies, and collects taxes under Chapter 71 of the Statutes.

The Secretary of Revenue and employees of the department are authorized to examine returns for the purpose of calculating the penalty.

**12. Senior Citizen Credit Revised** (1997 Act 27, renumber 71.07(8)(a) to 71.07(8)(a)(intro.) and amend 71.07(8)(a)(intro.) as renumbered, and create sec. 71.07(8)(a)1 to 6, effective for taxable years beginning on or after January 1, 1997.)

The senior citizen credit is allowable to a taxpayer who has reached age 65 prior to the close of the taxpayer's calendar or fiscal year if one of the following applies:

- (a) If the taxpayer files an individual return and has Wisconsin adjusted gross income of less than \$30,000 in the year to which the claim relates, the credit is \$25.
- (b) If the taxpayer files an individual return and has Wisconsin adjusted gross income of at least \$30,000 but less than \$31,000 in the year to which the claim relates, the credit is equal to the amount obtained by subtracting from \$25, 2.5% of the amount by which the taxpayer's adjusted gross income exceeds \$30,000.
- (c) If the taxpayer is married, files a joint return, and has Wisconsin adjusted gross income of less than \$40,000 in the year to which the claim relates, the credit is \$25.
- (d) If the taxpayer is married, files a joint return, and has Wisconsin adjusted gross income of at least \$40,000 but less than \$41,000 in the year to which the claim relates, the credit is equal to the amount obtained by subtracting from \$25, 2.5%

of the amount by which the taxpayer's adjusted gross income exceeds \$40,000.

- (e) If the taxpayer is married, files a separate return, and has Wisconsin adjusted gross income of less than \$20,000 in the year to which the claim relates, the credit is \$25.
- (f) If the taxpayer is married, files a separate return, and has Wisconsin adjusted gross income of at least \$20,000 but less than \$21,000 in the year to which the claim relates, the credit is equal to the amount obtained by subtracting from \$25, 2.5% of the amount by which the taxpayer's adjusted gross income exceeds \$20,000.

For nonresidents and part-year residents of Wisconsin, the credit continues to be limited to the fraction of the amount that Wisconsin adjusted gross income is of federal adjusted gross income.

**13. Working Families Tax Credit Created** (1997 Act 27, create secs. 71.07(5m) and 71.10(4)(du), effective for taxable years beginning on or after January 1, 1998.)

***How to compute the credit.***

The working families tax credit is determined as follows:

*If the claimant's filing status is single, head of household, or married filing separate return —*

- (a) If the claimant's Wisconsin adjusted gross income is less than \$9,000 in the year to which the claim relates, the credit is equal to his or her net tax liability (gross tax less dependent credit, senior citizen credit, itemized deduction credit, school property tax credit, and the historic rehabilitation credits).
- (b) If the claimant's Wisconsin adjusted gross income is at least \$9,000 but less than \$10,000 in the year to which the

claim relates, the credit is an amount calculated as follows:

1. Calculate the value of a fraction, the denominator of which is \$1,000 and the numerator of which is the difference between the claimant's Wisconsin adjusted gross income and \$9,000.
2. Subtract from 1.0 the amount that is calculated under (b)1.
3. Multiply the amount of the claimant's net income tax liability by the amount calculated under (b)2.

*If the claimant's filing status is married filing joint return —*

- (a) If the sum of the claimant's Wisconsin adjusted gross income and his or her spouse's Wisconsin adjusted gross income is less than \$18,000 in the year to which the claim relates, the credit is equal to his or her net tax liability.
- (b) If the claimant's Wisconsin adjusted gross income and his or her spouse's Wisconsin adjusted gross income is at least \$18,000 but less than \$19,000 in the year to which the claim relates, the credit is an amount calculated as follows:
  1. Calculate the value of a fraction, the denominator of which is \$1,000 and the numerator of which is the difference between the married couple's Wisconsin adjusted gross income and \$18,000.
  2. Subtract from 1.0 the amount that is calculated under (b)1.
  3. Multiply the amount of the married couple's net income tax liability by the amount that is calculated under (b)2.

Only one credit is allowed per household (husband and wife) each year on a joint return.

*Who may not claim the credit.*

Part-year residents and nonresidents of Wisconsin are not eligible for the credit.

The credit may not be claimed by a person who may be claimed as a dependent on the individual income tax return of another taxpayer.

*When to claim the credit.*

The credit must be claimed within four years of the unextended due date of the income tax return for the year to which the claim relates.

*Assessments, refunds, appeals, collection, etc.*

The Department of Revenue may enforce the credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to taxes under Chapter 71, Wis. Stats. The income tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit.

- 14. Married Couple Credit Increased** (1997 Act 27, amend sec. 71.07(6)(a) and (b) and create sec. 71.07(6)(am), effective for taxable years beginning on or after January 1, 1998.)

The married couple credit is increased over a four-year period as follows:

- For taxable years beginning in 1998, the credit is 2.17% of the earned income of the spouse with the lower earned income, but not more than \$304.
- For taxable years beginning in 1999, the credit is 2.5% of the earned income of the spouse with the lower earned income, but not more than \$350.
- For taxable years beginning in 2000, the credit is 2.75% of the earned income of the spouse with the lower earned income, but not more than \$385.

- For taxable years beginning in 2001 and thereafter, the credit is 3% of the earned income of the spouse with the lower earned income, but not more than \$420.

- 15. Manufacturer's Sales Tax Credit Extended to Individuals, Partners, and Tax-Option (S) Corporation Shareholders** (1997 Act 27, repeal sec. 71.07(10)(a), renumber sec. 71.07(10)(b) to 71.07(10), amend sec. 71.05(6)(a)15, and create secs. 71.07(3s) and 71.10(4)(de), effective for taxable years beginning on or after January 1, 1998.)

See Item B.7.

- 16. Development Zones Credit Created** (1997 Act 27, amend secs. 71.05(6)(a)15 and 71.08(1)(intro.) and create secs. 71.07(2dd)(e), (2de)(d), (2di)(i), (2dj)(i), (2dL)(h), (2dr)(i), (2ds)(i), (2dx) and 71.10(4)(gu), effective for taxable years beginning on or after January 1, 1998.)

See Item B.8.

- 17. Alternative Computation of Development Zones Research Credit Permitted** (1997 Act 27, amend sec. 71.07(2dr)(a), effective for taxable years beginning on or after January 1, 1997.)

A taxpayer may elect to calculate the development zones research credit using the alternative computation method provided under sec. 41(c)(4) of the Internal Revenue Code. Once the election is made, it applies until the Department of Revenue permits its revocation.

- 18. Standard Deduction Indexed** (1997 Act 27, create sec. 71.05(22)(ds), effective for taxable years beginning on or after January 1, 1999.)

The dollar amounts of the standard deduction and all of the dollar amounts of Wisconsin adjusted gross income used in determining the standard deduction shall be increased each year by a percentage equal to the per-

centage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the year before the previous year, as determined by the federal Department of Labor. Each amount that is revised shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple of \$5, such amount shall be increased to the next higher multiple of \$10.

The Department of Revenue shall annually adjust the changes in dollar amounts and incorporate the changes into the income tax forms and instructions.

- 19. Farm Loss Limitations Revised** (1997 Act 27, amend sec. 71.05(6)(a)10, effective for taxable years beginning on or after January 1, 1999.)

The farm loss limits apply only for persons who are not "actively engaged in farming," as that term is used in 7 CFR 1497.201. Under prior law, the farm loss limits applied whether or not a person was actively engaged in farming.

The amount of nonfarm income a person may have before no loss is allowed is increased from \$400,000 to \$600,000.

- 20. "Multistate" Lottery Reference Changed** (1997 Act 27, amend secs. 71.02(1) and 71.04(1)(a), effective October 14, 1997.)

Income received by a nonresident of Wisconsin from any multijurisdictional lottery is taxable by Wisconsin if the winning lottery ticket or lottery share was purchased from a retailer located in Wisconsin or from the department. Under prior law, the statutes referred to "multistate" instead of "multijurisdictional."

## **B. Corporation Franchise or Income Taxes**

- 1. Internal Revenue Code References Updated for 1997 for Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Mortgage Investment Conduits, and Real Estate Investment Trusts** (1997 Act 27, repeal secs. 71.22(4)(d) and (4m)(b), 71.26(2)(b)4., and 71.42(2)(c), amend secs. 71.22(4)(k) and (4m)(i), 71.26 (2)(b)11. and (3)(y), 71.42(2)(j), and 71.45 (2)(a)13., and create secs. 71.22(4)(L) and (4m)(j), 71.26(2)(b)12., 71.42(2)(k), and 71.45(2)(a)10m., and a nonstatutory provision, effective for taxable years beginning on or after January 1, 1997.)

For taxable years that begin on or after January 1, 1997, "Internal Revenue Code" for corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), and real estate investment trusts (REITs) means the federal Internal Revenue Code as amended to December 31, 1996, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- a. The Internal Revenue Code excludes section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation's accumulated earnings and profits.
- b. For corporations (except nonprofit organizations, RICs, REMICs, and REITs) and insurance companies, for property placed in service in taxable years beginning on or after January 1, 1997, 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, 1996, at the taxpayer's option.

- c. For corporations (except nonprofit organizations, RICs, REMICs, and REITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- 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, REMICs, and REITs, 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.

Any increase in estimated tax payments that are due before October 14, 1997, solely because of this Act shall be prorated among, and paid with, estimated payments that are due after October 14, 1997.

**2. Federal Laws Enacted During 1996 Apply Simultaneously for Wisconsin Purposes** (1997 Act 27, amend secs. 71.22(4)(e), (f), (g), (h), (i), (j), and (k) and (4m)(c), (d), (e), (f), (g), (h), and (i), 71.26(2)(b)5., 6., 7., 8., 9., 10., and 11., 71.42(2)(d), (e), (f), (g), (h), (i), and (j), and 71.77(3) and (5), effective for taxable years beginning before January 1, 1997, at the same time as for federal tax purposes.)

The changes made to the Internal Revenue Code by the federal Small Business Job Protection Act of 1996 (Public Law 104-188), the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), and the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes.

For example, Public Law 104-188 liberalized the involuntary conversion replacement property rules for Presidentially declared disasters, effective for disasters declared after December 31, 1994, in taxable years ending after that date. This provision also applies for Wisconsin purposes for Presidentially declared disasters after December 31, 1994, in taxable years ending after that date.

**3. Federal S Corporation Law Changes Adopted** (1997 Act 27, repeal secs. 71.01(15) and 71.34(1g)(d), renumber sec. 71.125 to 71.125(1) and amend sec. 71.125(1) as renumbered, amend secs. 71.05(6)(intro.), 71.22(1), 71.34(1g)(e), (f), (g), (h), (i), (j), and (k), 71.365(1m) and (4)(a), 77.51(10), and 77.58(3)(a), and create secs. 71.122, 71.125(2), 71.34(1)(i) and (1g)(L), and 71.365(7), and a nonstatutory provision, effective for taxable years beginning on or after January 1, 1997, except as indicated below.)

For taxable years that begin on or after January 1, 1997, "Internal Revenue Code" for tax-option (S) corporations means the federal Internal Revenue Code as amended to December 31, 1996, except that —

- the Internal Revenue Code excludes section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation's accumulated earnings and profits, and
- Internal Revenue Code 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.

The changes made to the Internal Revenue Code by the federal Small Business Job Protection Act of 1996 (Public Law 104-188), federal Health Insurance Portability and Accountability Act of 1996 (Public Law

104-191), and federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes. These changes include the following:

- S corporations may have 75 shareholders.
- S corporations may have 80%-or-more-owned C corporation subsidiaries.
- S corporations may have wholly owned S corporation subsidiaries.

If a tax-option (S) corporation elects to treat a subsidiary as a qualified subchapter S subsidiary (QSSS) for federal purposes, that election also applies for Wisconsin purposes. The QSSS will be disregarded as a separate corporation for Wisconsin purposes, and its assets, liabilities, and items of income, deduction, and credit will be treated as those of the parent tax-option (S) corporation. If Wisconsin has jurisdiction to impose franchise or income taxes on the QSSS, Wisconsin has the jurisdiction to impose these taxes on the parent tax-option (S) corporation. A federal S corporation that has a qualified subchapter S subsidiary may not elect out of Wisconsin tax-option (S) corporation status.

For sales and use tax purposes, if a QSSS is disregarded as a separate entity for Wisconsin franchise and income tax purposes, the owner of that subsidiary shall include the information for that subsidiary on the owner's sales and use tax return.

- Electing small business trusts (SBTs) may be S corporation shareholders.

The portion of an electing SBT that consists of stock of one or more S corporations is treated as a separate trust. The net income for that portion is determined under IRC sec. 641(d), as modified by sec. 71.05(6) to (12), (19), and

(20), Wis. Stats. The separate trust is taxed on its Wisconsin taxable income at the highest rate under sec. 71.06(1) or (1m), Wis. Stats., as applicable.

- The post-death period during which grantor and testamentary trusts may hold S corporation stock is increased to 2 years.
- Financial institutions not using bad debt reserves may be S corporations.
- Financial institutions may hold "straight debt" for the one-class-of-stock safe harbor rule.
- Internal Revenue Service has retroactive authority to waive inadvertent terminations of S corporation status and to treat late or nonexistent S corporation elections as timely. (Applies to elections for taxable years beginning after December 31, 1982.)
- The election to terminate the S corporation's taxable year on termination of a shareholder's interest requires only the agreement of the corporation and all affected shareholders.
- If a trust or estate terminates before the end of the S corporation's taxable year, the S corporation's income is apportioned to the trust or estate. (Applies under prior law.)
- The post-termination transition period of S corporations is expanded.
- The adjusted basis of an S corporation shareholder's stock for purposes of computing the limitation on the amount of deductible S corporation losses is determined after the basis has been reduced by the year's nontaxable distributions made to the shareholder.
- S corporations may liquidate their 80%-or-more-owned C corporation subsidiaries on a tax-free basis.



- The basis of inherited S corporation stock is reduced by the corporation's income items treated as income in respect of a decedent. (Applies to decedents dying after August 20, 1996.)
- Corporations that terminated S corporation status before 1997 may reelect S corporation status within 5 years.

For property placed in service in taxable years beginning on or after January 1, 1997, 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, 1996, at the taxpayer's option.

Any increase in estimated tax payments that are due before October 14, 1997, solely because of this Act shall be prorated among, and paid with, estimated payments that are due after October 14, 1997.

A corporation that may be treated as a tax-option corporation or a QSSS because of this Act may treat any portion of a payment of estimated taxes for its taxable year that begins in 1997 that the corporation or its QSSS makes before October 14, 1997, as a payment made by a shareholder of the corporation on October 14, 1997, if the corporation so elects on or before the original due date of the corporation's franchise or income tax return for its taxable year that begins in 1997, in the manner that the Department of Revenue prescribes. That election is irrevocable.

**4. Federal Treatment of Financial Asset Securitization Investment Trusts (FASITs) Adopted** (1997 Act 27, amend sec. 71.26(2)(b)(title) and create sec. 71.26(2)(b)12., effective for taxable years beginning on or after January 1, 1997.)

The federal Small Business Job Protection Act of 1996 (Public Law 104-188) created a new type of statutory entity called a financial asset securitization investment trust (FASIT)

to facilitate the securitization of debt obligations such as credit card receivables, home equity loans, and auto loans. The federal FASIT provisions generally are effective September 1, 1997.

For a common law trust which qualifies as a FASIT under the Internal Revenue Code as amended to December 31, 1996, "net income" means the federal FASIT taxable income of the trust as determined under the Internal Revenue Code as amended to December 31, 1996.

**5. Alternative Computation of Research Credit and Development Zones Research Credit Permitted** (1997 Act 27, amend secs. 71.07(2dr)(a), 71.28(4)(a) and (am)1., and 71.47(4)(a) and (am), effective for taxable years beginning on or after January 1, 1997.)

A taxpayer may elect to calculate the research credit using the alternative computation method provided under sec. 41(c)(4) of the Internal Revenue Code. Once the election is made, it applies until the Department of Revenue permits its revocation.

**6. Statute of Limitations Provided for Assessments Relating to Public Water Utilities** (1997 Act 27, create sec. 71.77(2m), effective for deficiencies caused by notices received by the Department of Revenue on or after October 14, 1997.)

One of the federal law changes adopted by Wisconsin is the amendment to IRC sec. 118(c). Under this provision, a regulated public utility that provides water or sewage disposal services treats certain contributions in aid of construction as tax-free contributions to its capital.

The Department of Revenue may assess a deficiency related to a contribution to the capital of the taxpayer, as defined in IRC sec. 118(c), within 4 years after the department receives notice by the taxpayer, in the manner that the department prescribes, of any of the following:

- The amount of the expenditure under IRC sec. 118(c)(2)(A).
- The intent of the person against whom the deficiency is to be assessed not to make the expenditure under IRC sec. 118(c)(2)(A).
- Expiration of the time period under IRC sec. 118(c)(2)(B) and failure of the person against whom the deficiency is to be assessed to make the expenditure under IRC sec. 118(c)(2)(B).

**7. Manufacturer's Sales Tax Credit Extended to Individuals, Partners, and Tax-Option (S) Corporation Shareholders** (1997 Act 27, repeal secs. 71.07(10)(a), 71.28(3)(d), 71.365(3)(b), and 71.47(3)(d), renumber sec. 71.07(10)(b) to 71.07(10), sec. 71.28(3)(c) to 71.28(3)(c)1., sec. 71.365(3)(a) to 71.365(3), and sec. 71.47(3)(c) to 71.47(3)(c)1., amend secs. 71.05(6)(a)15., 71.21(4), 71.28(3)(b), 71.34(1)(g), 71.47(3)(b), and 77.92(4), and create secs. 71.07(3s), 71.10(4)(de), 71.28(3)(c)2. to 6., 71.34(1)(j), and 71.47(3)(c)2. to 6., effective for taxable years beginning on or after January 1, 1998.)

Individuals, partners, and tax-option (S) corporation shareholders shall claim a credit against their Wisconsin income or franchise tax for Wisconsin state, county, and stadium sales and use taxes paid in the taxable year on fuel and electricity consumed in manufacturing tangible personal property in Wisconsin.

**Individuals**

The credit, including any credits carried over, may be offset only against the amount of tax imposed upon or measured by the business operations of the claimant in which the fuel and electricity are consumed.

**Partners**

Partners may claim the credit based on eligible sales and use taxes paid by the partnership, in proportion to their ownership

interests. The partnership must calculate the amount of the credit which may be claimed by each partner and provide that information to the partner.

For partners, the credit may be offset only against the tax imposed on the partner's distributive share of partnership income.

**Tax-Option (S) Corporation Shareholders**

Tax-option (S) corporation shareholders may claim the credit based on eligible sales and use taxes paid by the corporation, in proportion to their ownership interests. The corporation must calculate the amount of the credit which may be claimed by each shareholder and provide that information to the shareholder.

For tax-option (S) corporation shareholders, the credit may be offset only against the tax imposed on the shareholder's prorated share of the tax-option corporation's income.

If a tax-option corporation becomes liable for tax, the corporation may offset the credit against the tax due, with any remaining credit passing through to the shareholders.

**Unused Credits**

If the credit computed is not entirely offset against taxes otherwise due, the unused balance must be carried forward and credited against taxes otherwise due for the following 15 years to the extent not offset by taxes otherwise due in all intervening years.

If a corporation that is not a tax-option corporation has a carryover credit and becomes a tax-option corporation before the credit carried over is used, the unused portion of the credit may be used by the tax-option corporation's shareholders on a prorated basis. If the shareholders of a tax-option corporation have carryover credits and the corporation becomes a regular (C) corporation before the credits carried over are used, the unused portion of the credits may be used by the corporation.

### *Credit Is Income*

The tax credit is income and must be reported on the claimant's Wisconsin franchise or income tax return for the year in which the credit is computed. This is the case even if the claimant cannot take the full amount of the credit computed in the current year and must carry part of it forward to subsequent years.

A tax-option corporation must report as income for the year in which it uses, or passes through to its shareholders, credits carried over from taxable years beginning before January 1, 1998.

- 8. Development Zones Credit Created** (1997 Act 27, repeal secs. 560.75(9), 560.765(3)(i), and 560.797(3)(b)9., amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.21(4), 71.26(2)(a) and (3)(n), 71.34(1)(g), 71.45(2)(a)10., 71.47(4)(am), 73.03(35), 77.92(4), 560.70(6), 560.71(1m)(d) and (e), 560.72(2)(h), 560.73(1)(e), 560.745(1)(b) and (2)(a), (am), and (c)1., 560.75(8), 560.765(3)(c) and (5)(e) and (f), 560.768(1)(a) and (b)2., 560.78(1)(a), (2)(a), and (3)(b), 560.795(3)(b)6. and (d), and 560.797(2)(b)4. and 5. and (3)(b)6. and 8., repeal and recreate sec. 560.70(7), and create secs. 71.07(2dd)(e), (2de)(d), (2di)(i), (2dj)(i), (2dL)(h), (2dr)(i), (2ds)(i), and (2dx), 71.10(4)(gu), 71.28(1dd)(f), (1de)(e), (1di)(j), (1dj)(j), (1dL)(j), (1ds)(j), (1dx), and (4)(am)3., 71.30(3)(eom), 71.47(1dd)(e), (1de)(d), (1di)(i), (1dj)(i), (1dL)(h), (1ds)(i), and (1dx), 71.49(1)(eom), 560.70(2m), 560.735(6r), 560.785, and 560.797(1)(am) and (4)(g), effective for taxable years beginning on or after January 1, 1998.)

For taxable years beginning on or after January 1, 1998, a person who is certified for tax benefits by the Department of Commerce may claim the "development zones credit" as a credit against taxes. For purposes of this tax credit, "development zone" means a development zone under sec. 560.70, Wis. Stats., a development opportunity zone under sec. 560.795, Wis. Stats., or

an enterprise development zone under sec. 560.797, Wis. Stats.

The current development, development opportunity, and enterprise development zones day care, environmental remediation, investment, jobs, location, research, and sales tax credits may no longer be claimed for taxable years beginning on or after January 1, 1998. However, unused credits from taxable years that began before January 1, 1998, may continue to be carried forward to years that begin on January 1, 1998, or thereafter.

### *Computing the Credit*

The development zones credit is the total of following amounts:

- a. 50% of the amount expended for environmental remediation in a development zone.

"Environmental remediation" means removal or containment of environmental pollution and restoration of soil or groundwater that is affected by environmental pollution in a brownfield and investigation, unless the investigation determines that remediation is required and that remediation is not undertaken. The removal, containment, or restoration work, other than planning and investigating, must be begun after the area that includes the site where the work is being done is designated a development zone and after the claimant is certified for tax benefits.

"Environmental pollution" means the contaminating or rendering unclean or impure the air, land, or waters of the development zone, or making it injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life.

"Brownfield" means an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

- b. The dollar amount, up to \$6,500, determined by the Department of Commerce multiplied by the number of full-time jobs created in a development zone and filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.

“Full-time job” means a regular, non-seasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. “Full-time job” does not include training before an employment position begins.

“Member of a targeted group” means a Wisconsin resident who is:

- a vocational rehabilitation program referral,
- an economically disadvantaged Vietnam-era veteran,
- an economically disadvantaged youth,
- a Supplemental Security Income (SSI) recipient,
- a general assistance recipient,
- a youth in a cooperative education program, who belongs to an economically disadvantaged family,
- an economically disadvantaged ex-convict,
- an eligible work incentive employee,
- a qualified summer youth employee, age 16 or 17, who works between May 1 and September 15,
- a person unemployed as a result of a business closing or mass layoff, in situations where Wisconsin law requires the employer to provide notification of the closing or layoff,
- a dislocated worker,
- a resident of an empowerment zone, or an enterprise community, that the U.S. government designates,
- a person who is employed in an unsubsidized job but meets the eligibility requirements under sec. 49.145(2) and (3), Wis. Stats., for a Wisconsin works employment position,
- a person who is employed in a trial job, as defined in sec. 49.141(1)(n), Wis. Stats.,
- a person who is eligible for the Wisconsin works health plan under sec. 49.153, Wis. Stats., or
- a person who is eligible for child care assistance under sec. 49.155, Wis. Stats.

The employee must be certified as a member of a targeted group by a Jobs Service office of the Wisconsin Department of Workforce Development.

- c. The dollar amount, up to \$4,000, determined by the Department of Commerce multiplied by the number of full-time jobs created in a development zone and not filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.
- d. The dollar amount, up to \$6,500, determined by the Department of Commerce multiplied by the number of full-time jobs retained in a development zone, excluding jobs for which the former Wisconsin jobs credit has been claimed,

and filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.

- e. The dollar amount, up to \$4,000, determined by the Department of Commerce multiplied by the number of full-time jobs retained in a development zone, excluding jobs for which the former Wisconsin jobs credit has been claimed, and not filled by a member of a targeted group, less the subsidies paid under sec. 49.147(3)(a), Wis. Stats., for those jobs.

Claimants must include with their Wisconsin franchise or income tax returns a copy of their certification for tax benefits and a copy of the Department of Commerce's verification of their expenses.

Partnerships, limited liability companies treated as partnerships, and tax-option (S) corporations may not claim the credit, but the eligibility for, and the amount of, the credit will be based on their economic activity. The entity will compute the amount of credit that will pass through to its partners, members, or shareholders. Partners, members, or shareholders may claim the credit based on the entity's activities, in proportion to their ownership interests.

### *Unused Credits*

Unused credits may be carried forward for up to 15 years. In the case of a change in ownership or business of a corporation, the limitations of section 383 of the Internal Revenue Code apply to the carryover of any unused Wisconsin development zone credit.

If the certification for tax benefits is revoked, credit may not be claimed for that year and unused credits may not be carried forward to succeeding years. If a claimant ceases business operations in the development zone, unused credits may not be carried forward to any taxable year following the year in which the operations cease.

### *Credit Is Income*

The tax credit is income and must be reported on the claimant's Wisconsin franchise or income tax return for the year in which the credit is computed. This is the case even if the claimant cannot take the full amount of the credit computed in the current year and must carry part of it forward to subsequent years.

### *Assessments, Refunds, Appeals*

The franchise and income tax provisions in chapter 71, Wis. Stats., relating to assessments, refunds, appeals, collection, interest, and penalties, apply to the development zone credit.

## **C. Homestead Credit**

1. **Eliminate Double Counting of Scholarship Income** (1997 Act 27, amend sec. 71.52(6), effective for taxable years beginning on or after January 1, 1998.)

The definition of "income" for homestead credit purposes is amended to subtract scholarship and fellowship gifts or income that are included as part of Wisconsin adjusted gross income, if the scholarship and fellowship gifts or income had been included in income on a previous year's homestead credit claim. This eliminates the double counting of scholarship and fellowship gifts or income for certain claimants.

Under both prior law and the amendment to sec. 71.52(6), scholarship and fellowship gifts or income are includable in income on a homestead credit claim in the year they are received. However, under prior law any portion of scholarship and fellowship gifts or income that was determined to be taxable for income tax purposes in a subsequent year was includable a second time in the subsequent year, as "Wisconsin adjusted gross income."

## D. Sales and Use Taxes

### 1. Telephone Message Services Are Taxable (1997 Act 27, create sec. 77.52(2)(a)5m, effective for sales on or after December 1, 1997.)

Sales and use tax is imposed on services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental, as defined in sec. 77.51(5), Wis. Stats., element of another service that is sold to that purchaser and is not taxable.

### 2. Telecommunications Services Originating or Terminating in Wisconsin and Charged to a Service Address in Wisconsin Are Taxable, Except Certain Services Obtained by Means of a Toll-Free Number (1997 Act 27, amend sec. 77.52(2)(a)5, effective for sales on or after December 1, 1997.)

Sales and use tax is imposed on telecommunications services that:

- either originate or terminate in Wisconsin, and
- are charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid.

**Exception:** Services that are obtained by means of a toll-free number, that originate outside Wisconsin and that terminate in Wisconsin, are not taxable.

Under prior law, telecommunications services were taxable if the services originated in Wisconsin and were charged to a service address in Wisconsin.

### 3. Credit Allowed for Sales Tax Properly Paid to Another State on Interstate Telecommunications Services (1997 Act 27, create sec. 77.525, effective October 14, 1997.)

Any person who is subject to the tax under sec. 77.52(2)(a)5, Wis. Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under sec. 77.52(2)(a)5, Wis. Stats., was passed on an amount equal to the amounts not remitted.

### 4. Motor Vehicles Used by Dealership — Measure of Use Tax Changed (1997 Act 27, amend sec. 77.53(1m)(a), effective December 1, 1997.)

Persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships (e.g., sole proprietors, partners, subchapter S shareholders, LLC members, etc.) who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, may use \$99\* (see the end of this summary on page 23 for an explanation) per month as the measure of use tax for motor vehicles assigned to them that are used for a purpose, in addition to retention, demonstration, or display, while being held for sale.

“Actively participates” means the person performs services for the dealership, including selling, accounting, managing, and consulting, for more than 500 hours in a taxable year for which the person receives compensation. “Actively participates” does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use, or monitoring the finances or operations of the activity in a nonmanagerial capacity.

Previously, motor vehicles assigned to these persons and used for a purpose, in addition to retention, demonstration, or display, while being held for sale were subject to use tax on the lease value computed using the IRS Lease Value Table contained in IRS Reg. § 1.61-21(d)(2).

The following examples illustrate the amendment to sec. 77.53(1m)(a), Wis. Stats.:

**Example 1:** Individual C is the shareholder in a subchapter S corporation that operates a motor vehicle dealership. Individual C is the general manager of the dealership responsible for all management decisions of the dealership. Individual C spends 40 hours per week performing his duties relating to the dealership. The compensation Individual C receives for services performed are not considered wages subject to withholding for federal income tax purposes.

Individual C is assigned by the dealership a motor vehicle that is held for sale. Individual C uses the motor vehicle for personal travel (e.g., to and from home).

Individual C “actively participates” in the dealership because the hours spent performing services for the dealership are more than 500 per year (40 hours X 52 weeks = 2,080 hours). Although compensation received is not subject to withholding for federal income tax purposes, the dealership may use \$99\* per month as the amount subject to use tax on the motor vehicle assigned to Individual C by the dealership.

**Example 2:** Individual A is the sole proprietor of a motor vehicle dealership. Individual A has turned over the day-to-day management of the dealership to his daughter. Individual A’s only activities in the business include meetings with his daughter four hours each week regarding the management of the dealership. Individual A is paid for services performed. Such payments are not subject to withholding for federal income tax purposes.

Individual A is assigned by the dealership a motor vehicle that is held for sale. Individual A uses the motor vehicle for personal travel (e.g., to and from home).

Individual A does not “actively participate” in the dealership because hours spent performing services for the dealership are only 208 per year (4 hours X 52 weeks). Therefore, the dealership may not use \$99\* per month as the amount subject to use tax on the motor vehicle assigned to Individual A by the dealership.

**Example 3:** Individual B is a limited partner in a partnership that operates a motor vehicle dealership. Individual B receives cash distributions from the partnership based on her partnership interest. These distributions are not subject to withholding for federal income tax purposes. Individual B performs no services for the partnership. Individual B’s activities for the partnership relate only to reviewing financial statements for purposes of monitoring her investment.

Individual B is assigned by the dealership a motor vehicle that is held for sale. Individual B uses the motor vehicle for personal travel (e.g., to and from home).

Individual B does not “actively participate” in the dealership. Therefore, the dealership may not use \$99\* per month as the amount subject to use tax on the motor vehicle assigned to Individual B by the dealership.

\* \$99 is the amount effective for the period 1/1/97 through 12/31/97. This amount is subject to change effective each January 1 thereafter to account for changes in the Consumer Price Index.

5. **“Real Property Construction Activities” — Definition Changed** (1997 Act 27, amend sec. 77.51(2), effective for sales of property pursuant to contracts entered into on or after December 1, 1997.)

The definition of “real property construction activities” for purposes of sec. 77.51(2),

Wis. Stats., is changed to mean “activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the real property.” In sec. 77.51(2), Wis. Stats., “real property construction activities” do not include “affixing to real property tangible personal property that remains tangible personal property after it is affixed.”

This change in definition of “real property construction activities” reverses the decision of the Wisconsin Supreme Court in *Wisconsin Department of Revenue v. Sterling Custom Homes* (282 N.W.2d 573 (1979)). Manufacturers of modular homes are no longer considered engaged in real property construction when they manufacture a home for a specific site designated by the purchaser prior to manufacturing. The manufacturer is engaged in real property construction activities when the manufacturer affixes the modular home at the site selected by the purchaser.

The following examples illustrate the sales and use tax treatment of modular homes as a result of the change in definition of “real property construction activities.” The sales and use tax treatment may differ depending on where the manufacturing takes place, who affixes the modular home to real property, and the site where the modular home is affixed. These examples are not all-inclusive.

**Example 1: Manufactured in Wisconsin, Dealer Affixes, Wisconsin Site** Modular Home Manufacturer enters into a contract with Dealer to manufacture a modular home for a site in Wisconsin selected by Customer. Modular Home Manufacturer manufactures the modular home in Wisconsin after the site is selected. Modular Home Manufacturer delivers the modular home in Wisconsin to Dealer. Dealer, who has entered into a contract with Customer for the sale and installation of the modular home, affixes the modular home in Wisconsin for Customer.

***Per Amendment to Sec. 77.51(2), Wis. Stats.:***

- Sales of materials by Vendors to Modular Home Manufacturer are not subject to Wisconsin sales or use tax. The materials are for resale.
- The sale of the modular home by Modular Home Manufacturer to Dealer is subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling tangible personal property in Wisconsin to Dealer. Dealer is the consumer of the modular home it uses in real property construction activities (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Dealer to Customer is not subject to Wisconsin sales or use tax. Dealer is selling to Customer a real property improvement.

***Prior Law:***

- Sales of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities in Wisconsin (i.e., manufacturing of home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Dealer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Dealer a real property improvement.
- The sale of the modular home by Dealer to Customer was not subject to Wisconsin sales or use tax. Dealer was selling to Customer a real property improvement.

**Example 2: Manufactured in Wisconsin, Dealer Affixes, Illinois Site** Modular Home Manufacturer enters into a contract with Dealer to manufacture a modular home for a site in Illinois selected by Customer. Modu-



lar Home Manufacturer manufactures the modular home in Wisconsin after the site is selected. Modular Home Manufacturer delivers the modular home to Dealer in Illinois. Dealer, who has entered into a contract with Customer for the sale and installation of the modular home, affixes the modular home in Illinois for Customer.

***Per Amendment to Sec. 77.51(2), Wis. Stats.:***

- Sales of materials by Vendors to Modular Home Manufacturer are not subject to Wisconsin sales or use tax. The materials are for resale.
- The sale of the modular home by Modular Home Manufacturer to Dealer is not subject to Wisconsin sales or use tax. The sale of tangible personal property does not take place in Wisconsin.
- The sale of the modular home by Dealer to Customer is not subject to Wisconsin sales or use tax. Dealer is selling to Customer a real property improvement. In addition, the sale takes place outside Wisconsin.

***Prior Law:***

- Sale of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction in Wisconsin (i.e., manufacturing of home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Dealer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Dealer a real property improvement. In addition, the sale did not take place in Wisconsin.
- The sale of the modular home by Dealer to Customer was not subject to Wisconsin

sales or use tax. Dealer was selling to Customer a real property improvement. In addition, the sale did not take place in Wisconsin.

***Example 3: Manufactured in Wisconsin, Manufacturer Affixes, Wisconsin Site***  
Modular Home Manufacturer enters into a contract with Customer to manufacture and install a modular home for a site in Wisconsin selected by Customer. Modular Home Manufacturer manufactures the modular home in Wisconsin after the site is selected.

***Per Amendment to Sec. 77.51(2), Wis. Stats.:***

- Sales of materials by Vendors to Modular Home Manufacturer are subject to Wisconsin sales or use tax. Modular Home Manufacturer is the consumer of materials it uses in real property construction activities in Wisconsin (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer is not subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling to Customer a real property improvement.

***Prior Law:***

- Sale of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities in Wisconsin (i.e., manufacturing of home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Customer a real property improvement.

**Example 4: *Manufactured in Wisconsin, Manufacturer Affixes, Illinois Site*** Modular Home Manufacturer enters into a contract with Customer to manufacture and install a modular home for a site in Illinois selected by Customer. Modular Home Manufacturer manufactures the modular home in Wisconsin after the site is selected.

***Per Amendment to Sec. 77.51(2), Wis. Stats.:***

- Sales of materials by Vendors to Modular Home Manufacturer are subject to Wisconsin sales or use tax. Modular Home Manufacturer is the consumer of materials it stores in Wisconsin and uses in real property construction activities in Illinois (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer is not subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling to Customer a real property improvement. In addition, the sale does not take place in Wisconsin.

***Prior Law:***

- Sales of materials by Vendors to Modular Home Manufacturer were subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities in Wisconsin (i.e., manufacturing of modular home for predetermined site).
- The sale of the modular home by Modular Home Manufacturer to Customer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Customer a real property improvement. In addition, the sale did not take place in Wisconsin.

**Example 5: *Manufactured in Illinois, Manufacturer Affixes, Wisconsin Site*** Modular Home Manufacturer enters into a contract

with Customer to manufacture and install a modular home for a site in Wisconsin selected by Customer. Materials are delivered by Vendors to Modular Home Manufacturer in Illinois. Modular Home Manufacturer manufactures the modular home in Illinois after the site is selected.

***Per Amendment to Sec. 77.51(2), Wis. Stats.:***

- Modular Home Manufacturer is subject to Wisconsin use tax on its purchase of materials. Modular Home Manufacturer is the consumer of materials (i.e., modular home) it stores in Wisconsin and uses in real property construction activities in Wisconsin (i.e., affixing the modular home at the predetermined site). **Note:** Credit would be allowed, up to the amount of Wisconsin state and local taxes, for Illinois state and local taxes properly paid on the materials.
- The sale of the modular home by Modular Home Manufacturer to Customer is not subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling to Customer a real property improvement.

***Prior Law:***

- Sales of materials by Vendors to Modular Home Manufacturer were not subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities (i.e., manufacturing of home for predetermined site). However, storage, use, and consumption of the materials as tangible personal property took place in Illinois where the modular home was manufactured.
- The sale of the modular home by Modular Home Manufacturer to Customer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Customer a real property improvement.

**Example 6: Manufactured in Illinois, Dealer Affixes, Wisconsin Site** Modular Home Manufacturer enters into a contract with Dealer to manufacture a modular home for a site in Wisconsin selected by Customer. Materials are delivered by Vendors to Modular Home Manufacturer in Illinois. Modular Home Manufacturer manufactures the modular home in Illinois after the site is selected. Modular Home Manufacturer delivers the modular home in Wisconsin to Dealer. Dealer, who has entered into a contract with Customer for the sale and installation of the modular home, affixes the modular home in Wisconsin for Customer.

**Per Amendment to Sec. 77.51(2), Wis. Stats.:**

- Sale of materials by Vendors to Modular Home Manufacturer are not subject to Wisconsin use tax. The materials are for resale.
- The sale of the modular home by Modular Home Manufacturer to Dealer is subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling tangible personal property in Wisconsin to Dealer. Dealer is the consumer of the modular home it uses in real property construction activities (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Dealer to Customer is not subject to Wisconsin sales or use tax. Dealer is selling to Customer a real property improvement.

**Prior Law:**

- Sales of materials by Vendors to Modular Home Manufacturer were not subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities (i.e., manufacturing of home for predetermined site). However, storage, use, and consumption of the materials as tangible personal

property took place in Illinois where the modular home was manufactured.

- The sale of the modular home by Modular Home Manufacturer to Dealer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Dealer a real property improvement.
- The sale of the modular home by Dealer to Customer was not subject to Wisconsin sales or use tax. Dealer was selling to Customer a real property improvement.

**6. Manufactured Buildings — Computing Amount Subject to Tax** (1997 Act 27, amend sec. 77.51(4)(b)3. and 77.51(15)(b)4. and create sec. 77.51(4)(b)7. and (15)(b)6., effective for sales of property pursuant to contracts entered into on or after December 1, 1997.)

Gross receipts and sales price from the sale of a “manufactured building,” as defined in sec. 101.71(6), Wis. Stats. (see definition below), that is tangible personal property when sold, may be reduced by one of the following:

Option A: 35% of the sales price.

Option B: An amount equal to the sales price minus the cost of the materials that become an ingredient or component part of the manufactured building.

No credit is allowed for trade-ins under Option A or Option B in computing gross receipts or sales prices subject to tax.

Once a retailer chooses Option A or Option B for the first manufactured building sold under this provision, the retailer must continue to use that option for all sales of manufactured buildings, that are tangible personal property when sold, until such time as the department approves in writing the use of the other option.

“Manufactured building” under sec. 101.71(6), Wis. Stats. (1995-96), means any structure or component thereof which is intended for use as a dwelling and:

- a. is of closed construction and fabricated or assembled on-site or off-site in manufacturing facilities for installation, connection, or assembly and installation, at the building site; or
- b. is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer.

“Manufactured building” does not mean a manufactured home or mobile home under sec. 101.91 or any building of open construction which is not subject to b. above.

**Example:** Building Manufacturer sells a manufactured building, as defined in sec. 101.71(6), Wis. Stats., in Wisconsin to Dealer. Dealer will affix the manufactured building to real property in Wisconsin for Customer under a contract between Dealer and Customer. This is the first manufactured building, as defined in sec. 101.71(6), Wis. Stats., sold by Building Manufacturer pursuant to a contract entered into on or after December 1, 1997. Additional facts are as follows:

- \$40,000 is the cost materials purchased by Building Manufacturer that become an ingredient or component part of the manufactured building.
- \$65,000 is the selling price of the manufactured building by Building Manufacturer to Dealer.

The amount subject to sales tax on the sale of the manufactured building to Dealer is one of the following:

Option A: \$42,250 [\$65,000 selling price - (35% X \$65,000 selling price)].

Option B: \$40,000 [\$65,000 selling price - (\$65,000 selling price - \$40,000 cost of materials)].

If Building Manufacturer chooses Option A for computing gross receipts from the sale of this manufactured building, it must use Option A for computing gross receipts from all future sales of manufactured buildings, until the department approves in writing the use of Option B.

**7. Exemption Modified for Meals, Food, and Beverages Furnished Under Contract or Agreement by Institutions of Higher Education** (1997 Act 27, amend sec. 77.54(20)(c)5, effective for contracts or agreements entered into on or after October 14, 1997.)

The exemption for meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education is modified to apply only if:

- a. The items are furnished to an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or
- b. The items are furnished to a National Football League team.

**Note:** Under prior law, meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education were exempt from sales and use tax.

**8. Exemption Created for Certain Pharmaceutical Samples Furnished Without Charge** (1997 Act 27, create sec. 77.54(14)(f), effective October 14, 1997.)

An exemption is created for sales of, and the storage, use or other consumption in Wisconsin of medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist who is licensed under ch. 447, Wis. Stats., podiatrist who is licensed under ch. 448, Wis. Stats., or optometrist who is licensed under ch. 449, Wis. Stats., if the medicine may not be dispensed without a prescription.

9. **Raw Materials Incorporated in Printed Materials Not Sold — Exemption Created** (1997 Act 27, repeal sec. 77.51(18)(a) and (b); renumber sec. 77.51(18) (intro.) to 77.51(18) and amend as renumbered; amend sec. 77.51 (22)(a); and create sec. 77.54(43), effective December 1, 1997.)

The sale of, and the storage, use, or other consumption of, raw materials used for the processing, fabricating, or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside Wisconsin are exempt from Wisconsin sales or use tax, even if the printed materials are not sold.

**Example:** Company A, located in Wisconsin, sells paper for \$100,000 to Company B. Company B directs Company A to deliver the paper to Company C in Wisconsin. Company C uses the paper to print Company B's advertising catalog. Company B delivers, without charge, 90% of the catalogs to its customers outside Wisconsin for use solely outside Wisconsin.

Since 90% of the paper is incorporated into printed material (i.e., catalogs) that is transported outside Wisconsin for use solely outside Wisconsin, 90% of the \$100,000 charge by Company A to Company B for the paper (\$90,000) is exempt from Wisconsin sales or use tax. Company B should provide Company A with a properly completed exemption certificate.

**Note:** The exemption for paper illustrated in the example above is not limited to catalogs, but would also apply to other printed materials (e.g., letterheads, invoices, envelopes, etc.).

10. **Clarify Exemption for Plastic Bags, Sleeves, and Sheeting Used to Store or Cover Hay or Silage** (1997 Act 27, repeal and recreate sec. 77.54(3m), effective December 1, 1997.)

This provision clarifies that plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage and containers for hay and silage are exempt from sales and use tax if they are used exclusively by the purchaser or user in the business of farming.

This provision also clarifies that for purposes of the exemption for certain items provided in sec. 77.54(3m), Wis. Stats., the business of farming includes custom farming services.

**Note:** The repeal and recreation of sec. 77.54(3m), Wis. Stats., does not result in any change in the taxability of items used in farming.

11. **Certain Periodicals Issued in Six-Month Intervals Are Exempt** (1997 Act 27, amend sec. 77.54(15), effective December 1, 1997.)

Sales of periodicals by subscription issued at average intervals not exceeding six months are exempt from Wisconsin sales or use tax if the seller is an educational association or corporation exempt from sales or use tax on its purchases under sec. 77.54(9a)(f), Wis. Stats.

12. **Exemption Certificates Not Required for Sales of Certain Commodities** (1997 Act 27, amend sec. 77.53(10), effective December 1, 1997.)

No sales and use tax exemption certificate is required for sales of commodities, as defined in 7 United States Code section 2, that are consigned for resale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse.

- 13. Authorize Department of Revenue to Enter Into Direct Marketer Agreements** (1997 Act 27, create sec. 73.03(53), effective October 14, 1997.)

The Department of Revenue is authorized to enter into agreements with direct marketers about the collection of state and local sales and use taxes.

- 14. Lac du Flambeau Band to Collect Sales and Use Taxes on All-Terrain Vehicles and Snowmobiles** (1997 Act 27, create secs. 23.33(2g)(e)4 and 350.122(5)(e), effective October 14, 1997.)

For all-terrain vehicles and snowmobiles registered with the Lac du Flambeau Band that are purchased from a person who is not a registered Wisconsin all-terrain vehicle or snowmobile dealer, the Wisconsin sales or use tax due on the purchase is required to be collected by the Lac du Flambeau Band. On or before the 15th day of each month, the Lac du Flambeau Band is required to pay to the Department of Revenue the taxes collected by the Lac du Flambeau Band in the previous month.

Under prior law, the sales or use tax on such purchases was collected by the Department of Natural Resources when all-terrain vehicles and snowmobiles were registered with the Department of Natural Resources.

- 15. Motor Fuel Tax Refunds Excluded From Measure of Sales and Use Taxes** (1997 Act 27, amend sec. 77.51(4)(a)4 and (15)(a)4, effective December 1, 1997.)

The gross receipts or sales price from the sale of motor fuel subject to Wisconsin sales or use tax do not include Wisconsin and federal motor fuel taxes that have been refunded.

**Example:** Company C sells motor fuel to Company D. The selling price includes the federal and Wisconsin motor fuel taxes. Company C does not charge Company D Wisconsin sales tax on the sale of the motor

fuel because the sale is exempt from sales tax under sec. 77.54(11), Wis. Stats. (1995-96).

After the sale, Company D files claims for refund with the Wisconsin Department of Revenue and Internal Revenue Service for the federal and Wisconsin motor fuel taxes it paid on the fuel purchased from Company C because the fuel was used off-highway. As a result of the refund of Wisconsin motor fuel taxes, Company D's purchase of the motor fuel is subject to use tax.

The amount subject to use tax is the total amount of the sale of the fuel by Company C to Company D, less the federal and Wisconsin motor fuel taxes that were subsequently refunded.

- 16. Clarify Registration Provisions** (1997 Act 27, create sec. 77.52(7), repeal and recreate sec. 77.52(9) and amend sec. 77.53(9m), effective January 1, 1998.)

It is clarified that:

- Every person desiring to operate as a seller within Wisconsin and who holds a valid certificate under sec. 73.03(50), Wis. Stats., is required to file an application for permit for each place of operations.
- The application for a permit shall set forth the name under which the applicant intends to operate, the location of the operations, and any other information that the department requires.
- The application must be signed by the owner if a sole proprietor and, in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers.
- A nonprofit organization that has taxable gross receipts under sec. 77.54(7m), Wis. Stats., shall obtain a seller's permit and pay taxes under this subchapter on taxable gross receipts received after it is

required to obtain the permit. The non-profit organization may surrender the permit if it later becomes eligible for the exemption under sec. 77.54(7m), Wis. Stats.

- Once the seller has filed the application for permit and fulfilled the requirements of sec. 77.61(2), Wis. Stats., the department shall issue the applicant a separate permit for each place of operations within Wisconsin. This permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of operations at the place designated in it. The permit must be conspicuously displayed at the place for which it was issued.
- A person who is not required to collect Wisconsin sales or use tax is only required to obtain a valid certificate under sec. 73.03(50), Wis. Stats., if that person is voluntarily registering to collect Wisconsin sales or use tax.

**17. Allow Use of Temporary Permit After Revocation, Suspension, or Expiration** (1997 Act 27, amend sec. 77.52(12), effective January 1, 1998.)

A person who operates as a seller in Wisconsin after a permit has been suspended, revoked or has expired is guilty of a misdemeanor, unless the person has a temporary permit as provided in sec. 77.52(11), Wis. Stats.

**18. Change Requirement to Qualify for Direct Pay Permit** (1997 Act 27, amend sec. 77.52(17m)(b)7, effective January 1, 1998.)

Rather than being required to hold a business tax registration certificate, in order for a person to qualify for a direct pay permit from the department, the person must either:

- a. hold a permit provided for under sec. 77.52(9), Wis. Stats., or
- b. be registered with the department as required by sec. 77.53(9), Wis. Stats.

**19. Require Retailers to Register With the Department and to Provide Standard Industrial Classification Code for Each Location** (1997 Act 27, amend sec. 77.53(9), effective October 14, 1997; amend sec. 77.53(9), as affected by 1997 Act 27, effective January 1, 1998.)

A retailer selling tangible personal property or taxable services for storage, use, or other consumption in Wisconsin is required to:

- a. Effective October, 14, 1997, provide the standard industrial classification code for each place of business in Wisconsin.
- b. Effective January 1, 1998, register with the department.

**E. Premier Resort Area Tax**

**1. Authorize Creation of Premier Resort Area and Imposition of Premier Resort Area Tax** (1997 Act 27, create sec. 66.307, subch. X of ch. 77, effective October 14, 1997.)

*Creation of Premier Resort Area*

The governing body of a political subdivision, by a two-thirds vote of the members of the governing body who are present when the vote is taken, may enact an ordinance or adopt a resolution declaring itself to be a "premier resort area" if at least 40% of the equalized assessed value of the taxable property within such political subdivision is used by tourism-related retailers.

"Political subdivision" means a city, village, town, or county.

"Premier resort area" means a political subdivision whose governing body enacts an ordinance or adopts a resolution declaring itself to be a "premier resort area."

"Tourism related retailers" means those retailers that are classified in the Standard Industrial Classification Manual, 1987 Edi-

tion, published by the U.S. Office of Management and Budget, under the following industry numbers:

- 5331 - Variety stores.
- 5399 - Miscellaneous general merchandise stores.
- 5441 - Candy, nut, and confectionary stores.
- 5451 - Dairy product stores.
- 5461 - Retail bakeries.
- 5541 - Gasoline service stations.
- 5812 - Eating places.
- 5813 - Drinking places.
- 5912 - Drug stores and proprietary stores.
- 5921 - Liquor stores.
- 5941 - Sporting goods stores and bicycle shops.
- 5946 - Camera and photographic supply stores.
- 5947 - Gift, novelty, and souvenir shops.
- 7011 - Hotels and motels.
- 7032 - Sporting and recreational camps.
- 7033 - Recreational vehicle parks and campsites.
- 7948 - Racing, including track operation.
- 7992 - Public golf courses.
- 7993 - Coin-operated amusement devices.
- 7996 - Amusement parks.
- 7999 - Amusement and recreational services, not elsewhere classified.

### ***Jurisdiction of Premier Resort Area***

A premier resort area's jurisdiction is coterminous with the boundaries of the political subdivision whose governing body enacts an ordinance or adopts a resolution declaring itself to be a "premier resort area." If two or more contiguous political subdivisions enter into a contract to cooperate in paying for the infrastructure expenses, the jurisdiction of the premier resort area is coterminous with the boundaries of those two or more political subdivisions.

Retailers making deliveries in their company-operated vehicles of tangible personal property, or of property on which taxable services were performed, to purchasers in a premier resort area are doing busi-

ness in that premier resort area, and that premier resort area has jurisdiction to impose the taxes under this subchapter on them.

A premier resort area does not have jurisdiction to impose the premier resort area tax in regard to tangible personal property purchased in a sale that is consummated at a location in this state that does not have in effect an ordinance or resolution imposing a premier resort area tax and later brought by the buyer into the premier resort area that does impose this tax.

### ***Authority to Impose Premier Resort Area Tax***

A political subdivision that is a premier resort area may impose the premier resort area tax. The proceeds from the imposition of the tax may only be used to pay for infrastructure expenses within the jurisdiction of the premier resort area.

To impose the premier resort area tax, the municipality or county enacting the ordinance must deliver a certified copy of the ordinance to the secretary of revenue at least 120 days before its effective date. Either a county or a municipality within the county, but not both, may impose the premier resort area tax.

Two or more contiguous political subdivisions that are each premier resort areas and each impose the premier resort area tax may enter into a contract to cooperate in paying for the infrastructure expenses.

"Infrastructure expenses" are defined to mean the costs of purchasing, constructing or improving parking lots; access ways; transportation facilities, including roads and bridges; sewer and water facilities; parks, boat ramps, beaches and other recreational facilities; fire fighting equipment; police vehicles; ambulances; and other equipment or materials dedicated to public safety or public works.

### ***Tax Rate and Effective Date***

The tax is imposed at a rate of 0.5% and is effective on January 1, April 1, July 1 or October 1.



### *Imposition of Tax*

A municipality or a county, all of which is included in a "premier resort area" under sec. 66.307, Wis. Stats., may, by ordinance, impose a premier resort area tax of 0.5% of the gross receipts from the sale, lease or rental of goods or services that are: (a) made within the premier resort area, (b) taxable under subch. III. and (c) made by businesses that are classified in the Standard Industrial Classification Manual, 1987 Edition, published by the U.S. Office of Management and Budget, under the following industry numbers:

- 5331 - Variety stores.
- 5399 - Miscellaneous general merchandise stores.
- 5441 - Candy, nut, and confectionary stores.
- 5451 - Dairy product stores.
- 5461 - Retail bakeries.
- 5541 - Gasoline service stations.
- 5812 - Eating places.
- 5813 - Drinking places.
- 5912 - Drug stores and proprietary stores.
- 5921 - Liquor stores.
- 5941 - Sporting goods stores and bicycle shops.
- 5946 - Camera and photographic supply stores.
- 5947 - Gift, novelty, and souvenir shops.
- 7011 - Hotels and motels.
- 7032 - Sporting and recreational camps.
- 7033 - Recreational vehicle parks and campsites.
- 7948 - Racing, including track operation.
- 7992 - Public golf courses.
- 7993 - Coin-operated amusement devices.
- 7996 - Amusement parks.
- 7999 - Amusement and recreational services, not elsewhere classified.

The Department of Revenue may prepare rules determining the classifications of businesses. If there is a dispute as to the proper classification of a business, the Department of Revenue's decision is final.

### *Situs*

All retail sales of tangible personal property are completed at the time when, and the place where, the seller or the seller's agent transfers

possession to the buyer or the buyer's agent. When determining situs, a common carrier or the U.S. Postal Service is the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid. Rentals and leases of property, except moving property, have a situs at the location of that property.

Leased or rented motor vehicles and other equipment used principally on the highway at normal highway speeds are located in the premier resort area if that is where the item is customarily kept, except that drive-it-yourself motor vehicles and equipment used principally on the highway at normal highway speeds, if those vehicles or that equipment are used for one-way trips or leased for less than one month, are located in the premier resort area if that is where they come into the lessee's possession.

Services have a situs at the location where they are furnished.

### *Transitional Provisions*

If the services subject to tax under sec. 77.52(2), Wis. Stats. are billed to the customer and paid for before the effective date of the premier resort area ordinance or rate increase, the gross receipts from those services are not subject to the premier resort area tax, and the incremental amount of tax caused by a rate increase applicable to those services is not due, regardless of whether the service is furnished to the customer before or after that date.

Lease or rental receipts from tangible personal property that the lessor is obligated to furnish at a fixed price under a contract entered into before the effective date of an ordinance or resolution are subject to this tax on the effective date of the ordinance or resolution, as provided for the state sales tax under sec. 77.54 (18), Wis. Stats.

### *Administering and Distributing the Premier Resort Area Tax*

The Wisconsin Department of Revenue is responsible for administering and distributing the premier resort area tax. The Department of

Revenue has the power to levy, enforce, and collect the premier resort area tax and may take any action, conduct any proceeding, impose interest and penalties, and in all respects proceed as it is authorized to proceed for the taxes imposed by subch. III of ch. 77, Wis. Stats. (state sales and use taxes).

Judicial and administrative review of departmental determinations shall be as provided in subch. III of ch. 77, Wis. Stats., for state sales and use taxes, and no premier resort area may intervene in any matter related to the levy, enforcement, and collection of the premier resort area tax.

Every person subject to the premier resort area tax shall, for each reporting period, record that person's sales made in the premier resort area that has imposed the tax separately from sales made elsewhere in this state and report the measure of the premier resort area sales taxes and the tax due thereon separately to the Department of Revenue on forms to be provided by the department.

Ninety-seven percent of the taxes collected by the Department of Revenue from the premier resort area tax, minus the county's or municipality's portion of the retailer's discount will be distributed to the municipality or county which has imposed the tax. Three percent of the taxes collected will be retained by the Department of Revenue to cover the costs incurred in administering, enforcing, and collecting this tax.

Any municipality or county receiving a report from the Department of Revenue relating to the premier resort area tax is subject to the duties of confidentiality to which the Department of Revenue is subject to under sec. 77.61(5), Wis. Stats.

#### ***Repealing the Premier Resort Area Tax***

To repeal the premier resort area tax, the municipality or county that passed the ordinance to impose the tax, must deliver a certified copy of the repeal ordinance to the Secretary of Revenue at least 60 days before its effective date. The repeal of the ordinance to impose the tax is effective on December 31.

## **F. Adult Entertainment Tax**

### **1. Impose Tax on Certain Adult Entertainment Products and Services** (1997 Act 27, create subch. XIII of ch. 77 and a nonstatutory provision, effective April 1, 1998.)

A tax is imposed at the rate of 5% of the gross receipts, as defined in sec. 77.51(4), Wis. Stats., from the retail sale of "adult entertainment products and services."

"Adult entertainment products and services" are defined to mean "products and services, not including magazines and motion pictures but including admission to a strip club, that are harmful to children, as defined in s. 948.11(1)(b)."

The Department of Revenue is responsible for administering the tax and for promulgating permanent rules which specify the products and services which are subject to this tax.

## **G. Dry Cleaners Fees**

### **1. Impose Various Environmental Response Fund Fees on Dry Cleaners** (1997 Act 27, create subch. XII of ch. 77, effective October 14, 1997.)

#### ***a. Dry Cleaning Facility License Fee***

A fee of 1.8% of the previous year's gross receipts from dry cleaning is required to be paid to the Wisconsin Department of Revenue by any person operating a dry cleaning facility in Wisconsin. The fee shall be paid on or before January 15 of each year.

The department will issue a license, which is valid through December 31, to each person who pays the fee and submits the form. The holder of the license shall display it prominently in the facility to which it applies. If a dry cleaning facility is sold, the seller may transfer the license to the buyer. A penalty of \$5 per day will be imposed on any person who operates a dry cleaning facility without a license.

A “dry cleaning facility” means a facility that dry cleans apparel or household fabrics for the general public other than:

- 1) Coin-operated facilities.
- 2) Facilities located on U.S. military installations.
- 3) Industrial laundries.
- 4) Commercial laundries.
- 5) Linen supply facilities.
- 6) Facilities located at a prison or other penal institution.
- 7) Facilities located at a nonprofit hospital or at a nonprofit health care institution.
- 8) Facilities located on property owned by the U.S. government or by Wisconsin.

The Department of Revenue will mail a form on which to apply for this license to each dry cleaning facility of which the department is aware by December 15.

b. *Dry Cleaning Solvents Fee*

A fee of \$5 per gallon of perchloroethylene sold, and \$0.75 per gallon of a hydrocarbon-based solvent sold, is imposed on each person who sells a dry cleaning solvent to a dry cleaning facility. The fees for the previous three months are due on January 25, April 25, July 25, and October 25 of each year.

c. *Inventory Fee*

A fee of \$5 per gallon of perchloroethylene, and \$0.75 per gallon of a hydrocarbon-based solvent, possessed on October 14, 1997 is imposed on each dry cleaning facility. The fee is due November 13, 1997.

The fees collected under subch. XII will all be deposited by the department in the “dry cleaner environmental response fund” established under sec. 25.48, Wis. Stats. Subchapter XII does not apply after June 30, 2032.

## H. Rental Vehicle Fee

1. **State Rental Vehicle Fee Created** (1997 Act 27, amend ch. 77(title) and create sec. 25.40(1)(bm) and subch. XI of ch. 77, effective April 1, 1998.)

### *General Imposition*

- a. A 3% fee is imposed on the rental of the following, by establishments primarily engaged in the short-term rental of vehicles without drivers, for a period of 30 days or less:
  - Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats.
  - Station wagons, as defined in sec. 340.01(61), Wis. Stats.
  - Motor trucks, as defined in sec. 340.01(34), Wis. Stats.
  - Road tractors, as defined in sec. 340.01(53), Wis. Stats.
  - Truck tractors, as defined in sec. 340.01(73), Wis. Stats.
  - Semitrailers, as defined in sec. 340.01(57), Wis. Stats.
  - Trailers, as defined in sec. 340.01(71), Wis. Stats.
  - Motor buses, as defined in sec. 340.01(31), Wis. Stats.
  - Mobile homes, as defined in sec. 340.01(29), Wis. Stats.
  - Motor homes, as defined in sec. 340.01(33m), Wis. Stats.
  - Camping trailers, as defined in sec. 340.01(6m), Wis. Stats.
- b. A 5% fee is imposed on the rental of limousines.

“Limousine” means a passenger automobile that has a capacity of 10 or fewer

persons, excluding the driver, that has a minimum of 5 seats behind the driver; that is operated for hire on an hourly basis under a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person who hires the vehicle and not over a defined route.

“Limousine” does not include taxicabs, hotel or airport shuttles or buses, buses employed solely in transporting school children or teachers, vehicles owned and operated without charge or remuneration by a business entity for its own purposes, vehicles used in car pools or van pools, public agency vehicles that are not operated as a commercial venture, vehicles operated as part of the employment transit assistance program under sec. 106.26, Wis. Stats., ambulances, or any vehicle that is used exclusively in the business of funeral directing.

The renter shall collect the fee from the person to whom the vehicle is rented.

### ***Exemptions***

The following exemptions apply to the rental of items listed in Part a. of “General Imposition” above:

- Rerentals
- Rentals as a service or repair replacement vehicle

The following exemptions apply to the rental of items listed in both Parts a. and b. of “General Imposition” above:

- Rentals to the federal government
- Rentals to a Wisconsin governmental unit, including a Wisconsin county, city, village, town, public school, or school district
- Rentals to nonprofit organizations that hold a Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue

- Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts

**Note:** Exemptions, other than those listed above, that apply for Wisconsin sales or use tax purposes (e.g., common or contract carriage) do not apply for the rental vehicle fee.

### ***Administration***

The Department of Revenue is responsible for administering the rental vehicle fee. The Department of Revenue has the authority to conduct audits, make assessments, issue refunds, impose interest and penalties, etc.

The fees collected will be deposited in a separate nonlapsible trust fund designated as the “transportation fund.”

Persons who are subject to the fee shall register with the Department of Revenue. Any person who fails to register is guilty of a misdemeanor.

## **I. Local Exposition District Tax**

- 1. Exemption From Food and Beverage Tax if Liability Is Less Than \$5 for Year** (1997 Act 27, create sec. 77.9815, effective January 1, 1998.)

Any retailer whose liability for the tax under subch. VIII (local food and beverage tax) is less than \$5 for the year, is exempt from that tax for that year.

**(Note:** As of October 22, 1997, the only tax this provision applies to is the local exposition food and beverage tax imposed in Milwaukee County.)

## **J. County Tax**

- 1. Excess Moneys Lapse to General Fund** (1997 Act 27, amend sec. 20.566(1)(g), effective June 30, 1998.)

At the end of a fiscal year, the unencumbered balance of the appropriation account for administration of county sales and use tax lapses to the general fund.

The account represents 1.5% of the county sales and use tax moneys received by the department offset by expenses for administering the county sales and use tax.

Under prior law, the unencumbered balance of this appropriation account was carried over in the same account to the next fiscal year.

## K. Excise Taxes

1. **Change Motor Vehicle Fuel and Alternate Fuels Tax Provisions** (1997 Act 27, amend secs. 78.01(2m)(f), 78.40(1), and 78.75(1m)(a)2m and 3, effective October 14, 1997.)

Various motor vehicle fuel tax and alternate fuels tax provisions are amended to include a reference to the Lac du Flambeau Band Registration Program for private use all-terrain vehicles. (Note: This is a new registration program authorized by 1997 Act 27.)

2. **Fuel Tax Rates Increased** (1997 Act 27, amend secs. 78.01(1), 78.12 (4)(a) 4 and (b)2, and 78.40(1), and create secs. 78.017 and 78.407, effective November 1, 1997.)

The rate per gallon for the Wisconsin motor vehicle fuel tax and the rates per equivalent gallon for the Wisconsin alternate fuels taxes are increased from 23.8 cents to 24.8 cents on November 1, 1997. For alternate fuels, the rate is further prorated for the BTU factor (see Item K.6).

3. **Motor Vehicle Fuel Tax Rate Indexing Formula Changed** (1997 Act 27, amend sec. 78.015(1), and repeal sec. 78.015(3), effective April 1, 1998.)

The formula used to index Wisconsin's motor vehicle fuel and alternate fuels tax rates is modified. When the rates are indexed on April 1, 1998 and thereafter, only the U.S. consumer price index factor will be used.

4. **Limit Exempt Sales of Fuel** (1997 Act 27, repeal sec. 78.01(2)(e), repeal and recreate sec. 78.01(2m)(f), and amend sec. 78.73(1)(dm), effective November 1, 1997.)

Tax-free sales of gasoline and clear diesel fuel for off-highway use are no longer allowed. When gasoline or clear diesel fuel is used for off-road purposes, the user will be required to file a refund claim with the Department of Revenue.

5. **Application and Other Administrative Procedures** (1997 Act 27, amend secs. 78.47 and 78.56, repeal and recreate secs. 78.10(1), 78.48(1), and 78.57(1), and create secs. 78.10(2), (3), and (4), 78.48(2), (3), and (4), and 78.57(2), (3), and (4), effective October 14, 1997.)

Motor vehicle fuel, alternate fuels, and general aviation fuel license procedures relating to the following are provided in Chapter 78:

- Form of application
- Investigations
- Hearings
- Issuing licenses

6. **Procedures for Annual Adjustment of Alternate Fuels Tax Rate Changed** (1997 Act 27, repeal and recreate sec. 78.405, effective October 14, 1997, and create a nonstatutory provision, effective November 1, 1997.)

The method by which the Department of Revenue is to annually (before April 1) calculate the alternate fuels tax rate is changed to the following:

- (a) Determine the standard number of British thermal units (BTUs) per gallon generated by gasoline.
- (b) Determine the standard number of BTUs per gallon generated by each kind of alternate fuel sold in Wisconsin.
- (c) For each kind of alternate fuel sold in Wisconsin, divide (b) above by (a) above.

- (d) For each kind of alternate fuel sold in Wisconsin, multiply the decimal in (c) above by the motor vehicle fuel tax rate.

A nonstatutory provision created by 1997 Act 27 specifies that the Department of Revenue is to calculate the new tax rates for alternate fuels using this calculation method on November 1, 1997 and that the new tax rates are to apply from November 1, 1997 through March 31, 1998.

**7. Authority to Approve Alcohol Beverage Training Course Changed** (1997 Act 27, amend secs. 125.04(5)(a)5 and 125.17(6)(a)(intro.), effective October 14, 1997.)

Responsible beverage server courses offered by anyone other than a Technical College District must be approved by the Department of Revenue or the Educational Approval Board of the Wisconsin Technical College System.

**8. "Class B" Liquor License Quota Exception** (1997 Act 27, amend secs. 125.04(12)(a) and 125.12(2)(b)2, (4)(b), and (5), and create secs. 125.51(3)(e)3 and (4)(v), effective for license applications submitted after October 14, 1997.)

A municipality that has otherwise reached its license quota may issue a site specific "Class B" liquor and wine license to any of the following establishments:

- a. A full-service restaurant with a seating capacity of 300 or more, or
- b. A hotel with 100 or more rooms with sleeping accommodations with either an attached full-service restaurant with a seating capacity of 150 or more, or an attached banquet facility providing full-service meals with a seating capacity of 400 or more.

Licenses issued under sec. 125.51(4)(v), Wis. Stats., are subject to mandatory revocation for violations of sec. 125.12(2)(ag)4 or 6.

**9. Alcohol Beverage License Suspension or Revocation** (1997 Act 27, amend sec. 125.04(5)(a)1, renumber sec. 125.12(1) to 125.12(1)(a) and amend 125.12(1)(a) as re-

numbered, and create sec. 125.12(1)(b), effective October 14, 1997.)

The Department of Revenue and municipalities are prohibited from revoking, suspending, or refusing to renew an alcohol license or permit for the first violation of a state law restricting the procurement or sale of alcohol to underage persons. Violations will be expunged from a licensee's or permittee's record if a subsequent violation does not occur within the succeeding 12 months.

**10. Civil Liability Exemption Created for Retaining Proofs of Age** (1997 Act 27, create sec. 125.039, effective with retentions of documents occurring on or after October 14, 1997.)

Persons who hold a license or permit and their employees are not civilly liable for retaining a proof of age document.

**11. Penalties for Falsifying Proof of Age Increased** (1997 Act 27, amend sec. 125.085(3)(a)1 and (bd), effective October 14, 1997.)

The fine for falsifying proof of age on an official identification card or for an underage person to intentionally carry a falsified identification card, falsify, or give false information in applying for an identification card, is increased from a minimum of \$100 and a maximum of \$500 to a minimum of \$300 and a maximum of \$1,250.

**12. Municipalities Required to Issue Licenses to Qualified Applicants** (1997 Act 27, amend sec. 125.17(1), effective October 14, 1997.)

Every municipal governing body is required to issue an operator's license to any applicant who is qualified under sec. 125.04, Wis. Stats.

**13. Reserve Licenses Established** (1997 Act 27, renumber sec. 125.51(3)(e) to 125.51(3)(e)1 and amend 125.51(3)(e)1 as renumbered, and create sec. 125.51(3)(e)2 and 3, effective for applications submitted after October 14, 1997; create sec. 125.51(4)(a)4, (am), (b)1m, (bm), and (br), amend sec. 125.51(4)(b)(intro.), and repeal sec. 125.51(4)(b)1, 2, 3, 4, and 5, and (c) to (u), effective October 14, 1997.)

Municipalities are required to record the number of retail "Class B" (sale of liquor and wine for on premise consumption) licenses that are authorized but not granted or issued on December 1, 1997.

The municipality's license quota will equal the number of licenses that have been granted or issued as of December 1, 1997, plus the number of "reserve" licenses, as determined by the following formula:

- a. If the number of unissued licenses is three or fewer, the number of reserve licenses is equal to the number of unissued licenses.
- b. If the number of unissued licenses is four or more, the number of reserve licenses is determined by: (1) subtracting three from the number of unissued licenses; (2) dividing the remaining number of licenses by two; (3) rounding down to the nearest whole number; and (4) adding back three licenses. For example, if a municipality had 12 unissued licenses, the number of reserve licenses would be seven, as shown below:

Number of unissued licenses	12
Subtract three	<u>- 3</u>
Remaining licenses	9
Divide by two	4.5
Round down	4
Add back three licenses	<u>+ 3</u>
Total reserve licenses	7

The number of reserve licenses is increased by one for each 500-person increase or fraction thereof, in the municipality's population after December 1, 1997.

Each municipal governing body shall establish the fee, in an amount not less than \$10,000, for an initial issuance of a reserve "Class B" license, except that the fee for an initial issuance of a reserve "Class B" license to a bona fide club or lodge situated and incorporated in the state for at least 6 years is the fee established under sec. 125.51(3)(e)1, Wis. Stats., for such a club or lodge. The fee under sec. 125.51(3)(e)2, Wis. Stats., is in addition to

any other fee required under chapter 125. Wis. Stats. The annual fee for renewal of a reserve "Class B" license is the fee established under sec. 125.51(3)(e)1, Wis. Stats.

14. **Increase Cigarette Tax Rate** (1997 Act 27, amend sec. 139.31(1)(a) and (b), effective November 1, 1997.)

The cigarette tax rate is increased from 44 cents to 59 cents per package of 20 cigarettes.

15. **Reduce Cigarette Tax Discount Rate** (1997 Act 27, amend sec. 139.32(5), effective November 1, 1997.)

The discount rate which applies when cigarette manufacturers and distributors purchase cigarette tax stamps is reduced from 2.0% to 1.6%.

## L. Controlled Substance Tax

1. **Controlled Substance Tax Provisions Revised**

(1997 Act 27, renumber secs. 139.91 and 139.96 to 139.91(1) and 139.96(1) and amend 139.91(1) and 139.96(1) as renumbered, create secs. 139.95(4) and 139.96(2), and create a nonstatutory provision, effective retroactively to May 1, 1990.)

- a. Any person who reveals facts obtained in administering the controlled substance ("drug") tax law may be fined up to \$1,000 and/or imprisoned for up to 60 days.
- b. Information obtained from a dealer as a result of compliance with the drug tax laws may generally not be used against the dealer in any criminal proceeding.
- c. The department may retain a portion of taxes, penalties, and interest collected under the drug tax law as a result of an arrest, to cover administrative costs, and the remainder must be paid to the law enforcement agency that made the arrest.
- d. In a nonstatutory provision, the Legislature stated its intention that, irrespective of the constitutionality of the "affix and display requirements" under sec. 139.89, Wis.

Stats., and the rules that interpret that section, all other civil and administrative procedures that are related to the civil obligation to pay the tax, interest, and penalties required under subch. IV of ch. 139, Wis. Stats., are severable from those affix and display requirements and are to remain in full force and effect. The civil obligation to pay the tax, interest, and penalties is reimposed, effective retroactively to May 1, 1990.

## M. Withholding Tax

### 1. Withholding Not Required for Real Estate Agents and Direct Sellers (1997 Act 27, amend sec. 71.63(2), effective October 14, 1997.)

Under prior and current law, employers were required to withhold Wisconsin income tax from wages paid to an employee for the performance of services. The amendment to sec. 71.63(2), Wis. Stats., provides that the term "employee" does not include a qualified real estate agent or a direct seller who is not treated as an employee under sec. 3508 of the Internal Revenue Code.

### 2. Self-Insurers Statutory Reference Changed (1997 Act 27, amend sec. 71.65(4), effective October 14, 1997.)

The statutory reference in sec. 71.65(4), Wis. Stats., is changed from subchapter II of ch. 619 to ch. 149 because of changes made to that subchapter.

### 3. Withholding Tables to Be Revised (1997 Act 27, amend sec. 71.64(9)(b), effective for taxable years beginning on or after January 1, 1998.)

For taxable years beginning on or after January 1, 1998, the withholding tax tables shall be revised to reflect the working families tax credit.

The department may not adjust the withholding tables to reflect the changes in rates for any taxable year that begins before January 1, 2000.

## N. Other

### 1. Federal "Check-the-Box" Regulations Adopted (1997 Act 27, repeal sec. 77.93(3m), amend secs. 71.02(1), 71.20(1), 71.21(1), (2), (3), and (4), 71.22(1), 73.03(50), 77.51(10), 77.58(3)(a), 77.92(4) and (4m), 77.93(5), and 125.02(14), and create secs. 71.195, 71.63(3)(c), and 77.935, effective for taxable years beginning on or after January 1, 1997, except as indicated below.)

A single-owner entity, such as an LLC with only one member, that is disregarded as a separate entity under IRC sec. 7701 is disregarded as a separate entity for Wisconsin income and franchise tax purposes, and its owner is subject to the tax on or measured by the entity's income.

A partnership that is the owner of a single-owner entity that is disregarded as a separate entity under IRC sec. 7701 shall include that entity's information on the owner's Wisconsin partnership return.

For income and franchise tax purposes, "partnership" includes limited liability companies and other entities that are treated as partnerships under the Internal Revenue Code. "Partnership" does not include publicly traded partnerships treated as corporations.

"Corporation" includes corporations, publicly traded partnerships treated as corporations in IRC sec. 7704, limited liability companies treated as corporations under the Internal Revenue Code, joint stock companies, associations, common law trusts, and all other entities treated as corporations under IRC sec. 7701. "Corporation" does not include any entity that is a qualified subchapter S subsidiary under sec. 71.365(7), Wis. Stats.

If a single-owner entity is disregarded as a separate entity under IRC sec. 7701, the owner:

- is an "employer" for withholding tax purposes.
- must obtain any required business tax registration certificate. (Applies on or after October 14, 1997.)



- shall include the information from the entity on the owner's sales and use tax returns. (Applies on or after October 14, 1997.)
- shall include the information from the entity on the owner's temporary recycling surcharge returns.
- is subject to tax for excise tax purposes. (Applies on or after October 14, 1997.)

**2. Definition of Endangered Resources Program Expanded** (1997 Act 27, amend sec. 71.10(5)(a)2, effective October 14, 1997.)

Under prior law, individuals could contribute to the "endangered resources program" by designating the amount they wish to contribute on their Wisconsin income tax returns. The amendment to sec. 71.10(5)(a)2., Wis. Stats., expands the definition of "endangered resources program" to also include conducting the natural heritage inventory program.

**3. Refund Setoff for Other State Agencies Revised** (1997 Act 27, create sec. 71.93(1)(a)5., effective October 14, 1997.)

Under prior law, the department could offset a refund against debts owed to various other state agencies, municipalities, and counties. The creation of sec. 71.93(1)(a)5., Wis. Stats., allows the department to also offset refunds against the amounts owed to the Department of Corrections under sec. 304.073(2) or 304.074(2).

**4. Setoff Provisions for Municipalities and Counties Amended** (1997 Act 27, amend sec. 71.935(1)(a), (2), and (3), effective October 14, 1997.)

The provisions relating to refund setoffs of debts to municipalities and counties are amended as they relate to parking citations.

A municipality or county may certify to the department any debt owed to it. "Debt" includes a parking citation of a least \$20 that is unpaid and for which there has been no court appearance by the date specified in the citation. Not later than five days after certification, the municipality or county shall notify the debtor

in writing of its certification of the debt to the Department of Revenue, of the basis of the certification and of the debtor's right to appeal and, in the case of parking citations, of the debtor's right to contest the citation. If the debt remains uncollected and, in the case of a parking citation, if the debtor has not contested the citation within 20 days after the notice, the department shall set off the debt against any refund that is owed to the debtor after any setoff for other state agencies.

**5. Department Allowed to Prescribe Alternative Methods of Filing, Paying Taxes, Etc.** (1997 Act 27, repeal secs. 71.09(6), 71.24(8), 71.44(4)(a), 78.12(2)(a) to (c) and (5)(b), 78.22(3)(b) and 78.585; renumber sec. 78.22(3)(a) to 78.22(3); renumber sec. 78.12(2)(intro.) to 78.12(2) and (5)(a) to (5) and amend as renumbered; amend secs. 71.29(2), 71.65(2)(title), (a), and (b), (3)(a), (d), and (e), 71.66(1)(a), (b), (c), (d) and (f), 71.69, 71.70, 71.71(2), 71.72, 71.74(1), (3), (6), (8)(a) and (d), (9) and (14), 71.75(6) and (7), 71.76, 71.77(3) and (5), 71.78(1), (8)(d)(intro.), (9) and (10), 71.80(1)(a), (c) to (e), (2), (3), (3m)(intro.), (c) and (d), (7), (8), (16)(a), (17) and (18), 71.90(1), 71.91(1)(b), (6)(c)3. and (g)1. and (7)(d), 72.045, 72.22(1) and (3), 72.30(1) and (4), 72.34, 77.61(14), 77.75, 77.96(5), 78.09(2) and (5), 78.20(1m), and (4), 78.22(1) and (4), 78.49(1)(a) and (b), 78.58(1)(a) and (b), 78.59(2), 78.75(1m)(a)1., (c) and (e), 78.78(3), 139.03(2x)(a) and (d), 139.05(1), (2a), (4) and (7)(b), 139.06(1)(c), (2)(a) and (b), and (3), 139.09, 139.096, 139.11(2), 139.315(1) and (4), 139.32(1), 139.33(3), 139.34(1)(a), 139.38(2)(a) and (5), 139.44(2), 139.77(1), 139.78(2), 139.79(1), 139.81(1), and 139.82(2)(a) and (5); repeal and recreate secs. 71.22(8), 71.738, 72.33(2)(intro.) and 78.58(3); repeal and recreate secs. 78.75(1m)(a)3. and 139.32(5) as affected by this Act; and create 71.01(1m), (5g), (8r) and (9c), 71.22(1m), (2m), and (9m), 71.42(1m) and (3m), 71.63(1m), (3m), (3r), and (5m), 71.68, 72.01(12m) and (14m), 73.029, 77.51(3r) and (17r), 77.58(1m), 77.92(1m), 77.96(5m), 78.005(6m), (13b) and (13r), 78.39(4m), 78.55(2g), (2r), (5m), and (6), 78.66(4), 139.01(2g), (2r), (5m), and (9m), 139.30(4m), (8m) and (12m), and 139.75(4m) and (5m), effective January 1, 1998.)

The Department of Revenue is authorized to prescribe alternative methods of paying taxes, filing tax forms and authenticating documents. For example, as a result of this legislation, the department would be allowed to require electronic funds transfers by promulgating rules.

**6. Filing Fee Increased — Wisconsin Tax Appeals Commission** (1997 Act 27, amend sec. 73.01 (5)(a), effective December 1, 1997.)

The filing fee for petitions for review filed with the Wisconsin Tax Appeals Commission is increased from \$5 to \$25.

**7. Claim for Refund Provisions Revised** (1997 Act 27, amend sec. 71.75(5), effective for refunds for taxable years beginning on or after January 1, 2000.)

A claim for refund may be made within 4 years after the assessment of a tax or an assessment to recover all or part of any tax credit, including penalties and interest, under ch. 71, assessed by office audit or field audit and paid if the assessment was not protested by the filing of a petition for redetermination. Under prior law, the claim for refund must have been made within 2 years.

No claim for refund may be made in respect to items that were not adjusted in the notice of assessment or of refund. A person whose returns for more than one year have been adjusted may make a claim whether or not the net result of the adjustments for those years is an assessment.

**8. Authorize Department to Revoke and Reissue All Permits, Licenses, and Certificates** (1997 Act 27, create sec. 73.03(51), effective January 1, 1998.)

If a person fails to timely renew a business tax registration certificate under sec. 73.03(50), Wis. Stats., the Department of Revenue may:

- a. Revoke all permits, licenses, and certificates that the department has issued to that person.

- b. Reissue permits, licenses, and certificates revoked by the department if the person renews the business tax registration certificate.

**9. Additional Persons Required to Obtain Business Tax Registration Certificate Prior to Operating** (1997 Act 27, amend secs. 78.47, 78.56, 78.77(1), 139.09, 139.81(1) and 168.12(7), effective January 1, 1998.)

In addition to the persons required to obtain a business tax registration certificate under prior law, the following persons are also required to obtain a business tax registration certificate prior to operating:

- a. Alternate fuels dealers.
- b. General aviation fuel dealers.
- c. Certain transporters of motor vehicle fuel, general aviation fuel or alternate fuels on Wisconsin highways.
- d. Brewers, bottlers, manufacturers, rectifiers, wholesalers and retailers subject to the occupational tax imposed in secs. 139.01 to 139.25.
- e. Persons selling or taking orders for tobacco products for resale in Wisconsin for any manufacturer or permittee.
- f. Shippers of petroleum products in Wisconsin.

**10. Tax Amnesty Proposal Required** (1997 Act 27, create nonstatutory provision, effective October 14, 1997.)

The Department of Revenue shall submit a proposal for a tax amnesty program to the Joint Committee on Finance. This proposed tax amnesty program shall be materially similar to the tax amnesty program conducted in 1985. The Joint Committee on Finance may modify the department's proposal to ensure that it is materially similar to the tax amnesty program conducted in 1985. □