



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.

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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.

	Effective Date	Page
A. Individual and Fiduciary Income Taxes		
1. Internal Revenue Code Reference Updated for 1997 for Individuals, Estates, and Trusts	Taxable years beginning on or after January 1, 1997	7
2. Federal Laws Enacted During 1996 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning before January 1, 1997, at the same time as for federal tax purposes	7
3. Taxation of Nonresidents and Part-Year Residents	Taxable years beginning on or after January 1, 1997	8
4. Subtraction Allowed for Long-Term Care Insurance	Various effective dates	8

	Effective Date	Page
A. Individual and Fiduciary Income Taxes (Cont'd.)		
5. Penalty Imposed on Certain Distributions From Medical Savings Accounts	Taxable years beginning on or after January 1, 1997	9
6. Provisions Relating to Medical Savings Accounts Repealed	Taxable years beginning on or after January 1, 1997	9
7. Excess Distributions From Passive Foreign Investment Companies	Taxable years beginning on or after January 1, 1997	9
8. Federal S Corporation Law Changes Adopted	Taxable years beginning on or after January 1, 1997	9
9. Estimated Tax Provisions for 1997 Modified	October 14, 1997	9
10. Income Tax Rates Reduced	Various effective dates	10
11. Gain Excluded on Disposition of Certain Business and Farming Assets	Taxable years beginning on or after January 1, 1998	10
12. Senior Citizen Credit Revised	Taxable years beginning on or after January 1, 1997	11
13. Working Families Tax Credit Created	Taxable years beginning on or after January 1, 1998	12
14. Married Couple Credit Increased	Taxable years beginning on or after January 1, 1998	13
15. Manufacturer's Sales Tax Credit Extended to Individuals, Partners, and Tax-Option (S) Corporation Shareholders	Taxable years beginning on or after January 1, 1998	13
16. Development Zones Credit Created	Taxable years beginning on or after January 1, 1998	13
17. Alternative Computation of Development Zones Research Credit Permitted	Taxable years beginning on or after January 1, 1997	13
18. Standard Deduction Indexed	Taxable years beginning on or after January 1, 1999	13
19. Farm Loss Limitations Revised	Taxable years beginning on or after January 1, 1999	14
20. "Multistate" Lottery Reference Changed	October 14, 1997	14
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	Taxable years beginning on or after January 1, 1997	14

	Effective Date	Page
B. Corporation Franchise or Income Taxes (Cont'd.)		
2. Federal Laws Enacted During 1996 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning before January 1, 1997, at the same time as for federal tax purposes	15
3. Federal S Corporation Law Changes Adopted	Various effective dates	15
4. Federal Treatment of Financial Asset Securitization Investment Trusts (FASITs) Adopted	Taxable years beginning on or after January 1, 1997	17
5. Alternative Computation of Research Credit and Development Zones Research Credit Permitted	Taxable years beginning on or after January 1, 1997	17
6. Statute of Limitations Provided for Assessments Relating to Public Water Utilities	Deficiencies caused by notices received by the Department of Revenue on or after October 14, 1997	17
7. Manufacturer's Sales Tax Credit Extended to Individuals, Partners, and Tax-Option (S) Corporation Shareholders	Taxable years beginning on or after January 1, 1998	18
8. Development Zones Credit Created	Taxable years beginning on or after January 1, 1998	19
C. Homestead Credit		
1. Eliminate Double Counting of Scholarship Income	Taxable years beginning on or after January 1, 1998	21
D. Sales and Use Taxes		
1. Telephone Message Services Are Taxable	Sales on or after December 1, 1997	22
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	Sales on or after December 1, 1997	22
3. Credit Allowed for Sales Tax Properly Paid to Another State on Interstate Telecommunications Services	October 14, 1997	22
4. Motor Vehicles Used by Dealership — Measure of Use Tax Changed	December 1, 1997	22
5. "Real Property Construction Activities" — Definition Changed	Sales of property pursuant to contracts entered into on or after December 1, 1997	23

	Effective Date	Page
D. Sales and Use Taxes (Cont'd.)		
6. Manufactured Buildings — Computing Amount Subject to Tax	Sales of property pursuant to contracts entered into on or after December 1, 1997	27
7. Exemption Modified for Meals, Food, and Beverages Furnished Under Contract or Agreement by Institutions of Higher Education	Contracts or agreements entered into on or after October 14, 1997	28
8. Exemption Created for Certain Pharmaceutical Samples Furnished Without Charge	October 14, 1997	28
9. Raw Materials Incorporated in Printed Materials Not Sold — Exemption Created	December 1, 1997	29
10. Clarify Exemption for Plastic Bags, Sleeves, and Sheeting Used to Store or Cover Hay or Silage	December 1, 1997	29
11. Certain Periodicals Issued in Six-Month Intervals Are Exempt	December 1, 1997	29
12. Exemption Certificates Not Required for Sales of Certain Commodities	December 1, 1997	29
13. Authorize Department of Revenue to Enter Into Direct Marketer Agreements	October 14, 1997	30
14. Lac du Flambeau Band to Collect Sales and Use Taxes on All-Terrain Vehicles and Snowmobiles	October 14, 1997	30
15. Motor Fuel Tax Refunds Excluded From Measure of Sales and Use Taxes	December 1, 1997	30
16. Clarify Registration Provisions	January 1, 1998	30
17. Allow Use of Temporary Permit After Revocation, Suspension, or Expiration	January 1, 1998	31
18. Change Requirement to Qualify for Direct Pay Permit	January 1, 1998	31
19. Require Retailers to Register With the Department and to Provide Standard Industrial Classification Code for Each Location	January 1, 1998	31
E. Premier Resort Area Tax		
1. Authorize Creation of Premier Resort Area and Imposition of Premier Resort Area Tax	October 14, 1997	31
F. Adult Entertainment Tax		
1. Impose Tax on Certain Adult Entertainment Products and Services	April 1, 1998	34

	Effective Date	Page
G. Dry Cleaners Fees		
1. Impose Various Environmental Response Fund Fees on Dry Cleaners	October 14, 1997	34
H. Rental Vehicle Fee		
1. State Rental Vehicle Fee Created	April 1, 1998	35
I. Local Exposition District Tax		
1. Exemption From Food and Beverage Tax if Liability Is Less Than \$5 for Year	January 1, 1998	36
J. County Tax		
1. Excess Moneys Lapse to General Fund	June 30, 1998	36
K. Excise Taxes		
1. Change Motor Vehicle Fuel and Alternate Fuels Tax Provisions	October 14, 1997	37
2. Fuel Tax Rates Increased	November 1, 1997	37
3. Motor Vehicle Fuel Tax Rate Indexing Formula Changed	April 1, 1998	37
4. Limit Exempt Sales of Fuel	November 1, 1997	37
5. Application and Other Administrative Procedures	October 14, 1997	37
6. Procedures for Annual Adjustment of Alternate Fuels Tax Rate Changed	Various effective dates	37
7. Authority to Approve Alcohol Beverage Training Course Changed	October 14, 1997	38
8. "Class B" Liquor License Quota Exception	License applications submitted after October 14, 1997	38
9. Alcohol Beverage License Suspension or Revocation	October 14, 1997	38
10. Civil Liability Exemption Created for Retaining Proofs of Age	Retentions of documents occurring on or after October 14, 1997	38
11. Penalties for Falsifying Proof of Age Increased	October 14, 1997	38
12. Municipalities Required to Issue Licenses to Qualified Applicants	October 14, 1997	38
13. Reserve Licenses Established	Various effective dates	38

	Effective Date	Page
K. Excise Taxes (Cont'd.)		
14. Increase Cigarette Tax Rate	November 1, 1997	39
15. Reduce Cigarette Tax Discount Rate	November 1, 1997	39
L. Controlled Substance Tax		
1. Controlled Substance Tax Provisions Revised	Retroactively to May 1, 1990	39
M. Withholding Tax		
1. Withholding Not Required for Real Estate Agents and Direct Sellers	October 14, 1997	40
2. Self-Insurers Statutory Reference Changed	October 14, 1997	40
3. Withholding Tables to Be Revised	Taxable years beginning on or after January 1, 1998	40
N. Other		
1. Federal "Check-the-Box" Regulations Adopted	Various effective dates	40
2. Definition of Endangered Resources Program Expanded	October 14, 1997	41
3. Refund Setoff for Other State Agencies Revised	October 14, 1997	41
4. Setoff Provisions for Municipalities and Counties Amended	October 14, 1997	41
5. Department Allowed to Prescribe Alternative Methods of Filing, Paying Taxes, Etc.	January 1, 1998	41
6. Filing Fee Increased — Wisconsin Tax Appeals Commission	December 1, 1997	42
7. Claim for Refund Provisions Revised	Refunds for taxable years beginning on or after January 1, 2000	42
8. Authorize Department to Revoke and Reissue All Permits, Licenses, and Certificates	January 1, 1998	42
9. Additional Persons Required to Obtain Business Tax Registration Certificate Prior to Operating	January 1, 1998	42
10. Tax Amnesty Proposal Required	October 14, 1997	42

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.