



Wisconsin TAX BULLETIN

New Wisconsin Tax Laws

The Wisconsin Legislature enacted a number of changes to the Wisconsin tax laws in its session which ended May 20, 1998. This issue of the *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, sales/use, withholding, and excise tax provisions. These provisions are contained in the following Acts:

1997 Wisconsin Act	Publication Date	1997 Wisconsin Act	Publication Date
63	April 3, 1998	214	May 12, 1998
98	April 27, 1998	237	June 16, 1998
100	April 27, 1998	259	June 19, 1998
132	May 1, 1998	283	June 29, 1998
136	May 1, 1998	291	June 29, 1998
137	May 4, 1998	299	June 30, 1998
166	May 5, 1998		
184	May 11, 1998		
191	April 30, 1998		

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code Reference Updated for 1998 for Individuals, Estates, and Trusts (1997 Act 237, amend sec. 71.01(6)(m) and (7r), effective for taxable years beginning on or after January 1, 1998.)

For taxable years that begin on or after January 1, 1998, "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, 1997, 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 elimination of earnings and profits from pre-1983 S corporation years from an S corporation's accumulated earnings and profits 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, 1998, 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, 1997, at the taxpayer's option.

As a result of the passage of 1997 Wisconsin Act 237, a number of new federal provisions that take effect for the 1998 taxable year also apply for Wisconsin purposes at the same time. Some examples of these new provisions are:

1. The treatment of Roth IRAs (including the feature allowing income from certain 1998 rollovers to be included in taxable income ratably over four years).
2. The deduction for interest on education loans.

3. The treatment of education IRAs.

2. Income Tax Rates Reduced (1997 Act 237, amend sec. 71.06(1m)(a) through (c) and (2)(c)1. through 3. and (d)1. through 3., effective for taxable years beginning on or after January 1, 1998.)

- The tax rates for single persons, heads of households, and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, are as follows:
 - a. On all taxable income from \$0 to \$7,500, 4.77%.
 - b. On all taxable income exceeding \$7,500 but not exceeding \$15,000, 6.37%.
 - c. On all taxable income exceeding \$15,000, 6.77%.
- The tax rates for married persons filing jointly are as follows:
 - a. On all taxable income from \$0 to \$10,000, 4.77%.
 - b. On all taxable income exceeding \$10,000 but not exceeding \$20,000, 6.37%.
 - c. On all taxable income exceeding \$20,000, 6.77%.
- The tax rates for married persons filing separately are as follows:
 - a. On all taxable income from \$0 to \$5,000, 4.77%.
 - b. On all taxable income exceeding \$5,000 but not exceeding \$10,000, 6.37%.
 - c. On all taxable income exceeding \$10,000, 6.77%.

3. Subtraction Allowed for Tuition for Higher Education (1997 Act 237, create sec. 71.05(6)(b)28, effective for taxable years beginning on or after January 1, 1998.)

What is Allowed

A subtraction from federal adjusted gross income is allowed for the amount paid during the taxable year for tuition expenses for a student (either the claimant or the claimant's child who

is claimed as a dependent) to attend any university, college, technical college or a school approved under sec. 39.51, Wis. Stats., by the Educational Approval Board, that is located in Wisconsin, or to attend a public vocational school or public institution of higher education in Minnesota under the Minnesota-Wisconsin reciprocity agreement.

The maximum subtraction is \$3,000 per student per year.

Phase-Out of Subtraction

If the claimant is single or files as head of household, the subtraction is reduced if the claimant's federal adjusted gross income is more than \$50,000. No subtraction is allowed if federal adjusted gross income is more than \$60,000.

If the claimant is married and filing jointly, the subtraction is reduced if the claimant's and his or her spouse's federal adjusted gross income is more than \$80,000. No subtraction is allowed if federal adjusted gross income is more than \$100,000.

If the claimant is married and filing separately, the subtraction is reduced if the claimant's federal adjusted gross income is more than \$40,000. No subtraction is allowed if federal adjusted gross income is more than \$50,000.

Nonresidents and Part-Year Residents

For an individual who is a nonresident or part-year resident of Wisconsin, the amount of the subtraction is multiplied by a fraction the numerator of which is the individual's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by Wisconsin and the denominator of which is the individual's total wages, salary, tips, unearned income and net earnings from a trade or business.

For married persons filing separately, "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse, and for married persons filing jointly, it means the total wages, salary, tips, unearned in-

come and net earnings from a trade or business of both spouses. The subtraction is further limited to the individual's aggregate wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by Wisconsin.

4. Standard Deduction for Dependents Modified (1997 Act 237, amend sec. 71.05(22)(f)3 and create sec. 71.05(22)(f)4, effective for taxable years beginning on or after January 1, 1998.)

The Wisconsin standard deduction for individuals who can be claimed as a dependent by another taxpayer is modified.

The standard deduction is the greater of —

- \$500 adjusted for inflation (this translates into a \$700 standard deduction for 1998 after the inflation adjustment), or
- The dependent's earned income plus \$250.

Exception If earned income plus \$250 is more than the standard deduction allowable based on the person's filing status (for example, \$5,200 for single persons with Wisconsin adjusted gross income of less than \$7,500), the standard deduction may not be more than that allowed based on the filing status.

For 1999 and future tax years, the \$250 amount will be adjusted for inflation in the same manner as for federal tax purposes.

Example: Mary, age 17, has \$400 of interest income and \$1,500 of earned income in 1998. Mary is single and eligible to be claimed by her parents as a dependent. Her standard deduction for 1998 is \$1,750 (the greater of \$700, or \$1,500 earned income plus \$250, but not more than \$5,200).

5. Manufacturer's Sales Tax Credit: Offsets Against Alternative Minimum Tax Permitted (1997 Act 237, renumber sec. 71.10(4)(de) to sec. 71.10(4)(gb) and amend secs. 71.07(3s)(b) and 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 1998.)

For taxable years beginning on or after January 1, 1998, 1997 Act 27 (which was enacted October 13, 1997) provides that individuals, including partners, LLC members, and tax-

option (S) corporation shareholders, may be eligible to claim the manufacturer's sales tax credit for fuel and electricity used in manufacturing tangible personal property in Wisconsin. Act 237 modifies the provisions of Act 27 to permit individuals to offset the credit against the Wisconsin alternative minimum tax under sec. 71.08, Wis. Stats., as well as the regular Wisconsin income tax under sec. 71.02, Wis. Stats. The credit may be offset only against the amount of tax imposed upon income from the business operations in which the fuel or electricity is consumed.

- 6. Surplus to be Used to Increase School Property Tax Credit** (1997 Act 237, renumber sec. 71.07(9)(b) to 71.07(9)(b)1 and amend as renumbered and create sec. 71.07(9)(b)2 and appropriation change, effective June 17, 1998.)

The Department of Revenue shall propose a method to use a portion of any projected budget surplus as of June 30, 1998, to increase the school property tax credit. Any increase in the credit shall apply only to taxable years which begin after December 31, 1997 and before January 1, 1999.

- 7. Nonresident Taxed on Winnings From a Native American Casino or Bingo Hall** (1997 Act 237, amend secs. 71.02(1) and 71.04(1)(a), effective for taxable years beginning on or after January 1, 1998.)

Income of nonresident individuals, estates, and trusts from winnings from a casino or bingo hall located in Wisconsin and operated by a Native American tribe or band is taxable by Wisconsin.

- 8. Illinois-Wisconsin Reciprocity Study and Payments Authorized** (1997 Act 63, renumber sec. 71.78(4)(h) to 71.78(4)(h)1 and create secs. 20.566(3)(go), 20.855(4)(cm), (cn), and (co), 71.10(7e), and 71.78(4)(h)2, effective for taxable years beginning on or after January 1, 1998.)

For purposes of income tax reciprocity with the State of Illinois, whenever the income taxes on residents of one state which would have been paid to the second state without reciprocity exceed the income taxes on residents of the second state which would have been paid to the first state without reciprocity, the state with the

net revenue loss shall receive from the other state the amount of the loss.

The data used for computing the loss to either state shall be determined by both states on or before December 1 of the year following the close of the previous calendar year. If an agreement cannot be reached as to the amount of the loss, the Secretary of Revenue of Wisconsin and the Director of Taxation of Illinois shall each appoint a member of a Board of Arbitration, and these members shall appoint a third member of the board.

The Board of Arbitration may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers and documents and hold hearings as necessary. A member of the board or a consultant under a joint contract with the States of Illinois and Wisconsin is authorized to examine Wisconsin income tax returns. The board shall then make a final determination as to the amount to be paid the other state.

For taxable years beginning in 1998, the maximum amount that may be paid to Illinois is \$5,500,000. For taxable years beginning in 1999, the maximum amount that may be paid to Illinois is \$8,250,000.

- 9. Penalty Related to Tax-Free Sale of Certain Business Assets or Assets Used in Farming Revised** (1997 Act 237, amend sec. 71.83(1)(d)2, effective June 17, 1998.)

Capital gain on the sale or disposition of business assets or on assets used in farming may be excluded from Wisconsin taxable income if the assets have been held more than one year and 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. This exclusion was created by 1997 Act 27, effective for taxable years beginning on or after January 1, 1998. The exclusion applies only to the portion of the capital gain which is not subject to the 60% exclusion for capital gain on assets held more than one year.

If the related person who purchases or otherwise receives the assets on which the gain is excluded sells or otherwise disposes of the as-

sets within two years, the person is subject to a penalty.

Act 237, which is effective June 17, 1998, provides that the penalty is equal to the amount of income tax that would have been imposed on the capital gains of the seller or transferor if the exclusion for gain on the sale or disposition of assets to a related person did not apply to the transaction, 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.

10. Computation of Income of Electing Small Business Trusts Clarified (1997 Act 237, amend sec. 71.125(2), effective June 17, 1998.)

For taxable years that begin on or after January 1, 1997, electing small business trusts (ESBTs) may be S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The separate trust is subject to Wisconsin income tax at the highest rate under sec. 71.06(1) or (1m), Wis. Stats., as applicable.

The amendment clarifies that the net income for that portion of an ESBT treated as a separate trust is computed under IRC sec. 641, as modified by sec. 71.05(6) to (12), (19), and (20), Wis. Stats.

11. Federal Treatment of Funeral Trusts Applies (1997 Act 237, create sec. 71.17(6), effective for taxable years ending after August 5, 1997.)

For federal income tax purposes, if the trustee makes an election, a pre-need funeral trust is not treated as a grantor trust and the tax on the annual earnings of the trust is payable by the trustee. The trust rates apply by treating each beneficiary's trust as a separate trust.

If a qualified funeral trust makes the election under IRC sec. 685 for federal income tax purposes, that election applies for Wisconsin income tax purposes. Each trust computes its own tax using the rates under sec. 71.06(1) and (1m), Wis. Stats.

12. Installment Payments of Estate Taxes (1997 Act 291, amend sec. 72.23, effective June 30, 1998.)

If an estate fails to make an installment payment of tax or interest under sec. 72.225, Wis. Stats. (1995-96), when it is due, the entire remaining balance of tax and interest due shall be paid upon notice by the Department of Revenue

B. Corporation Franchise or Income

1. Internal Revenue Code References Updated for 1998 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Non-profit Organizations, Regulated Investment Companies, Real Estate Mortgage Investment Conduits, Real Estate Investment Trusts, and Financial Asset Securitization Investment Trusts (1997 Act 237, amend secs. 71.22(4)(m) and (4m)(k), 71.26(2)(b)13. and (3)(y), 71.34(1g)(m), 71.365(1m), 71.42(2)(L), and 71.45(2)(a)13., effective for taxable years beginning on or after January 1, 1998.)

For taxable years that begin on or after January 1, 1998, "Internal Revenue Code" for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), real estate investment trusts (REITs), and financial asset securitization investment trusts (FASITs) means the federal Internal Revenue Code as amended to December 31, 1997, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- a. For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 1998, 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, 1997, at the taxpayer's option.
- b. For corporations (except nonprofit organizations, RICs, REMICs, and REITs), the

Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.

- c. 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.
- d. For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in pass-throughs 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.
- e. For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- f. For RICs, REMICs, REITs, and FASITs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.

2. Manufacturer's Sales Tax Credit: Tax-Option Corporation Shareholders Prohibited From Claiming Certain Pre-1998 Credits (1997 Act 237, repeal sec. 71.34(1)(j) and amend secs. 71.07(3s)(c)5., 71.28(3)(c)5., and 71.47(3)(c)5. and 1997 Act 299, amend secs. 71.07(3s)(c)4., 71.28(3)(c)4., and 71.47(3)(c)4. and create non-statutory provision, effective for credits computed for taxable years beginning on or after January 1, 1998.)

A tax-option (S) corporation may not pass through to its shareholders unused manufacturer's sales tax credits computed for taxable years beginning before January 1, 1998.

If a regular (C) corporation has an unused manufacturer's sales tax credit from a taxable year that begins on or after January 1, 1998, and becomes a tax-option (S) corporation before the credit carried over is used, the unused portion of

the credit may be used by the corporation's shareholders on a prorated basis.

If a tax-option (S) corporation is liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the manufacturer's sales tax credit against the tax due. The corporation may pass through to its shareholders any remaining credit computed for a taxable year that begins on or after January 1, 1998.

3. Alternative Allocation of Corporation's Income Allowed (1997 Act 299, amend sec. 71.22(11) and create sec. 71.25(14) and non-statutory provision, effective for taxable years beginning on or after January 1, 1998.)

Upon request by a corporation on or before January 1, 2000, the Department of Revenue may authorize a corporation or a subsidiary thereof to use or continue to use a different method of apportioning its Wisconsin income, and may specify the method of apportionment that the corporation or subsidiary may use. This provision is to be used exclusively in the event of a corporate restructuring that would result in an unfair representation of the degree of business activity in Wisconsin. In no instance may the alternative method proposed under the new corporate structure result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll, and property.

Before the department grants permission to any corporation to use an alternative method of allocation, the department must promulgate rules that specify in more detail the circumstances in which that authority may be granted and the kinds of alternative methods that the department may authorize.

At least 14 days before giving final approval to an alternative method of apportionment, the department must submit the proposed method to the cochairpersons of the Joint Committee for Review of Administrative Rules (JCRAR), together with a description of and the reasons for the proposed method. If, within 14 days after receipt of the proposed alternative method, the cochairpersons of the JCRAR do not notify the department that the proposed alternative must be promulgated as an administrative rule in or-

der to be used, the department may give final approval to the proposed alternative method. If the cochairpersons of JCRAR notify the department within 14 days after receipt of the proposed alternative method that the proposed alternative must be promulgated as an administrative rule, the proposed alternative may not be used until it is promulgated as an administrative rule.

4. Income of Joint Local Water Authorities Exempted from Tax (1997 Act 184, amend sec. 71.26(1)(b), effective May 12, 1998.)

The income of a joint local water authority created under sec. 66.0735, Wis. Stats., is exempt from Wisconsin income and franchise taxes.

C. Sales and Use Taxes

1. Define “Meal” and “Sandwich” (1997 Act 237, create sec. 77.54(20)(bg), effective August 1, 1997.)

Sales of meals and sandwiches continue to be subject to Wisconsin sales or use tax. However, “meal” and “sandwich” were previously not defined in the sales and use tax law. This provision, which is effective August 1, 1997, defines “meal” and “sandwich” as follows:

- a. “Meal” includes, but is not limited to, a diversified selection of food, food products, or beverages that are customarily consumed as a breakfast, lunch, or dinner, that may not easily be consumed without an article of tableware, and that may not conveniently be consumed while standing or walking.

“Meal” does not include any of the following:

- Frozen items that are sold to a consumer.
- Items that are customarily heated or cooked after the retail sale and before they are consumed.
- A diversified selection of food, food products, and beverages that is packaged together by a person other than the retailer before the sale to the consumer.

This definition of “meal” clarifies that canned soups, frozen TV dinners, and frozen pizzas manufactured by many different parties and sold by grocery and other retail stores for off-premises consumption are not subject to Wisconsin sales or use tax. This definition also reverses the sales and use tax treatment of prepackaged combinations of food as provided in a tax release published in *Wisconsin Tax Bulletin 106* (January 1998), titled “Prepackaged Combinations of Food, Food Products, and Beverages Constitute Meals.”

- b. “Sandwich” means food that consists of a filling, such as meat, cheese, or a savory mixture, that is placed on a slice, or between two slices, of bread or something that takes the place of bread, such as a roll, croissant, or bagel.

“Sandwich” includes, but is not limited to, burritos, tacos, enchiladas, chimichangas, pita sandwiches, gyros, and pocket sandwiches.

“Sandwich” does not include hors d’oeuvres, canapes, egg rolls, cookies, cakes, pies, and similar desserts and pastries, and food that is sold frozen.

2. Provide Exemption for Certain Food Combinations (1997 Act 237, amend sec. 77.51(4)(a)(intro.) and (15)(a)(intro.) and create secs. 77.51(4)(cm) and (15)(cm) and 77.54(20m), effective August 1, 1997.)

If a combination of food, food products, and beverages are packaged together with other goods by a person other than a retailer before sale to the final consumer, and 50% or more of the sales price of the package is attributable to goods that are exempt from Wisconsin sales or use tax, the total selling price of the combined package is exempt from Wisconsin sales or use tax. If less than 50% of the sales price is attributable to goods that are exempt from Wisconsin sales or use tax, that portion of the selling price attributable to the taxable items is subject to Wisconsin sales or use tax.

Example 1: A grocery store sells to a consumer a package that contains crackers, meat, cheese, candy, and a fruit drink that is not a fruit juice.

The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the meat, cheese, and crackers (exempt items) and \$0.50 is attributable to the candy and fruit drink (taxable items). Since 50% or more of the selling price of the package is attributable to food that is exempt from Wisconsin sales or use tax, the entire \$2 selling price is exempt from Wisconsin sales or use tax.

Example 2: A grocery store sells to a consumer a package that contains a sandwich, pretzels, cookies, and a fruit drink that is not a fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the sandwich and fruit drink (taxable items) and \$0.50 is attributable to the pretzels and cookies (exempt items). Since less than 50% of the selling price of the package is attributable to food that is exempt from Wisconsin sales or use tax, \$1.50 of the \$2 selling price attributable to taxable items is subject to Wisconsin sales or use tax.

3. Sales of Prepaid Telephone Calling Cards and Authorization Numbers Taxable (1997 Act 237, amend sec. 77.52(2)(a)5 and create sec. 77.52(3m), effective August 1, 1998.)

The sale of rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and using an access number and authorization code (e.g., prepaid telephone calling cards or prepaid authorization numbers) is subject to Wisconsin sales or use tax.

The situs of the sale of the rights to purchase telecommunications services is as follows:

- If the sale takes place at a retailer's place of business, the situs of the sale is that place of business.
- If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services (e.g., calling card) is shipped, the situs of the sale is the customer's shipping address.
- If the sale does not take place at a retailer's place of business and no item that will im-

plement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

Under prior law, the sale of a prepaid telephone calling card or authorization number was not taxable.

4. Exempt Sales of Admissions to County Fairs (1997 Act 237, amend sec. 77.52(2)(a)2, effective August 1, 1998.)

Sales of admissions to county fairs are exempt from Wisconsin sales or use tax.

5. Exempt Sales to Joint Local Water Authorities (1997 Act 184, create sec. 77.54(9a)(em), effective May 12, 1998.)

A sales and use tax exemption is provided for sales of tangible personal property and taxable services to any joint local water authority created under sec. 66.0735, Wis. Stats.

6. Define "One Month" for Purposes of Lodging and Rentals of Mobile Homes (1997 Act 291, amend secs. 77.52(2)(a)1. and 77.54(36), effective June 30, 1998.)

Under prior law, secs. 77.52(2)(a)1 and 77.54(36), Wis. Stats., provided an exemption for the furnishing of accommodations to the public for a period of one month or more and the rental, for a period of one month or more, of a mobile home, as defined in s. 66.058(1)(d), Wis. Stats., that is used as a residence.

The amendments to secs. 77.52(2)(a)1 and 77.54(36), Wis. Stats., in 1997 Act 291 expressly define "one month" to mean a calendar month or 30 days, whichever is less, counting the first day of the rental, but not counting the last day of the rental for purposes of secs. 77.52(2)(a)1. and 77.54(36), Wis. Stats.

7. Revise Who Is a Responsible Person (1997 Act 237, amend sec. 77.60(9), effective June 17, 1998.)

A person required to collect, account for, or pay sales or use taxes, who willfully fails to collect, account for, or pay those taxes to the Department of Revenue, is personally liable for such taxes, including interest and penalties, if that

person's principal is unable to pay such amounts to the department. Under prior law, only a person who was required to **pay**, and who willfully failed to **pay**, sales and use taxes when due to the Department of Revenue could be held personally liable for those taxes, including interest and penalties, if that person's principal was unable to pay such amounts to the department.

This change reverses the Wisconsin Tax Appeals Commission decision in the case of *Frank A. Calarco vs. Wisconsin Department of Revenue* (Docket #96-S-550, March 12, 1998). The Commission held that a person who resigned at the end of a month, but prior to the due date for payment of sales taxes for that month, could not be a responsible person under sec. 77.60(9), Wis. Stats., for the unpaid taxes for that month.

8. Revise Exemption Certificate Requirements for Sales of Commodities (1997 Act 237, amend secs. 77.52(13) and 77.53(10), effective June 17, 1998.)

In 1997 Wisconsin Act 27, the law regarding exemption certificates was changed to provide that exemption certificates were not required for sales of certain commodities that are resold. The amendments to secs 77.52(13) and 77.53(10), Wis. Stats., by 1997 Wisconsin Act 237, provide that:

- The commodities are consigned for "sale," rather than "resale."
- The commodities must be deliverable on a contract for future delivery subject to rules of a regulated commodities market.
- The exemption certificate requirements apply to sales tax, in addition to use tax.

9. Change Obsolete References to "Special Fuel" and "Motor Fuel" (1997 Act 291, amend sec. 77.54(11), effective June 30, 1998.)

Obsolete references to "special fuel" have been changed to "alternate fuel" and references to "motor fuel" have been replaced with references to "motor vehicle fuel."

D. Rental Vehicle Fee

1. Rentals of Certain Vehicles Not Subject to Fee (1997 Act 237, amend sec. 77.995, effective August 1, 1998.)

Motor trucks, road tractors, truck tractors, semitrailers, trailers, and motor buses are not subject to the rental vehicle fee.

E. Adult Entertainment Tax

1. Adult Entertainment Tax Repealed (1997 Act 237, repeal subch. XIII of ch. 77, effective June 17, 1998.)

The adult entertainment tax that was to take effect April 1, 1998, but was postponed, is repealed.

F. Withholding Tax

1. Late Filing Fee Created (1997 Act 237, amend sec. 71.83(3), effective for amounts due on and after January 1, 1999.)

Any person required to file a withholding report and deposit withheld taxes who fails to do so by the required due date, will be subject to a \$30 late filing penalty, unless the person so required dies or the failure is due to a reasonable cause and not due to neglect.

G. Farmland Preservation Credit

1. Requirement to Include Zoning Certificate With Farmland Preservation Credit Claim Modified (1997 Act 137, amend sec. 71.59(1)(b)3, effective for taxable years beginning on or after January 1, 1999.)

If a farmland preservation credit claimant has included a zoning certificate with a previous year's claim, and the claimant determines that conditions relating to the previous certificate have not changed and are still applicable at the time a farmland preservation credit claim is filed for a subsequent year, the claimant may certify this fact on the claim for the subsequent year, and is not required to include a zoning certificate with that claim. The department may, however, require the claimant to submit a zoning certificate if it determines that one is needed to process the claim.

H. Excise Taxes

- 1. Off-Road Exemption for Gasoline** (1997 Act 237, create sec. 78.01(2)(e), and repeal and recreate sec. 78.73(1)(dm), effective July 1, 1998.)

Effective July 1, 1998, persons who consume gasoline for off-road purposes may purchase gasoline tax-free by executing an exemption certificate (Department of Revenue form MF-209) with their suppliers. 1997 Act 237 reinstates the exemption for gasoline when it is delivered directly into the purchaser's bulk storage tank in an amount not less than 100 gallons.

(Note: The exemption for clear diesel fuel is not reinstated. Fuel suppliers and vendors must continue to sell clear diesel fuel tax-included, and off-road users must file claims with the department for refunds of the fuel tax relating to off-road usage. To avoid filing refund claims on off-road usage of diesel fuel, the department encourages off-road users to buy dyed diesel fuel because it can be purchased tax-exempt.)

- 2. Conflicting Language In Off-Road Motor Vehicle Fuel Refund Provisions Corrected** (1997 Act 291, amend sec. 78.75(1m)(a)3, effective June 30, 1998.)

The statutory requirements for motor vehicle fuel refund forms are changed to conform to the exemptions available from that tax.

- 3. Tax Rate on Cider** (1997 Act 136, amend sec. 139.03(2n) and create sec. 139.01(2m), effective July 1, 1998.)

Cider is defined as an alcoholic beverage obtained from the fermentation of the juice of apples containing not less than 0.5% nor more than 7.0% alcohol by volume; it is taxed at 1.71 cents per liter.

- 4. Underage Persons on Alcohol Beverage Licensed Premises** (1997 Act 98, create sec. 125.07(3)(a)3m and 1997 Act 100, amend sec. 125.07(3)(a)3, effective April 28, 1998.)

Underage persons unaccompanied by parents, guardians or spouses of legal drinking age may be on alcohol beverage licensed premises that:

- (a) have an indoor volleyball court that measures at least 9 meters by 18 meters in area. (Note: This exception does not authorize the underage persons to loiter in any room that is primarily used for the sale/consumption of alcohol beverages.)
- (b) have 12 or more billiard tables that are not designed for coin operation and that are 8 feet or longer in length.

- 5. Brewery Personnel at Tasting Events** (1997 Act 132, create sec. 125.33(2)(p), effective May 2, 1998.)

Brewers may have not more than three individuals at a beer tasting event lasting two days or less at which taste samples of beer brewed by at least five different brewers are offered for consumption by persons who either pay for the taste samples or pay a charge for admission to the event. No Class "B" licensee or permittee may allow more than one beer tasting event on the premises within one year.

- 6. Cigarette/Tobacco Products License Fees and Sales Restrictions** (1997 Act 214, repeal sec. 134.66(2)(c) and 134.66(2)(cm)2 and 3; renumber and amend sec. 134.66(2)(cm)1; amend secs. 134.65(2)(a), 134.65(2)(b), 134.66(2)(a) and 134.66(4)(a)1; and create sec. 134.66(2)(am) and 134.66(2)(cm)1m, effective May 13, 1998.)

Municipalities may charge a fee of not less than \$5 nor more than \$100 per year for a retail cigarette/tobacco products license; no industry member may provide cigarettes or tobacco products for nominal or no consideration to persons under the age of 18; cigarettes/tobacco products may not be sold from vending machines except in a place where no person younger than age 18 is permitted. If a written agreement was in effect on May 13, 1998 requiring placement of the vending machine in a location prohibited by Act 214, the vending machine operator shall remove the machine on or before the date the agreement expires or would be extended or renewed, whichever occurs first.

- 7. Primary Source for Fermented Malt Beverages** (1997 Act 166, amend sec. 125.30(1), and create secs. 125.12(2)(ag)7 and 125.33(11), effective May 6, 1998.)

Beer wholesalers who also hold retail licenses may only sell beer to other retailers if the wholesaler has a franchise agreement with the brewer of that brand of beer. All shipments of fermented malt beverages to a wholesaler of fermented malt beverages in this state shall be unloaded in and distributed from the wholesaler's warehouse in this state.

8. Temporary "Class B" Wine Licenses (1997 Act 259, amend sec. 125.51(10), effective June 20, 1998.)

Temporary "Class B" licenses authorizing the sale of wine may be issued to bona fide clubs, fair associations, churches, lodges, societies, and veterans' posts for a \$10 license fee. Not more than two such licenses may be issued to any one organization in any 12-month period.

9. Disposal Alternatives for Seized Alcohol and Cigarettes (1997 Act 291, amend secs. 125.14(2)(e) and 139.40(2), effective June 30, 1998.)

The Department of Revenue is authorized to furnish seized cigarettes and alcohol beverages to law enforcement agencies for use in criminal investigations.

I. Other

1. Tax Amnesty Established (1997 Act 237, create a nonstatutory provision, effective from June 15, 1998 to August 14, 1998.)

The Department of Revenue is directed to establish a tax amnesty program applicable to all taxes administered under chapters 71, 72, 78, and 139 and subchapter III of chapter 77 of the statutes. This includes income, franchise, withholding, estate, Wisconsin state sales and use, fuel, beverage, cigarette, tobacco products, and controlled substances taxes. It does not include temporary recycling surcharge and local option taxes (e.g., county sales and use, premier resort, and local exposition district taxes).

The amnesty program is to be in effect from June 15, 1998, to August 14, 1998. Further details concerning the amnesty program can be found in Wisconsin Tax Bulletin issue number 108, dated June 1998, or through the Internet at: www.taxamnesty.org.

2. Federalize Due Dates for Informational Returns (1997 Act 291, amend secs. 71.65(2)(b), 71.70(1) and (2), and 71.72 and repeal and recreate secs. 71.65(5) and 71.73(2), effective January 1, 1999.)

The due date and extension of time provisions for filing Wisconsin informational returns with the Department of Revenue relating to rents, royalties and payments of nonwage remuneration for services are changed to conform to the due date and extension provisions under federal law. Act 291 also requires persons filing such informational returns to furnish the recipient of the payments being reported with a copy of the informational return by January 31 of the year in which the informational return is required to be filed with the Department of Revenue.

The new due date and extension of time to file provisions are as follows:

Type of Payment	Type of Payer	Due Date	Extension Available
Nonwage	All	February 28 of following year	60 days
Rent or royalties	Noncorporate	February 28 of following year	60 days
Rent or royalties	Corporation	March 15 of following year	60 days

3. Occupational License Revocation Program Expanded (1997 Act 237, repeal and recreate secs. 71.78(4)(o) and 77.61(5)(b)10, repeal secs. 71.91(8)(title) and 73.03(28g), renumber sec. 71.91(8) to 73.0301(5)(a), create secs. 73.0301, 73.0302 and 73.09(6m) and (7m), and amend secs. 73.03(50), 73.09(7)(e), 77.62(1)(intro.), 78.70(1)(intro.), 139.03(2x)(c) and (4), 139.315(3), and 139.39(6), effective January 1, 1999.) Note: In addition to those sections listed, numerous other sections of the statutes in Chapters administered by other Wisconsin agencies are also affected by the occupational licensing denial and revocation provisions. A complete listing of affected sections can be found in Section 9456 of 1997 Act 237.

Current Program

When a person applies to the Department of Regulation and Licensing (DORL) to renew a credential to practice a profession or occupation that was initially issued by DORL or an attached examining board or affiliated credentialing board, before renewing the credential, DORL must request the Department of Revenue (DOR) to certify whether the person is liable for delinquent taxes. If DOR certifies that the person is liable for delinquent taxes, DORL must deny the application for credential renewal and notify the person that the person has 30 days to request a hearing before DOR to review the certification. A hearing is limited to questions of mistaken identity and payment of the delinquent taxes. If DOR affirms its certification after a hearing, DOR must notify DORL, which must affirm its denial of the application. A person may seek judicial review of DORL's affirmation of its denial in the circuit court for Dane County.

Changes Which Go Into Effect 1/1/99

Expanded provisions cover certain licenses, credentials, permits, approvals, registrations and certifications (licenses) that are issued by the following licensing and credentialing boards and departments: DORL; an examining board or affiliated credentialing board in DORL; the Department of Administration; the Board of Commissioners of Public Lands; the Department of Commerce; the Ethics Board; the Department of Financial Institutions; the Department of Health and Family Services; the Department of Natural Resources; the Department of Public Instruction; the Department of Workforce Development; the Office of the Commissioner of Insurance; the Department of Transportation; and the Wisconsin Supreme Court, if the court agrees. The provisions also cover business tax registration certificates, and property assessor certifications and recertifications made by DOR. For a license granted by a board in DORL, DORL, rather than the board, carries out the duties of a licensing department that are described below.

Each licensing department and the Supreme Court may require a person who applies for a license, for renewal or continuation of a license or for certification or recertification as a prop-

erty assessor to provide his or her social security number or, if applicable, its federal employer identification number. A licensing department must request DOR to certify whether an applicant for a license, or license renewal or continuation, is liable for delinquent taxes. In addition, each licensing department (except a board that is attached to DORL) must enter into a memorandum of understanding with DOR that requires the licensing department to request that DOR certify whether a person who holds a license is liable for delinquent taxes. (DORL is required to make such a request on behalf of a board that is attached to DORL.) If DOR certifies a liability for delinquent taxes, the licensing department must revoke the license or deny the application for the license or license renewal or continuation. The Department of Transportation is also authorized to suspend licenses in lieu of revoking them. In addition, DOR may deny an application for property assessor certification or recertification or revoke such a certification if DOR determines that the applicant or holder of the certification is liable for delinquent taxes.

A person whose application is denied or whose license or property assessor certification is revoked for tax delinquency has 30 days to request a hearing before DOR to review the certification of tax delinquency or, for a property assessor, determination of liability for delinquent taxes. A hearing is limited to questions of mistaken identity and prior payment of delinquent taxes. After conducting a hearing, if DOR determines that a person is not liable for delinquent taxes, the licensing department or, for a property assessor, DOR, must grant the application or reinstate the license or property assessor certification, unless there are other grounds for denying the application or revoking the license or property assessor certification. If DOR affirms its certification of tax delinquency after a hearing, DOR must provide notice of its affirmation to the licensing department, which, upon receiving the notice, must affirm its denial or revocation. For a property assessor, DOR must notify the applicant or certification holder that it has affirmed its determination of liability. A person may seek judicial review in Dane County Circuit Court of a licensing department's affirmation of its denial or revocation or, for a property assessor, DOR's affirmation of its determination.

In addition, a licensing agency is prohibited from issuing a license to a person whose application was previously denied or whose license was previously revoked for tax delinquency unless the person submits a nondelinquency certificate issued by DOR that states that the person is not liable for delinquent taxes.

(Note: A complete listing of the licenses, etc. which are affected by these denial, revocation, or suspension provisions can be found in secs. 73.0301(1)(d), 73.0302(1), and 73.09(7m)(a), as created by 1997 Act 237.)

- 4. Child Support Enforcement Provisions Expanded** (1997 Act 191, create secs. 49.857, 73.03(50m), and 77.61(5)(b)11 and amend sec. 73.03(50), effective May 1, 1998.) Note: In addition to those sections listed, 1997 Act 191 also affects numerous other sections of the statutes in Chapters administered by other Wisconsin agencies.

The Wisconsin Department of Workforce Development (DWD) is required to establish a system, in accordance with federal law, under which licensing agencies are required to restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license in a timely manner upon certification by and in cooperation with DWD, if the individual holding or applying for the license is delinquent in making court-ordered payments of support or fails to comply, after appropriate notice, with a subpoena or warrant issued by DWD or county child support agency. The Business Tax Registration certificate issued by the Department of Revenue (DOR), is included among the “licenses” affected by Act 191.

DOR is required to enter into a memorandum of understanding with DWD regarding the suspension of Business Tax Registration certificates for failure to pay child support or comply with a subpoena or warrant issued by DWD or a county child support agency. In addition, DOR must require that persons applying for or renewing Business Tax Registration certificates provide their social security number.

DWD and county child support agencies under sec. 59.53(5), Wis. Stats., are authorized to obtain information from Wisconsin state and county sales and use tax, premier resort area tax

and rental vehicle fee returns, if the request is made under sec. 49.22(2m), Wis. Stats., as affected by 1997 Act 191.

- 5. Refund Offset Agreements With IRS Authorized** (1997 Act 237, create sec. 73.03(52), effective June 17, 1998.)

The department is given authority to enter into agreements with the Internal Revenue Service that provide for offsetting Wisconsin tax refunds against federal tax obligations and offsetting federal tax refunds against state tax obligations, if the agreements provide that setoffs under secs. 71.93 (setoffs for other state agencies) and 71.935 (setoffs for municipalities and counties) occur before the setoffs under those agreements.

- 6. Payment by Electronic Funds Transfer** (1997 Act 237, amend sec. 71.92(2), effective June 17, 1998.)

The department is authorized to require taxpayers who make installment payments of delinquent income or franchise taxes, costs, penalties and interest to make such installment payments by electronic funds transfer.

- 7. Provision Allowing Setoff of Payments to Vendors Modified** (1997 Act 237, amend sec. 73.12(1)(b), effective June 17, 1998.)

If a vendor providing goods or services to the State of Wisconsin under subch. IV or V of Chapter 16 or Chapter 84, Wis. Stats., owes delinquent tax, the Department of Revenue may request that the Department of Administration set off amounts payable to the vendor against the delinquent tax, if the value of the vendor’s contract is \$500 or more. Under prior law, the value of the vendor’s contract must have been at least \$3,000 before the set off provision could be used.

- 8. Uncollectible Taxes** (1997 Act 237, renumber sec. 73.03(27)(intro.) to 73.03(27) and amend as renumbered, and repeal sec. 73.03(27)(a) to (e), effective June 17, 1998.)

Income, franchise, sales, use, withholding, motor fuel, gift, beverage and cigarette tax, and recycling surcharge liabilities, may be written off from the records of the department when

determined by the Secretary of Revenue to be uncollectible. Under prior law, uncollectible amounts were permitted to be written off only when certain additional conditions were met (for example, in some cases the amount must have been delinquent for at least 10 years).

Uncollectible taxes written off under sec. 73.03(27) remain legal obligations.

9. Satisfaction of Tax Warrant (1997 Act 237, amend 71.91(5)(f), effective December 1, 1998.)

When the department issues a satisfaction of a tax warrant, the taxpayer may request that the department indicate the amount that was paid to satisfy the warrant.

10. Venue for Criminal Cases (1997 Act 291, create sec. 71.80(6m), effective for criminal charges filed on or after June 30, 1998.)

A proceeding for a criminal violation under Chapter 71 of the Wisconsin Statutes may be brought in the Circuit Court for Dane County or for the county in which the defendant resides or is located when charged with the violation.

11. Clarify that Six-Year Statute of Limitations Applies to All Taxpayers (1997 Act 291, amend sec. 71.77(7)(a), effective June 30, 1998.)

Section 71.77(7)(a) provides that if a taxpayer reports less than 75% of the net income properly assessable on a return and the resulting unreported tax exceeds \$100 (\$200 in the case of a joint return), a six-year statute of limitations applies for purposes of correcting such return. The amendment to sec. 71.77(7)(a) in 1997 Act 291 clarifies that the six-year statute of limitations applies to all taxpayers, not just to individuals.

12. Felony Penalties Increased (1997 Act 283, amend secs. 71.83(2)(b), 125.075(2), 125.085(3)(a)2, 125.105(2)(b), 125.66(3), 125.68(12)(b) and (c), 139.44(1), (1m), (2) and (8)(c), and 139.95(2) and (3), effective for offenses committed on or after December 31, 1999.) Note: In addition to those sections listed, 1997 Act 283 also amended numerous other sections of the statutes in Chapters administered by other Wisconsin agencies.

Various felony penalties relating to income, franchise, cigarette and controlled substance taxes, and alcoholic beverages are increased as shown in Table 1 below.

TABLE 1 - FELONY PENALTIES INCREASED

Statute	Maximum Imprisonment Under Prior Law	Maximum Imprisonment Under New Law
71.83(2)(b)1	2 years	3 years
71.83(2)(b)2	5 years	7 years and 6 months
71.83(2)(b)3	3 years	4 years and 6 months
71.83(2)(b)4	5 years	7 years and 6 months
125.075(2)	5 years	7 years and 6 months
125.085(3)(a)2	2 years	3 years
125.105(2)(b)	5 years	7 years and 6 months
125.66(3)	10 years	15 years
125.68(12)(b)	10 years	15 years
125.68(12)(c)	10 years	15 years
139.44(1)	10 years	15 years
139.44(1m)	10 years	15 years
139.44(2)	1 year	2 years
139.44(8)(c)	2 years	3 years
139.95(2)	5 years	7 years and 6 months
139.95(3)	10 years	15 years