



Wisconsin TAX BULLETIN

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New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This issue of the *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, sales/use, premier resort area and excise tax provisions, and rental vehicle and regional transit authority fee provisions. These provisions are contained in 2005 Act 25.

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

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code References Updated for 2005 for Individuals, Estates, and Trusts (2005 Act 25, repeal sec 71.01(6)(j) and (k), amend sec. 71.01(6)(p), and create sec. 71.01(6)(r), effective for taxable years beginning on or after January 1, 2005.)

For taxable years that begin on or after January 1, 2005, “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, 2004, with the following exceptions:

- Section 13113 of Public Law 103-66, relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years.
- 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.
- Sections 1, 3, 4, and 5 of Public Law 106-519, relating to the allowance of an exclusion for extraterritorial income, and section 101 of Public Law 108-357, relating to the repeal of the extraterritorial income exclusion. (Note: Foreign sales corporation (FSC) treatment is repealed for Wisconsin purposes for taxable years beginning on or after January 1, 2005.)
- Section 162 of Public Law 106-554 and section 308 of Public Law 108-311, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Section 165 of Public Law 106-554 and section 306 of Public Law 108-311, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date.
- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.
- Section 431 of Public Law 107-16, relating to the deduction for higher education expenses.
- Section 101 of Public Law 107-147, section 201 of Public Law 108-27, and section 403(a) of Public Law 108-311, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.
- Section 106 of Public Law 108-27 relating to an increase in the exemption amounts for alternative minimum tax for 2003 and 2004. (Note: An increase in the exemption amounts is allowed for taxable years beginning on or after January 1, 2005.)
- Section 201 of Public Law 108-27, relating to the 50% bonus depreciation allowance.
- Section 202 of Public Law 108-27, relating to increased section 179 expensing for small business, and section 201 of Public Law 108-357, relating to the extension of the termination date.
- Section 1201 of Public Law 108-173, relating to health savings accounts.
- Section 244 of Public Law 108-357, relating to special rules for certain film and television productions.
- Section 336 of Public Law 108-357, relating to the depreciation allowance for aircraft.
- Section 337 of Public Law 108-357, relating to the modification of placed in service rule for bonus depreciation.
- Section 909 of Public Law 108-357, relating to the sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy.
- Section 910 of Public Law 108-357, relating to the expansion of the limitation on depreciation of certain passenger automobiles.

In addition, for property placed in service in taxable years beginning on or after January 1, 2001, individuals and fiduciaries must compute depreciation or amortization under the Internal Revenue Code as amended to December 31, 2000.

- 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2005 Act 25, amend sec. 71.01(6)(L), (m), (n), (o), and (p) and create sec. 71.01(6)(q) and a nonstatutory provision, effective for taxable years beginning before January 1, 2005.)

The changes to the Internal Revenue Code by the following federal laws apply for Wisconsin individual and fiduciary income tax purposes at the same time as for federal purposes:

- Jobs and Growth Tax Relief Reconciliation Act of 2003, excluding section 106, relating to minimum tax relief, section 201, relating to the increase and extension of bonus depreciation, and section 202, relating to increased section 179 expensing (Public Law 108-27, enacted May 28, 2003).
- Military Family Tax Relief Act of 2003, excluding section 109, relating to the above-the-line deduction for overnight travel expenses of National Guard and Reserve members (Public Law 108-121, enacted November 11, 2003).
- Medicare Prescription Drug, Improvement, and Modernization Act of 2003, excluding section 1201, relating to health savings accounts (Public Law 108-173, enacted December 8, 2003).
- Social Security Protection Act of 2004 (Public Law 108-203, enacted March 2, 2004).
- Pension Funding Equity Act of 2004 (Public Law 108-218, enacted April 10, 2004).
- Working Families Tax Relief Act of 2004, excluding section 306, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date, section 307, relating to the deduction for certain expenses of school teachers, section 308, relating to expensing of environmental remediation costs, and section 403(a), relating to qualified property for purposes of 30% bonus depreciation (Public Law 108-311, enacted October 4, 2004).
- American Jobs Creation Act of 2004, excluding section 201, relating to the extension of the termination date for increased section 179 expensing for small business, section 244, relating to special rules for cer-

tain film and television productions, section 336, relating to the depreciation allowance for aircraft, section 337, relating to the modification of the placed-in-service rule for bonus depreciation, section 909, relating to sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy, and section 910, relating to the expansion of the limitation on depreciation of certain passenger automobiles (Public Law 108-357, enacted October 22, 2004).

- Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375, enacted October 28, 2004).

- 3. Tuition Deduction Increased** (2005 Act 25, amend sec. 71.05(6)(b)28.(intro.) and a., effective for taxable years beginning on or after January 1, 2005.)

The deduction for an amount paid for tuition expenses is limited to not more than twice the average amount charged by the Board of Regents of the University of Wisconsin System at 4-year institutions for resident undergraduate academic fees for the most recent fall semester, as determined by the Board of Regents by September 1 of that semester. Under prior law, the deduction was limited to \$3,000.

- 4. Standard Deduction for Dependents Revised** (2005 Act 25, amend sec. 71.05(22)(f)4.a., (g) and (h), effective for taxable years beginning on or after January 1, 2005.)

For nonresident and part-year resident individuals who can be claimed as a dependent on another person's income tax return, the Wisconsin standard deduction is the lesser of (1) the standard deduction that may be claimed by an individual based on his/her federal adjusted gross income, or (2) the individuals earned income plus \$250, but not less than \$500 as adjusted for inflation (currently \$800). The standard deduction for dependents who are nonresidents or part-year residents of Wisconsin must be multiplied by a fraction the numerator of which is Wisconsin adjusted gross income and the denominator of which is federal adjusted gross income. Under prior law, this proration applied only to dependents whose standard deduction was based on federal adjusted gross income.

This bill also changes an obsolete reference in sec. 71.05(22)(f)4.a.

5. Medical Care Insurance Subtraction Revised (2005 Act 25, amend secs. 71.05(6)(b)20.(intro.) and 71.07(5)(a)15. and create sec. 71.05(6)(b)35. to 38., various effective dates.)

The calculation of the subtraction for medical care insurance for an employee whose employer pays no amount of money toward their medical care insurance is revised as follows for taxable years beginning on or after January 1, 2006:

- (a) The amount paid for medical care insurance that can be used in the calculation of the subtraction is increased from 50% to 100%.
- (b) The numerator of the fraction used by a non-resident or part-year resident of Wisconsin is the individual's wages, salary, tips, unearned income, and net earnings from a trade or business taxable by Wisconsin. The denominator 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. For married persons filing jointly it means the total wages, salary, tips, unearned income, and net earnings from a trade or business of both spouses.
- (c) The amount calculated is reduced to the individual's aggregate wages, salary, tips, unearned income, and net earnings from a trade or business taxable by Wisconsin.

For taxable years beginning after December 31, 2006, and before January 1, 2008, an individual who is not self-employed, has no self-employment income, and has no employer may be able to claim a subtraction for a portion of the amount paid for medical care insurance for the individual, his or her spouse, and dependents.

"Medical care insurance" means a medical care insurance policy that covers the individual, his or her spouse, and dependents and provides surgical, medical, hospital, major medical, or other health service coverage. It includes payments

made for medical care benefits under a self-insured plan, but does not include hospital indemnity policies or policies with ancillary benefits such as accident benefits or benefits for loss of income resulting from a total or partial inability to work because of illness, sickness, or injury.

The amount of the subtraction is calculated as follows:

- (a) Multiply the amount paid by the individual for medical care insurance by 33.4%.
- (b) From the amount calculated in (a), subtract the amounts deducted from gross income for medical care insurance in the calculation of federal adjusted gross income.
- (c) A nonresident or part-year resident of Wisconsin must multiply the amount calculated in (a) or (b) by a fraction, the numerator of which is the individual's wages, salary, tips, unearned income, and net earnings from a trade or business 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. For married persons filing jointly it means the total wages, salary, tips, unearned income, and net earnings from a trade or business of both spouses.
- (d) Reduce the amount calculated in (a), (b), or (c) to the individual's aggregate wages, salary, tips, unearned income, and net earnings from a trade or business taxable by Wisconsin.

The amount paid for medical care insurance which is claimed as a subtraction cannot be used in the computation of the Wisconsin itemized deduction credit.

For taxable years beginning after December 31, 2007, and before January 1, 2009, 66.7% of the amount paid by the individual for medical care insurance can be used in Step (a) in calculating the subtraction. For taxable years beginning on

or after January 1, 2009, 100% of the amount paid by the individual for medical care insurance can be used.

6. Taxation of Social Security Benefits (2005 Act 25, renumber sec. 71.05(6)(b)21. to 71.05(6)(b)21.a. and amend as renumbered and create sec. 71.05(6)(b)21.b. and c., effective for taxable years beginning on or after January 1, 2008).

For taxable years beginning before January 1, 2008, Wisconsin law provides a subtraction from federal adjusted gross income for the difference between the amount of social security benefits included in federal adjusted gross income (FAGI) and the amount calculated under sec. 86 of the Internal Revenue Code (IRC) as that section existed on December 31, 1992. The result of this subtraction is that up to 50% of social security benefits are taxable for Wisconsin while up to 85% are taxable for federal tax purposes.

For taxable years beginning in 2008 and thereafter, a subtraction is provided for the amount of social security benefits included in FAGI under sec. 86 of the IRC.

7. Veterans and Surviving Spouses Property Tax Credit Created (2005 Act 25, amend secs. 71.10(4)(i) and 71.08(1)(intro.) and create sec. 71.07(6e), effective for taxable years beginning on or after January 1, 2005).

The veterans and surviving spouses property tax credit is a refundable credit available to an eligible unremarried surviving spouse or an eligible veteran.

“Eligible unremarried surviving spouse” means an unremarried surviving spouse of one of the following, as verified by the Department of Veterans Affairs:

- An individual who had served on active duty in the U.S. armed forces or in forces incorporated as part of the U.S. armed forces, who was a resident of Wisconsin at the time of entry into that active service, and who died on active duty while a resident of Wisconsin.
- An individual who had served on active duty under honorable conditions in the U.S. armed forces or in forces incorporated as

part of the U.S. armed forces; who was a resident of Wisconsin at the time of entry into that active service; who was at least 65 years of age at the time of his or her death or would have been 65 years of age at the close of the year in which the death occurred; who was a resident of Wisconsin at the time of his or her death; and who had a service-connected disability rating of 100% under 38 USC 1114 or 1134.

- An individual who had served in the National Guard or a reserve component of the U.S. armed forces, who was a resident of Wisconsin at the time of entry into that service, and who, while a resident of Wisconsin, died in the line of duty while on active or inactive duty for training purposes.

“Eligible veteran” means an individual who is at least 65 years of age and who is verified by the Department of Veterans Affairs as meeting all of the following conditions:

- Served on active duty under honorable conditions in the U.S. armed forces or in forces incorporated in the U.S. armed forces.
- Was a resident of Wisconsin at the time of entry into that active service.
- Is currently a resident of Wisconsin for purposes of receiving veterans benefits under ch. 45, Wis. Stats.
- Has a service-connected disability rating of 100% under 38 USC 1114 or 1134.

The credit is equal to the amount of the claimant’s property taxes on his or her principal dwelling. If the allowable amount of the claim exceeds the income taxes otherwise due on the claimant’s income, the amount of the claim not used as an offset against those taxes shall be certified by the Department of Revenue to the Department of Administration for payment to the claimant by check, share draft, or other draft.

For purposes of the credit, “principal dwelling” means any dwelling and the land surrounding it that is reasonably necessary for use of the dwelling as a primary dwelling of the claimant. It may include a part of a multidwelling or multipurpose building and a part of the land upon which it is built that is used as a primary dwelling.

“Property taxes” means real and personal property taxes, exclusive of special assessments, delinquent interest, and charges for service, paid by a claimant on the claimant’s principal dwelling in Wisconsin during the taxable year for which credit is claimed, less any property taxes paid which are properly includable as a trade or business expense under sec. 162 of the Internal Revenue Code.

If the principal dwelling on which the taxes were paid is owned by two or more persons or entities as joint tenants or tenants in common or is owned by spouses as marital property, “property taxes” is that part of property taxes paid that reflects the ownership percentage of the claimant.

Note: The Wisconsin Legislature is currently considering an amendment to sec. 71.07(6e). The amendment would provide that in the case of an eligible veteran where the principal dwelling is owned by both spouses as joint tenants, tenants-in-common, or marital property, the credit would be based on 100% of the property taxes paid on the principal dwelling when a joint return is filed. If the eligible veteran and spouse file separate returns, each spouse could claim the credit based on their respective ownership interest in the eligible veteran’s principal dwelling.

If the principal dwelling is sold during the taxable year, the “property taxes” for the seller and buyer shall be the amount of the tax prorated to each in the closing agreement pertaining to the sale or, if not provided in the closing agreement, the tax shall be prorated between the seller and buyer in proportion to months of their respective ownership.

“Property taxes” includes monthly parking permit fees under sec. 66.0435(3)(c), Wis. Stats., in respect to a mobile home used as a principal dwelling.

The credit must be claimed within four years of the unextended due date of the return.

No credit may be allowed if the individual, or the individual’s spouse, files a claim for the farmland tax relief, school property tax credit, homestead, or farmland preservation credit.

The credit is not considered in the computation of the alternative minimum tax.

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 other taxes. The income tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit.

8. Dairy Investment Credit Clarified (2005 Act 25, renumber sec. 71.07(3n)(e) to 71.07(3n)(e)1. and amend as renumbered, amend sec. 71.07(3n)(a)2.(intro.), and create sec. 71.07(3n)(a)6.a. and (e)2., various effective dates.)

Certain terms and provisions of the dairy investment credit are clarified as follows:

- (a) “Dairy farm modernization or expansion” means the construction, the improvement, or the acquisition of buildings or facilities, or the acquisition of equipment, for dairy animal housing, confinement, animal feeding, milk production, or waste management, if used exclusively related to dairy animals and if acquired and placed in service in Wisconsin during taxable years that begin after December 31, 2003, and before January 1, 2010.
- (b) For taxable years beginning on or after January 1, 2004, and before January 1, 2006, “used exclusively,” related to dairy animals, means used to the exclusion of all other uses except for use not exceeding 5 percent of total use.
- (c) Effective July 27, 2005, the aggregate amount of credits that a partnership, limited liability company, or tax-option corporation may compute shall not exceed \$50,000.
- (d) Effective July 27, 2005, if 2 or more persons own and operate the dairy farm, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the farm shall not exceed \$50,000.

9. Dairy Investment Credit Expanded to Include Livestock (2005 Act 25, renumber sec. 71.07(3n)(b) to 71.07(3n)(b)1., renumber sec. 71.07(3n)(e) to 71.07(3n)(e)1. and amend as renumbered, amend sec. 71.07(3n)(title), and

create sec. 71.07(3n)(a)4., 5., and 6.b. and c., (b)2., and (e)2., various effective dates.)

The dairy investment credit is renamed the dairy and livestock farm investment credit. For taxable years beginning on or after January 1, 2006, and before January 1, 2012, the credit is expanded to include a credit equal to 10% of the amount the claimant paid in the taxable year for livestock farm modernization or expansion related to the operation of the claimant's livestock farm.

“Livestock farm modernization or expansion” means the construction, the improvement, or the acquisition of buildings or facilities, or the acquisition of equipment, for livestock housing, confinement, feeding, or waste management, including the following, if used exclusively related to livestock and if acquired and placed in service in Wisconsin during taxable years that begin after December 31, 2005, and before January 1, 2012:

- (a) Birthing structures.
- (b) Rearing structures.
- (c) Feedlot structures.
- (d) Feed storage and handling equipment.
- (e) Fences.
- (f) Watering facilities.
- (g) Scales.
- (h) Manure pumping and storage facilities.
- (i) Digesters.
- (j) Equipment used to produce energy.
- (k) Fish hatchery buildings.
- (l) Fish processing buildings.
- (m) Fish rearing ponds.

“Livestock” means cattle, not including dairy animals; swine; poultry, including farm-raised pheasants but not including other farm-raised game birds or ratites; fish that are raised in aquaculture facilities; sheep; and goats.

For taxable years that begin on or after January 1, 2006, and before January 1, 2010, “used exclusively,” related to livestock, dairy animals, or both, means used to the exclusion of all other

uses except for use not exceeding 5 percent of total use.

For taxable years that begin on or after January 1, 2010, and before January 1, 2012, “used exclusively,” related to livestock, means used to the exclusion of all other uses except for use not exceeding 5 percent of total use.

No credit may be allowed for any amount that the claimant paid for expenses that the claimant also claimed as a deduction for trade or business expenses under sec. 162 of the Internal Revenue Code.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of expenses, except that the aggregate amount of credits that the entity may compute shall not exceed \$50,000. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

If 2 or more persons own and operate the dairy or livestock farm, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the farm shall not exceed \$50,000.

The aggregate amount of dairy investment and dairy and livestock farm investment credits that a claimant may claim is \$50,000.

The current law provisions relating to the time period within which the credit must be claimed, the inclusion of the credit in income, the 15 year carry-forward of unused credit, the Department of Revenue's power to administer the credit, and the definition of “net business Income” with respect to a partnership for purposes of the recycling surcharge that apply to the dairy investment credit also apply to the dairy and livestock farm investment credit.

10. Armed Forces Member Tax Credit Increased (2005 Act 25, renumber sec. 71.07(6m)(b) to 71.07(6m)(b)(intro.) and amend as renumbered and create sec. 71.07(6m)(b)2., effective for taxable years beginning on or after January 1, 2006.)

The maximum armed forces member tax credit is increased from \$200 to \$300.

11. Donations to Veterans Trust Fund (2005 Act 25, create sec. 71.10(5g), effective for taxable years beginning on or after January 1, 2005.)

Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due that individual as a veterans trust fund donation. “Veterans trust fund” means the fund under sec. 25.36, Wis. Stats., that is administered by the Department of Veterans Affairs and provides moneys for the benefit of veterans.

If the individual owes any tax, the individual shall remit in full the tax due and the amount designated on the return as a veterans trust fund donation when the individual files a tax return. If an individual who owes taxes fails to remit an amount equal to or in excess of the total actual tax due (after any error correction) and the amount designated on the return as a veterans trust fund donation, the department will reduce the amount designated to reflect the amount remitted in excess of the actual tax due (after any error correction). If the amount remitted with the return does not exceed the tax due (after any error correction), the designation is void.

If the individual still has a refund after applying the refund to any delinquency owing the department and to any offset (pursuant to secs. 71.75(9) and 71.80(3) and (3m), Wis. Stats.), the department will deduct the amount designated on the return as a veterans trust fund donation from the amount of the refund. If an individual is owed a refund that does not equal or exceed the amount designated on the return as a veterans trust fund donation (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the veterans trust fund donation to reflect the actual amount of refund (after any error cor-

rection and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the veterans trust fund donation, the designation is void.

If a designation for the veterans trust fund donation is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place must be provided on the individual income tax return for designations to the veterans trust fund.

Amounts designated for veterans trust fund donations are not subject to refund unless the taxpayer submits information to the satisfaction of the department within 18 months after the date on which taxes are due or the date on which the return is filed, whichever is later, that the amount designated is clearly in error.

Annually, on or before September 15, the Secretary of Revenue shall certify to the Department of Veterans Affairs, the Department of Administration, and the State Treasurer the total amount of administrative costs, including data processing costs, incurred by the department in administering the veterans trust fund donation program, the total amount received from all designations for veterans trust fund donations made by taxpayers during the previous fiscal year, and the net amount after subtracting administrative costs from the total received.

12. Development Zone Credits Allowed Against All Franchise or Income Tax (2005 Act 25, repeal sec. 71.07(2di)(b)1. and (2dL)(c)1., renumber sec. 71.07(2dL)(c)2. to 71.07(2dL)(c), and amend sec. 71.07(2dL)(d), (2dm)(hm), and (2dx)(b)(intro.), effective for taxable years beginning on or after January 1, 2005.)

See Item B6.

13. Sales Factor Revised for Software Companies and Service Providers (2005 Act 25, amend secs. 71.01(8g) and (8m), 71.03(1), 71.04(7)(d), 71.07(2dr)(a), (3m)(a)1.b., and (10), and 71.195 and create secs. 71.01(1b), (1n), and (10g), and

71.04(7)(df) and (dh), effective for taxable years beginning on or after January 1, 2005.)

See Item B3.

14. Definition of “Member of a Targeted Group” Revised (2005 Act 25, amend sec. 71.07(2dx)(a)5., effective for taxable years beginning on or after January 1, 2005.)

See Item B7.

15. Joint or Separate Return Liability Revised to Adopt Changes to the IRC (2005 Act 25, amend sec. 71.10(6)(a) and (b) and (6m)(a) and create sec. 71.10(6)(e) and (6m)(c), effective for a tax liability that arises or remains unpaid on July 27, 2005.)

Persons filing a joint return are jointly and severally liable for the tax, interest, penalties, fees, additions to tax and additional assessments applicable to the return. A person shall be relieved of liability in regard to a joint return in the manner specified in section 6015(a) to (d) and (f) of the Internal Revenue Code.

A spouse filing a separate return may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments in the manner specified in section 66(c) of the Internal Revenue Code.

A formerly married or remarried person filing a return for a period during which the person was married may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments from that period as if the person were a spouse under section 66(c) of the Internal Revenue Code.

A person who seeks relief from liability shall apply for relief with the department, on a form prescribed by the department, within 2 years after the date on which the department first begins collection activities after July 27, 2005.

B. Corporation Franchise or Income Taxes

1. Internal Revenue Code References Updated for 2005 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 (2005 Act 25, repeal secs. 71.22(4)(j) and (k) and (4m)(h) and (i), 71.26(2)(b)10. and 11., 71.34(1g)(j) and (k), and 71.42(2)(i) and (j); amend secs. 71.22(4)(p) and (4m)(n), 71.26(2)(b)16., 71.34(1g)(p), and 71.42(2)(o); and create secs. 71.22(4)(r) and (4m)(p), 71.26(2)(b)18., 71.34(1g)(r), and 71.42(2)(q), effective for taxable years beginning on or after January 1, 2005.)

For taxable years that begin on or after January 1, 2005, “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, 2004, with the following exceptions:

- Section 13113 of Public Law 103-66, relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years.
- 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.
- Sections 1, 3, 4, and 5 of Public Law 106-519, relating to the allowance of an exclusion for extraterritorial income, and section 101 of Public Law 108-357, relating to the repeal of the extraterritorial income exclusion. (Note: Foreign sales corporation (FSC) treatment is repealed for Wisconsin purposes for taxable years beginning on or after January 1, 2005.)
- Section 162 of Public Law 106-554 and section 308 of Public Law 108-311, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Section 165 of Public Law 106-554 and section 306 of Public Law 108-311, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date.

- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.
 - Section 431 of Public Law 107-16, relating to the deduction for higher education expenses.
 - Section 101 of Public Law 107-147, section 201 of Public Law 108-27, and section 403(a) of Public Law 108-311, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.
 - Section 106 of Public Law 108-27, relating to an increase in the exemption amounts for alternative minimum tax for 2003 and 2004. (Note: An increase in the exemption amounts is allowed for taxable years beginning on or after January 1, 2005.)
 - Section 201 of Public Law 108-27, relating to the 50% bonus depreciation allowance.
 - Section 202 of Public Law 108-27, relating to increased section 179 expensing for small business, and section 201 of Public Law 108-357, relating to the extension of the termination date.
 - Section 1201 of Public Law 108-173, relating to health savings accounts.
 - Section 244 of Public Law 108-357, relating to special rules for certain film and television productions.
 - Section 336 of Public Law 108-357, relating to the depreciation allowance for aircraft.
 - Section 337 of Public Law 108-357, relating to the modification of placed in service rule for bonus depreciation.
 - Section 909 of Public Law 108-357, relating to the sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy.
 - Section 910 of Public Law 108-357, relating to the expansion of the limitation on depreciation of certain passenger automobiles.
 - 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, 2001, depreciation or amortization must be computed under the federal Internal Revenue Code as amended to December 31, 2000.
 - For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
 - 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.
 - For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
 - 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. **Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2005 Act 25, amend secs. 71.22(4)(L), (m), (n), (o), and (p) and (4m)(j), (k), (L), (m), and (n), 71.26(2)(b)12., 13., 14., 15., and 16., 71.34(1g)(L), (m), (n), (o), and (p), and 71.42(2)(k), (L), (m), (n), and (o); and create secs. 71.22(4)(q) and (4m)(o), 71.26(2)(b)17., 71.34(1g)(q), and 71.42(2)(p), and a nonstatutory provision, effective for taxable years beginning before January 1, 2005.)

Certain changes to the Internal Revenue Code made by federal laws enacted prior to 2005 apply for Wisconsin purposes at the same time as for federal purposes.

In addition, the Internal Revenue Code is modified as follows:

See Item A2 for a list of these law changes.

- 3. Sales Factor Revised for Software Companies and Service Providers** (2005 Act 25, renumber sec. 71.22(1) to 71.22(1k), amend secs. 71.22(6m) and (7m), 71.25(9)(d), 71.28(2m)(a)1.b. and (4)(a), (am)1., and (i), 71.42(3d) and (3h), 71.47(2m)(a)1.b. and (4)(a), (am), and (i), and 71.58(1)(c) and (cm), and create secs. 71.22(1g), (1t), and (9g) and 71.25(9)(df) and (dh), effective for taxable years beginning on or after January 1, 2005.)

Computer Software

For purposes of the sales factor, gross receipts from the use of computer software are Wisconsin sales, and included in the numerator of the sales factor, if the purchaser or licensee uses the computer software at a location in Wisconsin.

In the case of a business, computer software is used at a location in Wisconsin if the purchaser or licensee uses the computer software in the regular course of business operations in Wisconsin. If the purchaser or licensee uses the computer software in more than one state, the gross receipts are divided among the states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. If the taxpayer is not subject to income tax in the state in which the gross receipts are considered received, but the taxpayer's commercial domicile is in Wisconsin, 50 percent of the gross receipts are included in the numerator of the sales factor.

“Commercial domicile” means the location from which a trade or business is principally managed and directed, based on any factors the Department of Revenue determines are appropriate, including the location where the greatest number of employees of the trade or business work, have their office or base of operations, or from which the employees are directed or controlled.

If the purchaser or licensee is an individual, computer software is used in Wisconsin if the individual's domicile is in Wisconsin. “Domicile” means an individual's true, fixed, and permanent home where the individual intends to remain permanently and indefinitely and to which, whenever absent, the individual intends

to return, except that no individual may have more than one domicile at any time.

Services

For purposes of the sales factor, gross receipts from services are Wisconsin sales, and included in the numerator of the sales factor, if the purchaser of the service received the benefit of the service in Wisconsin. The benefit of the service is received in Wisconsin if any of the following applies:

- The service relates to real property that is located in Wisconsin.
- The service relates to tangible personal property that is located in Wisconsin at the time that the service is received.
- The service relates to tangible personal property that is delivered directly or indirectly to customers located in Wisconsin.
- The service is provided to an individual who is physically present in Wisconsin at the time the service is received.
- The service is provided to a person engaged in a trade or business in Wisconsin and relates to that person's business in Wisconsin.

If the purchaser of a service receives the benefit of the service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in Wisconsin.

If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in Wisconsin to the extent that the taxpayer's employees or representatives performed services from a location in Wisconsin. Fifty percent of the taxpayer's receipts that are considered received in Wisconsin are included in the numerator of the sales factor.

Definition

For purposes of these provisions, “state” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States,

unless the context requires that “state” means only the state of Wisconsin.

- 4. Dairy Investment Credit Clarified** (2005 Act 25, renumber sec. 71.28(3n)(e) to 71.28(3n)(e)1. and sec. 71.47(3n)(e) to 71.47(3n)(e)1. and amend secs. 71.28(3n)(e)1. and 71.47(3n)(e)1. as renumbered; amend secs. 71.28(3n)(a)2.(intro.) and 71.47(3n)(a)2.(intro.); and create secs. 71.28(3n)(a)6.a. and (e)2. and 71.47(3n)(a)6.a. and (e)2.; various effective dates.)

See Item A8.

- 5. Dairy Investment Credit Expanded to Include Livestock** (2005 Act 25, renumber sec. 71.28(3n)(b) to 71.28(3n)(b)1. and sec. 71.47(3n)(b) to 71.47(3n)(b)1.; renumber sec. 71.28(3n)(e) to 71.28(3n)(e)1. and 71.47(3n)(e) to 71.47(3n)(e)1. and amend secs. 71.28(3n)(e)1. and 71.47(3n)(e)1. as renumbered; amend secs. 71.28(3n)(title) and 71.47(3n)(title); and create secs. 71.28(3n)(a)4., 5., and 6.b. and c., (b)2., and (e)2. and 71.47(3n)(a)4., 5., and 6.b. and c., (b)2. and (e)2.; various effective dates.)

See Item A9.

- 6. Development Zone Credits Allowed Against All Franchise or Income Tax** (2005 Act 25, repeal secs. 71.28(1di)(b)1. and (1dL)(c)1. and 71.47(1di)(b)1. and (1dL)(c)1.; renumber sec. 71.28(1dL)(c)2. to 71.28(1dL)(c) and sec. 71.47(1dL)(c)2. to 71.47(1dL)(c); and amend secs. 71.28(1dL)(d), (1dm)(hm), and (1dx)(b)(intro.) and 71.47(1dL)(d), (1dm)(hm) and (1dx)(b)(intro.); effective for taxable years beginning on or after January 1, 2005.)

A claimant may claim the development zone, opportunity zone, enterprise zone, and agricultural development zone credits against the franchise or income taxes imposed on all of the claimant’s income. This treatment applies to credits claimed for taxable years beginning on or after January 1, 2005, including unused credits carried forward from prior years to taxable years beginning on or after January 1, 2005.

Under prior law, these credits generally could offset only the claimant’s taxes imposed on in-

come derived from the claimant’s business activities in the development zone, opportunity zone, enterprise zone, or agricultural development zone.

Note: Under both current and prior law, the credits may not be claimed against the recycling surcharge.

- 7. Definition of “Member of a Targeted Group” Revised** (2005 Act 25, amend secs. 71.28(1dx)(a)5. and 71.47(1dx)(a)5., effective for taxable years beginning on or after January 1, 2005.)

For purposes of the development zones credit, “member of a targeted group” includes a person who resides in an area designated by the federal government as an economic revitalization area.

Under prior law, a person who resided in an empowerment zone, or an enterprise community, that the U.S. government designated was a member of a targeted group.

- 8. Donations to Veterans Trust Fund** (2005 Act 25, create sec. 71.30(11), effective for taxable years beginning on or after January 1, 2005.)

A corporation filing a Wisconsin franchise or income tax return may designate on the return any amount of additional payment or any amount of a refund that is due the corporation as a donation to the veterans trust fund to be used for veterans programs. For additional information, see Item A11.

C. Sales and Use Taxes

- 1. Clarify Definition of “Retailer”** (2005 Act 25, amend sec. 77.51(13)(a), effective January 1, 2006.)

The definition of “retailer” in sec. 77.51(13)(a), Wis. Stats. (2003-04), is clarified to include every seller who makes any sale, *regardless of whether the sale is mercantile in nature.*

This provision reverses the decisions in two court cases, *Kollasch v. Adamany* (104 Wis. 2d 552, 562 (1981)) and *American Heart Association/Wisconsin Affiliate, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 24, 1998). In these decisions,

the Courts ruled that a nonprofit organization engaging in “nonmercantile transactions” is not a “retailer” with respect to those transactions as provided in secs. 77.51(13) and 77.52(1), Wis. Stats., and, therefore, is not liable for the sales tax on those transactions, even though the organization may hold a seller’s permit.

2. Increase Dollar Amount of Standards for Occasional Sale Exemption for Nonprofit Organizations (2005 Act 25, amend sec. 77.54(7m), effective January 1, 2006.)

Certain standards, including an entertainment standard and a receipts standard, must be met for a nonprofit organization’s sales to qualify as exempt occasional sales.

Entertainment Standard

The standard to determine whether “entertainment” is involved at an event is increased to \$500. For this purpose, “entertainment” means entertainment provided at an admission event by all persons or groups who are paid in the aggregate \$500 or more per event by all persons for performing, as a reimbursement of expenses, or prize money.

Under prior law, the entertainment standard was \$300.

Receipts Standard

The standard relating to a nonprofit organization’s receipts is increased to \$25,000. For this purpose, a nonprofit organization is engaged in a trade or business and is required to have a seller’s permit if its sales of tangible personal property and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed \$25,000 during the year.

Under prior law, the receipts standard was \$15,000.

For information about the other standards that must be met for a nonprofit organization’s sales to qualify as exempt occasional sales, see Publication 206, *Sales Tax Exemption for Nonprofit Organizations*.

3. Exempt Certain Sales by Affiliated Businesses (2005 Act 25, create sec. 77.54(49), effective September 1, 2005.)

An exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of taxable services and tangible personal property that is physically transferred to the purchaser as a necessary part of services that are subject to the taxes imposed under sec. 77.52(2)(a)7., 10., 11., and 20., if the seller and the purchaser of such services and property are members of the same affiliated group under sec. 1504 of the Internal Revenue Code and are eligible to file a single consolidated return for federal income tax purposes.

For purposes of this provision, if a seller purchases a taxable service or tangible personal property, as described above, that is subsequently sold to a member of the seller’s affiliated group and the sale is exempt under this provision from sales and use taxes, the original purchase of the taxable service or tangible personal property by the seller is not considered a sale for resale or exempt under this provision.

4. Exempt Clay Pigeons Sold to Shooting Facilities (2005 Act 25, renumber sec. 77.54(47) to 77.54(47)(intro.), and amend as renumbered, and create sec. 77.54(47)(b), effective for sales made on or after January 1, 2003.)

An exemption is created for the sale of and the storage, use, or other consumption of clay pigeons that are sold to a shooting facility, if any of the following applies:

- The shooting facility is required to pay the tax imposed under sec. 77.52, Wis. Stats., on its gross receipts from charges for shooting at the facility.
- The shooting facility is a nonprofit organization that charges for shooting at the facility, but is not required to pay the tax imposed under sec. 77.52, Wis. Stats., on its gross receipts from such charges because the charges are for occasional sales, as provided under sec. 77.54(7m), Wis. Stats.

- 5. Require that Moneys Transferred to the Baseball Park District Be Used Exclusively to Retire the District's Debt** (2005 Act 25, amend secs. 20.835(4)(gb) and 77.705, effective July 27, 2005.)

Any moneys that are transferred from the appropriation account under sec. 20.566(1)(gd) to the appropriation account under sec. 20.835(4)(gb), which relates to the administration of the baseball park district, are required to be used exclusively to retire the baseball park district's debt.

- 6. Require that Moneys Transferred to the Football Stadium District Be Used Exclusively to Retire the District's Debt** (2005 Act 25, amend secs. 20.835(4)(ge) and 77.706, effective July 27, 2005.)

Any moneys that are transferred from the appropriation account under sec. 20.566(1)(ge) to the appropriation account under sec. 20.835(4)(ge), which relates to the administration of the football stadium district, are required to be used exclusively to retire the football stadium district's debt.

- 7. Clarify Exemption for Meals, Food, Food Products, or Beverages Sold by Day Care Centers** (2005 Act 25, amend sec. 77.54(20)(c)4., effective July 27, 2005.)

This provision clarifies that the sale of meals, food, food products, or beverages sold by a day care center licensed under ch. 48, Wis. Stats., and served at a day care center are exempt from tax. Prior law stated that such sales by a day care center *registered* under ch. 48, Wis. Stats., are exempt from tax.

D. State Rental Vehicle Fee

- 1. Increase State Rental Vehicle Fee** (2005 Act 25, amend sec. 77.995(2), effective for rental or lease agreements entered into on or after October 1, 2005.)

The state rental vehicle fee is increased from 3% to 5% of the gross receipts on the rental, but not on the rental and not for rental as a service or repair replacement vehicle, of Type I automobiles, mobile homes, motor homes, and camping trailers by establishments primarily en-

gaged in the short-term rentals of vehicles without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under sec. 77.54(1), (4), (7)(a), (7m) or (9a), Wis. Stats.

E. Premier Resort Area Tax

- 1. Additional Businesses Subject to Premier Resort Area Taxes** (2005 Act 25, renumber 77.994(1)(a) to 77.994(1)(am) and create secs. 77.994(1)(ad), (em), (fa), (fb), (fc), (fd), (fe), (ff), (fg), (ka), (kb), (kc), (kd), (ma), (mb), (mc), (md), (me), (mf), (pa), (pb), (qa), and (ta), effective September 1, 2005.)

In addition to the businesses previously identified under sec. 77.994, Wis. Stats., 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 are also subject to the premier resort area tax:

- 5311 — Department stores.
- 5499 — Miscellaneous food stores.
- 5611 — Men's and boys' clothing and accessory stores.
- 5621 — Women's clothing stores.
- 5632 — Women's accessory and specialty stores.
- 5641 — Children's and infants' wear stores.
- 5651 — Family clothing stores.
- 5661 — Shoe stores.
- 5699 — Miscellaneous apparel and accessory stores.
- 5942 — Bookstores.
- 5943 — Stationery stores.
- 5944 — Jewelry stores.
- 5945 — Hobby, toy, and game shops.
- 5948 — Luggage and leather goods stores.
- 5949 — Sewing, needlework, and piece goods stores.
- 5992 — Florists.
- 5993 — Tobacco stores and stands.
- 5994 — News dealers and newsstands.
- 5999 — Miscellaneous retail stores.

- 7922 — Theatrical producers (except motion picture) and miscellaneous theatrical services.
- 7929 — Bands, orchestras, actors, and other entertainers and entertainment groups.
- 7991 — Physical fitness facilities.
- 7997 — Membership sports and recreation clubs.

(**Note:** Although the above industry numbers are subject to the premier resort area tax, businesses in the above industry numbers are not used for purposes of determining if 40% of the equalized value of the taxable property in the political subdivision is used by “tourism-related retailers,” as is required for a political subdivision to declare itself a premier resort area. See pages 31 to 34 of *Wisconsin Tax Bulletin 104* (November 1997) for additional information.)

2. **Require Department of Revenue to Provide Appropriate Guidance to Retailers With Respect to Premier Resort Area Tax and Impose Premier Resort Area Tax on Certain Additional Retail Outlets** (2005 Act 25, create sec. 77.9941(3m)(b), effective July 27, 2005.)

The Department of Revenue is required to provide appropriate guidance regarding the application of the premier resort area tax to all persons who hold a sales tax permit issued by the department. In addition, any retail outlet that would have been classified as a tourism-related retailer under sec. 77.994(1), Wis. Stats., but for the fact that it is a retail outlet for a manufacturer or wholesaler, will be considered a tourism-related retailer for purposes of imposing the premier resort area tax.

Note: Information about the premier resort area tax is provided in Publication 403, *Premier Resort Area Tax*, available on the Department of Revenue’s web site at www.dor.state.wi.us/html/taxpubs.html#sales.

F. Regional Transit Authority Fee

1. **Regional Transit Authority Fee** (2005 Act 25, amend sec. 59.58(6)(title), (a)1. and 2. and ch. 77 (title), create secs. 20.566(1)(gh), 20.835(4)(gh), 59.58(6)(cg) and subch. XIII of ch. 77, and repeal and recreate sec. 59.58(6)(b), effective July 27, 2005.)

Effective Date

The regional transit authority fee is effective on the first day of the month that begins at least 90 days after the governing body of the authority approves the imposition of the fee and notifies the Department of Revenue.

Creation of Regional Transit Authority and Governing Body

The counties of Kenosha, Milwaukee, and Racine shall create a regional transit authority.

“Authority” means the regional transit authority.

“Region” means the geographic area composed of the counties of Kenosha, Milwaukee, and Racine.

The governing body of the regional transit authority shall be made up of seven members consisting of one member from each county in the region appointed by the county executive of each county and approved by the county board, one member from the most populous city in each of the counties in the region appointed by the mayor of each such city and approved by the common council and one member from the most populous city in the region nominated by the governor and approved by the senate.

Jurisdiction of Regional Transit Authority

Retailers making deliveries in their company-operated vehicles of tangible personal property, or of property on which taxable services were performed, to purchasers in the region are doing business in that region, and the authority has the jurisdiction to impose the regional transit authority fee on them.

An authority does not have jurisdiction to impose the fee 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 this fee and later brought by the buyer into the region that does impose the fee.

Authority to Impose Regional Transit Authority Fee

A regional transit authority may impose a fee that does not exceed \$2 for each transaction in the region on the rental of Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats., by establishments primarily engaged in the short-term rental of passenger cars without drivers, for a period of 30 days or less.

This fee is to be collected from the person to whom the passenger car is rented and the retailer that collects this fee is required to separately state the fee on the receipt that the retailer provides to the rental customer. However, the following exemptions from the regional transit authority fee apply:

- a. Rerentals
- b. Rentals as a service or repair replacement vehicle
- c. Rentals which are prohibited from being taxed under the constitution or laws of the United States or under the constitution of the State of Wisconsin (sec. 77.54(1), Wis. Stats.)
- d. Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts (sec. 77.54(4), Wis. Stats.)
- e. Rentals that qualify as occasional sales, as defined in sec. 77.51(9), Wis. Stats. (sec. 77.54(7)(a), Wis. Stats.)
- f. Rentals by a neighborhood association, church, civic group, garden club, social club, or similar nonprofit organization if the organization is not engaged in a trade or business and is not required to have a seller's permit (sec. 77.54(7m), Wis. Stats.)
- g. Sales of tickets or admissions to public and private elementary school activities, where the entire net proceeds therefrom are expended for educational, religious or charitable purposes (sec. 77.54(9), Wis. Stats.)
- h. Rentals to the following organizations under sec. 77.54(9a), Wis. Stats.:
 1. Wisconsin or any agency thereof
 2. The University of Wisconsin Hospitals and Clinics Authority
 3. The Fox River Navigational System Authority
 4. Any county, city, village, town, or school district in Wisconsin
 5. A county-city hospital established under sec. 66.0927, Wis. Stats.
 6. A sewerage commission organized under sec. 281.43(4), Wis. Stats.
 7. A metropolitan sewerage district organized under secs. 200.01 to 200.15 or 200.21 to 200.65, Wis. Stats.
 8. Any other unit of government in this state or any agency or instrumentality of one or more units of government in this state
 9. Any joint local water authority created under sec. 66.0823, Wis. Stats.
 10. Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation
 11. A local exposition district under subch. II of ch. 229, Wis. Stats.
 12. A local cultural arts district under subch. V of ch. 229, Wis. Stats.

(Note: Exemptions other than those listed above, that apply for Wisconsin sales and use tax purposes, do not apply for purposes of the regional transit authority fee.)

Situs

Leases and rentals of motor vehicles used principally on the highway at normal highway speeds have a situs in the region if that is where they are customarily kept, except that leases and rentals of drive-it-yourself motor vehicles used principally on the highway at normal highway speeds, if those vehicles are used for one-way trips or leased for less than one month, are located in the region if that is where they come into the lessee's possession.

Administering and Distributing the Regional Transit Authority Fee

The Department of Revenue is responsible for administering and distributing the regional transit authority fee and may take any action, conduct any proceeding and impose interest and penalties relating to this fee.

Every person subject to the regional transit authority fee is required to register with the Department of Revenue. Any person who is required to register, including any person authorized to act on behalf of a corporation, partnership, or other person who is required to register, and who fails to do so is guilty of a misdemeanor.

The Department of Revenue will distribute 97.45% of the fees collected for each regional transit authority to that authority and will indicate to the authority the fees reported by each fee payer within the authority's jurisdiction no later than the end of the month following the end of the calendar quarter in which the amounts were collected. For administering the fees, the Department of Revenue may retain 2.55% of the fees collected. In addition, the fees distributed will be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments. Interest paid on the refunds will be paid from the appropriation under sec. 20.835(4)(gh), Wis. Stats.

Any authority receiving a report from the Department of Revenue relating to the regional transit authority fee is subject to the duties of confidentiality to which the Department of Revenue is subject under sec. 77.61(5), Wis. Stats.

Repealing the Regional Transit Authority Fee

To repeal the regional transit authority fee, the governing body of the authority is required to notify the Department of Revenue of the repeal of the fee at least 60 days prior to the effective date of the repeal.

Discontinuation of the Regional Transit Authority Fee

Retailers and the Department of Revenue may not collect this fee for any regional transit authority after the calendar quarter during which the regional transit authority ceases to exist, except that the Department of Revenue may collect from the retailers fees that accrued before that calendar quarter and interest and penalties that relate to those fees. If fees are collected, the authority may use this revenue for any lawful purpose.

G. Excise Tax

1. **Direct Marketing of Cigarettes** (2005 Act 25, renumber sec. 139.30(1) to 139.30(1m), amend secs. 134.66(1)(a), (2)(a), (am), and (e), 139.06(1)(a), 139.30(10), 139.32(1), (5), (5m), and (6), 139.321(1)(intro.), 139.33(3), 139.34(3), 139.35(1), 139.38(1) and (2), 139.395, 139.45, and 139.75(12), and create secs. 134.66(1)(am), 139.30(1d), (1s), (2n), (2p), (4n), and (8d), 139.345, 139.38(1m), and 139.46, effective July 27, 2005.)

Cigarette sales to consumers in Wisconsin by direct marketing are allowed if a direct marketer fulfills certain requirements.

“Direct marketing” means publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes, using any means by which the consumer is not physically present on a premise that sells cigarettes.

“Direct marketer” means a bonded direct marketer or a nonbonded direct marketer. A “bonded direct marketer” means any person who acquires unstamped cigarettes from the manufacturer, affixes the stamps to the packages and who also may acquire stamped cigarettes from a manufacturer or distributor and sells them by direct marketing. A “nonbonded direct marketer”

means any person who acquires stamped cigarettes from the manufacturers or distributors and sells them by direct marketing.

A direct marketer must submit to the department their name, trade name, address of the person's principal place of business, phone number, e-mail address, and Web site address. The direct marketer must certify to the department that they will acquire stamped cigarettes from a licensed distributor or unstamped cigarettes from the manufacturer, pay the tax imposed on all unstamped cigarettes, affix the stamps to the cigarette packages and sell only the stamped cigarettes in this state by direct marketing.

A direct marketer must certify to the department that the person will register with debit and credit card companies; that the invoices for all shipments of cigarettes will bear the direct marketer's name and address and any valid cigarette permit issued to the seller by the Department of Revenue; and that the direct marketer will provide the department any information the department considers necessary to administer the law.

The direct marketer may not sell any cigarettes to consumers in this state unless the sales tax, use tax, or cigarette tax, as appropriate, has been paid on the sale of the cigarettes.

A direct marketer who sells cigarettes to consumers in this state is required to verify the consumer's name and address and that the consumer is at least 18 years of age, and obtain from the consumer at the time of purchase, a statement signed by the consumer that confirms all of the following:

- The consumer's name, address, and birth date.
- That the consumer understands that no person under 18 years of age may purchase or possess cigarettes or falsely represent his or her age for the purpose of receiving cigarettes.
- That the consumer understands that any person who, for the purpose of obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses with intent to use, any personal identifying information or documents of an individual, including a de-

ceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her, is guilty of a Class H felony.

A direct marketer who sells cigarettes by means of the Internet shall obtain the purchaser's e-mail address and receive payment by credit card, debit card, or check prior to shipping.

All packages of cigarettes shipped to consumers in this state shall be clearly labeled "Cigarettes" on the outside of the packages.

No persons may deliver a package of cigarettes sold by direct marketing to a consumer in this state unless the person making the delivery receives a government issued identification card and verifies that the person receiving the cigarettes is at least 18 years old.

A delivery shall not be made unless the seller provides proof to the delivery person that all requirements have been met.

2. **Bad Debt Deduction Related to Cigarette and Tobacco Products Taxes** (2005 Act 25, create secs. 139.362, 139.363, 139.801, and 139.802, effective September 1, 2005.)

A distributor who sells cigarettes or tobacco products may claim as a deduction against the cigarette and tobacco products taxes imposed, an amount equal to such taxes that are attributable to bad debts that the distributor writes off as uncollectible in their books and records.

"Bad debt" means an amount that is equal to the purchase price of cigarettes and tobacco products, if such amount may be claimed as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges, interest on the wholesale price of cigarettes and tobacco products, uncollectible amounts on property that remains in the seller's possession until the full purchase price is paid, debts sold or assigned to third parties, and repossessed property.

The bad debt deduction for any excise taxes attributable to the bad debt shall be claimed on the

return that is submitted for the period in which the distributor writes off the amount of the bad debt as uncollectible in their books and records.

A distributor who claims a bad debt deduction shall submit the claim on a form prescribed by the department and shall submit with the form all of the following:

- (a) A copy of the original invoice for the sale of cigarettes and tobacco products that represents bad debt.
- (b) Evidence that the cigarettes and tobacco products described in the invoice under (a) above were delivered to the person who ordered them.
- (c) Evidence that the person who ordered and received the cigarettes and tobacco products did not pay the distributor who claims the bad debt deduction.
- (d) Evidence that the distributor who claims a bad debt deduction used reasonable collection practices in attempting to collect the amount owed.

Any amount that the distributor collects on which a deduction was claimed shall be reported and submitted to the department in the period in which it is collected.

Any person who possesses cigarettes or tobacco products for which the taxes imposed have not been paid because a bad debt deduction was claimed by that person's distributor, shall file a report and pay the cigarette or tobacco products taxes, and be subject to the same tax provisions as valid cigarette and tobacco products permittees.

If the property of any purchaser of cigarettes or tobacco products from any permittee is seized upon any intermediate or final process of any court in this state, or if the business of any purchaser of cigarettes or tobacco products from any permittee is suspended by the action of creditors or put into the hands of any assignee, receiver, or trustee, all amounts that are due from the purchaser to any permittee for taxes imposed that the permittee has paid to the state for cigarettes or tobacco products purchased from the permittee shall be considered preferred claims.

3. Bona Fide Liquor Wholesalers/Wine Reciprocity Provisions Revised (2005 Act 25, amend secs 125.145 and 125.68(10)(bs), and create secs. 125.12(6), 125.15, and 125.54(7), effective July 27, 2005.)

Intoxicating liquor wholesalers must be capable of warehousing intoxicating liquor. Any liquor sold by the wholesaler shall be physically unloaded at the wholesaler's premises or wholesaler's warehouse prior to being delivered to a retailer or to another wholesaler. The wholesaler shall annually sell and deliver intoxicating liquor to at least 10 retailers that do not have any direct or indirect interest in each other or in the permittee under this section.

Wholesalers who violate these provisions are subject to fines of not more than \$10,000; the court shall also order the wholesaler, and any retailer who receives a benefit from the violation, to forfeit an amount equal to any profit gained by the wholesaler or by the retailer, and the court shall further order that the wholesaler's permit and the retailer's license be revoked.

The department shall promulgate rules to administer and enforce the requirements.

Revocation/suspension actions for these violations may be initiated with the department; intoxicating liquor wholesalers, retailers and trade associations may initiate a private cause of action to enforce the provisions.

Wisconsin residents purchasing wine under the reciprocity agreements may receive 27 liters of wine annually.

4. Liquor Administrative Fee Increased (2005 Act 25, amend sec. 139.06(1)(a), effective August 15, 2005.)

An administrative fee on intoxicating liquor taxed at rates under sec. 139.03(2m) is increased from 3 cents to 11 cents per gallon and shall be deposited in the appropriation under sec. 20.566(1)(ha).

The fee is to be used for computer, audit, and enforcement costs incurred in the administration of the liquor tax and for costs incurred in enforcing the 3-tier system for alcohol beverage production, distribution, and sale under chapter 125.

- 5. Supplier Definition Amended** (2005 Act 25, amend secs. 78.005 (14) and 168.01(2), effective for tax periods beginning on or after January 1, 2005.)

A “supplier” also includes a person who acquires motor vehicle fuel or petroleum products “by a 2-party exchange under section 4105 of the Internal Revenue Code.”

- 6. Petroleum Inspection Fee Rate Decreased** (2005 Act 25, amend sec. 168.12 (1), effective May 1, 2006.)

The petroleum inspection fee rate is decreased from 3 cents per gallon to 2 cents per gallon on all petroleum products that are received by a supplier for sale in this state or for sale for export to this state.

H. Withholding Tax

- 1. Withholding Required From Nonresident Members of Pass-Through Entities** (2005 Act 25, create sec. 71.775, effective for taxable years beginning on or after January 1, 2005.)

A pass-through entity that has Wisconsin income for the taxable year that is allocable to a nonresident partner, member, shareholder, or beneficiary is required to pay a withholding tax.

For purposes of the withholding tax, a pass-through entity is a partnership, limited liability company treated as a partnership, a tax-option (S) corporation, an estate, or a trust that is treated as a pass-through entity for federal income tax purposes. A nonresident includes an individual who is not domiciled in Wisconsin; a partnership, limited liability company, or corporation whose commercial domicile is outside Wisconsin; and an estate or trust that is a nonresident under sec. 71.14(1) to (3m), Wis. Stats.

The amount of tax required to be withheld is equal to the nonresident partner’s, member’s, shareholder’s, or beneficiary’s share of income attributable to Wisconsin multiplied by the following:

- For an individual, an estate, or a trust, the highest tax rate for a single individual for the taxable year under sec. 71.06, Wis. Stats.

- For a partnership, a limited liability company, or a corporation, the highest tax rate for a corporation under sec. 71.27, Wis. Stats.

A pass-through entity that is a member of another pass-through entity must pay the withholding tax based on the share of income that is distributable to each of the entity’s nonresident partners, members, shareholders, or beneficiaries.

A nonresident partner’s, member’s, shareholder’s, or beneficiary’s share of income from the pass-through entity is not subject to withholding if any of the following applies:

- The partner, member, shareholder, or beneficiary is exempt from Wisconsin income taxation. The pass-through entity may rely on a written statement from a partner, member, shareholder, or beneficiary claiming to be exempt from taxation, if the pass-through entity attaches a copy of the statement to its return for the taxable year. The statement must specify the name, address, federal employer identification number, and reason for claiming an exemption.
- The partner, member, shareholder, or beneficiary has no Wisconsin income other than his or her share of income from the pass-through entity that is attributable to Wisconsin and his or her share of that income is less than \$1,000.
- The pass-through entity is a joint venture that has elected not to be treated as a partnership under section 761 of the Internal Revenue Code.
- The pass-through entity is a publicly traded partnership, as defined under section 7704(b) of the Internal Revenue Code, if the entity files with the Department of Revenue an information return that reports the name, address, taxpayer identification number, and any other information requested by the Department for each unit holder with more than \$500 of Wisconsin income from the entity.

Each pass-through entity that is subject to withholding must pay the tax withheld to the Department of Revenue no later than:

- For tax-option (S) corporations, the 15th day of the 3rd month following the close of the taxable year (March 15 for calendar-year filers).
- For partnerships, limited liability companies, estates, and trusts, the 15th day of the 4th month following the close of the taxable year (April 15 for calendar-year filers).

If the pass-through entity has an extension of time to file its return, the tax withheld is due on the unextended due date of the entity's return.

A pass-through entity that pays the tax withheld is not subject to an underpayment of estimated tax under sec. 71.09 or 71.29, Wis. Stats., if 90 percent of the tax that is due for the current year is paid by the unextended due date or if 100 percent of the tax that is due for the taxable year immediately preceding the current taxable year is paid by the unextended due date and the taxable year immediately preceding the current taxable year was a 12-month period. Interest at the rate of 12 percent is imposed on the unpaid amount of the tax withheld during any extension period. Interest at the rate of 18 percent is imposed on the unpaid amount of the tax withheld for the period beginning with the extended due date and ending with the date that the unpaid amount is paid in full.

On or before the due date, including extensions, of the entity's return, a pass-through entity that withholds tax must notify each of its nonresident partners, members, shareholders, or beneficiaries of the amount of tax withheld that the entity paid on the nonresident partner's, member's, shareholder's, or beneficiary's behalf. The pass-through entity must provide a copy of the notice to the Department of Revenue with the return that it files for the taxable year.

A nonresident partner, member, shareholder, or beneficiary may claim a credit on his or her Wisconsin income or franchise tax return for the amount of tax withheld on his or her behalf. The amount withheld is considered to be paid on the last day of the pass-through entity's taxable year for which the tax is paid.

Any tax withheld is held in trust for the state of Wisconsin, and a pass-through entity subject to the withholding tax is liable to the Department

for the payment of the tax withheld. No partner, member, shareholder, or beneficiary of a pass-through entity shall have any right of action against the pass-through entity with respect to any amount withheld and paid in compliance with sec. 71.775, Wis. Stats.

If a pass-through entity subject to withholding fails to withhold tax, the pass-through entity is liable for any tax, interest, and penalties. If a nonresident partner, member, shareholder, or beneficiary of a pass-through entity files a return and pays the tax due, the pass-through entity is not liable for the tax, but is liable for any interest and penalties otherwise applicable for failure to withhold, as provided under secs. 71.82(2)(d) and 71.83, Wis. Stats.

I. Other

- 1. Internet Listing of Delinquent Taxpayers** (2005 Act 25, amend secs. 71.78(2) and 139.91(1) and create secs. 71.78(4) (r), 73.03(62), 76.30(2)(i), 77.61(5)(b)12., and 139.91(4), effective January 1, 2006.)

The department is authorized to prepare, maintain, and post on the Internet a list of all persons who owe delinquent taxes, including interest, penalties, fees, and costs, to the department, in excess of \$25,000, which are unpaid for more than 90 days after all appeal rights have expired.

The internet site shall list the name, address, tax type and amount of tax due, including interest, penalties, fees, and costs. The Internet site shall also contain a separate list of the 100 largest delinquent tax accounts. Both lists will be updated on a quarterly basis.

The department may not post on the Internet the name of any person who has reached an agreement or compromise with the Department of Revenue or the Department of Justice and is in compliance with that agreement, regarding the payment of delinquent taxes, or the name of any person who is protected by a stay that is in effect under the Federal Bankruptcy Code. The Internet posting shall be updated each business day to comply with these prohibitions.

The Secretary of Revenue and employees of the department are authorized to examine returns for the purpose of preparing and maintaining the list

of persons with unpaid tax obligations so that the list of such persons is available for public inspection.

- 2. Revocation, Suspension or Denial of License to Practice Law Based on Tax Delinquency** (2005 Act 25, amend sec. 73.0301(2)(b)1.a., b., and 2., and (5)(a) and (b)(intro) and create sec. 73.0301(2)(b)2m. and (5)(am), effective for hearings that commence on or after July 27, 2005.)

This act provides that the hearing process for a law license applicant or attorney owing delinquent state taxes to the department be concluded prior to a department certification of such an individual to the Wisconsin Supreme Court.

After the tax delinquency is certified, the Supreme Court would decide what action to take regarding the law license or law license application.

The Department of Revenue may not submit a certificate of delinquency to the Supreme Court if the attorney or law license applicant pays the tax delinquency in full or enters into an agreement with the Department to satisfy the delinquency.

The legislation results in a hearing process consistent with the Supreme Court's authority over attorney licensure.

- 3. License Denial or Revocation Provisions Revised** (2005 Act 25, amend sec. 73.0301(2)(c)2., effective July 27, 2005.)

A licensing department and the Supreme Court may require a holder of a license to provide the following information upon request:

- If the license holder is an individual and has a social security number, the license holder's social security number.
- If the license holder is not an individual, the license holder's federal employer identification number.

A licensing department may disclose this information to the Department of Revenue for the purpose of requesting certifications and administering state taxes. Under prior law, the licensing

department could disclose this information for the sole purpose of requesting certifications.

- 4. Provisions Relating to Setoffs for Other State Agencies Expanded** (2005 Act 25, renumber sec. 71.93(3) to 71.93(3)(a) and amend as renumbered, amend sec. 71.93(1)(a)1., 3., and 4., (2), (4), (5), (6), and (7), and create sec. 71.93(1)(cm) and (3)(b), effective July 27, 2005).

A state agency may certify to the department any properly identified debt exceeding \$20 so that the department may set off the amount of the debt against a refund to the debtor or so that the Department of Administration may reduce a disbursement to the debtor by the amount of the debt. At least 30 days prior to certification each debtor shall be sent a notice by the state agency of its intent to certify the debt to the department for setoff or reduction and of the debtor's right of appeal.

"Disbursement" means any payment to a person who provides goods and services to the state under subch. IV or V of ch. 16 or under ch. 84, Wis. Stats.

"Debt" includes an amount owed to a state agency, if the amount has been reduced to a judgment or if the state agency has provided the debtor reasonable notice and an opportunity to be heard with regards to the amount owed.

Any legal action contesting a setoff or reduction shall be brought against the state agency that certified the debt.

The department shall provide the information to the Department of Administration. Before reducing any disbursement, the Department of Administration shall contact the department to verify whether a certified debt that is the basis of the reduction has been collected by other means. If the certified debt remains uncollected, the Department of Administration shall reduce the disbursement by the amount of the debtor's certified debt, notify the department of such reduction and disbursement, and remit the amount of the reduction to the department in the manner prescribed by the department. If more than one certified debt exists for any debtor, the disbursement shall be reduced first by any tax

debts certified under sec. 73.12, Wis. Stats., then by the earliest debt certified.

The current law provisions relating to settlements with state agencies, administrative costs, adjustment of erroneous settlements and confidentiality that apply to setoffs of refunds also apply to reductions of disbursements.

This Act also provides that the Department of Health and Family Services may certify debts to recover incorrect payments under certain public assistance programs and for food stamp offenses.

- 5. Provisions Relating to Setoffs for Municipalities and Counties Expanded** (2005 Act 25, renumber sec. 71.935(3) to 71.935(3)(a) and amended as renumbered, amend sec. 71.935(2), (4), and (5), and create sec. 71.935(1)(cm) and (3)(b), effective July 27, 2005).

A municipality or county may certify to the department any debt owed to it as defined in sec. 71.935(1)(a), Wis. Stats. At the time of certification, the municipality or county shall furnish to the department the name and social security number or operator's license number of each individual debtor and the name and federal employer identification number of each other debtor.

The department shall provide the information obtained to the Department of Administration. Before reducing any disbursement, the Department of Administration shall contact the department to verify whether a certified debt that is the basis of the reduction has been collected by other means and, in the case of a parking citation, whether the debtor has contested the citation within 20 days after the certification notice. If the certified debt remains uncollected and, in the case of a parking citation, the citation has not been contested within the 20 days, the Department of Administration shall, after any re-

duction for debts owed to other state agencies, reduce the disbursement by the amount of the debtor's certified debt, notify the department of such reduction and disbursement, and remit the amount of the reduction to the department in the manner prescribed by the department. If more than one certified debt exists for any debtor, the disbursement shall be reduced first by the earliest debt certified.

“Disbursement” means any payment to a person who provides goods and services to the state under subch. IV or V of ch. 16 or under ch. 84 of the Wisconsin Statutes.

Any legal action contesting a setoff or reduction shall be brought against the municipality or county that certified the debt.

Current law provisions relating to settlements with the municipality and county and administration costs that apply to setoffs of refunds also apply to reduction of disbursements.

- 6. Definition of Vendor Changed** (2005 Act 25, amend sec. 73.12(1)(b), effective July 27, 2005).

For purposes of the set off of payments to vendors, “vendor” means a person providing goods or services to Wisconsin under subch. IV or V of ch. 16 or under ch. 84, Wis. Stats. Under prior law, this definition applied only if the value of the contract for those goods or services was at least \$500.

- 7. Definition of License Revised** (2005 Act 25, amend sec. 73.0301(1)(d)3., effective July 27, 2005.)

The amendment to sec. 73.0301(1)(d)3., Wis. Stats., deletes the sanitarian registration from the definition of licenses subject to denial, nonrenewal, or suspension based on a tax delinquency.