



Wisconsin TAX BULLETIN

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New Tax Laws

Since the last issue of the Wisconsin Tax Bulletin, the Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. See page 3 for details.

Mark Your Calendar...

The Council on State Taxation (COST), in partnership with the Wisconsin Department of Revenue (DOR), will be presenting a Special Report Mid-West Regional State Tax Seminar on April 22, 2009, at the Miller Inn in Milwaukee. Topics will include combined reporting, Streamlined Sales and Use Tax, and other significant business tax provisions included in the Budget Repair Bill and Budget Bill. More information will be available soon on DOR's web site.

Making the Transition to Combined Reporting: Estimated Payments

A commonly controlled group of corporations engaged in a unitary business must use combined reporting to compute their Wisconsin income for franchise or income tax purposes. This applies to taxable years beginning on or after January 1, 2009 (see page 6 for a summary of the provisions of combined reporting).

Affected groups of corporations must take combined reporting into account when they make their 2009 estimated payments. However, special transitional rules apply to give taxpayers adequate time to adjust their estimates. This article provides an overview of how estimated payments will work under the transition to combined reporting.

Determining the Taxable Year of the Combined Group

The same taxable year will apply for the entire combined group. If two or more corporations in the group file in the same federal consolidated return, the group's taxable year is the same as that used on the federal consolidated return. In all other cases, the group's taxable year is the taxable year of the "designated agent" corporation described in the next column.

If a corporation is on a different taxable year than the rest of the group, it may choose to convert its records to the combined group's taxable year or simply use the amounts from the year that ends during the combined group's taxable year. (**Note:** If a corporation is on a fiscal year beginning before January 1, 2009, it is not required to use combined reporting until its first fiscal year beginning on or after January 1, 2009.)

Determining the "Designated Agent" Corporation

The designated agent of the combined group is responsible for acting on behalf of the entire group for matters relating to the combined Wisconsin return. The designated agent is normally the parent corporation of the combined group. If the combined group has no parent corporation, the members can designate which corporation is the designated agent. The designated agent is not required to identify itself as the designated agent until the first combined return is filed.

One of the responsibilities of the designated agent is to make quarterly estimated tax payments on behalf of the entire combined group. Thus, the other corporations in the group should **not** remit their own estimated payments on income that will be included in a combined Wisconsin return.

Estimated Payment Due Dates Under Transitional Rules

The law provides a grace period for the designated agent to make any estimated payments for the combined group that are due less than 45 days after March 6, 2009. The due date of these payments is extended to the next subsequent installment due date. Thus, the following due dates apply:

- For combined groups on a **calendar year**, the first estimated payment is due on **June 15, 2009**. This payment must take into account the combined group's first and second installment payments.

- For combined groups on a fiscal year beginning **February 1, 2009**, the first estimated payment is due on **July 15, 2009**. This payment must take into account the combined group's first and second installment payments.
- For combined groups on a fiscal year beginning **March 1, 2009**, the first estimated payment is due on **May 15, 2009**. This payment only needs to take into account the combined group's first installment payment.

How to Make Estimated Payments Under Combined Reporting

As mentioned on page 1, the designated agent is not required to register as the designated agent in order to submit estimated payments on behalf of the group. The designated agent is also not required to identify the members of the group at the time that it makes an estimated payment on behalf of the group. Rather, when the designated agent files the group's combined Wisconsin corporation franchise or income tax return, it will submit a department-prescribed form with the return to identify the corporations included.

The designated agent should use electronic funds transfer or a Form 4-ES, *Wisconsin Corporation Estimated Tax Voucher*, to make the estimated payments, in the same manner as it would make payments under separate entity filing. The [estimated tax voucher](#) and payments may be mailed to:

Wisconsin Department of Revenue
Box 930208
Milwaukee, WI 53293-0208 [☞](#)

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available earlier this month. The *Sales and Use Tax Report* contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the March 2009 *Sales and Use Tax Report* (1-09) include:

- Important Notice About the *Sales and Use Tax Report*;
- Reminder – New Catalog Exemption Becomes Effective April 1, 2009; and
- New Tax Laws.

The Report is available on the Department of Revenue's web site at www.revenue.wi.gov/ise/sales/09-1.pdf.



We Need Your Brain...

By now, some of you are seeing tax forms and instructions in your sleep. Do any of these images cause you to wake up screaming? If so, we're looking to help end the nightmares by tapping into your knowledge and experience.

If you have suggestions for improving Wisconsin's tax forms and instructions for 2009, please take a few moments to share them with us. E-mail them to isetechnsv@revenue.wi.gov, fax them to (608) 261-6240, or mail them to Wisconsin Department of Revenue, Administration Technical Services, Mail Stop 6-40, P.O. Box 8933, Madison, WI 53708-8933.

Updated and Discontinued Publications

Since the last issue of the *Wisconsin Tax Bulletin*, the following publication of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue has been revised:

401 Extensions of Time to File (1/09)

In addition, due to increased availability of information on the Internet and decreased usage, the following publications have been discontinued:

502 Directory of Wisconsin Tax Publications

504 Wisconsin Department of Revenue Directory

All of the IS&E Division's publications may be downloaded or ordered online at www.revenue.wi.gov/html/taxpubs.html. There are over 70 publications available, covering a wide range of topics.

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New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual and fiduciary income tax, corporation franchise and income tax, sales and use tax, and other provisions. These provisions are contained in 2009 Act 2 (the Budget Repair Bill).

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A. Individual Income Taxes

- Angel Investment Credit Revised** (2009 Act 2, renumber sec. 71.07(5d)(b) to 71.07(5d)(b)(intro.) and amend as renumbered, amend secs. 71.07(5d)(c)2., 73.03(63), and 560.205(1)(intro.), (g), and (k) and (3)(d), repeal and recreate sec. 560.205(1)(f), and create secs. 71.07(5d)(b)2. and 560.205(1)(kn) and (L), various effective dates.)

For taxable years beginning before January 1, 2008, an individual may claim the angel investment credit in each taxable year for two consecutive years beginning with the taxable year as certified by the Department of Commerce, an amount equal to 12.5 percent of the claimant's bona fide angel investment made directly in a qualified new business venture.

For taxable years beginning after December 31, 2007, for the taxable year certified by the Department of Commerce, the individual may claim an amount equal to 25 percent of the claimant's bona fide angel investment made directly in a qualified new business venture.

For taxable years beginning before January 1, 2008, the maximum amount of a claimant's investment that may be used as the basis for the credit is \$2,000,000 for each investment made directly in a certified business.

A business desiring certification from the Department of Commerce shall specify in its application the investment amount it wishes to raise and the Department of Commerce may certify the business and determine the amount that qualifies for purposes of the angel investment credit.

A business may be certified and may maintain such certification only if it satisfies all of the following requirements:

- It has its headquarters in Wisconsin,

- (b) At least 51 percent of the employees are employed in Wisconsin,
- (c) It has the potential for increasing jobs in Wisconsin, increasing capital investment in Wisconsin, or both, and any of the following apply:
 - 1. It is engaged in, or has committed to engage in, innovation in any of the following:
 - a. Manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology.
 - b. Processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying proprietary technology.
 - c. Services that are enabled by applying proprietary technology.
 - 2. It is undertaking pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying proprietary technology.
- (d) It is not primarily engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable resource.
- (e) It has less than 100 employees.
- (f) It has been in operation in Wisconsin for not more than ten consecutive years.
- (g) For taxable years beginning before January 1, 2008, it has not received more than \$1,000,000 in investments that have qualified for the angel investment credit.
- (h) It has not received aggregate private equity investment in cash of more than \$10,000,000 prior to being certified.
- (i) For taxable years beginning after December 31, 2007, and before January 1, 2011, it has not received more than \$4,000,000 in investments that have qualified for angel investment credits or early stage seed investment credits.
- (j) For taxable years beginning after December 31, 2010, it has not received more than \$8,000,000 in investments that have qualified for angel investment credits or early stage seed investment credits.

The aggregate amount of angel investment credits that may be claimed for investments in certified businesses is \$3,000,000 per calendar year for calendar years beginning after December 31, 2004, and before January 1, 2008, \$5,500,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, 2011, and \$18,000,000 per calendar year for calendar years beginning after December 31, 2010, plus, for taxable years beginning after December 31, 2010, an additional \$250,000 for tax credits that may be claimed for investments in certified nanotechnology businesses.

B. Corporation Franchise and Income Taxes

1. **Combined Reporting** (2009 Act 2, amend secs. 71.22(3m), 71.25(intro.), 71.26(3)(x), 71.30(2), 71.42(1t), 71.43(2), and 71.80(1)(b) and create sec. 71.255, effective for taxable years beginning on or after January 1, 2009.)

Corporations that are commonly controlled and engaged in a unitary business must use combined reporting to compute their Wisconsin income for franchise or income tax purposes. This requirement does not generally apply to tax-option (S) corporations.

Generally speaking, corporations are commonly controlled if:

- There is greater than 50% common ownership (either directly or indirectly), or
- Stock representing more than 50% of the voting power in each corporation are interests that cannot be separately transferred.

Income includable on a combined return does not include income of corporations exempt from Wisconsin franchise or income taxes under sec. 71.26(1), Wis. Stats. (2007-08), or insurers exempt under sec. 71.45(1)(a), Wis. Stats. (2007-08).

The department has set up a web page to provide a centralized source of information about combined reporting. As implementation of this law progresses, this page will be updated continually with resources to assist taxpayers in determining their income and tax liability under combined reporting. You can link to the web page from the department's main page at www.revenue.wi.gov, or link directly to the page at www.revenue.wi.gov/comb rept/index.html.

On a continuing basis, the department will use its Practitioner E-News Service to notify subscribers by e-mail when new items are posted. To subscribe, visit the department's web site at www.revenue.wi.gov/html/lists.html.

For more information about the transition to combined reporting, including special rules that allow additional time for making estimated payments, see the article titled "Making the Transition to Combined Reporting: Estimated Payments" on page 1 of this Bulletin.

2. **Definition of "Doing Business in This State" Expanded** (2009 Act 2, amend sec. 71.22(lr), effective for taxable years beginning on or after January 1, 2009.)

Under prior law, the definition of "doing business in this state" included issuing credit, debit, or travel and entertainment cards to customers in Wisconsin; directly or indirectly owning a general or limited partnership interest in a partnership transacting business in Wisconsin, regardless of the percentage of ownership; and directly or indirectly owning an interest in an LLC transacting business in Wisconsin, regardless of the percentage of ownership, if the LLC is treated as a partnership for federal income tax purposes.

For income and franchise tax purposes, the definition of "doing business in this state" is expanded to include:

- regularly selling products or services of any kind or nature to customers in Wisconsin that receive the product or service in Wisconsin;
- regularly soliciting business from potential customers in Wisconsin;
- regularly performing services outside Wisconsin for which the benefits are received in Wisconsin;

- regularly engaging in transactions with customers in Wisconsin that involve intangible property and result in receipts flowing to the taxpayer from within Wisconsin; and
- holding loans secured by real or tangible personal property located in Wisconsin.

3. Treatment of Personal Holding Companies Revised (2009 Act 2, repeal sec. 71.25(5)(b)2. and renumber sec. 71.25(5)(b)1. to 71.25(5)(b), effective for taxable years beginning on or after January 1, 2009.)

Under prior law (sec. 71.25(5)(b)2., Wis. Stats. (2007-08)), income, gain or loss from intangible property that was earned by a personal holding company, as defined in sec. 542 of the Internal Revenue Code (as amended to December 31, 1974) was to be allocated to the residence of the taxpayer, except to the extent that the realized income was from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin. In that case, the lottery prize income was to be allocated to Wisconsin.

Act 2 repealed sec. 71.25(5)(b)2. However, the repeal does not affect the treatment of income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin. Section 71.25(5)(b), Wis. Stats., as renumbered by Act 2 provides that this income shall be allocated to Wisconsin.

4. Computations Order Revised (2009 Act 2, renumber secs. 71.30(3)(em) to 71.30(3)(eh), 71.30(3)(emb) to 71.30(3)(ei), 71.30(3)(en) to 71.30(3)(ej), 71.30(3)(eo) to 71.30(3)(ek), 71.30(3)(eom) to 71.30(3)(eL), 71.49(1)(em) to 71.49(1)(eh), 71.49(1)(emb) to 71.49(1)(ei), 71.49(1)(en) to 71.49(1)(ej), 71.49(1)(eo) to 71.49(1)(ek), and 71.49(1)(eom) to 71.49(1)(eL) and create secs. 71.30(3)(ema) and 71.49(1)(ema), effective March 6, 2009.)

The computations order under secs. 71.30(3) and 71.49(1), Wis. Stats., is revised to reflect that the newly created economic development tax credit under secs. 71.28(1dy) and 71.47(1dy), Wis. Stats., is not a refundable credit.

C. Individual and Fiduciary Income Taxes and Corporation Franchise and Income Taxes

1. Economic Development Tax Credit Created (2009 Act 2, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.21(4), 71.26(2)(a)4., 71.34(1k)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.07(2dy), 71.10(4)(gv), 71.28(1dy), 71.30(3)(ema), 71.47(1dy), 71.49(1)(ema), 76.637, and 560.701 through 560.706, effective for taxable years beginning on or after January 1, 2009.)

The economic development tax credit may be claimed by persons certified by the Department of Commerce (DOC) and authorized by that department to claim the tax credits. A person may be certified by the DOC if it determines that the person is conducting or intends to conduct at least one eligible activity.

The person must enter into a contract with the DOC that includes provisions that detail all of the following:

- A description of each eligible activity being conducted or proposed to be conducted.
- Whether any of the eligible activities will occur in an economically distressed area.
- Whether any of the eligible activities will benefit members of a targeted group.
- A compliance schedule that includes a sequence of anticipated actions to be taken or goals to be achieved before the person may receive tax benefits.
- The reporting requirements with which the person must comply.
- If feasible, a determination of the tax benefits the person will be authorized to claim if the person fulfills the terms of the contract.

“Eligible activities” are any of the following:

- Job creation project.
- Capital investment project.
- Employee training project.
- Project related to persons with corporate headquarters in Wisconsin

The DOC may authorize a person who is certified to claim tax benefits only after the person has submitted a report to the DOC that documents to the satisfaction of the DOC that the person has complied with the terms of the contract and the requirements of any applicable rules.

The economic development tax credit is equal to the amount authorized by the DOC. A copy of the certification and notice to receive tax benefits from the DOC must be attached to the claimant’s Wisconsin tax return.

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 authorization to claim tax benefits. 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 interests.

The amount of the computed credit must be added to the claimant’s income except where the credit is passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to its income.

The credit is nonrefundable. If a credit computed is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income taxes for the following 15 taxable years to the extent not offset by these taxes in all intervening years. In the case of a change in ownership or business of a corporation, section 383 of the Internal Revenue Code applies to the carry-over of unused credits.

If the claimant’s certification is revoked or if a claimant becomes ineligible for tax benefits, the claimant may not claim credits for the taxable year that includes the day on which the certification is revoked; the taxable year that includes the day on which the claimant becomes ineligible for tax benefits; or succeeding taxable years. The claimant may not carry over unused credits from previous years to offset tax for the taxable year that includes the day on which certification is revoked; the taxable year that includes the day on which the claimant becomes ineligible for tax benefits; or succeeding taxable years.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit.

No credit may be allowed unless it is claimed within 4 years of the unextended due date of the return.

- 2. Dairy Manufacturing Facility Investment Credit Extended to Dairy Cooperatives** (2009 Act 2, amend secs. 71.07(3p)(a)3.(intro.), (b), (c)2m.b. and 3., and (d)2., 71.28(3p)(a)3.(intro.), (b), (c)2m.b. and 3., and (d)2., 71.47(3p)(a)3.(intro.), (b), (c)2m.b. and 3., and (d)2., and 560.207(1) and (2) and create secs. 71.07(3p)(a)1m., (c)2m.b.m., 5., and 6., and (d)3., 71.28(3p)(a)1m., (c)2m.b.m., 5., and 6., and (d)3., and 71.47(3p)(a)1m., (c)2m.b.m., 5., and 6., and (d)3., effective for taxable years beginning on or after January 1, 2009, and before January 1, 2017.)

The dairy manufacturing facility investment credit is extended to dairy cooperatives. “Dairy cooperative” means a business organized under ch. 185 or 193, Wis. Stats., for the purpose of obtaining or processing milk.

In the case of dairy cooperatives, “dairy manufacturing modernization or expansion” means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing if used exclusively for dairy manufacturing and if acquired and placed in service in Wisconsin during taxable years that begin after December 31, 2008, and before January 1, 2017.

The Department of Commerce shall implement a program to certify members of dairy cooperatives as eligible for the credit and shall determine the amount of credits to allocate. The maximum amount of credits that may be claimed by all members of dairy cooperatives is \$600,000 in fiscal year 2009-10 and \$700,000 in each fiscal year thereafter.

Partnerships, limited liability companies, tax-option corporations, and dairy cooperatives 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 \$200,000 for each of the entity’s dairy manufacturing facilities. A dairy cooperative shall compute the amount of credit that each of its members may claim and shall provide that information to each of them. Members of a dairy cooperative may claim the credit in proportion to the amount of milk that each member delivers to the dairy cooperative, as determined by the dairy cooperative.

No dairy manufacturing facility investment credit may be allowed unless the claimant submits a copy of the credit certification and allocation from the Department of Commerce with the tax return.

The amount of the computed credit must be added to the claimant’s income except where the credit is passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to its income.

If the allowable amount of the credit exceeds the tax otherwise due, the amount of the credit not used to offset tax otherwise due shall be certified by the Department of Revenue for payment by check.

- 3. Meat Processing Facility Investment Credit Created** (2009 Act 2, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.10(4)(i), 71.21(4), 71.26(2)(a)4., 71.30(3)(f), 71.34(1k)(g), 71.45(2)(a)10., 71.49(1)(f), and 77.92(4) and create secs. 71.07(3r), 71.28(3r), 71.47(3r), and 560.208, effective for taxable years beginning on or after January 1, 2009, and before January 1, 2017.)

The meat processing facility investment credit is an amount equal to 10 percent of the amount paid in the taxable year for meat processing modernization or expansion related to the claimant’s meat processing operation.

“Meat processing” means processing livestock into meat products or processing meat products for sale commercially.

“Meat processing modernization or expansion” means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for meat processing, including the following, if used exclusively for meat processing and if acquired and placed in service in Wisconsin during taxable years that begin after December 31, 2008, and before January 1, 2017:

- Building construction, including livestock handling, product intake, storage, and warehouse facilities.
- Building additions.
- Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities.
- Livestock intake and storage equipment.
- Processing and manufacturing equipment, including cutting equipment, mixers, grinders, sausage stuffers, meat smokers, curing equipment, cooking equipment, pipes, motors, pumps, and valves.
- Packaging and handling equipment, including sealing, bagging, boxing, labeling, conveying, and product movement equipment.
- Warehouse equipment, including storage and curing racks.
- Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment that uses waste to produce energy, fuel, or industrial products.
- Computer software and hardware used for managing the claimant’s meat processing operation, including software and hardware related to logistics, inventory management, production plant controls, and temperature monitoring controls.

“Used exclusively” means used to the exclusion of all other uses except for use not exceeding five 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 under section 162 of the Internal Revenue Code.

The aggregate amount of credits that a claimant may claim is \$200,000.

The amount of the computed credit must be added to the claimant’s income except where the credit is passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to its income.

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 \$200,000. 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 two or more persons own and operate the meat processing operation, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed shall not exceed \$200,000.

The Department of Commerce shall implement a program to certify taxpayers as eligible for the meat processing facility investment credit. The Department of Commerce also shall determine the amount of credits to allocate to that taxpayer. The total amount of meat processing facility investment credits allocated to taxpayers in fiscal year 2009-10 may not exceed \$300,000 and the total amount of credits allocated to taxpayers in fiscal year 2010-11 and thereafter may not exceed \$700,000. The Department of Commerce, in consultation with the Department of Revenue, shall promulgate rules to administer the certification and allocation.

No credit may be allowed unless the claimant submits with the claimant's return a copy of the claimant's credit certification and allocation from the Department of Commerce.

If the allowable amount of the credit exceeds the tax otherwise due, the amount of the credit not used to offset tax otherwise due shall be certified by the Department of Revenue for payment by check.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit.

No credit may be allowed unless it is claimed within 4 years of the unextended due date of the return.

4. **Early Stage Seed Investment Credit Revised** (2009 Act 2, repeal secs. 71.07(5b)(c)1., 71.28(5b)(c)1., and 71.47(5b)(c)1., renumber secs. 71.07(5b)(c)2. to 71.07(5b)(c), 71.28(5b)(c)2. to 71.28(5b)(c), and 71.47(5b)(c)2. to 71.47(5b)(c), amend secs. 73.03(63) and 560.205(2) and (3)(d), and create secs. 76.638 and 560.205(3)(e), effective for taxable years beginning on or after January 1, 2009.)

The provision limiting the amount of credit that may be claimed for all taxable years to \$52,000,000 is repealed. The amount that may be claimed for investments paid to fund managers is \$3,500,000 per calendar year for calendar years beginning after December 31, 2004, and before January 1, 2008; \$6,000,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, 2011; and \$18,500,000 per calendar year for calendar years beginning after December 31, 2010, plus, for taxable years beginning after December 31, 2010, an additional \$250,000 for tax credits that may be claimed for investments in certified nanotechnology businesses.

A person who is eligible to claim the early stage seed investment credit may sell or otherwise transfer the credit to another person who is subject to tax if the person receives prior authorization from the investment fund manager and the manager then notifies the Department of Commerce and the Department of Revenue of the transfer and submits with the notification a copy of the transfer documents. No person may sell or otherwise transfer a credit more than once in a 12-month period. The Department of Commerce may charge any person selling or otherwise transferring a credit a fee equal to one percent of the credit amount sold or transferred.

For purposes of certifying investment fund managers, the investment fund manager shall specify in the application to the Department of Commerce, the investment amount that the manager wishes to raise and the department may certify the manager and determine the amount that qualifies for the early stage seed investment credit.

5. **Internet Equipment Credit Cross-References Changed** (2009 Act 2, amend secs. 71.07(5e)(b) and (c)1. and 3., 71.28(5e)(b) and (c)1. and 3., and 71.47(5e)(b) and (c)1. and 3., effective October 1, 2009.)

Due to renumbering of the sales tax statutes, for purposes of the Internet equipment credit the references to sec. 77.54(48) are changed to sec. 77.585(9). References to "an exemption" are changed to "a deduction."

- 6. Related Entity Intangible Expenses and Management Fees** (2009 Act 2, amend secs. 71.05(6)(a) 24. and (b)46., 71.10(1), 71.26(2)(a)7. and 9., 71.34(1k)(j) and (L), 71.45(2)(a)16. and 18., and 71.80(23)(a)(intro.), 1., 2., and 3., and (b) and create secs. 71.01(5n), (5p), and (7v), 71.22(3g), (3h), and (6d), 71.34(1c), (1d), and (1h), and 71.42(1sg), (1sh), and (3c), effective for taxable years beginning on or after January 1, 2009.)

Current Wisconsin law provides an addition to income for interest expenses and rental expenses that are directly or indirectly paid, accrued, or incurred to, or in connection with one or more transactions with, a related entity. The taxpayer is then allowed a subtraction for the interest and rental expenses if certain conditions are met.

This Act provides the same treatment for intangible expenses or management fees that are directly or indirectly paid, accrued, or incurred to, or in connection with one or more transactions with, a related entity.

“Intangible expenses” include the following, to the extent that the amounts would otherwise be deductible in computing Wisconsin income:

- Expenses, losses, and costs for, related to, or directly or indirectly in connection with the acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property.
- Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions.
- Royalty, patent, technical, and copyright fees.
- Licensing fees.
- Other similar expenses, losses, and costs.

“Intangible property” includes stocks, bonds, financial instruments, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

“Management fees” include expenses and costs, not including interest expenses, pertaining to accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, taxation, financial matters, securities, accounting, or reporting and compliance matters or similar activities, to the extent that the amounts would otherwise be deductible in the computation of Wisconsin income.

- 7. Transactions Without Economic Substance** (2009 Act 2, create secs. 71.10(1m), 71.30(2m), and 71.80(1m), effective for taxable years beginning on or after January 1, 2009.)

If any person, directly or indirectly, engages in a transaction or a series of transactions without economic substance to create a loss, reduce taxable income, or increase credits allowed in determining the person’s Wisconsin tax, the department shall determine the amount of a taxpayer’s taxable income or tax so as to reflect what would have been the taxpayer’s taxable income or tax if not for the transaction or transactions without economic substance causing the reduction in taxable income or tax.

A transaction has economic substance only if the taxpayer shows both of the following:

- The transaction changes the taxpayer’s economic position in a meaningful way, apart from federal, state, local, and foreign tax effects; and
- The taxpayer has a substantial nontax purpose for entering into the transaction and the transaction is a reasonable means of accomplishing the substantial nontax purpose.

A transaction has a substantial nontax purpose if it has substantial potential for profit, disregarding any tax effects. With respect to transactions between members of a controlled group, as that term is defined under sec. 267(f)(1) of the Internal Revenue Code, such transactions shall be presumed to lack economic substance, and the taxpayer shall bear the burden of establishing by clear and convincing evidence that transactions between the taxpayer and one or more controlled group members has economic substance.

- 8. Sourcing of Intangibles for Sales Apportionment Factor** (2009 Act 2, repeal secs. 71.04(7)(d) and 71.25(9)(d), amend secs. 71.01(1b), (1n), and (10g), 71.07(2dr)(a), 71.22(1g), (1t), and (9g), 71.28(4)(ad)1. through 3. and (am)1., and 71.47 (4)(ad)1. through 3. and (am), and create secs. 71.04(7)(dj) and (dk) and 71.25(9)(dj) and (dk), effective for taxable years beginning on or after January 1, 2009.)

Under prior law (secs. 71.04(7)(d) and 71.25(9)(d), Wis. Stats. (2007-2008)), certain types of sales were sourced for purposes of the sales apportionment factor according to where the income-producing activity was performed. If that activity was performed both in and outside Wisconsin, the amount includable in the numerator of the sales apportionment factor was determined based on the portion of the direct costs of performance incurred in Wisconsin. Prior law required gross receipts from the use or license of intangible property and sales of intangible property to be sourced in this manner.

Act 2 repeals these provisions and provides that royalties and other gross receipts from the use or license of intangible property and sales of intangible property (excluding securities) must be sourced in the following manner:

Royalties and Gross Receipts for the Use or License of Intangible Property

Gross royalties and other gross receipts received for the use or license of intangible property, including patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know-how, contracts, and customer lists, are sales in Wisconsin if any of the following applies:

- The purchaser or licensee uses the intangible property in the operation of a trade or business at a location in Wisconsin,
- The purchaser or licensee is billed for the purchase or license of the use of the intangible property at a location in Wisconsin, or
- The purchaser or licensee of the use of the intangible property has its commercial domicile in Wisconsin.

If the purchaser or licensee uses the intangible property in the operation of a trade or business in more than one state, the gross royalties and other gross receipts from the use of the intangible property are divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states.

If the taxpayer is not within the jurisdiction, for income or franchise tax purposes, in the state in which the gross royalties or other gross receipts are apportioned as described above, but the taxpayer's commercial domicile is in Wisconsin, 50 percent of those gross royalties or other gross receipts are included in the numerator of the sales factor.

Sales of Intangible Property

Sales of intangible property, excluding securities, are sales in this state if any of the following applies:

- The purchaser uses the intangible property in the regular course of business operations in Wisconsin or for personal use in Wisconsin,
- The purchaser is billed for the purchase of the intangible property at a location in Wisconsin, or
- The purchaser of the intangible property has its commercial domicile in Wisconsin.

If the purchaser uses the intangible property in more than one state, the sales are divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states.

If the taxpayer is not within the jurisdiction, for income or franchise tax purposes, in the state in which the sales of intangible property are apportioned as described above, but the taxpayer's commercial domicile is in Wisconsin, 50 percent of those gross receipts are included in the numerator of the sales factor.

- 9. Definition of “Financial Organization” Modified** (2009 Act 2, renumber secs. 71.04(8)(a) to 71.04(8)(a)1. and 71.25(10)(a) to 71.25(10)(a)1. and create secs. 71.04(8)(a)2. and 71.25(10)(a)2., effective for taxable years beginning on or after January 1, 2009.)

The definition of “financial organization” is modified to include any subsidiary of a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, brokerage house, underwriter or any type of insurance company, if a significant purpose for the subsidiary is to hold investments or if the subsidiary primarily functions to hold investments.

D. Sales and Use Taxes

- 1. Computer Software** (2009 Act 2, amend sec. 77.51(20) and create secs. 77.51(1n), (1p), and (10r), effective March 6, 2009.)

The definition of tangible personal property is amended to include prewritten computer software, regardless of how it is delivered to the purchaser. Under prior law, tangible personal property included computer programs except custom computer programs.

Effective March 6, 2009, this provision reverses the effect of the decision in *Wisconsin Department of Revenue vs. Menasha Corporation* (Wisconsin Supreme Court, No. 2004AP3239, July 11, 2008). In this decision, the Supreme Court ruled that the SAP R/3 System software purchased by the taxpayer was custom software that is not subject to Wisconsin sales or use tax when sold, leased, or licensed.

Definitions of “computer,” “computer software,” and “prewritten computer software” were added to the law. The definitions are as follows:

Computer - An electronic device that accepts information in digital or similar form and that manipulates such information to achieve a result based on a sequence of instructions.

Computer software - A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

Prewritten computer software - Computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of 2 or more “prewritten computer software” programs or prewritten portions of computer software does not cause the combination to be other than “prewritten computer software.” “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than the specific purchaser. For purposes of this subsection, if a person modifies or enhances computer software of which the person is not the author or creator, the person is the author or creator only of the person's modifications or enhancements. “Prewritten computer software” or a prewritten portion of computer software that is modified or enhanced to any degree, with regard to a modification or enhancement that is designed and developed to the specifications of a specific purchaser, remains “prewritten computer software,” except that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not “prewritten computer software.”

Computer Software Maintenance Contracts

The tax treatment of a computer software maintenance contract follows the tax treatment of the purchase of the software to which the contract relates. Therefore, if a person's purchase of software was exempt from Wisconsin sales and use tax, then that person's purchase of the software maintenance contract for that software would also be exempt from Wisconsin sales and use tax.

For example, in 2007, Company A purchased software similar to SAP R/3 System software (exempt custom software at the time of purchase). Company A's purchase of a maintenance contract for this software is exempt from sales and use tax, regardless of whether the maintenance contract is purchased before or after March 6, 2009 (i.e., the date that the sale of this type of software becomes taxable).

When a software maintenance contract for **taxable software** includes both taxable and nontaxable products or services, the following applies:

- ***Maintenance contracts for taxable computer software or taxable computer programs - Contracts sold prior to 10-1-09**** – If the contract includes taxable and nontaxable products or services, the entire charge for the contract is taxable unless it is determined by the department that another method, such as allocation or primary purpose, more accurately reflects the tax.
- ***Maintenance contracts for taxable computer software or taxable computer programs - Contracts sold 10-1-09 and thereafter**** – If the contract includes taxable and nontaxable products or services, the entire sales price for the contract is taxable unless, at the retailer's option, the retailer can identify by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products or services that are not subject to the tax. That portion of the sales price is not taxable.

*The 10-1-09 date is significant because of certain provisions in the Main Street Equity Act referenced below.

2. **Main Street Equity Act a/k/a Streamlined Sales and Use Tax Provisions** (2009 Act 2, effective October 1, 2009. Affected provisions in the law are too numerous to list individually. See the language of 2009 Act 2 at www.legis.wi.gov/2009/data/acts/09Act2.pdf.)

The Wisconsin Legislature has passed the legislation necessary to conform Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA) and allow Wisconsin to petition to become a member of the Streamlined Sales Tax Governing Board (SSTGB). The conforming legislation becomes effective in Wisconsin on October 1, 2009. If the petition for membership is approved by the existing members of the SSTGB, Wisconsin will be the 23rd state to become a member of the SSTGB. The 22 other states that have already enacted the necessary legislation are: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, Washington, and Wyoming.

Some of the goals of the SSUTA that will benefit Wisconsin retailers and/or consumers include the following: simplifying and modernizing the sales and use tax system to reduce the burdens of sales and use tax compliance, creating uniformity among the states with respect to definitions used to determine the tax base, creating uniformity between the state and local tax bases, creating one central, electronic registration system for all member states, creating uniform sourcing rules for all of the member states, simplifying the administration of exemptions for both retailers and purchasers and simplifying the sales tax return and the methods to remit the taxes due. Even with all of these common goals, the SSUTA still protects each state's sovereign right to determine which items are or are not taxable in its state.

To date, nearly 1,100 retailers have already **voluntarily** registered under the Streamlined Sales Tax Project (SSTP) for those states that have conformed their laws to the SSUTA – regardless of whether they have a physical presence in all those states – and are collecting and remitting the applicable sales or use tax for those states. These retailers have recognized that the uniformity and simplification provisions required by the SSUTA before a state can become a full member of the SSTP have reduced their compliance burden to the point that they are willing to **voluntarily** collect the applicable sales or use tax on all of their taxable sales made into these states.

Although conforming Wisconsin's laws to the provisions of the SSUTA will not allow Wisconsin, or any other state, to **require** every out-of-state retailer that delivers taxable products into Wisconsin to collect Wisconsin sales and use tax, it at least gives the State of Wisconsin and the counties and the special districts that have adopted the applicable sales and use taxes an opportunity to receive some of the sales and use taxes that otherwise may go uncollected. In addition, it helps level the playing field between Wisconsin brick and mortar retailers and their mail order and online competitors.

Additional information detailing the changes that will occur because of Wisconsin's adoption of this legislation will be posted on the department's web site and published in future issues of the *Wisconsin Tax Bulletin* and *Sales and Use Tax Report*.

If you would like additional information concerning the national Streamlined Sales Tax Project, please visit the SSTP web site at: www.streamlinedsalestax.org/.

3. **Sales and Use Taxes Imposed on Digital Goods** (2009 Act 2, effective October 1, 2009. Affected provisions in the law are too numerous to list individually. See the language of 2009 Act 2 at www.legis.wi.gov/2009/data/acts/09Act2.pdf.)

Imposition - Sales Tax: Effective October 1, 2009, state, county, and stadium sales taxes and the premier resort area tax are imposed on the sale, lease, license, or rental of specified digital goods and additional digital goods at retail for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right. (Section 77.52(1)(d), Wis. Stats.)

Imposition - Use Tax: Effective October 1, 2009, state, county, and stadium use taxes are imposed on the storage, use, or other consumption of specified digital goods and additional digital goods purchased from any retailer, if the purchaser has the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right. (Section 77.53(1), Wis. Stats.)

Exemptions: An exemption is provided for the sale of and the storage, use, or other consumption of specified digital goods or additional digital goods, if the sale, license, lease, or rental of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from taxation under Subchapter III, Chapter 77, Wis. Stats. (Section 77.54(50), Wis. Stats.)

Definitions: The following definitions apply for purposes of the sales and use tax treatment of digital goods:

- (a) "Specified digital goods" means digital audio works, digital audiovisual works, and digital books. For purposes of Subchapter III, Chapter 77, Wis. Stats., the sale of or the storage, use, or other consumption of a digital code is treated the same as the sale of or the storage, use, or other consumption of any specified digital goods for which the digital code relates. (Section 77.51(17x), Wis. Stats.)

- (b) "Additional digital goods" means all of the following, if they are transferred electronically: (1) greeting cards; (2) finished artwork; (3) periodicals; and (4) video or electronic games. For purposes of Subchapter III, Chapter 77, Wis. Stats., the sale of or the storage, use, or other consumption of a digital code is treated the same as the sale of or the storage, use, or other consumption of any additional digital goods for which the digital code relates. (Section 77.51(1a), Wis. Stats.)
- (c) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds that are transferred electronically, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, ringtones, or other sound recordings but not including audio greeting cards sent by electronic mail. (Section 77.51(3pa), Wis. Stats.)
- (d) "Digital audiovisual works" means a series of related images that, when shown in succession, impart an impression of motion, along with accompanying sounds, if any, and that are transferred electronically. "Digital audiovisual works" includes motion pictures, musical videos, news and entertainment programs, and live events, but does not include video greeting cards or video or electronic games. (Section 77.51(3p), Wis. Stats.)
- (e) "Digital books" means works that are generally recognized in the ordinary and usual sense as books and are transferred electronically. "Digital books" includes any literary work, other than a digital audio work or digital audiovisual work, that is expressed in words, numbers, or other verbal or numerical symbols or indicia, if the literary work is generally recognized in the ordinary and usual sense as a book, work of fiction or nonfiction, or a short story, but does not include newspapers or other news or information products, periodicals, chat room discussions, or blogs. (Section 77.51(3pb), Wis. Stats.)
- (f) "Digital code" means a code that provides the person who holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book and that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code. "Digital code" includes codes used to access or obtain any specified digital goods, or any additional digital goods that have been previously purchased, and promotion cards or codes that are purchased by a retailer or other business entity for use by the retailer's or entity's customers.
- "Digital code" does not include the following: (1) code that represents any redeemable card, gift card, or gift certificate that entitles the holder of such card or certificate to select any specified digital goods or additional digital goods at the cash value indicated by the card or certificate; or (2) digital cash that represents a monetary value that a customer may use to pay for a future purchase. (Section 77.51(3pc), Wis. Stats.)
- (g) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (Section 77.51(3po), Wis. Stats.)
- (h) "Finished artwork" means the final art used for actual reproduction by photomechanical or other processes or for display purposes. "Finished artwork" also includes all of the following items regardless of whether such items are reproduced: drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals, assemblies, charts, graphs, and illustrative materials. (Section 77.51(3rm), Wis. Stats.)
- (i) "Ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer regarding a communication, but not including ringback tones or other digital audio files that are not stored on the purchaser's communication device. (Section 77.51(13rm), Wis. Stats.)
- (j) "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media. (Section 77.51(21q), Wis. Stats.)

Sourcing - Sales of Digital Goods: The location of a sale of a specified digital good or additional digital good is determined as follows:

Note: For purposes of the location of a sale of a specified digital good or additional digital good, “receives” means taking possession or making first use of, whichever is first, the specified digital good or additional digital good. (Section 77.522(1)(a)1., Wis. Stats.)

- (a) If a purchaser receives the digital good at a seller’s business location, the sale occurs at that business location.
- (b) If a purchaser does not receive the digital good at a seller’s business location, the sale occurs at the location where the purchaser, or the purchaser’s designated donee, receives the digital good, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser’s designated donee.
- (c) If the location of a sale of the digital good cannot be determined under par. (a) or (b), the sale occurs at the purchaser’s address as indicated by the seller’s business records, if the records are maintained in the ordinary course of the seller’s business and if using that address to establish the location of the sale is not in bad faith.
- (d) If the location of a sale of the digital good cannot be determined under par. (a), (b), or (c), the sale occurs at the purchaser’s address as obtained during the consummation of the sale, including the address indicated on the purchaser’s payment instrument, if no other address is available and if using that address is not in bad faith.
- (e) If the location of a sale of the digital good cannot be determined under par. (a), (b), (c), or (d), including the circumstance in which the seller has insufficient information to determine the location under par. (a), (b), (c), or (d), the sale occurs at the location from which the digital good was first available for transmission by the seller, not including any location from which the digital good was merely transferred electronically. (Section 77.522(1) and (2), Wis. Stats.)

Sourcing – Licenses of Digital Goods: The location of a license of a specified digital good or additional digital good is determined as follows:

- (a) With regard to the first or only payment on the license of the digital good, the license occurs at the location determined under “Sourcing – Sales of Digital Goods,” above.
- (b) If the digital good is moved from the place where the digital good was initially delivered, the subsequent periodic payments on the license occur at the digital good’s primary location as indicated by an address for the digital good that is provided by the licensee and that is available to the licensor in records that the licensor maintains in the ordinary course of the licensor’s business, if the use of such an address does not constitute bad faith. The location of a license as determined under this paragraph shall not be altered by any intermittent use of the digital good at different locations. (Section 77.522(1) and (2), Wis. Stats.)

E. Other

1. **Provisions Related to the Denial, Nonrenewal, Discontinuation, Suspension, or Revocation of a License Based on a Tax Delinquency Revised** (2009 Act 2, amend sec. 73.0301(1)(d)6., effective March 6, 2009.)

The definition of “license” is revised to include a mortgage loan originator license issued by the Department of Financial Institutions or a division of it.

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2. **Business Tax Registration** (2009 Act 2, amend sec. 73.03(50)(d) and create sec. 73.03(50b), effective October 1, 2009.)

If a seller has appointed an agent to represent them before the states that are signatories to the Streamlined Sales and Use Tax Agreement, they may designate the agent to register with the department in the manner prescribed by the department.

The fee for applying for and renewing the business tax registration certificate shall be waived if the person who is applying for or renewing the certificate is not required for purposes of ch. 77, Wis. Stats., to hold a certificate.

To “sign” a business tax registration application form means to write one’s signature or, if the department prescribes another method of authenticating, use that other method.