Wisconsin TAX BULLETIN

www.revenue.wi.gov Number 162 **July 2009***

*Revised September 2010. See "NEW" and REVISED" indicators on pages 7 and 35.

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 tax provisions of 2009 Acts 11 and 28.

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

Wisconsin Tax Bulletin

Published quarterly by
Wisconsin Department of Revenue
Income Sales and Excise
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PO Box 8933
Madison WI 53708-8933

In This Issue

A. Individual and Fiduciary Income Taxes

1. **Internal Revenue Code References Updated for 2009 for Individuals, Estates, and Trusts** (2009 Act 28, repeal sec. 71.01(6)(n), amend sec. 71.01(6)(t), and create sec. 71.01(6)(um), effective for taxable years beginning on or after January 1, 2009.)

   For taxable years that begin on or after January 1, 2009, "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, 2008, 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 and section 11(g) of Public Law 110-172, relating to the repeal of the extraterritorial income exclusion.

   - 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 101 of Public Law 107-147, section 201 of Public Law 108-27, section 403(a) of Public Law 108-311, and Public Law 110-186, relating to bonus depreciation allowance for property.

   - Section 202 of Public Law 108-27, section 201 of Public Law 108-357, section 101 of Public Law 109-222, section 8212 of Public Law 110-28, and Public Law 110-185, relating to increased section 179 expensing. (**Note:** For Wisconsin purposes, an increased sec. 179 expensing applies to property used in farming by a person actively engaged in farming if the property is placed in service in taxable years beginning on or after January 1, 2008, and before 2010. For purposes of this exception, "actively engaged in farming" has the meaning given in 7 CFR 1400.201, and "farming" has the meaning given in section 464(e)(1) of the Internal Revenue Code.)

   NEW→ • Section 1201 of Public Law 108-173 and sections 302, 303, 304, and 305 of Public Law 109-432, relating to health savings accounts.

   REVISED→ • Section 102 of Public Law 108-357, relating to the domestic production activities deduction. (**Note:** The domestic production activities deduction was allowed for tax years beginning prior to January 1, 2009. For taxable years beginning on or after January 1, 2009, this deduction is no longer allowed for Wisconsin tax purposes.)

   - Section 242 of Public Law 108-357, relating to income forecast method of depreciation.

   - 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 422 of Public Law 108-357, relating to incentives to reinvest foreign earnings in the United States.

   - Section 847 of Public Law 108-357, relating to tax treatment of certain leasing arrangements.

- Section 910 of Public Law 108-357, relating to the expansion of the limitation on depreciation of certain passenger automobiles.

- Section 1308 of Public Law 109-58, relating to electric transmission property treated as 15-year property.

- Section 1309 of Public Law 109-58, relating to expansion of amortization for certain atmospheric pollution control facilities.

- Section 1310 of Public Law 109-58, relating to special rules for nuclear decommissioning costs.

- Section 1323 of Public Law 109-58, relating to expensing refinery property.

- Section 1324 of Public Law 109-58, relating to the pass through to owners of deduction for capital costs incurred by small refiner cooperatives in complying with EPA sulfur regulations.

- Section 1325 of Public Law 109-58, relating to natural gas distribution lines treated as 15-year property.

- Section 1326 of Public Law 109-58, relating to natural gas gathering lines treated as 7-year property.

- Section 1328 of Public Law 109-58, relating to the determination of small refiner exception to oil depletion deduction.

- Section 1329 of Public Law 109-58 and section 503 of Public Law 109-222, relating to amortization of geological and geophysical expenditures.

- Section 1351 of Public Law 109-58, relating to the expansion of research credit.

- Section 11146 of Public Law 109-59, relating to tax treatment of state ownership of railroad real estate investment trust.

- Section 101 of Public Law 109-135, relating to tax benefits for the Gulf Opportunity Zone.

- Section 105 of Public Law 109-135, relating to extension of bonus depreciation placed in service date for taxpayers affected by Hurricanes Katrina, Rita, and Wilma.

- Section 207 of Public Law 109-222, relating to the election to amortize musical works and copyrights over a 5-year period.

- Section 209 of Public Law 109-222, relating to treatment of below-market loans to qualified continuing care facilities.

- Section 512 of Public Law 109-222, relating to 2010 IRA conversions to Roth IRAs.

- Section 811 of Public Law 109-280, relating to making permanent the pension and IRA provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001.

- Section 844 of Public Law 109-280, relating to the treatment of annuity and life insurance contracts with a long-term care insurance feature.

- Public Law 109-432, Tax Relief and Health Care Act of 2006.

- Public Law 110-28, U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007.

- Public Law 110-140, Energy Independence and Security Act of 2007.
- Public Law 110-141, Victims of events at Virginia Polytechnic Institute and State University.
- Public Law 110-142, Mortgage Forgiveness Debt Relief Act of 2007.
- Public Law 110-166, Tax Increase Prevention Act of 2007.
- Public Law 110-172, Tax Technical Corrections Act of 2007.
- Public Law 110-185, Economic Stimulus Act of 2008.
- Public Law 110-234, Food, Conservation and Energy Act of 2008.
- Public Law 110-245, Heroes Earnings Assistance and Relief Act of 2008.
- Public Law 110-289, Housing Assistance Act of 2008.
- Public Law 110-317, Hubbard Act.
- Public Law 110-343, Emergency Economic Stabilization Act of 2008.
- Public Law 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008.

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** (2009 Act 28, amend sec. 71.01(6)(o), (p), (q), (r), (s), and (t) and create sec. 71.01(6)(u) and nonstatutory provision, effective for taxable years beginning before January 1, 2009.)

   Certain changes to the Internal Revenue Code made by the P.L. 110-458, Worker, retiree, and Employer Recovery Act of 2008 enacted in 2008 apply for Wisconsin purposes at the same time as for federal purposes.

3. **Interest Not Applied During Extension Period Due to Certain Disasters** (2009 Act 28, create sec. 71.03(7)(f), effective for taxable years beginning on or after January 1, 2009.)

   Persons who qualify for a federal extension of time under 26 USC 7508A to file by reason of a presidentially declared disaster or terroristic or military action are not subject to interest during the extension period.

4. **Throwback Sales** (2009 Act 28, repeal sec. 71.04(7)(df)3. and 4., and (dj)2. and (dk)2., as created by 2009 Act 2, amend sec. 71.04(7)(a), and create sec. 71.80(24), various effective dates.)

   See Items B.7 and B.8.

5. **Interest on Southeastern Regional Transit Authority Bonds Exempt** (2009 Act 28, create sec. 71.05(1)(c)9., effective July 1, 2009.)

   Interest received on bonds or notes issued by the southeastern regional transit authority is exempt from Wisconsin income tax.

6. **Modification for the Domestic Production Activities Deduction Limited** (2009 Act 28, amend sec. 71.05 (6)(a) 21. and 22., effective for taxable years beginning in 2008.)

   Wisconsin law currently provides that the domestic production activities deduction under sec. 199 of the Internal Revenue Code is not allowed to an individual who is a nonresident or part-year resident of Wisconsin if the domestic production activities income is not attributable to a trade or business that is taxable by Wisconsin. If a portion of the domestic production activities is attributable to a trade or business that is taxable by Wisconsin, the deduction is prorated by a fraction, the numerator of which is the individual's net earnings from the trade or business that is taxable by Wisconsin and the denominator of which is the individual's total net earnings from the trade or business to which the deduction applies.

   These provisions are limited to taxable years beginning in 2008. The domestic production activities deduction is no longer allowable for taxable years beginning in 2009 and thereafter (see Item A.1).

7. **Medical Care Insurance Subtraction Phase-In Delayed** (2009 Act 28, amend sec. 71.05(6)(b)37.(intro.), 38.(intro.), 39.(intro.), 40.(intro.), 41.(intro.), and 42.(intro.), various effective dates.)

   The subtractions for medical care insurance are revised as follows:

   For taxable years beginning in 2009 and 2010, a subtraction is allowed for 66.7 percent of the amount paid by an individual who has no employer and no self-employment income for medical care insurance for the individual, his or her spouse, and the individual's dependents. For taxable years beginning on or after January 1, 2011, the subtraction is increased to 100 percent of the amount paid by an individual who has no employer and no self-employment income for medical care insurance for the individual, his or her spouse, and the individual's dependents.

   For an individual who is an employee of another person, if the individual's employer pays a portion of the cost of the medical care insurance for the individual, his or her spouse, and the individual's dependents, the individual may subtract the following percentages of the amount the individual paid for medical care insurance:

Taxable years beginning in 2009 and 2010	10 percent
Taxable years beginning in 2011	25 percent
Taxable years beginning in 2012	45 percent
Taxable years beginning in 2013 and thereafter	100 percent

8. **Capital Gain Exclusion Revised** (2009 Act 28, amend sec. 71.05(6)(b)9. and create sec. 71.05(6)(b)9m., effective for taxable years beginning on or after January 1, 2009.)

   Except as provided below, the net long-term capital gain exclusion is reduced from 60 percent to 30 percent.

   On farm assets held more than one year and on all farm assets acquired from a decedent, the capital gain exclusion remains at 60% of the capital gain as computed under the Internal Revenue Code, not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize.

   "Farm assets" means livestock, farm equipment, farm real property, and farm depreciable property. Capital gains and capital losses for all assets shall be netted before application of the percentage.

9. **College Savings Program and College Tuition and Expenses Program Revised** (2009 Act 28, amend sec. 71.05(6)(b)32.(intro.) and a. and 33. (intro.) and a., effective for taxable years beginning on or after January 1, 2010.)

   A deduction from federal adjusted gross income is available for the amount paid for the year into a college savings account or a college tuition or expenses program (for example, EdVest or "tomorrow's scholar") if the beneficiary is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew. The claimant's child no longer has to be claimed as a dependent on the parent's income tax return.

   The maximum deduction is an amount equal to $3,000 per beneficiary, by each contributor, or $1,500 by each contributor who is married and files separately. The total amount for which a deduction may be claimed to a college savings account and a college tuition or expenses program may not exceed $3,000 each year or $1,500 each year by any claimant who is married and files separately. In the case of divorced parents, the total deduction per beneficiary by the formerly married couple may not exceed $3,000, and the maximum amount that may be deducted by each former spouse is $1,500, unless the divorce judgment specifies a different division of the $3,000 maximum that may be claimed by each former spouse.

10. **Subtraction for Child and Dependent Care Expenses Delayed** (2009 Act 28, amend sec. 71.05(6)(b)43.a., b., c., and d., various effective dates.)

    The subtraction for employment-related expenses for child and dependent care is delayed and allowed as follows:

Taxable years beginning in 2011	– Up to $750 for one qualified individual ($1,500 if more than one)
Taxable years beginning in 2012	– Up to $1,500 for one qualified individual ($3,000 if more than one)
Taxable years beginning in 2013	– Up to $2,250 for one qualified individual ($4,500 if more than one)
Taxable years beginning in 2014 and thereafter	– Up to $3,000 for one qualified individual ($6,000 if more than one)

11. **Standard Deduction Indexing Revised** (2009 Act 28, amend sec. 71.05(22)(dt), effective for taxable years beginning on or after January 1, 2012.)

    The adjustment for indexing of the standard deduction may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year.

12. **Gain Deferred on Sale of Capital Assets** (2009 Act 28, amend sec. 71.01(13) and create secs. 71.05(24) and 560.208, effective for taxable years beginning on or after January 1, 2011.)

    A claimant may subtract from federal adjusted gross income any amount, up to $10,000,000, of a long-term capital gain if the claimant does all of the following:

    - Deposits the gain into a segregated account in a financial institution,
    - Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account in a qualified new business venture, and
    - After making the investment, notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain because the claimant has reinvested the capital gain. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

    The basis of the investment must be reduced by the deferred gain.

If a claimant defers the payment of income taxes on the capital gain, the claimant may not use the gain to net capital gains and losses.

"Claimant" means an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation.

"Financial institution" means any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions.

"Long-term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long-term gain under the Internal Revenue Code.

"Qualified new business venture" means a business certified by the Department of Commerce under sec. 560.208, Wis. Stats. A business desiring certification shall submit an application to the Department of Commerce in each taxable year for which the business desires certification. A business may be certified, and may maintain such certification, only if the business is engaged in (a) developing a new product or business process, or (b) manufacturing, agriculture, or processing or assembling products and conducting research and development.

A business may not be certified if the business is engaged in real estate development, insurance, banking, lending, lobbying, political consultation, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail sales, leisure, hospitality, transportation, or construction.

The Department of Commerce shall maintain a list of businesses certified and shall permit public access to the list through the department's website. The Department of Commerce shall notify the Department of Revenue of every certification issued and the date on which a certification is revoked or expires.

13. **Top Income Tax Rate Increased** (2009 Act 28, renumber sec. 71.06(2e) to 71.06(2e)(a) and amend as renumbered, amend sec. 71.06(1p)(d) and (2)(g)4. and (h)4., and create secs. 71.06(1p)(e), (2)(g)5. and (h)5., and (2e)(b) and 71.09(11)(f), effective for taxable years beginning on or after January 1, 2009.)

The top individual income tax rate is increased from 6.75 percent to 7.75 percent. The increased rate applies as follows:

- Fiduciaries, single individuals, and heads of households – On all taxable income exceeding $225,000.
- Married persons filing joint returns – On all taxable income exceeding $300,000.
- Married persons filing separately – On all taxable income exceeding $150,000.

For taxable years beginning after December 31, 2009, the dollar amounts in the new brackets shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August 2008 as determined by the Federal Department of Labor. Each amount that is revised shall be rounded to the nearest multiple of $10 if the revised amount is not a multiple of $10 or, if the revised amount is a multiple of $5, such an amount shall be increased to the next higher multiple of $10. The Department of Revenue shall annually adjust the changes in dollar amounts and incorporate the changes into the income tax forms and instructions.

For taxable years beginning on or after January 1, 2012, an indexing adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year.

Interest on underpayment of estimated tax will not be charged when the estimated tax was underpaid due to the change in brackets. This applies only to the taxable year to which the bracket changes apply.

14. **Obsolete Statute Repealed** (2009 Act 28, repeal sec. 71.07(2fd), effective July 1, 2009.)

    The statute relating to the farmers' drought property tax credit is repealed. This credit only applied for taxable year 1988.

15. **Effective Date for Biodiesel Fuel Production Credit Changed** (2009 Act 28, amend sec. 71.07(3h)(b), effective for taxable years beginning on or after January 1, 2012.)

    The biodiesel fuel production credit is available for taxable years beginning on or after January 1, 2012. Under prior law, the credit was available for taxable years beginning on or after January 1, 2010.

16. **Farmland Tax Relief Credit Repealed** (2009 Act 28, amend sec. 71.07(3m)(a)1.(intro.), 3., and 4 and create sec. 71.07(3m)(e), effective for taxable years that begin on or after January 1, 2010.)

    No new claim for the farmland tax relief credit may be filed for a taxable year that begins on or after January 1, 2010.

17. **Jobs Tax Credit Created** (2009 Act 28, amend secs. 71.05(6)(a)15. and 71.10(4)(i) and create secs. 71.07(3q) and 560.2055, effective for taxable years beginning on or after January 1, 2010.)

    The jobs tax credit is equal to any of the following:

    - The amount of wages that the claimant paid to an eligible employee in the taxable year, not to exceed 10 percent of such wages, as determined by the Department of Commerce (DOC).

    - The amount of costs incurred by the claimant in the taxable year, as determined by the DOC to undertake training activities.

    The following definitions apply:

    "Claimant" means a person certified by the DOC to receive tax benefits. The DOC may certify a person to receive tax benefits if (1) the person is operating or intends to operate a business in Wisconsin and (2) the person applies and enters into a contract with the DOC. A business does not include a store or shop in which retail sales are the principal business.

    "Eligible employee" means a person employed in a full-time job by a person certified by the DOC.

    "Full-time job" means a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150 percent of the federal minimum wage and benefits that are not required by federal or state law.

    The DOC may require a person to repay any tax benefits the person claims for a year in which the person failed to maintain employment required by an agreement.

    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 amounts. 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 credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

No credit may be allowed unless the claimant includes with the claimant's return a copy of the certification from the DOC for tax benefits.

If the allowable amount of the claim exceeds the tax otherwise due, the amount of the claim not used to offset the tax due shall be certified by the Department of Revenue to the Department of Administration for payment. Amounts certified for taxable years beginning after December 31, 2009, and before January 1, 2012, shall be paid in taxable years beginning after December 31, 2011.

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

The maximum amount of credit that may be claimed by all entities for the period beginning on January 1, 2010 and ending on June 30, 2013, is $14,500,000.

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

18. **Manufacturing Sales Tax Credit Statutory Reference Revised** (2009 Act 28, amend sec. 71.07(3s)(a)1., effective July 1, 2009.)

    The reference to sec. 77.54(6m) for purposes of the manufacturing sales tax credit is revised to sec. 77.54(6m), 2007 Stats.

19. **Enterprise Zone Jobs Credit as Affected by Act 11 Revised** (2009 Act 28, amend sec. 71.07(3w)(bm)1. and 2, as affected by 2009 Act 11, and (c)3. and create sec. 71.07(3w)(bm)3., effective for taxable years beginning on or after January 1, 2009.)

    An additional enterprise zone jobs credit is available. The credit is equal to 10 percent of the claimant's significant capital expenditures, as determined by the Department of Commerce (DOC). The DOC may certify the business to receive the additional tax benefits in an amount to be determined by that department, but not exceeding 10 percent of the business' capital expenditures. The DOC shall allocate the tax benefits a business is certified to receive over the remainder of the time limit of the enterprise zone.

    A copy of the certification for tax benefits must be included with the claimant's income or franchise tax return.

    Also see Item A.34.

20. **Certain Casualty Losses Allowed for the Itemized Deduction Credit** (2009 Act 28, amend sec. 71.07(5)(a)3., effective for taxable years beginning on or after January 1, 2009.)

    Casualty losses that are directly related to a presidentially declared disaster may be used in the computation of the Wisconsin itemized deduction credit.

21. **Early Stage Seed Investment Credit Repayment** (2009 Act 28, create sec. 71.07(5b)(d)3., effective for calendar years beginning on or after January 1, 2008.)

    If an investment for which a claimant claims the early stage seed investment credit is held by the claimant for less than three years, the claimant shall pay the Department of Revenue, in the manner prescribed by the department, the amount of the credit that the claimant received related to the investment.

22. **Angel Investment Credit Repayment Revised** (2009 Act 28, amend sec. 71.07(5d)(d)1., effective for calendar years beginning on or after January 1, 2008.)

    If an investment for which a claimant claims the angel investment credit is held by the claimant for less than three years (formerly one year), the claimant shall pay to the Department of Revenue, in the manner prescribed by the department, the amount of the credit that the claimant received related to the investment.

23. **Film Production Services Credit Revised** (2009 Act 28, repeal sec. 71.10(4)(ga), repeal and recreate sec. 71.07(5f), and amend sec. 71.10(4)(i), effective for taxable years beginning on or after January 1, 2009.)

    Definitions

    "Accredited production" means a film, video, broadcast advertisement, or television production, as approved by the Department of Commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds $50,000. "Accredited production" also means an electronic game, as approved by the Department of Commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 36 months after the month in which the principal programming, filming, or taping of the production begins exceeds $100,000. "Accredited production" does not include any of the following, regardless of the production costs:

    - News, current events, or public programming or a program that includes weather or market reports.
    - A talk show.
    - A production with respect to a questionnaire or contest.
    - A sports event or sports activity.
    - A gala presentation or awards show.
    - A finished production that solicits funds.
    - A production for which the production company is required under 18 USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program.
    - A production produced primarily for industrial, corporate, or institutional purposes.

    "Claimant" means a person who files a claim for the credit.

    "Production expenditures" means any expenditures that are incurred in Wisconsin and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment as determined by the Department of Commerce. "Production expenditures" does not include salary, wages, or labor-related contract payments.

    Filing Claims

    A claimant may claim the credit for any of the following amounts:

    (1) An amount equal to 25 percent of the salary, wages, or labor-related contract payments paid by the claimant in the taxable year to individuals, including actors, who were residents of Wisconsin at the time that

they were paid and who worked on an accredited production in Wisconsin, not including the salary, wages, or contract payments paid to any individual who was paid more than $250,000.

(2) An amount equal to 25 percent of the production expenditures paid by the claimant in the taxable year to produce an accredited production.

The amount of the credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

Limitations

A claimant may not claim the credit if less than 35 percent of the total budget for the accredited production is spent in Wisconsin.

No credit may be claimed under (2) above for the purchase of tangible personal property or items, property, or goods the sale of which is not sourced to Wisconsin.

The maximum amount of film production services credit and film production company investment credit that may be claimed by all entities in a fiscal year is $500,000.

No credit may be allowed unless the claimant files an application with the Department of Commerce, at the time and in the manner prescribed by that department, and the Department of Commerce approves the application. The claimant shall submit a fee with the application in an amount equal to 2 percent of the budgeted production expenditures or $5,000, whichever is less. A copy of the approved application must be submitted with the claimant's 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 payment of amounts. 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.

Administration

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

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

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

24. **Film Production Company Investment Credit Revised** (2009 Act 28, repeal sec. 71.10(4)(en), renumber sec. 71.07(5h)(d) to 71.07(5h)(d)1. and amend as renumbered, amend secs. 71.07(5h)(a)2., (b)(intro.) and 1., and (c)1., 2., 3., and 4., 71.08(1)(intro.), and 71.10(4)(i), and create sec. 71.07 (5h)(c)4m. and (d)2., effective for taxable years beginning on or after January 1, 2009.)

The film production company investment credit is revised for taxable years beginning on or after January 1, 2009.

A "film production company" means an entity that exclusively creates accredited productions as defined for purposes of the film production services credit.

A claimant may claim as a credit an amount that is equal to 15 percent of the following that the claimant paid in the taxable year to establish or operate a film production company in Wisconsin:

(1) The purchase price of depreciable, tangible personal property and items, property, and goods under sec. 77.52(1)(b)(c) or (d), Wis. Stats., if the sale of the tangible personal property, items, property, or goods is sourced to Wisconsin.

(2) The amount expended to acquire, construct, rehabilitate, remodel, or repair real property.

The credit may be claimed under (1) above if the tangible personal property or item, property, or goods is purchased after December 31, 2008, and the tangible personal property, item, property, or goods is used for at least 50 percent of its use in the claimant's business as a film production company.

The credit may be claimed under (2) above for an amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2008, and the completed project is placed in service after December 31, 2008.

A claimant may claim the credit under (2) above for an amount expended to acquire real property, if the property is not previously owned property and if the claimant acquires the property after December 31, 2008, and the completed project is placed in service after December 31, 2008.

No claim may be allowed unless the Department of Commerce certifies, in writing, that the credits claimed are for expenses related to establishing or operating a film production company in Wisconsin and the claimant submits a copy of the certification with the tax return.

The maximum amount of film production services credit and film production investment credit that may be claimed by all entities is $500,000 in a fiscal year.

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

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

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

25. **Effective Date for Electronic Medical Records Credit Changed** (2009 Act 28, amend secs. 71.07(5i)(b) and 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 2012.)

The electronic medical records credit will first be available for taxable years beginning on or after January 1, 2012. Under prior law, the credit was available for taxable years beginning on or after January 1, 2010.

The amount of this credit does not reduce the regular tax when considering whether the Wisconsin alternative minimum tax applies.

26. **Ethanol and Biodiesel Fuel Pump Credit Revised** (2009 Act 28, amend secs. 71.07(5j)(b) and 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 2008, and before January 1, 2018.)

    The amount of ethanol and biodiesel fuel pump credit does not reduce the regular tax when considering whether the Wisconsin alternative minimum tax applies.

27. **Effective Date for Community Rehabilitation Program Credit Changed** (2009 Act 28, amend sec. 71.07(5k)(b), effective July 1, 2009.)

    The community rehabilitation program credit will first be available for taxable years beginning after July 1, 2011. Under prior law, the credit was available for taxable years beginning after July 1, 2009.

28. **Beginning Farmer and Farm Asset Owner Tax Credit** (2009 Act 28, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), and 71.10(4)(i) and create secs. 71.07(8r) and 93.53, effective for taxable years beginning on or after January 1, 2011.)

    Definitions

    "Agricultural assets" means machinery, equipment, facilities, or livestock that is used in farming.

    "Beginning farmer" means a person who, at the time that the person submits an application to the Department of Agriculture, Trade and Consumer Protection (DATCP), (1) has a net worth of less than $200,000, (2) has farmed for fewer than ten years out of the preceding 15 years, (3) has entered into a lease for a term of at least three years with an established farmer for the use of the established farmer's agricultural assets by the beginning farmer, and (4) uses the leased agricultural assets for farming.

    "Educational institution" means the Wisconsin Technical College System, the University of Wisconsin—Extension, the University of Wisconsin—Madison, or any other institution that is approved by the DATCP.

    "Established farmer" means a person who, at the time that the person submits an application to the DATCP, (1) has engaged in farming for a total of at least ten years, (2) owns agricultural assets, and (3) has entered into a lease for a term of at least three years with a beginning farmer for the use of the person's agricultural assets by the beginning farmer.

    "Farming" means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

    "Financial management program" means a course in farm financial management that is offered by an educational institution.

    "Lease amount" is the amount of the cash payment paid by a beginning farmer to an established farmer each year for leasing the established farmer's agricultural assets.

    Filing Claims

    - A beginning farmer may claim as a credit against tax, on a one-time basis, the amount paid by the beginning farmer to enroll in a financial management program in the year to which the claim relates. The maximum credit that a beginning farmer may claim is $500. If the allowable amount of the claim exceeds the income taxes otherwise due on the beginning farmer's income, the amount of the claim not used to offset those taxes shall be certified by the Department of Revenue to the Department of Administration for payment to the claimant. The beginning farmer must attach a copy of the certificate of eligibility received from the DATCP to his or her Wisconsin income tax return.

- An established farmer may claim as a credit against tax 15 percent of the lease amount received by the established farmer in the year to which the claim relates. An established farmer may only claim the credit for the first three years of any lease of the established farmer's agricultural assets to a beginning farmer. If the allowable amount of the claim exceeds the income taxes otherwise due on the established farmer's income, the amount of the claim not used to offset those taxes shall be certified by the Department of Revenue to the Department of Administration for payment to the claimant. The established farmer must attach a copy of the certificate of eligibility received from the DATCP to his or her Wisconsin income tax return.

The amount of the credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

Limitations

The credit claim must be filed within four years of the unextended due date of the tax return.

No credit may be claimed by a part-year resident or a nonresident of Wisconsin.

The right to file a claim is personal to the claimant and does not survive the claimant's death. When a claimant dies after having filed a timely claim, the Department of Revenue shall pay the refund or credit check to the decedent's personal representative. If there is no personal representative, the department shall pay the refund or credit check either to a surviving relative, giving preference to relatives in the following order: surviving spouse, child, parent, brother or sister, or to a creditor of the decedent, as determined by the department.

The right to file a claim may be exercised on behalf of a living claimant by the claimant's legal guardian or attorney-in-fact.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit for an established farmer, but the eligibility for, and the amount of, the credit are based on the amounts received by the entities. 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.

Administration

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

29. **Advance Payment of Earned Income Tax Credit** (2009 Act 28, create sec. 71.07(9e)(g), effective for taxable years beginning on or after January 1, 2009.)

If an individual claims the Wisconsin earned income tax credit and claims the federal advance earned income tax credit, the individual may request that his or her employer add to his or her paycheck an advance payment amount.

The advance payment amount that an individual's employer shall add to the individual's paycheck shall be equal to a percentage of the amount that the individual's employer adds to the individual's paycheck as an advance earned income tax credit payment under federal law. The percentage is 4 percent if the individual has one qualifying child, 14 percent if the individual has two qualifying children and 43 percent if the individual has three or more qualifying children.

The employer may deduct from the aggregate amount that the employer would otherwise be required to withhold from employee wages and forward to the department, the total amount of any advance payments the employer makes.

The Department of Revenue shall prepare any forms and instructions that may be necessary to facilitate the addition of the advance payment amount to an individual's paycheck and any changes to the withholding procedures.

30. **Supplement to Federal Historic Rehabilitation Credit Revised** (2009 Act 28, amend sec. 71.07(9m)(c) and (f) and create sec. 71.07(9m)(cm) and (g), effective for property placed in service on or after June 30, 2008.)

Several changes are made to the supplement to federal historic rehabilitation credit.

- No person may claim the credit unless the claimant includes with the claimant's return evidence that the rehabilitation was recommended by the state historic preservation officer for approval by the Secretary of the Interior under 36 CFR 67.6 before the physical work of construction, or destruction in preparation for construction, began and that the rehabilitation was approved by the Secretary of the Interior.

- The credit shall be claimed at the same time as for federal purposes.

- A partnership, limited liability company, or tax-option corporation may not claim the credit. The partners of a partnership, members of a limited liability company, or shareholders in a tax-option corporation may claim the credit based on eligible costs incurred by the partnership, company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit which may be claimed by each partner, member, or shareholder and shall provide that information to the partner, member, or shareholder.

  For shareholders of a tax-option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder.

  Credits computed by a partnership or limited liability company may be claimed in proportion to the ownership interests of the partners or members or allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed.

  For a partnership or limited liability company that places property in service after June 29, 2008, and before January 1, 2009, the credit attributable to such property may be allocated, at the election of the partnership or limited liability company, to partners or members for a taxable year of the partnership or limited liability company that ends after June 29, 2008, and before January 1, 2010.

  The partner or member shall attach a copy of the agreement, if applicable, to the tax return on which the credit is claimed. A person claiming the credit under an agreement is solely responsible for any tax liability arising from a dispute with the Department of Revenue related to claiming the credit.

- If a person elects to claim the credit based on claiming amounts for expenditures as the expenditures are paid, rather than when the rehabilitation work is completed, the person shall file an election form with the department, in a manner prescribed by the department.

- The department may adjust or disallow the credit within four years after the date that the State Historical Society notifies the department that the expenditures for which the credit was claimed do not comply with the standards for certification.

31. **Exceptions Provided for Interest on Underpayment of Estimated Tax** (2009 Act 28, create sec. 71.09(11)(e) and (f), various effective dates.)

    Interest on underpayment of estimated tax is not required if either of the following conditions applies:

    - For taxable years beginning after December 31, 2008, the taxpayer qualifies for a federal extension of time to file due to a presidentially declared disaster or terroristic or military action.

    - The estimated tax was underpaid due to the change in tax brackets (see Item A.13). This applies only to the first taxable year to which the bracket changes apply.

32. **Donations to Military Family Relief Fund** (2009 Act 28, create sec. 71.10(5i), effective for taxable years beginning on or after January 1, 2009.)

    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 for the military family relief fund. Designations, less administrative expenses, shall be deposited in the military family relief fund administered by the Wisconsin Department of Military Affairs. The fund will be used to provide financial assistance to eligible members of the immediate family of members of the U.S. armed forces or of the National Guard who are residents of Wisconsin and are serving on active duty.

    If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for the military family relief fund 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 for the military family relief fund, 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 for the military family relief fund 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 for the military family relief fund (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the military family relief fund to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

    If an individual places any conditions on a designation for the military family relief fund, the designation is void.

    If a designation for the military family relief fund 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 military family relief fund. Amounts designated for the military family relief fund 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.

33. **Donations to Second Harvest Food Banks** (2009 Act 28, create sec. 71.10(5j), effective for taxable years beginning on or after January 1, 2009.)

    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 for Second Harvest food banks in Wisconsin that are members of Feeding America. Designations, less administrative

expenses, shall be distributed 65 percent to Second Harvest in the city of Milwaukee, 20 percent to Second Harvest in the city of Madison, and 15 percent to Second Harvest in the city of Eau Claire.

If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for Second Harvest food banks 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 for the Second Harvest food banks, 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 for the Second Harvest food banks 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 for the Second Harvest food banks (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the Second Harvest food banks to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the Second Harvest food banks, the designation is void.

If a designation for the Second Harvest food banks 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 Second Harvest food banks. Amounts designated for the Second Harvest food banks 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.

34. **Enterprise Zone Jobs Credit Revised** (2009 Act 11, renumber secs. 71.07(3w)(bm) to 71.07(3w)(bm)1., 71.28(3w)(bm) to 71.28(3w)(bm)1., 71.47(3w)(bm) to 71.47(3w)(bm)1., and 560.799(3)(b) to 560.799(3)(b)(intro.), and amend as renumbered, amend secs. 71.07(3w)(a)3., (b)1.a. and b.2., 3., and 5., 71.28(3w)(a)3., (b)1.a and b.2., 3., and 5., 71.47(3w)(a)3., (b)1.a. and b.2., 3., and 5., and 560.799(3)(a), and create secs. 71.07(3w)(a)5d. and 5e. and (bm)2., 71.28(3w)(a)5d. and 5e. and (bm)2., 71.47(3w)(a)5d. and 5e. and (bm)2., 560.799(1)(am)1., (3)(bm), (5)(d), and (6)(g), effective for taxable years beginning on or after January 1, 2009.)

Numerous changes are made to the enterprise zone jobs credit.

"Full-time employee" means an individual who is employed in a regular, nonseasonal job and who, as a condition of employment, is required to work at least 2080 hours per year, including paid leave and holidays. The Department of Commerce may by rule specify circumstances under which the department may grant exceptions to this requirement but under no circumstances may a full-time employee mean an individual who, as a condition of employment, is required to work less than 37.5 hours per week.

"Tier I county or municipality" means a tier I county or municipality, as determined by the Department of Commerce.

"Tier II county or municipality" means a tier II county or municipality, as determined by the Department of Commerce.

The enterprise zone jobs credit is calculated as follows:

1. Determine the amount that is the lesser of:

   (a) The number of full-time employees whose annual wages are greater than $20,000 in a tier I county or municipality or greater than $30,000 in a tier II county or municipality and who the claimant employed in the enterprise zone in the taxable year, minus the number of full-time employees whose annual wages were greater than $20,000 in a tier I county or municipality or greater than $30,000 in a tier II county or municipality and who the claimant employed in the area that comprises the enterprise zone in the base year, or

   (b) The number of full-time employees whose annual wages are greater than $20,000 in a tier I county or municipality or greater than $30,000 in a tier II county or municipality and who the claimant employed in the state in the taxable year, minus the number of full-time employees whose annual wages were greater than $20,000 in a tier I county or municipality or greater than $30,000 in a tier II county or municipality and who the claimant employed in the state in the base year.

2. Determine the claimant's average zone payroll by dividing total wages for full-time employees whose annual wages are greater than $20,000 in a tier I county or municipality or greater than $30,000 in a tier II county or municipality and who the claimant employed in the enterprise zone in the taxable year by the number of full-time employees whose annual wages are greater than $20,000 in a tier I county or municipality or greater than $30,000 in a tier II county or municipality and who the claimant employed in the enterprise zone in the taxable year.

3. For employees in a tier I county or municipality, subtract $20,000 from the amount determined in 2. above and for employees in a tier II county or municipality, subtract $30,000 from the amount determined in 2. above.

4. Multiply the amount determined in 3. above by the amount determined in 1. above.

5. Multiply the amount determined in 4. above by the percentage determined by the Department of Commerce, not to exceed seven percent.

In addition, the following supplemental credits are available:

- A credit may be claimed against the income or franchise tax for an amount equal to a percentage, as determined by the Department of Commerce, not to exceed 100 percent, of the amount the claimant paid in the taxable year to upgrade or improve the job-related skills of any full-time employees, to train any full-time employees on the use of job-related new technologies, or to provide job-related training to any full-time employee whose employment with the claimant represents the employee's first full-time job. This does not apply to employees who do not work in an enterprise zone.

- A credit may be claimed against the income or franchise tax for an amount equal to the percentage, as determined by the Department of Commerce, not to exceed 7 percent, of the claimant's zone payroll paid in the taxable year to all of the claimant's full-time employees whose annual wages are greater than $20,000 in a tier I county or municipality, not including the wages paid to the employees determined under 1(a) and (b) above, or greater than $30,000 in a tier II county or municipality, not including the wages paid to the employees determined under 1(a) and (b) above, and who the claimant employed in the enterprise zone in the taxable year, if the total number of such employees is equal to or greater than the total number of such employees in the base year. This credit may be claimed for no more than five consecutive taxable years.

B. Corporation Franchise or Income Taxes

1. **Internal Revenue Code References Updated for 2009 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies** (2009 Act 28, repeal secs. 71.22(4)(n) and (4m)(L), 71.26(2)(b)14., 71.34(1g)(n), and 71.42(2)(m), amend secs. 71.22(4)(t) and (4m)(r), 71.26(2)(b)20., 71.34(1g)(t), and 71.42(2)(s), and create secs. 71.22(4)(um) and (4m)(sm), 71.26(2)(b)22., 71.34(1g)(um), and 71.42(2)(tm), effective for taxable years beginning on or after January 1, 2009.)

   For taxable years beginning on or after January 1, 2009, "Internal Revenue Code" for corporations, nonprofit organizations, regulated entities, tax-option (S) corporations, and insurance companies means the federal Internal Revenue Code as amended to December 31, 2008, with the exceptions listed in Item A.1.

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

   - 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** (2009 Act 28, amend secs. 71.22(4)(o) to (t) and (4m)(m) to (r), 71.26(2)(b)15. to 20., 71.34(1g)(o) to (t), and 71.42(2)(n) to (s) and create secs. 71.22(4)(u) and (4m)(s), 71.26(2)(b)21., 71.34(1g)(u), 71.42(2)(t), and nonstatutory provision, effective for taxable years beginning before January 1, 2009.)

   Certain changes to the federal Internal Revenue Code made by P.L. 110-458, Worker, Retiree, and Employer Recovery Act of 2008, enacted in 2008, apply for Wisconsin purposes at the same time as for federal purposes.

3. **Super Research and Development Credit Created** (2009 Act 28, amend secs. 71.21(3), 71.26(2)(a)2. and (3)(n), 71.365(3), and 71.45(2)(a)10., as affected by 2009 Act 2, and create secs. 71.28(4m), 71.30(3)(db), 71.47(4m), and 71.49(1)(db), effective for taxable years beginning on or after January 1, 2011.)

   A corporation may claim as a credit against income or franchise tax, up to the amount of those taxes, an amount equal to the amount of qualified research expenses paid or incurred by the corporation in the taxable year that exceeds the amount calculated as follows: (1) Determine the average amount of the qualified research expenses paid or incurred by the corporation in the 3 taxable years immediately preceding the taxable year for which a credit is claimed and (2) multiply the amount determined by 1.25.

For purposes of the super research and development credit, "qualified research expenses" means qualified research expenses as defined in section 41 of the Internal Revenue Code, except that "qualified research expenses" only includes expenses incurred by the claimant for research conducted in Wisconsin for the taxable year and does not include compensation used in computing the development zones job credit or the development zones credit.

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

The credit may not be claimed by a partnership, except a publicly traded partnership treated as a corporation; a limited liability company, except a limited liability company treated as a corporation, or a tax-option corporation; or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax-option corporation.

The amount of the computed credit must be included in the claimant's income.

If a computed credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 5 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

Adjustments for acquisitions and dispositions of a major portion of a trade or business shall be made under section 41 of the Internal Revenue Code. In the case of any short taxable year, qualified research expenses shall be annualized as prescribed by the Department of Revenue. If a portion of qualified research expenses is incurred partly within and partly outside this state and the amount incurred in this state cannot be accurately determined, a portion of the qualified expenses shall be reasonably allocated to this state. Expenses incurred entirely outside this state for the benefit of research in this state are not allocable to Wisconsin. In the case of a change in ownership or business of a corporation, section 383 of the Internal Revenue Code applies to the carryover of unused credits.

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

4. **Definition of "Doing Business in This State" Revised** (2009 Act 28, amend sec. 71.22(1r), as affected by 2009 Act 2, effective for taxable years beginning on or after January 1, 2009, and to any period for which the statute of limitations has not expired.)

Two provisions are added to the definition of "doing business in this state." The definition as revised is provided below with the additional provisions shown in **bold**.

The definition of "doing business in this state" provides that "doing business in this state" includes, **except as prohibited under P.L. 86−272**, issuing credit, debit, or travel and entertainment cards to customers in this state; regularly selling products or services of any kind or nature to customers in this state that receive the product or service in this state; regularly soliciting business from potential customers in this state; regularly performing services outside this state for which the benefits are received in this state; regularly engaging in transactions with customers in this state that involve intangible property and result in receipts flowing to the taxpayer from within this state; holding loans secured by real or tangible personal property located in this state; owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; and owning, directly or indirectly, an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, if the limited liability company is treated as a partnership for federal income tax purposes. **A taxpayer doing business in this state for any part of the taxable year is considered to be doing business in this state for the entire taxable year.**

The statutory language relating to P.L. 86-272 is effective for taxable years beginning on or after January 1, 2009. The statutory language relating to the non-recognition of part-year nexus applies to any period for which the statute of limitations has not expired.

5. **Decoupling from the Domestic Production Activities Deduction** (2009 Act 28, create secs. 71.22(4)(um) and (4m)(sm), 71.26(2)(b)22., 71.34(1g)(um), and 71.42(2)(tm), effective for taxable years beginning on or after January 1, 2009.)

   For taxable years beginning after December 31, 2008, the Wisconsin definition of "Internal Revenue Code" for corporations, nonprofit organizations, regulated entities, tax-option (S) corporations, and insurance companies, decouples from the domestic production activities deduction provisions under section 199 of the federal Internal Revenue Code.

6. **Filing Return Extensions Revised** (2009 Act 28, renumber secs. 71.24(7) to 71.24(7)(a) and 71.44(3) to 71.44(3)(a) and amend as renumbered and create secs. 71.24(7)(b) and 71.44(3)(b), effective for taxable years beginning after December 31, 2008.)

   For persons who qualify for a federal extension of time to file under 26 USC 7508A due to a presidentially declared disaster or terroristic or military action, income or franchise taxes payable upon the filing of the tax return are not subject to interest during the extension period.

7. **"Throwback" for Tangible Personal Property Revised to 100 Percent** (2009 Act 28, amend sec. 71.25(9)(a) and create sec. 71.80(24), various effective dates.)

   For sales of tangible personal property, the numerator of the sales factor includes, in addition to sales in this state, 100% of the sales of the taxpayer to a destination state where the taxpayer falls outside the destination state's jurisdiction to tax. For purposes of applying the "throwback" provisions, if a taxpayer is within another state's jurisdiction for income or franchise tax purposes for any part of the taxable year, it is considered to be within that state's jurisdiction for income or franchise tax purposes for the entire taxable year. There is a transition or grace period for the making of estimated payments attributable to the difference between the two "throwback" percentages that become due less than 45 days after July 1, 2009. The due date of these payments is extended to the next subsequent installment due date. See Item B.27 for information on the transition dates.

   The provisions amending the "throwback" percentage from 50 to 100% are effective for taxable years beginning on or after January 1, 2009. The provisions relating to the non-recognition of part-year nexus applies to any period for which the statute of limitations has not run.

8. **"Throwback" Provisions for Sales Other Than Tangible Personal Property Repealed** (2009 Act 28, repeal sec. 71.25(9)(df)3. and (dh)4. and 71.25(9)(dj)2. and (dk)2., as created by 2009 Act 2, effective for taxable years beginning on or after January 1, 2009.)

   Under prior law, the numerator of the sales factor included (i) 50% of the gross receipts from the use of computer software if the taxpayer was not subject to income tax in the state in which the gross receipts were considered received and the taxpayer's domicile was in Wisconsin; (ii) 50% of the gross receipts from services if the taxpayer was not subject to income tax in the state in which the benefit of the services was received and employees or representatives of the taxpayer performed the services from a location in Wisconsin; (iii) 50% of gross royalties and other gross receipts received for the use or license of intangible property if the taxpayer was not subject to income tax in the state in which a portion of the gross royalties and gross receipts were apportioned and the taxpayer's domicile was in Wisconsin; and (iv) 50% of gross receipts from the sale of intangible property, excluding securities, if the taxpayer was not subject to income tax in the state in which the a portion of the gross receipts were apportioned and the taxpayer's domicile was in Wisconsin.

   The above provisions are repealed effective for taxable years beginning on or after January 1, 2009.

9. **Combined Reporting Law Revised** (2009 Act 28, repeal sec. 71.255(4)(e), (7)(c), and (7)(d), amend secs. 71.255(2)(a), (3)(c), (4)(f), (6)(a), and (7)(b)(intro.), 71.30(8)(b), and 71.74(6), repeal and recreate sec. 71.255(4)(h) and (i), (6)(b), and (7)(a), as created by 2009 Act 2, and create sec. 71.255(2m), (6)(c), and (11), effective for taxable years beginning on or after January 1, 2009, except sec. 71.255(6)(c)2., which is effective on July 1, 2009.)

   Wisconsin's combined reporting law, as enacted by 2009 Wisconsin Act 2, is revised to:

   - clarify that a corporation engaged in a unitary business with one or more other corporations in a commonly controlled group must use combined reporting;
   - allow an election to include members of a commonly controlled group in the combined group;
   - provide that combined groups operating wholly in Wisconsin be treated the same as multistate groups in determining modifications for an expanded dividends received deduction, deferral of intercompany gains and losses, application of charitable contribution limitations, and the sharing of net business losses;
   - delete the requirement that a corporation must be a member of a combined group for 365 days to eliminate dividends paid by that corporation to another combined group member in determining income;
   - clarify that the limitations that apply to charitable contribution deductions shall be applied as provided under section 170 of the Internal Revenue Code in the manner prescribed by administrative rule;
   - clarify that gain or loss from the sale or exchange of capital assets, property described under section 1231(a)(3) of the Internal Revenue Code, and property subject to involuntary conversion shall be determined under sections 1211, 1222, and 1231 of the Internal Revenue Code in the manner prescribed by administrative rule;
   - allow the sharing of unused research credits (except the super research and development credit);
   - allow the sharing of net business loss carry-forwards to the extent these losses are first computed for a taxable year beginning on or after January 1, 2009;
   - modify provisions related to the duties of the designated agent to allow the department to authorize, through administrative rules, other members to perform certain duties; and
   - authorize the department to promulgate administrative rules necessary to conform Wisconsin treatment of transactions between members of a combined group with those that apply to members of a federal consolidated group.

10. **Excludable and Exempt Income Provisions Revised** (2009 Act 28, amend sec. 71.26(1)(b) and (be) and create secs. 46.2898, 59.58(7), 66.1039, 71.26(1m)(j), and 71.45(1t)(j), effective July 1, 2009.)

    Exempt income includes interest received on bonds or notes issued by the Southeastern Regional Transit Authority, income from transit authorities under sec. 66.1039, and income from the Wisconsin Quality Home Care Authority.

11. **Obsolete Statute Repealed** (2009 Act 28, repeal secs. 71.28(1fd) and 71.47(1fd), effective July 1, 2009.)

    The statute relating to the farmers' drought property tax credit is repealed. This credit only applied for taxable year 1988.

12. **Farmland Tax Relief Credit Repealed** (2009 Act 28, amend secs. 71.28(2m)(a)1.(intro.), 3., and 4., 71.47(2m)(a)1.(intro.), 3., and 4., and create secs. 71.28(2m)(e) and 71.47(2m)(e), effective for taxable years beginning on or after January 1, 2010.)

    No new claim for the farmland tax relief credit may be filed for a taxable year that begins on or after January 1, 2010.

13. **Manufacturing Sales Tax Credit Statutory Reference Revised** (2009 Act 28, amend secs. 71.28(3)(a)1. and 71.47(3)(a)1., effective July 1, 2009.)

    The reference to sec. 77.54(6m) for purposes of the manufacturing sales tax credit is revised to sec. 77.54(6m), 2007 Stats.

14. **Effective Date for Biodiesel Fuel Production Credit Changed** (2009 Act 28, amend secs. 71.28(3h)(b) and 71.47(3h)(b), effective for taxable years beginning on or after January 1, 2012.)

    The biodiesel fuel production credit is available for taxable years beginning on or after January 1, 2012. Under prior law, the credit was available for taxable years beginning on or after January 1, 2010.

15. **Jobs Tax Credit Created** (2009 Act 28, amend sec. 71.21(4) and secs. 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), as affected by 2009 Act 2, and create secs. 71.28(3q), 71.47(3q), and 560.2055, effective for taxable years beginning on or after January 1, 2010.)

    See Item A.17.

16. **Enterprise Zone Jobs Credit Revised** (2009 Act 11, renumber secs. 71.28(3w)(bm) to 71.28(3w)(bm)1., 71.47(3w)(bm) to 71.47(3w)(bm)1., and 560.799(3)(b) to 560.799(3)(b)(intro.) and amend as renumbered, amend secs. 71.28(3w)(a)3., (b)1.a. and b., 2., 3., and 5., 71.47(3w)(a)3., (b)1.a. and b., 2., 3., and 5., and 560.799(3)(a), and create secs. 71.28(3w)(a)5d. and 5e. and (bm)2., 71.47(3w)(a)5d. and 5e. and (bm)2., and 560.799(1)(am), (3)(bm), (5)(d), and (6)(g), effective for taxable years beginning on or after January 1, 2009.)

    See Item A.34.

17. **Enterprise Zone Jobs Credit as Affected by Act 11 Revised** (2009 Act 28, amend secs. 71.28(3w)(bm)1. and 2., 71.47(3w)(bm)1., and 2., as affected by 2009 Act 11, amend secs. 71.28(3w)(c)3., and 71.47(3w)(c)3., and create secs. 71.28(3w)(bm)3., 71.47(3w)(bm)3., 560.799(5m) and (6)(g)3., effective for taxable years beginning on or after January 1, 2009.)

    See Item A.19.

18. **Early Stage Seed Investment Credit Repayment** (2009 Act 28, create secs. 71.28(5b)(d)3. and 71.47(5b)(d)3., effective for calendar years beginning on or after January 1, 2008.)

    See Item A.21.

19. **Film Production Services Credit Revised** (2009 Act 28, repeal secs. 71.30(3)(eps) and 71.49(1)(eps), amend secs. 71.30(3)(f) and 71.49(1)(f), as affected by 2009 Act 2, and repeal and recreate secs. 71.28(5f) and 71.47(5f), effective for taxable years beginning on or after January 1, 2009.)

    See Item A.23.

20. **Film Production Company Investment Credit Revised** (2009 Act 28, repeal secs. 71.30(3)(epr) and 71.49(1)(epr), renumber secs. 71.28(5h)(d) to 71.28(5h)(d)1. and 71.47(5h)(d) to 71.47(5h)(d)1., and amend as renumbered, amend secs. 71.28(5h)(a)2., (b)(intro.) and 1., and (c)1., 2., 3., and 4., 71.30(3)(f), as affected by 2009 Act 2, 71.47(5h)(a)2., (b)(intro.) and 1., and (c)1., 2., 3., and 4., and 71.49(1)(f), as affected by 2009 Act 2, and create secs. 71.28(5h)(c)4m. and (d)2. and 71.47(5h)(c)4m. and (d)2., effective for taxable years beginning on or after January 1, 2009.)

    See Item A.24.

21. **Effective Date for Electronic Medical Records Credit Changed** (2009 Act 28, amend secs. 71.28(5i)(b) and 71.47(5i)(b), effective for taxable years beginning on or after January 1, 2012.)

    See Item A.25.

22. **Effective Date for Community Rehabilitation Program Credit Changed** (2009 Act 28, amend secs. 71.28(5k)(b) and 71.47(5k)(b), effective July 1, 2009.)

    The community rehabilitation program credit will first be available for taxable years beginning after July 1, 2011. Under prior law, the credit was available for taxable years beginning after July 1, 2009.

23. **Supplement to Federal Historic Rehabilitation Credit Revised** (2009 Act 28, amend secs. 71.28(6)(c) and (f) and 71.47(6)(c) and (f) and create secs. 71.28(6)(cm) and (g) and 71.47(6)(cm) and (g), effective for property placed in service on or after June 30, 2008.)

    See Item A.30.

24. **Beginning Farmer and Farm Asset Owner Tax Credit** (2009 Act 28, amend secs. 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. 71.28(8r), 71.47(8r), and 93.53, effective for taxable years beginning on or after January 1, 2011.)

    See Item A.28.

25. **Exception Provided for Interest on Underpayment of Estimated Tax** (2009 Act 28, create sec. 71.29(7)(c), effective for taxable years beginning after December 31, 2008.)

    Interest on underpayment of estimated tax by a corporation or virtually exempt entity is not required during the extension period if the taxpayer qualifies for a federal extension of time to file due to a presidentially declared disaster or terroristic or military action.

26. **Computation Order for Ethanol and Biodiesel Fuel Pump Credit Revised** (2009 Act 28, renumber sec. 71.30(3)(ed) to 71.30(3)(ds), effective for taxable years beginning after December 31, 2007.)

    The ethanol and biodiesel fuel pump credit is claimed after the health insurance risk-sharing plan assessment credit. Under prior law, the ethanol and biodiesel fuel pump credit was claimed after the development zones sales tax credit.

27. **Withholding from Nonresident Members of Pass-Through Entities Revised** (2009 Act 28, repeal sec. 71.775(4)(b) and (f), renumber sec. 71.775(4)(c) to 71.775(4)(i) and 71.775(4)(e) to 71.755(4)(k), renumber sec. 71.775(4)(d) to 71.775(4)(j) and amend as renumbered, amend sec. 71.775(4)(a)(intro.), and create sec. 71.775(4)(bm)1. and 2., (bn), (cm), (dm), (em), (fm), (g), (h), and (L), effective for taxable years beginning on or after January 1, 2009.)

Several changes are made to the provisions requiring a pass-through entity to annually pay, by the unextended due date of its Wisconsin income or franchise tax return, withholding tax on a nonresident member's share of income attributable to Wisconsin.

- Each pass-through entity that is subject to the withholding requirement shall file an annual return that indicates the withholding amount paid to the state during the pass-through entity's taxable year. The entity shall file the return with the department no later than, (i) for tax-option corporations, the 15th day of the 3rd month following the close of the taxable year, and (ii) for partnerships, limited liability companies, estates, and trusts, the 15th day of the 4th month following the close of the taxable year.

- The department shall allow an automatic extension of 7 months or until the corresponding due date of the pass-through entity's federal income tax return or return of partnership income, whichever is later. Except for payments of estimated taxes, withholding taxes payable upon filing the return are not delinquent during the extension period but shall be subject to interest at the rate of 12 percent per year during that period.

- For taxable years beginning after December 31, 2008, for persons who qualify for a federal extension of time to file under 26 USC 7508A due to a presidentially declared disaster or terroristic or military action, withholding taxes that are otherwise due from a pass--through entity are not subject to 12 percent interest during the extension period and for 30 days after the end of the federal extension period.

- If a pass-through entity subject to the withholding tax does not file the return mentioned above on or before the extension date, the pass-through entity is liable for the negligence penalty provided in sec. 71.83 (1), in addition to any unpaid tax, interest, and penalty otherwise assessable to a nonresident partner, member, shareholder, or beneficiary on income from the pass-through entity.

- Except as provided during the transition period, pass-through entities shall make quarterly payments of the withholding tax on or before the 15th day of the 3rd, 6th, 9th, and 12th month of the taxable year.

- The corporate provisions relating to refund carry-forward, refunds, prepayments, short year, overpayments and exception to final installment of sec. 71.29 also apply to estimated payments of the withholding tax.

  If a pass-through entity claims a refund on any tax return and, concurrent with or subsequent to filing the return upon which that refund is claimed, the pass-through entity is required to pay an estimated tax, and at the time of paying that tax the refund has not been paid, the pass-through entity may deduct the amount of that refund from the first installment of estimated taxes and may deduct any excess from the succeeding installments.

  The department may refund estimated taxes after the completion of the taxable year to which the estimated taxes relate if the refund is at least 10% of the taxes estimated for that taxable year and is at least $500. A refund may be subject to 12% interest. If a refund results in an income or franchise tax liability that is greater than the amount of estimated taxes paid reduced by the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable year interest at an annual rate of 12% on the amount of the unpaid tax liability for the period beginning on the date the refund is issued and ending on the 15th day of the 3rd month beginning after the end of the taxable year, or the date the tax liability is paid, whichever is earlier.

Any installment of estimated tax may be paid before the due date. The treatment of taxable years of less than 12 full months shall be made under the Department of Revenue's rules. If the amount of an installment payment of estimated tax exceeds the amount determined to be the correct amount of that payment, the overpayment shall be credited against the next unpaid installment.

If a pass-through entity files a return for a calendar year on or before January 31 of the succeeding calendar year or if on a fiscal year basis files a return on or before the last day of the first month immediately succeeding the close of such fiscal year, and pays in full at the time of such filing the amount computed on the return as payable, then, if estimated taxes are not required to be paid on or before the 15th day of the 9th month of the taxable year but are required to be paid on or before the 15th day of the 12th month of the taxable year, such return shall be considered as payment.

- In case of any underpayment of estimated withholding taxes, interest shall be added to the aggregate withholding tax for the taxable year at the rate of 12% per year on the amount of the underpayment for the period of the underpayment. "Period of the underpayment" means the time period beginning with the due date of the installment and ending on either the unextended due date of the return or the date of payment, whichever is earlier. If 90% of the tax due for the taxable year is not paid by the unextended due date of the return, the difference between that amount and the estimated taxes paid, along with any interest due, shall accrue delinquent interest in the same manner as income and franchise taxes.

  However, no interest is required if any of the following conditions apply: (1) the amount of withholding tax due is less than $500; or (2) the amount of withholding tax due is less than $5,000, the pass-through entity had no withholding tax liability for the preceding taxable year, and the preceding taxable year was 12 months.

- The amount of each installment, except if computing annualized income, is 25% of the lesser of the following amounts: (1) 90% of the withholding tax that is due for the taxable year; or (2) the withholding tax due for the preceding taxable year, except that this option does not apply if the preceding taxable year was less than 12 months or if the pass-through entity did not file a return for the preceding taxable year.

  If 22.5% for the first installment, 45% for the second installment, 67.5% for the third installment, and 90% for the fourth installment for the taxable year, computed by annualizing the pass-through entity's income for the months in the taxable year ending before the installment's due date is less than the installment required as explained above, the pass-through entity may pay the amount under this option rather than the amount required as explained above. For purposes of computing annualized income, the apportionment percentage computed from the annual pass-through entity return filed for the previous taxable year may be used if that return was filed with the department on or before the due date of the installment for which the income is being annualized and if the apportionment percentage on that previous year's return was greater than zero.

  Any pass-through entity that pays an amount calculated by annualizing income shall increase the next installment by an amount equal to the difference between the amount paid by annualizing income and the amount that would have been paid as explained above.

- The changes provide a transition or grace period for the making of estimated payments of the withholding tax that become due less than 45 days after July 1, 2009. The due date of these payments is extended to the next subsequent installment due date. For example,

  - A pass-through entity on a **calendar year** basis will make its first payment subject to these new provisions on **September 15, 2009**. This payment must account for the 1st, 2nd, and 3rd installment payments.

- A pass-through entity on a fiscal year beginning on **February 1, 2009**, will make its first payment subject to these new provisions on **October 15, 2009**. This payment must account for the 1st, 2nd, and 3rd installment payments.

- A pass-through entity on a fiscal year beginning on **March 1, 2009**, will make its first payment subject to these new provisions on **August 15, 2009**. This payment must account for the 1st and 2nd installment payments.

- A pass-through entity on a fiscal year beginning on **June 1, 2009**, will make its first payment subject to these new provisions on **August 15, 2009**. This payment must only account for the 1st installment payment.

C. Homestead Credit

1. **Homestead Credit Indexing** (2009 Act 28, amend sec. 71.54(1)(f)(intro.) and (2)(b)3. and create sec. 71.54(2m), effective for calendar years beginning on or after January 1, 2010.)

   Under current law, if household income is more than $8,000 in the year to which the claim relates, the claim is limited to 80% of the amount by which up to $1,450 of property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead exceeds 8.788% of household income exceeding $8,000. No credit may be allowed if household income exceeds $24,500.

   Effective for 2010 homestead credit claims, the threshold household income (currently $8,000), maximum household income (currently $24,500), and maximum property taxes accrued or rent constituting property taxes accrued (currently $1,450) shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the 12-month average of the U.S. consumer price index for the month of August of the year before the previous year through the month of July of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the 12-month average of the U.S. consumer price index for August 2007 through July 2008, except that the adjustment may occur only if the percentage is a positive number. Each revised amount shall be rounded to the nearest multiple of $10.

   The slope (currently 8.788%) shall also be adjusted each year such that, as household income increases from the threshold household income as calculated above to an amount that exceeds the maximum household income as calculated above, the credit that may be claimed is reduced to zero.

2. **Deduction from Household Income for Dependents Increased** (2009 Act 28, amend sec. 71.52(5), effective for taxable years beginning on or after January 1, 2010.)

   Under current law, in computing household income a claimant may deduct $250 for each dependent, as defined in section 152 of the Internal Revenue Code, who has the same principal abode as the claimant for more than 6 months during the year to which the claim relates.

   The amount of this deduction is increased from $250 to $500.

D. Farmland Preservation Credit Revised (2009 Act 28, amend secs. 71.57, 71.58(intro.), (1)(intro.), (b), (d), (e), and (f), (3), (4), and (8), 71.59(1)(a), (b)(intro.) and 4., (c), and (d)1. and 5. and (2)(intro.), (b), (c), (d), and (e), 71.60(1)(b) and (c)1. through 6., 6m., 7., and 8. and (2), and 71.61 and create secs. 71.61(6) and 71.613, various effective dates.)

Existing Farmland Preservation Credit

For taxable years beginning after December 31, 2009, no new claims may be filed for the farmland preservation credit as it exists under current law, but if an otherwise eligible claimant is subject to a farmland preservation

agreement that is in effect on July 1, 2010, the claimant may continue to file a claim for the existing credit until the farmland preservation agreement expires, except that no claimant who files a claim for the existing credit may file a claim for the new credit described on pages 33 to 36.

New Farmland Preservation Credit (effective for taxable years beginning on or after January 1, 2010)

Definitions

"Agricultural use" means any of the following activities conducted for the purpose of producing an income or livelihood or any other use that the Department of Agriculture, Trade and Consumer Protection, by rule, identifies as an agricultural use.

- Crop or forage production.
- Keeping livestock.
- Beekeeping.
- Nursery, sod, or Christmas tree production.
- Floriculture.
- Aquaculture.
- Fur farming.
- Forest management.
- Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.

"Claimant" means an owner of farmland, domiciled in Wisconsin during the entire taxable year to which the farmland preservation claim relates, who files a farmland preservation claim, except as follows:

- When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the Secretary of Revenue, whose decision is final.
- If any person in a household has claimed or will claim homestead credit, all persons from that household are ineligible to claim any farmland preservation credit for the year to which the homestead credit pertains.
- For partnerships except publicly traded partnerships treated as corporations under s. 71.22 (1k), Wis. Stats., "claimant" means each individual partner.
- For limited liability companies, except limited liability companies treated as corporations under s. 71.22 (1k), Wis. Stats., "claimant" means each individual member.
- For purposes of filing a farmland preservation claim, the personal representative of an estate and the trustee of a trust shall be considered owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

- For purposes of filing a farmland preservation claim, when land is subject to a land contract, the claimant shall be the vendee under the contract.

- For purposes of filing a farmland preservation claim, when a guardian has been appointed in Wisconsin for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

- For a tax-option corporation, "claimant" means each individual shareholder.

"Farm" means all land under common ownership that is primarily devoted to agricultural use and has produced at least $6,000 in gross farm revenues during the taxable year to which the claim relates or, in the taxable year to which the claim relates and the 2 immediately preceding taxable years, at least $18,000 in gross farm revenues.

"Farmland preservation agreement" means a farmland preservation agreement or transition area agreement entered into under sec. 91.13 or 91.14, Wis. Stats. (2007-08), or a farmland preservation agreement entered into under sec. 91.60(1), Wis. Stats., between an owner of land and the Department of Agriculture, Trade and Consumer Protection under which the owner agrees to restrict the use of land in return for tax credits.

"Farmland preservation zoning district" means an area zoned for exclusive agricultural use under an ordinance described in sec. 91.32(1), Wis. Stats., or a farmland preservation zoning district designated under sec. 91.38(1)(c), Wis. Stats., in an ordinance described in sec. 91.32(2), Wis. Stats.

"Gross farm revenues" means gross receipts from agricultural use of a farm, excluding rent receipts, less the cost or other basis of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year.

"Household" means an individual and his or her spouse and all minor dependents.

"Owner" means a resident of Wisconsin owning land and includes an individual, legal guardian, corporation incorporated in this state, business trust, estate, trust, limited liability company, partnership or association or 2 or more persons having a joint or common interest in the land. However, where land is subject to a land contract, it means the vendor in agreement with the vendee.

"Qualifying acres" means the number of acres of a farm that correlate to a claimant's percentage of ownership interest in a farm to which one of the following applies:

- The farm is wholly or partially covered by a farmland preservation agreement, except that if the farm is only partially covered, the qualifying acres calculation includes only those acres which are covered by a farmland preservation agreement.

- The farm is located in a farmland preservation zoning district at the end of the taxable year to which the claim relates.

- If the claimant transferred the claimant's ownership interest in the farm during the taxable year to which the claim relates, the farm was wholly or partially covered by a farmland preservation agreement, or the farm was located in a farmland preservation zoning district, on the date on which the claimant transferred the ownership interest. For the purposes of this provision, a land contract is a transfer of ownership interest.

Filing Claims

The farmland preservation credit is calculated by multiplying the claimant's qualifying acres by one of the following amounts:

- $10, if the qualifying acres are located in a farmland preservation zoning district and are also subject to a farmland preservation agreement that is entered into after July 1, 2009.

- $7.50, if the qualifying acres are located in a farmland preservation zoning district but are not subject to a farmland preservation agreement that is entered into after July 1, 2009.

- $5, if the qualifying acres are subject to a farmland preservation agreement that is entered into after July 1, 2009, but are not located in a farmland preservation zoning district.

The amount calculated above may be claimed as a credit against income or franchise tax imposed. If the allowable amount of the claim exceeds the income taxes otherwise due on the claimant's income or if there are no Wisconsin income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes is refundable.

No credit may be allowed unless all of the following apply:

- The claimant certifies to the Department of Revenue that the claimant has paid, or is legally responsible for paying, the property taxes levied against the qualifying acres to which the claim relates.

- The claimant certifies to the Department of Revenue that at the end of the taxable year to which the claim relates or, on the date on which the person transferred the person's ownership interest in the farm if the transfer occurs during the taxable year to which the claim relates, there was no outstanding notice of noncompliance issued against the farm under sec. 91.82(2), Wis. Stats.

- The claimant submits to the Department of Revenue a certification of compliance with soil and water conservation standards, as required by sec. 91.80, Wis. Stats., issued by the county land conservation committee unless, in the last preceding year, the claimant received a farmland preservation credit for the same farm.

If a farm is jointly owned by 2 or more persons who file separate income or franchise tax returns, each person may claim a credit based on the person's ownership interest in the farm.

If a person acquires or transfers ownership of a farm during a taxable year for which a claim may be filed, the person may file a claim based on the person's liability for the property taxes levied on the person's qualifying acres for the taxable year to which the claim relates.

A claimant shall claim the credit on a form prepared by the Department of Revenue and shall submit any documentation required by the department. On the claim form, the claimant shall certify all of the following:

- The number of qualifying acres for which the credit is claimed.

- The location and tax parcel number for each parcel on which the qualifying acres are located.

- That the qualifying acres are covered by a farmland preservation agreement or located in a farmland preservation zoning district, or both.

- That the qualifying acres are part of a farm that complies with applicable state soil and water conservation standards, as required by sec. 91.80, Wis. Stats.

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

The maximum amount of the credits that may be claimed in any fiscal year is $27,007,200 **[REVISED]**. If the total amount of eligible claims exceed this amount, the excess claims shall be paid in the next succeeding fiscal year to ensure that the limit specified in this paragraph is not exceeded. For the 2011-2012 fiscal year, and for every succeeding fiscal year, the Department of Revenue shall prorate the per acre amounts specified above based on the department's estimated amount of eligible claims that will be filed for that fiscal year, and to account for any excess claims from the preceding fiscal year that are required to be paid.

If the payment to which an eligible claimant is entitled is delayed because the claim was an excess claim, as described above, the claimant is not entitled to any interest payment under sec. 71.82, Wis. Stats., with regard to the delayed claim or with regard to any other refund to which the claimant is entitled if that other refund claim is claimed on the same income tax return as the farmland preservation credit.

Administration

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

E. Withholding Tax

1. **"Willful Misclassification" Penalty for Construction Contractors Created** (2009 Act 28, create secs. 71.63(3)(d), 71.65(6), and nonstatutory provisions, effective July 1, 2009.)

   Any employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects who willfully provides false information to the department, or who willfully and with intent to evade any withholding requirement, misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee shall be fined $25,000 for each violation.

   The department may promulgate emergency rules to define "willful misclassification," as that concept is used in this provision.

2. **Extensions for Filing Withholding Returns and Paying Withholding** (2009 Act 28, amend sec. 71.65(5)(b), effective July 1, 2009.)

   The department for good cause may extend for a period, not to exceed one month, the time for making any withholding return or paying any withholding amount. The extension may be granted at any time if the extension request is filed with the department within or before the period for which the extension is requested.

F. Recycling Surcharge Revised (2009 Act 28, amend sec. 77.92(4), as affected by 2009 Wisconsin Act 2, effective July 1, 2009.)

For purposes of the recycling surcharge, the definition of "net business income," with respect to a partnership, is expanded to include the jobs tax credit and the beginning farmer and farm asset owner tax credit.

G. Sales and Use Taxes

1. **Baseball Park District - Funds Restrictions** (2009 Act 28, amend sec. 20.835(4)(gb), and create secs. 25.40(1)(a) 26., 341.14(6r)(b)13., and 341.14(6r)(f)60., effective July 1, 2009.)

   Section 341.14(6r)(f)60., Wis. Stats., authorizes special motor vehicle license plates to be issued for persons interested in expressing their support of a major league professional baseball team that uses as its home field baseball park facilities that are constructed under Subchapter III of Chapter 229, Wis. Stats. Section 341.14(6r)(b)13.b., Wis. Stats., provides that net monies derived after crediting the appropriation account as provided in sec. 341.14(6r)(b)13.a., Wis. Stats., shall be credited to the appropriation account under sec. 20.835(4)(gb), Wis. Stats. The Wisconsin Department of Transportation shall identify and record the percentage of moneys that are attributable to each professional baseball team represented by a plate under sec. 341.14(6r)(f)60., Wis. Stats.

Section 77.705, Wis. Stats., provides that any moneys received by the baseball park district under sec. 341.14(6r)(b)13.b., Wis. Stats., and credited to the appropriation account under sec. 20.835(4)(gb), Wis. Stats., shall be used exclusively to retire the district's debt.

2. **Biotechnology and Manufacturing Exemptions** (2009 Act 28, create sec. 77.54(57), effective January 1, 2012.)

Effective January 1, 2012, exemptions from Wisconsin sales and use taxes were created for purchases of the following:

- Machinery and equipment, including attachments, parts, and accessories, that are sold to persons who are engaged primarily in manufacturing or biotechnology in Wisconsin and are used exclusively and directly in qualified research.

- Tangible personal property and certain other items that are sold to persons who are engaged primarily in manufacturing or biotechnology in Wisconsin, if the property or item is consumed or destroyed or loses its identity while being used exclusively and directly in qualified research.

- Machines and specific processing equipment, including accessories, attachments, and parts for the machines or equipment, that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.

- The items listed in sec. 77.54(3m)(a) to (m), Wis. Stats., medicines, semen for artificial insemination, fuel, and electricity that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.

For purposes of the exemptions described above, the following definitions apply.

"Animals" include bacteria, viruses, and other microorganisms.

"Biotechnology" means the application of biotechnologies, including recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses, that use living organisms or parts of an organism to produce or modify products to improve plants or animals or improve animal health, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

"Biotechnology business" means a business, as certified by the Department of Revenue in the manner prescribed by the Department of Revenue, that is primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

"Machinery" means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but "machinery" does not include a building (by reference to sec. 70.11(27)(a)2., Wis. Stats.).

"Primarily" means more than 50%.

"Qualified research" means qualified research as defined under section 41(d)(1) of the Internal Revenue Code.

"Used exclusively" means used to the exclusion of all other uses except for other use not exceeding 5% of total use (by reference to sec. 77.54(3)(b)3., Wis. Stats.).

3. **Clarify that the Sale, License, Lease, or Rental of a Product May Be Taxed Only Once for Sales and Use Tax Purposes** (2009 Act 28, create sec. 77.61(20), effective July 1, 2009.)

The sale, license, lease, or rental of a product may be taxed only once under the sales and use tax law, regardless of whether such sale, license, lease, or rental is subject to taxation under more than one imposition provision under the sales and use tax law. This provision merely clarifies, but does not change, the tax treatment of any transaction.

Example 1: Individual A brings his clothing to Laundry B. Laundry B cleans the clothing for Individual A for a fee. The provision of laundry service is taxable under sec. 77.52(2)(a)6., Wis. Stats. (2007-08). Additionally, the cleaning of tangible personal property (e.g., clothing) is taxable under sec. 77.52(2)(a)10., Wis. Stats. (2007-08). Although the tax is imposed under two separate provisions of the sales and use tax law, the service may only be taxed once.

Example 2: Individual C purchases a new automobile for $20,000 plus tax. Three years later, Individual C sells the automobile to Individual D. Individual D pays the tax upon registering the automobile with the Department of Transportation. Individual D later sells the automobile to Individual E, who also pays the tax upon registering the automobile with the Department of Transportation. Tax was correctly paid on each of these separate transactions. The taxation of these transactions is not affected by the creation of sec. 77.61(20), Wis. Stats.

4. **Credit for Tax Paid to a Tribe** (2009 Act 28, create sec. 77.53(16m), effective July 1, 2009.)

A credit against Wisconsin use tax is provided for sales tax paid to a federally recognized American Indian tribe or band in Wisconsin for purchases of property and services that occurred on tribal lands.

If the purchase, rental, or lease of tangible personal property or service subject to Wisconsin sales and use taxes occurred on tribal lands and, prior to imposing the tax under this subchapter, was subject to a sales tax by a federally recognized American Indian tribe or band in Wisconsin, the amount of sales tax paid to the tribe or band may, as determined by an agreement between the Department of Revenue and the tribal council under sec. 73.03 (65), Wis. Stats., be applied as a credit against and deducted from the sales and use tax. For purposes of this credit, "sales tax" includes a use or excise tax imposed on the use of tangible personal property or taxable service by the tribe or band.

5. **Disregarded Entities** (2009 Act 28, amend sec. 77.51(10) and create sec. 77.61(19m)(a) - (c), effective July 1, 2009, and amend 77.58(3)(a), effective September 1, 2009.)

The Act provides that a single-owner entity that is disregarded as a separate entity (i.e., the single-owner entity and its owner are treated as a single entity) for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin Statutes ("disregarded entity") is disregarded as a separate entity for purposes of Wisconsin sales and use taxes. The Act also removes the owner of a single-owner entity that is disregarded as a separate entity under Chapter 71 of the Wisconsin Statutes from the definition of "person" for purposes of Chapter 77 (effective July 1, 2009).

Prior to July 1, 2009, a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes was treated as an entity separate from its owner for Wisconsin sales and use tax purposes, except for reporting purposes.

The Act also provides that a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes has the option to (1) include the information from the disregarded entity on the owner's return, or (2) file a separate electronic sales and use tax return for the disregarded entity. If an owner

that owns more than one disregarded entity elects to file a separate return for one if its disregarded entities, the owner is required to file separate returns for all of its disregarded entities. Such returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath. (The provision relating to filing options (1) and (2) is effective September 1, 2009.)

For sales and use tax returns filed prior to September 1, 2009, the owner of a disregarded entity must include the information from the disregarded entity on the owner's sales and use tax return.

Transitional Provisions: The law includes the following transitional provisions to ensure that, solely due to this law change, the owner of a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes will not incur a use tax liability on purchases made prior to the effective date of the law change or on real property contracts entered into prior to the effective date of the law change:

- A single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes on July 1, 2009 shall be treated for Wisconsin sales and use tax purposes as an entity separate from its owner for purposes of the sale, lease, license, or rental of and the storage, use, or other consumption of tangible personal property purchased by the single-owner entity or its owner prior to July 1, 2009.

- A single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes on July 1, 2009 shall be treated for Wisconsin sales and use tax purposes as an entity separate from its owner for purchases of building materials, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to July 1, 2009, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before July 1, 2009.

6. **Entities Exempt from Sales and Use Taxes** (2009 Act 28, amend sec. 77.54(9a)(a) and create sec. 77.54(9a)(ed) and (er); various effective dates.)

- *Wisconsin Quality Home Care Authority* - Section 77.54(9a)(a), Wis. Stats., is amended, effective July 1, 2009, to add the Wisconsin Quality Home Care Authority as an entity that is exempt from Wisconsin sales and use taxes on its purchases.

- *Wisconsin Indian Bands and Tribes* -Section 77.54(9a)(ed), Wis. Stats., is created, effective August 1, 2009, to add any federally recognized American Indian tribe or band in Wisconsin as an entity exempt from Wisconsin sales and use taxes on its purchases.

- *Regional Transit Authorities* - Section 77.54(9a)(er), Wis. Stats., is created, effective July 1, 2009, to add the Southeastern Regional Transit Authority created under sec. 59.58(7), Wis. Stats., and any regional transit authority created under sec. 66.1039, Wis. Stats., as entities exempt from Wisconsin sales and use taxes on their purchases.

7. **Fuel for Charter Fishing Boats Exemption** (2009 Act 28, create sec. 77.54(30)(a)7., effective July 1, 2009.)

A sales and use tax exemption is created for fuel sold for use in motorboats that are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in sec. 29.001(63), Wis. Stats., and the rivers and tributaries specified in sec. 29.2285(2)(a)1. and 2., Wis. Stats., if the owner and all operators are licensed under sec. 29.514, Wis. Stats., to operate the boat for that purpose.

"Outlying waters," as defined in sec. 29.001(63), Wis. Stats., means Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere.

"Rivers and tributaries" specified in sec. 29.2285(2)(a)1. and 2., Wis. Stats., include any river or stream tributary of Lake Michigan or Green Bay from its mouth upstream to the first dam or lake and any other river or stream tributary of Lake Michigan or Green Bay that is designated by the department.

Section 29.514, Wis. Stats., details the requirement for obtaining and holding an outlying water sport trolling license. No person may be engaged or be employed for any compensation to guide any other person in sport trolling for trout or salmon in and upon the outlying waters unless the person is issued a sport trolling license by the Department of Natural Resources.

8. **Local Licenses and Permits – Requirement to Hold Seller's Permit Amended** (2009 Act 28, repeal and recreate sec. 77.61(11), as affected by 2009 Act 2, effective October 1, 2009.)

   The requirement to hold a seller's permit, for purposes of issuing local licenses or permits, is amended to allow the holding of a use tax registration certificate.

9. **Manufacturing Consumables and Definition of "Manufacturing"** (2009 Act 28, renumber sec. 77.54(6m)(a) to 77.51(7h)(a)1.; renumber sec. 77.54(6m)(intro.) to 77.51(7h)(a)(intro.) and amend as renumbered; renumber sec. 77.54(6m)(b) to 77.51(7h)(a)2. and amend as renumbered; amend sec. 77.54(2) and (2m); and create sec. 77.51(7h)(a)3. and (b), (10b), and (10c), effective August 1, 2009.)

   The definition of "manufacturing" is amended to mean the production by machinery of a new article of tangible personal property with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property to the point of first storage in the same plant. "Manufacturing" includes:

   - Crushing, washing, grading and blending sand, rock, gravel and other minerals.

   - Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including the preparation of ore for smelting.

   - Conveying work in process directly from one manufacturing process to another in the same plant; testing or inspecting, throughout the manufacturing process, the new article of tangible personal property that is being manufactured; storing work in progress in the same plant where the manufacturing occurs; assembling finished units of tangible personal property; and packaging a new article of tangible personal property, if the manufacturer, or another person on the manufacturer's behalf, performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

   "Manufacturing" does not include storing raw materials or finished units of tangible personal property, research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

   For purposes of the definition above, "plant" means a parcel of property or adjoining parcels of property, including parcels that are separated only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer, and "plant inventory" does not include unsevered mineral deposits.

   This act also provides that tangible personal property consumed in manufacturing is only exempt if it is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property destined for sale

10. **Nexus Definition – Sales and Use Tax** (2009 Act 28, create sec. 77.51(13g)(d), effective July 1, 2009.)

    This provision expands the definition of "retailer engaged in business in this state" to specifically include any person who has an affiliate in Wisconsin, if the person is related to the affiliate and if the affiliate uses facilities or employees in Wisconsin to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in Wisconsin or for providing services to the related person's purchasers in Wisconsin, including accepting returns of purchases or resolving customer complaints.

    For purposes of this provision, two persons are "related" if any of the following apply:

    - One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50% of the corporation's outstanding stock value.

    - One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the other person or both persons.

    - An individual stockholder and the members of the stockholder's family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of both persons' outstanding stock value.

11. **Penalties for Failing to Provide Records** (2009 Act 28, create sec. 77.61 (19), effective July 1, 2009.)

    A person who fails to produce records or documents, as provided under secs. 73.03 (9) or 77.59 (2), Wis. Stats., that support amounts or other information required to be shown on a return required under sec. 77.58, Wis. Stats., may be subject to any of the following penalties, as determined by the Department of Revenue, except that the Department of Revenue may not impose a penalty under this subsection if the person shows that under all facts and circumstances the person's response, or failure to respond, to the Department of Revenue's request was reasonable or justified by factors beyond the person's control:

    - The disallowance of deductions, credits, exemptions, or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.

    - A penalty for each violation of this subsection that is equal to the greater of $500 or 25 percent of the amount of the additional tax on any adjustment made by the Department of Revenue that results from the person's failure to produce the records.

    The Department of Revenue shall promulgate rules to administer this subsection and the rules shall include a standard response time, a standard for noncompliance, and penalty waiver provisions.

    Also see Item K.5.

12. **Police and Fire Protection Fee Exemption** (2009 Act 28, create sec. 77.54(55), effective July 1, 2009.)

    A sales and use tax exemption is created for the sales price from the police and fire protection fee imposed under sec. 196.025(6), Wis. Stats. (see Item K.12).

13. **Regional Transit Authorities** (2009 Act 28, amend secs. 77.71(intro), (1), (2), (3) and (4), 77.73(2), 77.75, 77.76(1), (2) and (4), and 77.78, effective July 1, 2009; amend secs. 77.73(3) and 77.77(1)(a) and (b) as created by 2009 Wis. Act 2, effective October 1, 2009; and create secs. 66.1039, 77.54(9a)(er), 77.708, 77.76(3r) and (5), effective July 1, 2009.)

Creation of Regional Transit Authorities

The enactment of 2009 Act 28 authorizes the creation of the following regional transit authorities, as provided in sec. 66.1039, Wis. Stats.:

Chequamegon Bay Regional Transit Authority

The Chequamegon Bay Regional Transit Authority is created if the governing bodies of the counties of Ashland and Bayfield each adopt a resolution authorizing its respective county to become a member of the authority.

Once the Chequamegon Bay Regional Transit Authority is created, any county other than Ashland or Bayfield may join the authority if the governing body of the county adopts a resolution authorizing that county to become a member of the authority and the authority approves that county's joinder.

The jurisdictional area of the Chequamegon Bay Regional Transit Authority is the combined territorial boundaries of Ashland and Bayfield Counties, plus the territorial boundaries of any other county that subsequently joins the authority.

Chippewa Valley Regional Transit Authority

The Chippewa Valley Regional Transit Authority is created if the governing body of Eau Claire County adopts a resolution authorizing the county to become a member of the authority.

Once created, Chippewa County may become a member of the authority if the governing body of Chippewa County adopts a resolution to become a member of the authority.

The jurisdictional area of the Chippewa Valley Regional Transit Authority is the territorial boundaries of Eau Claire County, plus the territorial boundaries of Chippewa County, if that county subsequently joins the authority.

Dane County Regional Transit Authority

The Dane County Regional Transit Authority (DC RTA) is created if the Dane County Board passes a resolution to become a member of the DC RTA. Upon creation, any municipality located in whole or in part within the Madison metropolitan planning area as of January 1, 2003, is a member of the DC RTA. Any municipality located in whole or in part within Dane County that is not located in whole or in part within the Madison metropolitan planning area on January 1, 2003, may join the DC RTA if the governing body of the municipality adopts a resolution to join the authority and the board of directors of the authority approves the municipality's joinder. The initial jurisdiction of the DC RTA is the Madison metropolitan planning area.

If a municipality joins the DC RTA, the area of its territorial boundaries becomes a part of the DC RTA jurisdiction as of the first day of the first calendar quarter that begins at least 120 days after the Department of Revenue receives a certified copy of the resolution that approves the joining. The DC RTA shall also provide the Department of Revenue with a description of the new boundaries of the DC RTA's jurisdictional area, as provided under sec. 66.1039(4)(s)2., Wis. Stats.

The jurisdictional area of the DC RTA is the area of the Madison metropolitan planning area, plus the area of any municipality joining the DC RTA.

Provisions applicable to all regional transit authorities created under sec. 66.1039, Wis. Stats.

Once a regional transit authority is created, that authority may impose a sales and use tax, pursuant to secs. 66.1039(4)(s)1. and 77.708(1), Wis. Stats., at a rate of up to 0.5%. The sales and use tax will apply within the transit authority's jurisdictional area. The sales and use tax imposed by a transit authority is effective on the first day of the first calendar quarter that begins at least 120 days after adoption of the resolution by the transit authority that imposes the tax. The transit authority must notify the Department of Revenue at least 120 days prior to the effective date of the tax.

Under sec. 77.708(2), Wis. Stats., retailers and the Department of Revenue may not collect a regional transit authority sales and use tax for any transit authority created under sec. 66.1039, Wis. Stats., after the calendar quarter during which the transit authority adopts a repeal resolution under sec. 66.1039(4)(s), Wis. Stats., except that the Department of Revenue may collect from retailers taxes that accrued before such calendar quarter and fees, interest, and penalties that relate to those taxes.

Under sec. 66.1039(4)(s)2., Wis. Stats., if the boundaries of the transit authority are other than a county line, the transit authority is required to furnish to the Department of Revenue a complete list of all the 9-digit zip codes that are entirely within the transit authority jurisdictional area, and a complete list of all the street addresses that are within the transit authority jurisdictional area that are not included in any 9-digit zip code that is entirely within the transit authority's jurisdictional area. This information is to be furnished in the manner, format and layout prescribed by the Department of Revenue.

Section 77.54(9a)(er), Wis. Stats., provides that a regional transit authority created under sec. 66.1039, Wis. Stats., is an entity that is exempt from paying Wisconsin sales and use taxes on its purchases.

Sections 77.71(intro), (1), (2), (3) and (4), 77.73(2), 77.75, and 77.76(1) and (2), and 77.78, Wis. Stats., as they apply to county and stadium district sales and use taxes, have been amended to apply to regional transit authority sales and use taxes as well.

Section 77.76(4), Wis. Stats., as it applies to taxes, interest and penalties collected for the taxes imposed by the baseball and football stadium districts, has been amended to apply in the same manner to taxes, interest and penalties collected for the taxes imposed by regional transit authorities.

Section 77.76(5), Wis. Stats., provides that if a retailer receives notice from the Department of Revenue that the retailer is required to collect and remit the taxes imposed under sec. 77.708, Wis. Stats., but the retailer believes that the retailer is not required to collect such taxes because the retailer is not doing business within the transit authority's jurisdictional area, the retailer shall notify the Department of Revenue no later than 30 days after receiving notice from the Department of Revenue. The Department of Revenue shall affirm or revise its original determination no later than 30 days after receiving the retailer's notice.

Section 77.76(3r), Wis. Stats., `provides that, from the appropriation under sec. 20.835(4)(gc), Wis. Stats., the Department of Revenue shall distribute 98.5 percent of the taxes reported for each transit authority that has imposed taxes under this subchapter, minus the transit authority portion of the retailers' discount, to the transit authority no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the Department of Revenue shall indicate the taxes reported by each taxpayer. The "transit authority portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross transit authority sales and use taxes payable and the denominator of which is the sum of the gross state and transit authority sales and use taxes payable. The transit authority taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments of the transit authority taxes previously distributed. Interest paid on refunds of transit authority sales and use taxes shall be paid from the appropriation under sec. 20.835(4)(gc), Wis. Stats., at the rate paid by this state under sec. 77.60(1)(a)., Wis. Stats. Any transit authority receiving a report under this subsection is subject to the duties of confidentiality to which the Department of Revenue is subject under sec. 77.61(5), Wis. Stats.

Sections 77.73(3), and 77.77(1)(a) and (b), Wis. Stats., as created by 2009 Wis. Act 2, and effective as of October 1, 2009, as it applies to county and stadium district sales and use taxes, has been amended to apply to regional transit authority sales and use taxes as well.

14. **Retailer's Discount Limited to $1,000 Per Reporting Period** (2009 Act 28, amend sec. 77.61(4)(c), first applies to the taxes payable on October 1, 2009.)

    The retailer's discount that may be deducted on a sales and use tax return is limited to $1,000 per reporting period.

15. **Towing and Hauling of Motor Vehicles** (2009 Act 28, create sec. 77.52(2)(a)8m., effective July 1, 2009.)

    Sales and use tax applies to the towing and hauling of motor vehicles by a tow truck, as defined in sec. 340.01(67n), Wis. Stats., unless at the time of towing or hauling a sale in this state of the motor vehicle to the purchaser would be exempt from sales and use taxes, not including the exempt sale of a motor vehicle to a nonresident under sec. 77.54(5)(a), Wis. Stats., and nontaxable sales described in sec. 77.51(14r), Wis. Stats.

    "Tow truck" is defined in sec. 340.01(67n), Wis. Stats., to mean "a motor vehicle that is equipped with mechanical or hydraulic lifting devices or winches capable of, and used for, the recovery or transport or both of wrecked, disabled, abandoned, used or replacement vehicles."

    Note: Under prior law, sales and use tax applied to the towing of tangible personal property, including the towing of motor vehicles, unless, at the time of the towing, a sale in Wisconsin of the type of property towed would have been exempt to the customer from sales tax, other than the exempt sale of a motor vehicle or truck body to a nonresident under sec. 77.54(5)(a), Wis. Stats., and other than nontaxable sales under sec. 77.51(14r), Wis. Stats. This tax treatment is provided in sec. 77.52(2)(a)10., Wis. Stats., and was not changed in 2009 Act 28.

16. **Wind, Solar, and Gas from Agricultural Waste Exemption – Effective Date Delayed Until July 1, 2011** (2009 Act 28, amend sec. 77.54(56), effective July 1, 2009.)

    Section 77.54(56), Wis. Stats., was created by 2007 Act 20, with an effective date of July 1, 2009. As a result of the enactment of 2009 Act 28, the effective date of this exemption is changed to July 1, 2011.

    Section 77.54(56), Wis. Stats., provides an exemption from sales and use taxes for:

    (a) The gross receipts from the sale of and the storage, use, or other consumption of a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, except that the exemption under this subsection does not apply to an uninterruptible power source that is designed primarily for computers.

    (b) Except for the sale of electricity or energy that is exempt from taxation under sub. (30), the gross receipts from the sale of and the storage, use, or other consumption of electricity or energy produced by a product described under par. (a).

17. **Youth Sports Exemption** (2009 Act 28, create sec. 77.52(2)(a)2.c., effective July 1, 2009.)

    Admissions, such as league entry fees, sold by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger are not subject to Wisconsin sales tax.

Under prior law, youth sports organizations were required to register to collect and remit Wisconsin sales tax on their registration fees. Municipalities that organize youth recreation programs were also required to pay tax on their receipts from registration fees.

H. Premier Resort Area Tax - Village of Lake Delton and City of Wisconsin Dells May Increase Their Rates to 1% (2009 Act 28, amend sec. 77.9941(1) and create sec. 77.994(3), effective July 1, 2009.)

Under this provision, any municipality that enacted an ordinance imposing the premier resort area tax that became effective before January 1, 2000 (the Village of Lake Delton and the City of Wisconsin Dells), may amend the ordinance to increase the premier resort area tax rate to 1%. For such an increase, the municipality would have to deliver a certified copy of an amended ordinance to the Secretary of Revenue at least 120 days before the effective date of the increase, and such an increase would be effective on January 1, April 1, July 1, or October 1.

I. State Rental Vehicle Fee

1. **Definition of "File"** (2009 Act 28, amend sec. 77.9951(2), effective July 1, 2009.)

"File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

Note: 2009 Act 28 amends sec. 77.9951(2) as affected by 2009 Act 2. 2009 Act 2 repeals and recreates sec. 77.9951(2), effective October 1, 2009.

2. **Regional Transit Authorities** (2009 Act 28, renumber sec. 77.9971 and amend as renumbered, amend secs. 59.58(6)(a)1., subch. XIII (title) of Chapter 77, 77.9972(3), and 77.9973, repeal and recreate sec. 58.58(6)(cg), create secs. 59.58(6)(f), 59.58(7), 77.54(9a)(er), 77.9971(2) and 77.9972(6), effective July 1, 2009.)

KRM Regional Transit Authority

The Act repeals the statutory authority provided to the KRM Regional Transit Authority under sec. 59.58(6)(cg)1., Wis. Stats., (2007-08), to impose the $2.00 per vehicle rental fee on the rental of passenger automobiles without drivers, for a period of 30 days or less (except the rental of a service or replacement vehicle), that originate in the counties of Kenosha, Racine or Milwaukee, under sec. 77.9971, Wis. Stats. **The repeal is effective July 1, 2009.**

Under sec. 59.58(6)(f), Wis. Stats., the existing KRM Regional Transit Authority shall terminate on October 1, 2009.

Under sec. 59.58(6)(cg), Wis. Stats., as recreated under the Act, no later than October 1, 2009, the KRM Regional Transit Authority shall transfer to the Southeastern Regional Transit Authority created under sec. 59.58(7), Wis. Stats., all revenues received under sec. 59.58(6)(cg)1., Wis. Stats., retained by the KRM Regional Transit Authority.

Southeastern Regional Transit Authority

The Act creates the "Southeastern Regional Transit Authority" (SERTA), as of July 1, 2009.

The SERTA has the power to create, construct and manage a KRM (Kenosha, Racine, and Milwaukee Counties) commuter rail line.

The SERTA's jurisdictional area is the geographic area formed by the combined territorial boundaries of the counties of Kenosha, Racine, and Milwaukee.

The SERTA is an entity exempt from Wisconsin sales and use taxes on its purchases pursuant to sec. 77.54(9a)(er), Wis. Stats.

The SERTA is authorized to impose the vehicle rental fee under sec. 77.9971(1), Wis. Stats., in an amount up to $18.00 per vehicle rental by resolution made by its board of directors. The fee is effective on the first day of the first month that begins at least 90 days after the board of directors of the SERTA approves the imposition of the fee and notifies the Department of Revenue. The board of directors shall notify the Department of Revenue at least 60 days before the effective date of a repeal of the fee.

The SERTA board of directors has the authority to adjust the fee for inflation in the manner prescribed under sec. 77.9971(2)(a), Wis. Stats. If the Department of Revenue receives a notification of a fee adjustment under sec. 77.9971(2)(b), Wis. Stats., the Department of Revenue shall publish the new adjusted fee at least 30 days before the adjustment becomes effective.

The fee will apply to the rental but not for rerental and not for rental as a service or repair replacement vehicle, of Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats., by establishments primarily engaged in short-term rental of passenger cars without drivers, for a period of 30 days or less, unless the sale is exempt from sales taxes under sec. 77.54(1), (4), (7)(a), (7m), (9), or (9a), Wis. Stats.

Section 77.9972(3), Wis. Stats., provides that, from the appropriation under sec. 20.835(4)(gh), Wis. Stats., the Department of Revenue shall distribute 97.45% of the fees collected under this subchapter to the SERTA and shall indicate to the authority the fees reported by each fee payer in 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. The fees distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments. Interest paid on refunds of the fee under this subchapter shall be paid from the appropriation under sec. 20.835(4)(gh), Wis. Stats., at the rate under sec. 77.60(1)(a), Wis. Stats. If the SERTA receives a report along with a payment under this subsection, the SERTA is subject to the duties of confidentiality to which the Department of Revenue is subject under sec. 77.61(5), Wis. Stats.

Under sec. 77.9973, Wis. Stats., retailers and the Department of Revenue may not collect fees under this subchapter for the SERTA after the calendar quarter during which the SERTA ceases to exist, except that the Department or Revenue may collect from retailers fees that accrued before that calendar quarter and interest and penalties that relate to those fees. If fees are collected, the SERTA may use the revenue for any lawful purpose.

J. Excise Taxes

1. **Cigarette Tax Rates** (2009 Act 28, amend sec. 139.31(1)(a) and (b), effective September 1, 2009.)

   On cigarettes weighing not more than 3 pounds per thousand, the rate of tax is increased from 88.5 mills to 126 mills on each cigarette (from $1.77 to $2.52 per pack of twenty cigarettes).

   On cigarettes weighing more than 3 pounds per thousand, the rate of tax is increased from 177 mills to 252 mills on each cigarette.

2. **Tobacco Products Excise Tax and Use Tax Rates** (2009 Act 28, amend secs. 139.76(1) and 139.78(1), effective September 1, 2009.)

   The excise tax and use tax rate on tobacco products, not including moist snuff, is increased from 50 percent to 71 percent. The excise tax rate on products, not including moist snuff, imported from another country is also increased from 50 percent to 71 percent. The excise tax or use tax imposed on cigars may not exceed an amount equal to 50 cents for each cigar.

The excise tax and use tax rate on moist snuff is 100 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products. On moist snuff imported from another country, the excise tax rate is 100 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties, and transportation costs to the United States. Under prior law, a weight-based tax of $1.31 per ounce was imposed on moist snuff.

3. **Refunds of Cigarette Taxes and Tobacco Products Taxes to Indian Tribes** (2009 Act 28, amend secs. 139.323(3) and 139.803(3), effective July 1, 2009.)

   Under prior law, one of the conditions for a refund was that the land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983.

   This condition is revised to allow the Department of Revenue and the tribal council to determine by agreement a date later than January 1, 1983.

4. **Authorization of a Caterer Issued a Class "B" Fermented Malt Beverage License Expanded** (2009 Act 28, create sec. 125.26(2w), effective July 1, 2009.)

   A Class "B" license issued to a caterer authorizes the caterer to provide fermented malt beverages, including their retail sale, at any location at the Heritage Hill State Park during special events held there. This provision applies even though the Heritage Hill State Park is not part of the caterer's licensed premises and even if the Heritage Hill State Park is not located within the municipality that issued the caterer's Class "B" license.

   A caterer that provides fermented malt beverages under this provision is subject to the general restrictions and requirements under sec. 125.32(2), Wis. Stats., as if the fermented malt beverages were provided on the caterer's Class "B" licensed premises.

   This provision does not authorize the Heritage Hill State Park to sell fermented malt beverages at retail or to procure or stock fermented malt beverages for purposes of retail sale.

   This provision does not apply if, at any time, the Heritage Hill State Park holds a Class "B" license.

5. **Authorization of a Caterer Issued a "Class B" Intoxicating Liquor License Expanded** (2009 Act 28, create sec. 125.51(3)(bw), effective July 1, 2009.)

   A "Class B" license issued to a caterer authorizes the caterer to provide intoxicating liquor, including its retail sale, at any location at the Heritage Hill State Park during special events held there. This provision applies even though the Heritage Hill State Park is not part of the caterer's licensed premises and even if the Heritage Hill State Park is not located within the municipality that issued the caterer's "Class B" license.

   A caterer that provides intoxicating liquor under this provision is subject to the general restrictions and requirements under sec. 125.68(2), Wis. Stats., as if the intoxicating liquor were provided on the caterer's "Class B" licensed premises.

   This provision does not authorize the Heritage Hill State Park to sell intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of retail sale.

   This provision does not apply if, at any time, the Heritage Hill State Park holds a "Class B" license.

6. **Class "B" Fermented Malt Beverage Permits for Certain Tribes** (2009 Act 28, create sec. 125.27(3), effective July 1, 2009.)

   Upon application, the department shall issue a Class "B" permit to a tribe that holds a valid business tax registration certificate issued under sec. 73.03(50), Wis. Stats., and that is qualified under the general licensing requirements of sec. 125.04(5) and (6), Wis. Stats. The permit authorizes the retail sale of fermented malt beverages for consumption on or off the premises where sold.

   "Tribe" means a federally recognized American Indian tribe in Wisconsin having a reservation created pursuant to treaty with the United States encompassing not less than 60,000 acres nor more than 70,000 acres or any business entity that is wholly owned and operated by such a tribe.

   A tribe holding a Class "B" permit may sell beverages containing less than 0.5% of alcohol by volume without obtaining a municipal license for nonintoxicating and soda water beverages under sec. 66.0433(1), Wis. Stats.

   Except as provided above, all sections of ch. 125, Wis. Stats., applying to Class "B" licenses apply to Class "B" permits issued to tribes.

7. **"Class B" Intoxicating Liquor Permits for Certain Tribes** (2009 Act 28, create sec. 125.51(5)(d), effective July 1, 2009.)

   Upon application, the department shall issue a "Class B" permit to a tribe that holds a valid business tax registration certificate issued under sec. 73.03(50), Wis. Stats., and that is qualified under the general licensing requirements of sec. 125.04(5) and (6), Wis. Stats. The permit authorizes the retail sale of intoxicating liquor for consumption on the premises where sold by the glass and not in the original package or container. The permit also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, to be consumed off the premises where sold, except that wine is not subject to the 4-liter limitation.

   "Tribe" means a federally recognized American Indian tribe in Wisconsin having a reservation created pursuant to treaty with the United States encompassing not less than 60,000 acres nor more than 70,000 acres or any business entity that is wholly owned and operated by such a tribe.

   Except as provided above, all sections of ch. 125, Wis. Stats., applying to "Class B" licenses apply to "Class B" permits issued to tribes.

8. **"Class B" Intoxicating Liquor License Quota Exceptions** (2009 Act 28, renumber sec. 125.51(4)(w) to 125.51(4)(w)1. and amend as renumbered, amend sec. 125.51(3)(e)2., and create sec. 125.51(4)(w) 2. through 4. and (x), effective July 1, 2009.)

   Notwithstanding its "Class B" liquor license quota:

   - A city that is immediately adjacent to the southern border of the city of Milwaukee and that has an eastern boundary of Lake Michigan may issue 3 "Class B" licenses in addition to the number of licenses determined for the city's quota.

   - A 4th class city located in Dane County having a population as shown in the 2000 federal decennial census of at least 8,000 but not more than 9,000 may issue one "Class B" license in addition to the number of licenses determined for the city's quota.

   - A 3rd class city located in Dane County having a population as shown in the 2000 federal decennial census of at least 15,000 but not more than 16,000 may issue 2 "Class B" licenses in addition to the number of licenses determined for the city's quota.

- A municipality containing a "capital improvement area" shall issue "Class B" licenses to qualified applicants in addition to the number of licenses determined for the municipality's quota and in addition to any license issued to a full-service restaurant, hotel, opera house, or theatre under sec. 125.51(4)(v), Wis. Stats., as provided below.

"Capital improvement area" means a geographic area that is enumerated by the Legislature as having an improvement increment exceeding $50,000,000 in the year in which the area is enumerated and as being located within a municipality with insufficient reserve "Class B" licenses to issue a "Class B" license for each business or proposed business that would reasonably require one. The Legislature has enumerated the geographic area composed of all land within the Tax Incremental District Number 3 within the city of Oconomowoc in Waukesha County that lies south of Valley Road and east of STH 67 or that lies south of I-94 and west of STH 67 as a capital improvement area.

"Improvement increment" means the aggregate assessed value of all taxable property in a capital improvement area as of January 1 of any year minus the area base value.

"Area base value" means the aggregate assessed value of all taxable property located within the geographic bounds of a capital improvement area on January 1 of the year that is 5 years prior to the year in which such capital improvement area is enumerated by the Legislature.

Upon application by a qualified applicant, the governing body of any municipality containing a capital improvement area shall issue to the qualified applicant one "Class B" license in addition to the number of licenses determined for the municipality's quota and in addition to any license issued to a full-service restaurant, hotel, opera house, or theatre under sec. 125.51(4)(v), Wis. Stats.

After a qualified applicant has filed an application and upon application by an initial qualified applicant, the governing body of any municipality containing a capital improvement area shall determine the improvement increment within the capital improvement area for the calendar year in which the application under is filed. If the improvement increment is at least $10,000,000 above $50,000,000, the governing body of the municipality shall issue to the initial qualified applicant a "Class B" license. For each $10,000,000 of improvement increment above $50,000,000, the governing body of the municipality is authorized to issue one "Class B" license and, upon each application by a qualified applicant subsequent to that of the initial qualified applicant, the governing body of the municipality shall issue a "Class B" license to the qualified applicant until all authorized licenses have been issued.

If the governing body of any municipality receives an application by a qualified applicant in a calendar year subsequent to the calendar year in which it received the application of the initial qualified applicant, the governing body of the municipality shall redetermine the improvement increment for that year for the purpose of determining the number of "Class B" licenses authorized. The "Class B" licenses that a municipality is authorized to issue under this provision are in addition to the number of licenses determined for the municipality's quota; any license issued to a full-service restaurant, hotel, opera house, or theatre under sec. 125.51(4)(v), Wis. Stats.; and the license issued as described in the previous paragraph.

"Qualified applicant" means an applicant that complies with all general licensing requirements under sec. 125.04(5) and (6), Wis. Stats., and any applicable ordinance, that certifies by affidavit that the applicant has made a good faith attempt to purchase the business of a person holding a "Class B" license within the municipality and have that license transferred to the applicant under sec. 125.04(12)(b)4., Wis. Stats., and for whom the issuing municipality has determined that these requirements have been met.

"Good faith," with respect to an applicant's attempt to purchase a "Class B" licensed business, includes an applicant making an offer to purchase the business for an amount exceeding $25,000 in total value, without additional significant conditions placed on the purchase by either party, after having given notice to all current "Class B" license holders within the municipality where the business is located, by U.S. mail addressed to either the licensee's last known address or to the licensed premises, of the applicant's interest in purchasing a licensed business, except that an offer in an amount of $25,000 or less may also be considered to be in a good faith depending on the fair market value of the business, the availability of other licensed businesses for purchase, and any conditions attached to the sale.

The governing body of each municipality containing a capital improvement area shall establish the fee, in an amount not less than $10,000, for an initial issuance of a "Class B" license under these provisions. The governing body shall also establish an annual renewal fee of between $50 and $500 that is the same as for other "Class B" licenses issued by the municipality.

No "Class B" license may be issued under these provisions after July 1, 2017, and not more than 8 "Class B" licenses may be issued for premises within the same capital improvement area, except any "Class B" license may be transferred as provided under sec. 125.04(12)(b)4., Wis. Stats., and if a "Class B" license is surrendered to the issuing municipality, revoked, or not renewed, the municipality may reissue the license to a qualified applicant for a premises located within the same capital improvement area for which the license was originally issued.

9. **Authorized Activity Under Manufacturers' and Rectifiers' Permits Expanded** (2009 Act 28, amend secs. 125.52(1) and 125.68(2) and create sec. 125.52(1)(b) 2., effective July 1, 2009.)

Notwithstanding the general restriction concerning the consumption of alcohol beverages in a public place under sec. 125.09(1), Wis. Stats., a manufacturer's or rectifier's permit authorizes the retail sale of intoxicating liquor that is manufactured or rectified on the premises, for consumption on or off the premises. A manufacturer's or rectifier's permit also authorizes the provision of taste samples, free of charge and in an amount not exceeding a total of 1.5 fluid ounces to any one person, of intoxicating liquor that is manufactured or rectified on the premises, for consumption on the premises.

No person who holds a manufacturer's or rectifier's permit may allow the sale or provision of taste samples of intoxicating liquor on the manufacturing or rectifying premises unless there is upon the premises either the permittee, the agent named in the permit if the permittee is a corporation or limited liability company, or some person who has an operator's license and who is responsible for the acts of all persons selling or serving any intoxicating liquor to customers.

The department may prescribe additional regulations for the sale of intoxicating liquor under this provision, if the additional regulations do not conflict with the requirements applicable to holders of "Class B" licenses.

Notwithstanding any other provision of ch. 125, Wis. Stats., the authorization under this provision applies with respect to a person who holds any manufacturers' and rectifiers' permit under sec. 125.52, Wis. Stats., a winery permit under sec. 125.53, Wis. Stats., and either a "Class A" license or a "Class B" license issued under sec. 125.51(3)(am), Wis. Stats., all issued for the same premises or portions of the same premises.

10. **Restrictions on Dealings Between Manufacturers, Rectifiers, Wholesalers, and Retailers Modified** (2009 Act 28, amend sec. 125.69(1)(a), (b)4., and (c), effective July 1, 2009.)

A person holding a "Class A" or "Class B" license may also hold both a winery permit under sec. 125.53, Wis. Stats., and a manufacturer's or rectifier's permit under sec. 125.52, Wis. Stats., and may make retail sales and provide taste samples as authorized under the "Class A" or "Class B" license and secs. 125.06(13) and 125.52(1)(b)2., Wis. Stats.

K. Other

1. **Requirement Created for Pass-Through Entities to Provide Schedules** (2009 Act 28, create secs. 71.13(1m), 71.20(1m), 71.36(4), and 71.83(1)(a)10., effective for taxable years beginning on or after January 1, 2010.)

   Every fiduciary, partnership, and tax-option corporation who is required to file a Wisconsin return shall, on or before the due date of the return, including extensions, provide a schedule to each beneficiary, partner, or shareholder whose share of income, deductions, credits, or other items of the fiduciary, partnership, or tax-option corporation may affect the beneficiary's, partner's, or shareholder's Wisconsin income or franchise tax liability. The schedule shall separately indicate the beneficiary's, partner's, or shareholder's share of each item.

   If a fiduciary, partnership, or tax-option corporation who is required to provide a schedule fails to provide the schedule by the due date, including any extension, or provides an incorrect or incomplete schedule, the fiduciary, partnership, or tax-option corporation is subject to a $50 penalty for each violation, except that the department shall waive the penalty if it is shown that a violation resulted from a reasonable cause and not from willful neglect.

2. **Electronic Filing of Wage Statements and Information Returns** (2009 Act 28, repeal and recreate sec. 71.80(20), effective January 1, 2010.)

   If a person is required to file 50 or more wage statements or 50 or more of any one type of information return with the department, the person shall file the statements or the returns electronically, by means prescribed by the department.

3. **Extensions for Filing Partnership Returns** (2009 Act 28, create sec. 71.20(3), effective for taxable years beginning on or after January 1, 2010.)

   Any extension granted by law or by the Internal Revenue Service for the filing of a federal partnership return extends the time for filing the corresponding Wisconsin partnership return.

4. **Late Filing Fees for Income, Franchise, and Partnership Returns and Withholding Reports** (2009 Act 28, renumber sec. 71.83(3) to 71.83(3)(a) and amend as renumbered and create sec. 71.83(3)(b), effective for taxable years beginning on or after January 1, 2010.)

   If any person required to file an income or franchise tax return fails to file a return within the time prescribed by law, or as extended, unless the return is filed under such an extension but the person fails to file a copy of the extension that is granted by or requested of the Internal Revenue Service, the department shall add $50 to the person's tax if the return is an individual or fiduciary income tax return or $150 if the return is a corporation income or franchise tax return. If no tax is assessed against any such person the amount of this fee shall be collected as income or franchise taxes are collected.

   A partnership that fails to file a return by the due date, including any extension, is subject to a $50 fee.

   If any person who is required to file a withholding report and deposit withheld taxes fails timely to do so; unless the person so required dies or the failure is due to a reasonable cause and not due to neglect; the department shall add $50 to the amount due except that if the person is a corporation subject to taxation under subch. IV of ch. 71, Wis. Stats., or an insurance company subject to taxation under subch. VII of ch. 71, Wis. Stats., the department shall add $150 to the amount due.

5. **Penalty for Failure to Produce Records Created** (2009 Act 28, create sec. 71.80(9m), effective July 1, 2009.)

A person who fails to produce records or documents, as provided under secs. 71.74(2) and 73.03(9), Wis. Stats., that support amounts or other information required to be shown on any income or franchise return may be subject to any of the following penalties, as determined by the department, except that the department may not impose a penalty if the person shows that under all facts and circumstances the person's response, or failure to respond, to the department's request was reasonable or justified by factors beyond the person's control:

- The disallowance of deductions, credits, exemptions, or income inclusions to which the requested records relate.

- In addition to any civil or criminal penalty imposed under sec. 71.80(4), Wis. Stats., a penalty for each violation that is equal to the greater of $500 or 25 percent of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records.

The department shall promulgate rules to administer this provision and the rules shall include a standard response time, a standard for noncompliance, and penalty waiver provisions.

Also see Item G.11.

6. **Internet Listing of Revoked Seller's Permits** (2009 Act 28, create sec. 73.03(64), effective October 1, 2009.)

The department is authorized to post on the Internet a list of every person who has had a seller's permit revoked under sec. 77.52(11), Wis. Stats. The Internet site shall list the real name, business name, address, revocation date, type of tax due, and amount due, including interests, penalties, fees, and costs, for each person who has had a seller's permit revoked under sec. 77.52(11), Wis. Stats. The department shall update the Internet site periodically to add revoked permits and to remove permits that are no longer revoked or for which the permit holder has made sufficient arrangements with the department so that the permit holder may be issued a monthly seller's permit. The department shall update the Internet site quarterly to remove revoked permits for entities that have been out of business for at least one year.

7. **Financial Record Matching Program** (2009 Act 28, create sec. 71.91(8), effective January 1, 2010.)

Definitions

"Account" means a demand deposit account, checking account, negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

"Financial institution" means any of the following:

- A depository institution, as defined in 12 USC 1813(c).

- An institution-affiliated party, as defined in 12 USC 1813(u), of a depository institution.

- A federal credit union or state credit union, as defined in 12 USC 1752.

- An institution-affiliated party, as defined in 12 USC 1786(r), of a credit union.

- A benefit association, insurance company, safe deposit company, money market mutual fund or similar entity authorized to do business in Wisconsin.

- A broker-dealer, as defined in sec. 551.102(4), Wis. Stats.

"Person" includes any individual, firm, partnership, limited liability company, joint venture, joint stock company, association, public or private corporation, estate, trust, receiver, personal representative, and other fiduciary, and the owner of a single-owner entity that is disregarded as a separate entity.

Matching Program Agreements

The department shall promulgate rules specifying procedures under which the department shall enter into agreements with financial institutions doing business in Wisconsin to operate the financial record matching program. The information shall be provided by electronic data exchange in the manner specified by the department by rule or by agreement between the department and the financial institution. If the financial institution requests reimbursement, the department shall reimburse a financial institution for costs associated with participating in the financial record matching program in an amount not to exceed $125 for each calendar quarter that the institution participates in the program.

Confidentiality

A financial institution participating in the financial institution matching program and the employees, agents, officers, and directors of the financial institution, may use any information provided by the department only for the purpose of administering the program and shall be subject to the confidentiality provisions of secs. 71.78(1) and 77.61(5)(a), Wis. Stats. Any person violating this provision may be fined not less than $25 nor more than $500, or imprisoned in the county jail for not less than 10 days nor more than one year or both.

Financial Institution Liability

A financial institution is not liable to any person for disclosing information to the department under this provision or for any other action that the financial institution takes in good faith to comply with this provision.

Penalty

A financial institution that fails to provide any information required within 120 days from either the date that the information is due or from the date that the department requests the information may be subject to a $100 penalty for each occurrence of the financial institution's failure to provide account information about an account holder. The department may commence civil proceedings to enforce this provision if a financial institution fails to provide any information required after 120 days from either the date that the information is due or from the date that the department requests the information.

8. **Provisions Relating to Setoffs for Other State Agencies Revised** (2009 Act 28, renumber sec. 71.93(8) to 71.93(8)(a), amend sec. 71.93(3)(a), and create sec. 71.93(1)(a)8. and (8)(b), effective July 1, 2009.)

Debt that another state agency may certify to the department so that the department may set off the amount of the debt against a refund to the debtor has been expanded to include an amount owed to a state agency and collected pursuant to a written agreement between the Department of Revenue and the state agency, if the debt has been reduced to a judgment or if the state agency or the department has provided the debtor reasonable notice and an opportunity to be heard with regard to the amount owed.

Under prior law, before a setoff occurred the department was required to check with the state agency certifying the debt to determine whether it had been collected by other means. This requirement has been eliminated.

A state agency and the department shall enter into a written agreement to have the department collect any amount owed to the state agency that is more than 90 days past due, unless negotiations between the agency and debtor are actively ongoing, the debt is the subject of legal action or administrative proceedings, or the agency determines that the debtor is adhering to an acceptable payment arrangement. At least 30 days before the department pursues the collection of any debt referred by a state agency, either the department or the agency shall provide the debtor with a written notice that the debt will be referred to the department for collec-

tion. The department may collect amounts owed, pursuant to the written agreement, from the debtor in addition to offsetting the amounts as provided above. The department shall charge each debtor whose debt is subject to collection an amount for administrative expenses and that amount shall be credited to the appropriation under sec. 20.566(1)(h), Wis. Stats. Agreements required by this provision shall be completed no later than July 1, 2010, except that an agreement may allow a delay or phase-in of referrals.

The department may also enter into agreements described above with the courts, the legislature, authorities, as defined in sec. 16.41(4), Wis. Stats., and local units of government.

The Secretary of Revenue may waive the referral of certain types of debt. The department's determination that a debt is not collectable does not prevent the referring agency from taking additional collection actions.

The department may collect debts and assess interest on delinquent amounts under this provision in the same manner that it collects taxes and assesses interest under secs. 71.82(2), 71.91, 71.92, and 73.03(20), Wis. Stats. The department's use of tax returns and related information to collect debts under this provision is not a violation of sec. 71.78, 72.06, 77.61(5), 78.80(3), or 139.38(6), Wis. Stats.

If the debtor owes debt to the department and to other entities, payments shall first apply to debts owed to the department, then to the state agencies, the courts, the legislature, and authorities, as defined in sec. 16.41(4), Wis. Stats., in the order in which the debts were referred to the department, and then to local units of government in the order in which the debts were referred to the department.

9. **Setoffs for Federal Nontax Obligations** (2009 Act 28, renumber sec. 73.03(52) to 73.03(52)(a) and create sec. 73.03(52)(b), effective September 1, 2010.)

The department is authorized to enter into agreements with the federal Department of the Treasury that provide for offsetting state payments against federal nontax obligations; and to charge a fee up to $25 per transaction for such offsets; and offsetting federal payments, as authorized by federal law, against state tax and nontax obligations, and collecting the offset cost from the debtor, if the agreements provide that setoffs for federal tax obligations, other state agencies, and municipalities and counties occur before the setoffs under this provision. The agreement shall provide that the federal Department of the Treasury may deduct a fee from each administrative offset and state payment offset. For purposes of this provision, "administrative offset" is any offset of federal payments to collect state debts and "state payment offset" is any offset of state payments to collect federal nontax debts.

10. **Tribal Agreements** (2009 Act 28, create sec. 73.03(65), effective July 1, 2009.)

The department is authorized to enter into agreements with federally recognized American Indian tribes or bands in Wisconsin to collect, remit, and provide refunds of the following taxes for activities that occur on tribal lands or are undertaken by tribal members outside of tribal lands:

- Individual and fiduciary income taxes imposed under subch. I of ch. 71, Wis. Stats.
- Withholding taxes imposed under subch. X of ch. 71, Wis. Stats.
- Sales and use taxes under subch. III of ch. 77, Wis. Stats.
- Motor vehicle fuel taxes imposed under subch. I of ch. 78, Wis. Stats.
- Beverage taxes imposed under subch. I of ch. 139, Wis. Stats.

For purposes of this provision, all tax and financial information disclosed during negotiations, or exchanged pursuant to a final agreement, between the department and a federally recognized American Indian tribe or band in Wisconsin is subject to the confidentiality provisions under secs. 71.78 and 77.61 (5), Wis. Stats.

The department shall submit a copy of each agreement negotiated under this subsection to the Joint Committee on Finance no later than 30 days after the agreement is signed by the department and the tribe or band.

11. **Ambulatory Surgical Center Assessment Created** (2009 Act 28, create sec. 146.98 and nonstatutory provisions, effective July 1, 2009.)

"Ambulatory surgical center" has the meaning given in 42 CFR 416.2.

The Department of Revenue may impose an assessment on ambulatory surgical centers in Wisconsin that satisfies the requirements under 42 CFR 433.68 for collecting an assessment without incurring a reduction in federal financial participation under the federal Medicaid program. The department shall allocate any assessment imposed among ambulatory surgical centers in proportion to their gross patient revenue.

The Department of Revenue may do all of the following:

- Determine the amount of assessment.
- Collect assessments imposed from ambulatory surgical centers.
- Require ambulatory surgical centers to provide any data that is required to determine assessment amounts.
- Establish deadlines by which ambulatory surgical centers shall pay assessments and provide required data.
- Impose penalties on ambulatory surgical centers that do not comply with department requirements or administrative rules relating to the assessment.

The Department of Revenue shall transfer 99.5 percent of the moneys collected from the assessment to the Medical Assistance trust fund.

The Department of Revenue shall promulgate rules for the administration of the assessment, and is authorized to promulgate the rules as emergency rules without a finding of emergency.

12. **Police and Fire Protection Fee** (2009 Act 28, amend secs. 196.202 (2), 196.203 (1), and 196.499 (1) (intro.), and create secs. 20.155 (3) (t), 25.17 (1) (ku), 25.99, and 196.025 (6), effective September 1, 2009.)

The police and fire protection fee is imposed on two types of transactions:

- A monthly fee of $0.75 per assigned telephone number (including a communication service provided via a voice over Internet protocol connection and fee modifications for multiple connections to one subscriber)

- A fee of $0.38 on each retail transaction for prepaid wireless plans that occur in Wisconsin.

The Public Service Commission may contract with the Department of Revenue for the collection of the $0.38 per transaction fee on prepaid wireless telecommunications plans. If the commission and department enter into such a contract, the communications provider or retailer shall remit the fee to the department no later than the first calendar month following the calendar month in which a communications provider or retailer receives from a subscriber the fee on a prepaid wireless telecommunications plan.

A communications provider or retailer may state the amount of the $0.38 fee separately on a bill for the retail transaction, and if a communications provider or retailer does so, the communications provider or retailer shall identify the fee as "police and fire protection fee."