



Wisconsin TAX BULLETIN

www.revenue.wi.gov

Number 172

July 2011

New Tax Laws

Since the last issue of the Wisconsin Tax Bulletin, the Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. See page 6 for details.

Emergency Rule Addresses Sales and Use Tax Exemption

On June 29, 2011, the department published an emergency rule that addresses a sales and use tax exemption for certain energy-producing wind, solar, and gas powered products and the electricity or energy they produce. In addition, a proposed permanent rule that will address this exemption is in process.

[Tax 11.10](#) defines the term “product” as it applies to the sales and use tax exemption, provides examples of items that are and are not considered products, and clarifies the exemption requirements and scope. The exemption that is the subject of Tax 11.10 is effective July 1, 2011, and provided for in sec. 77.54(56), Wis. Stats. (2009-10).

Information concerning administrative rules of the Department of Revenue, as well as other state agencies, is available at the State of Wisconsin Administrative Rules [Home Page](#). At this web site you can search for rules, view the status of current rulemaking, view documents associated with rulemaking, submit and view comments on rules, and subscribe to receive notification of rulemaking. [↗](#)

My Tax Account Upgrade

An improved version of [My Tax Account](#) launched last month. Thanks to your feedback, this version is easier to use, understand, and navigate. Changes include self-registration in one easy step, faster filing, fewer screens to navigate, and user-friendly help messages to guide you along the way.

(continued on page 2)

Increased Standard Mileage Rates Apply for Wisconsin

As a result of recent increases in the price of fuel, the Internal Revenue Service has increased the optional standard mileage rate to 55.5¢ per mile for business purposes and 23.5¢ per mile for medical and moving expense purposes. The mileage rate that applies to the deduction for charitable contributions is fixed under § 170(i) of the Internal Revenue Code at 14¢ per mile. The increased rates, which are effective July 1, 2011, also apply for Wisconsin. [↗](#)

IRS/DOR Seminars for 2011

The Internal Revenue Service and Wisconsin Department of Revenue will be sponsoring several seminars around the state this fall. The seminars will cover federal and state tax law updates, the latest requirements for tax preparers, and other topics of interest to tax preparers. All seminars are from 9:00 a.m. to 3:30 p.m., dates and locations are as follows:

October 18 – Menasha – UW Fox Valley

October 19 – Green Bay – UW Green Bay

October 20 – Stevens Point – UW Stevens Point

October 25 – Eau Claire – The Plaza Hotel

October 26 – Verona (Madison area) – Epic Systems Corporation

October 31 – Milwaukee → FULL (Registration Closed)

November 1 – Pewaukee – Waukesha County Technical College

Although all tax preparers are invited to attend, advance registration is required. The registration process, as well as other information concerning the seminars, is available on the department's [web site](#). [↗](#)

In This Issue**Articles –**

Emergency Rule Published	1
<i>My Tax Account</i> Upgrade	1
Increased Mileage Rates	1

IRS/DOR Seminars	1
Customs Project Finds Use Tax.....	2
Updated Publications.....	3
<i>Sales and Use Tax Report Available</i>	3

New FAQs: Automated Billings.....	3
Enforcement Report	4
New Tax Laws	6
Private Letter Rulings.....	32
Tax Releases.....	42

My Tax Account Upgrade*(continued from page 1)*

Several helpful tips for using *My Tax Account* are listed below. *My Tax Account* also provides [online training](#), [troubleshooting](#), and answers to [common questions](#).

Web Browsers

To avoid issues with how screens look in *My Tax Account*, use the most current version of your web browser. Visit our web site for recommended versions of widely used browsers.

Navigation and Help

- Look for action items and account information in two places: tabs at the top of the screen (e.g., My Accounts) and left sidebar panel (e.g., View My Profile, Submit).
- Instructions are in the gray boxes on the top and right side of the screen.
- Click on the blue question marks for help messages and hover over red entry fields for a description of the error.

Payment Sources

- Previously entered bank account information was transferred to the new version of *My Tax Account*. A list of available bank accounts to select from is shown on the payment page.
- For each tax type, you can select a bank account as a default. To find out how, read the *My Tax Account* common questions on our web site.

Printable Vouchers

- To avoid a delay in printing a voucher, file and pay electronically – it's the easiest and most secure way to pay. If you choose to print a voucher for sales tax, immediately view and print it from your confirmation page. If you choose to print a voucher for any other tax type, including withholding tax, it will be available the next business day when your return is filed by 4:00 p.m. [↗](#)

Customs Project Finds Unreported Use Tax

As part of the Wisconsin Department of Revenue's efforts to increase use tax compliance, auditors regularly review information received from the U. S. Customs Service relating to shipments from foreign countries to individuals in Wisconsin. The department sends these individuals a mailing consisting of a letter and a Use Tax Worksheet. The letter explains that use tax is due on items that are subject to Wisconsin sales tax but no sales tax was collected at the time of purchase. The Use Tax Worksheet provides the individual with an opportunity to report without penalty any unpaid use tax for the past four years.

As part of this project, the department instructs individuals to report their annual use tax liability on their Wisconsin income tax return. Individuals who do not have a Wisconsin income tax filing requirement report their use tax liability on a Consumer Use Tax Return, Form UT-5.

Additional information concerning use tax is available in Publication 205, *Use Tax Information for Individuals*, and Publication 213, *Travelers: Don't Forget about Use Tax*. [↗](#)

Wisconsin Tax Bulletin*Published quarterly by:*

Wisconsin Department of Revenue
Income, Sales, and Excise Tax Division
Mail Stop 6-40
P.O. Box 8933
Madison, WI 53708-8933

Updated Publications

The following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have recently been revised:

Income and Franchise Taxes

- 600 Wisconsin Taxation of Lottery Winnings (5/11)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (5/11)

Sales and Use Taxes

- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (6/11)
- 203 Sales and Use Tax Information for Manufacturers (5/11)
- 209 Sales and Use Tax Information for Wisconsin Counties and Municipalities (6/11)
- 210 Sales and Use Tax Treatment of Landscaping Services (5/11)
- 216 Filing Claims for Refund of Sales or Use Tax (7/11)
- 221 Farm Suppliers and Farmers: How Do Wisconsin Sales and Use Taxes Affect Your Operations? (5/11)
- 229 Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (6/11)
- 410 Local Exposition Taxes (5/11)

Other Topics

- 400 Wisconsin's Recycling Surcharge (5/11)

All of the IS&E Division's publications may be [downloaded](#) or [ordered](#) online. There are over 70 publications available, covering a wide range of topics. [↗](#)

Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's web site earlier this month. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the July 2011 *Sales and Use Tax Report* (2-11).

- New Tax Laws
- Reminder – Wind, Solar, and Gas From Agricultural Waste Exemption Becomes Effective July 1, 2011
- *My Tax Account* – Your Way
- Filing a Claim for Refund Just Got Easier!
- Reminder: Changes to Medical-Related Exemptions

In addition, the following topics from [News for Tax Professionals](#) and [FAQs](#) are referenced in the Report:

- [Shipments of Tangible Personal Property – Where Do the Sales Take Place?](#)
- [Credit for Taxes Paid to Other States - Tax on Repair Labor](#)
- [Construction Contractors - Credit for Taxes Paid to Other States](#)
- [Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places](#)
- [New Foreign Diplomat Tax Exemption Card Design!](#)
- [E-Mail Services Provided With Web Hosting](#)
- [Sales and Use Tax Treatment of Liquid Nurse Tanks, Dry Fertilizer Tender Units, and Liquid Fertilizer and Chemical Storage Tanks](#)
- [Is the Sale of a Dishwasher Taxable?](#)
- [Disaster Relief Payments](#) [↗](#)

New FAQs: Automated Billings Based on IRS Adjustments

The Department of Revenue routinely receives information from the Internal Revenue Service (IRS) about adjustments that the IRS made to taxpayers' federal taxable income through audits and its data matching programs. (This information is provided under authorization of section 6103(d) of the Internal Revenue Code.)

Under Wisconsin law, if the IRS changes net income tax payable, and the adjustment also changes net income tax payable to Wisconsin, an amended Wisconsin return must be filed within 90 days after the IRS' final determination. Section 71.76, Wis. Stats. (2009-10), and sec. Tax 2.105, Wis. Adm. Code (November 2010 Register), provide the requirements in more detail.

If a taxpayer's Wisconsin income tax liability is affected by IRS adjustments, but the taxpayer fails to file an amended Wisconsin return, the department may send a bill to the taxpayer for the Wisconsin amount (including interest and possible penalties), up to four years after the date it received the information from the IRS (sec. 71.77(7)(b), Wis. Stats. (2009-10)).

For certain types of adjustments, the department can send automated bills to taxpayers that have not amended their Wisconsin returns. Currently the department is sending some automated bills and plans to expand the program so bills can be sent more quickly to reduce the accumulation of interest.

The department has recently published [frequently asked questions](#) on its web site to address some of the common questions taxpayers ask when receiving an automated bill from the department.

Other Related FAQs:

[IRS Adjustment Notices \(CP 2000s\)](#)

[Amending a Wisconsin Income Tax Return](#)

[Department of Revenue Audits](#) 

Enforcement Report



Couple Convicted of Income Tax Fraud

A Dane County jury found Bryan D. Hoel and Amy L. Hoel guilty of multiple counts of income tax fraud and bail jumping. The verdict was reached on May 26, 2011, after a two day trial.

According to the criminal complaint, from 1997 through 2005 Bryan and Amy Hoel received more than \$400,000 in income. However, they reported total income of \$3,574 or zero on their income tax returns for those years.

The complaint also indicates that the Hoels filed 1997 through 2001 trust returns in one or both of their names. The trust income was reduced to zero or a negative number through deductions. When the Department of Revenue requested supporting documentation, none was provided.

The Hoels were prosecuted by the Dane County District Attorney's office following an investigation by the Wisconsin Department of Revenue.

Sentencing will occur following court-ordered presentence investigations. Bryan Hoel faces up to 36 years in prison and \$60,000 in fines. Amy Hoel faces a maximum of 54 years in prison and \$90,000 in fines.

Milwaukee Man Sentenced for Income Tax Fraud

Algernon J. Thompson was sentenced on June 1, 2011, by Milwaukee County Circuit Court Judge Jean DiMotto for income tax fraud. The 30-year-old Milwaukee man was convicted on March 9, 2011, of income tax fraud and fraudulent writings after a three-day jury trial.

According to the criminal complaint, Thompson was responsible for servicing several automatic teller machines (ATMs). The complaint states that in February 2009, there were discrepancies among various ATM machines on Thompson's route. A subsequent audit of all the machines on his route showed more than \$175,000 missing.

The complaint states that during the course of investigating this 2009 incident, subpoenas were issued for the defendant's bank records. The bank records showed that Thompson maintained three personal bank accounts from 2006 through 2008. An analysis of these bank records indicated Thompson had deposited cash into his bank account which could not be accounted for by paychecks paid to Thompson or his spouse. The Wisconsin Department of Revenue reviewed Thompson's tax returns to determine if cash beyond his earnings was declared. Thompson admitted to filing false 2006, 2007, and 2008 income tax returns.

Thompson received three years in prison, followed by six years of extended supervision, to be completed by an additional three years of probation. All of these sentences will be served consecutively. Thompson was also ordered to reimburse his employer \$183,206 and pay the Wisconsin Department of Revenue a total of \$4,453 in back taxes.

Thompson was prosecuted by the Milwaukee County District Attorney's Office following an investigation by the Greendale and West Allis Police Departments and the Wisconsin Department of Revenue.

Milwaukee Court Commissioner Charged With Tax Fraud

Attorney General J.B. Van Hollen announced on June 8, 2011, that Milwaukee County Court Commissioner Geneva E. McKinley has been charged with two counts of filing false and fraudulent income tax returns. An initial appearance has been scheduled for July in Dane County Circuit Court.

According to the criminal complaint, on May 28, 2008, McKinley filed income tax returns for the 2006 and 2007 tax years. The complaint alleges that McKinley failed to report rental income she received each year on commercial real estate property she owned. It also alleges that McKinley failed to report attorney fees she was paid for private legal work in 2006, prior to becoming a court commissioner. For the two years combined, McKinley reported only \$19,391 in adjusted gross income, when her actual adjusted gross income was over \$135,000.

Each charge of filing false and fraudulent income tax returns is a class H felony, punishable by imprisonment up to 6 years and a \$10,000 fine, or both. Assistant Attorney General David W. Maas is representing the state in this matter. [↗](#)

New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual income tax, homestead credit, individual and fiduciary income tax, corporation franchise or income tax, recycling surcharge, sales and use tax, alcohol beverages, and other provisions. These provisions are contained in 2011 Acts 10, 18, and 32.

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

	Effective Date	Page
A. Individual Income Taxes (also see “Individual and Fiduciary Income Taxes”)		
1. Earned Income Tax Credit Percentages Revised	Taxable years beginning on or after January 1, 2011	9
2. Subtraction for Contributions to a College Savings Account and Tuition and Expenses Program Revised	Various	9
3. Subtraction for Tuition Expenses Limited	Taxable years beginning on or after January 1, 2011	10
4. Donations to Badger Chapter of the American Red Cross	Taxable years beginning on or after January 1, 2011	10
5. Cancer Research Designations Revised	July 1, 2011	10
6. Campaign Fund Designation Repealed	July 1, 2011	10
B. Homestead Credit		
Homestead Credit Indexing Repealed	Calendar years beginning on or after January 1, 2011	11
C. Individual and Fiduciary Income Taxes		
1. Internal Revenue Code References Updated for 2011 for Individuals, Estates, and Trusts	Taxable years beginning on or after January 1, 2011	11
2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes	Taxable years beginning before January 1, 2011	13
3. Capital Gains Exclusion for Wisconsin-Source Assets	Taxable years beginning on or after January 1, 2016	14
4. Gain Deferred on Sale of Capital Assets	Taxable years beginning on or after January 1, 2011	15
5. Southeastern Regional Transit Authority Bonds	September 28, 2011	16
6. Wisconsin Housing and Economic Development Authority Bonds	July 1, 2011	16
7. Computation of “Modified Taxable Income” Clarified	July 1, 2011	16
8. Certification of Business for Deferral of Gain	July 1, 2011	16
9. Certain Development Zones Statutes Amended	July 1, 2011	16
10. Administration of Development Zones Capital Investment Credit Transferred	July 1, 2011	16

	Effective Date	Page
11. Administration of Development Zones Credit Transferred	July 1, 2011	16
12. Administration of Economic Development Tax Credit Transferred	July 1, 2011	17
13. Administration of Technology Zones Credit Transferred	July 1, 2011	17
14. Dairy Manufacturing Facility Investment Credit Revised	Various	17
15. Jobs Tax Credit Revised	Various	17
16. Administration of Certain Credits Transferred to DATCP	July 1, 2011	18
17. Manufacturing Investment Credit Statutes Amended	July 1, 2011	18
18. Administration of Enterprise Zone Jobs Credit Transferred	July 1, 2011	18
19. Early Stage Seed Investment Credit and Angel Investment Credit Revised	July 1, 2011	18
20. Administration of Film Credits Transferred	July 1, 2011	18
21. Administration of Electronic Medical Records Credit Transferred	July 1, 2011	18
22. Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred	July 1, 2011	19
23. Qualified Production Activities Credit Created	Taxable years beginning on or after January 1, 2013	19
D. Corporation Franchise or Income Taxes		
1. Internal Revenue Code References Updated for 2011 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies	Taxable years beginning on or after January 1, 2011	20
2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes	Taxable years beginning before January 1, 2011	20
3. Wisconsin Housing and Economic Development Authority Bonds	July 1, 2011	20
4. Certain Development Zones Statutes Amended	July 1, 2011	20
5. Administration of Development Zones Capital Investment Credit Transferred	July 1, 2011	21
6. Administration of Development Zones Credit Transferred	July 1, 2011	21
7. Administration of Economic Development Tax Credit Transferred	July 1, 2011	21
8. Administration of Technology Zones Credit Transferred	July 1, 2011	21
9. Dairy Manufacturing Facility Investment Credit Revised	Various	21

	Effective Date	Page
10. Jobs Tax Credit Revised	Various	21
11. Controlled Group Election	January 1, 2009	22
12. Sharing Under Combined Reporting of Loss Carry-Forwards Incurred Before 2009	Taxable years beginning after December 31, 2011	22
13. Administration of Certain Credits Transferred to DATCP	July 1, 2011	22
14. Manufacturing Investment Credit Statutes Amended	July 1, 2011	22
15. Administration of Enterprise Zone Jobs Credit Transferred	July 1, 2011	23
16. Early Stage Seed Investment Credit Revised	July 1, 2011	23
17. Administration of Film Credits Transferred	July 1, 2011	23
18. Administration of Electronic Medical Records Credit Transferred	July 1, 2011	23
19. Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred	July 1, 2011	23
20. Qualified Production Activities Credit Created	Taxable years beginning on or after January 1, 2013	23
21. Political Units Revised	September 28, 2011	24
22. Transit Authority Bonds Taxable	September 28, 2011	24
E. Recycling Surcharge		
Recycling Surcharge Revised	July 1, 2011	24
F. Sales and Use Taxes		
1. Discounts Given Equal to the Amount of Sales Tax	June 8, 2011	24
2. Products Provided Free of Charge	September 1, 2011	24
3. Exemption Created for Modular and Manufactured Homes Used in Real Property Construction Activities Outside Wisconsin	September 1, 2011	24
4. Exemption Created for Vegetable Oil or Animal Fat Converted to Motor Vehicle Fuel	September 1, 2011	25
5. Repeal of Regional Transit Authorities	July 10, 2011 and September 28, 2011	25
6. Exemption Created for Advertising and Promotional Direct Mail	July 1, 2013	25
7. Exemption Created for Snowmaking and Snow-Grooming Machines and Equipment	July 1, 2013	25
G. Alcohol Beverages		
1. Definitions of “Primary Source of Supply,” “Wholesaler,” and “Successor Wholesaler” Revised	July 1, 2011	25
2. Wholesalers’ Source of Supply	July 1, 2011	26

	Effective Date	Page
3. Distribution Restrictions on Wholesalers, Brewers, Brewpubs, and Out-of-State Shippers Revised	July 1, 2011	26
4. Restrictions on Movie Theaters Licensed to Sell Alcohol Beverages	July 1, 2011	26
5. Provisions Concerning Fermented Malt Beverage Wholesalers' Licenses and Permits Modified	July 1, 2011	26
6. Provisions Concerning Brewers Modified	July 1, 2011	28
7. Provisions Concerning Out-of-State Shippers' Permits Modified	July 1, 2011	30
H. Other		
1. Duties of the Department of Revenue Expanded	June 29, 2011	30
2. References to Wisconsin Quality Home Care Authority Eliminated	June 29, 2011	30
3. Persons Qualified to Examine Returns	July 1, 2011	31
4. Definition of "Municipality" Provided	July 1, 2011	31
5. Provisions Related to the Denial, Nonrenewal, Discontinuation, Suspension, or Revocation of a License Based on a Tax Delinquency Revised	July 1, 2011	31

A. Individual Income Taxes (also see "Individual and Fiduciary Income Taxes")

- Earned Income Tax Credit Percentages Revised** (2011 Act 32, amend sec. 71.07(9e)(af)(intro.) and create sec. 71.07(9e)(aj), effective for taxable years beginning on or after January 1, 2011.)

For qualified persons, the Wisconsin earned income tax credit is equal to a percentage of the federal earned income tax credit for which the person is eligible. The percentages are:

- If the person has one qualifying child who has the same principal place of abode as the person, 4 percent.
- If the person has two qualifying children who have the same principal place of abode as the person, 11 percent (formerly 14 percent).
- If the person has three or more qualifying children who have the same principal place of abode as the person, 34 percent (formerly 43 percent).

- Subtraction for Contributions to a College Savings Account and Tuition and Expenses Program Revised** (2011 Act 32, renumber secs. 14.63(4) to 16.64(4) and 14.64(3)(a)1. to 16.641(3)(a)1. and amend as renumbered and amend sec. 71.05(6)(b)23., 31., 32.(intro.), and 33.(intro.), various effective dates.)

Effective July 1, 2011, the owner of a college savings account or tuition and expenses program (e.g., EdVest or "tomorrow's scholar") may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to purchase tuition units or contribute to the college savings account.

Effective for taxable years beginning on or after January 1, 2011, a subtraction of up to \$3,000 of contributions to the account may be claimed by the owner of the account or by a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary 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.

3. **Subtraction for Tuition Expenses Limited** (2011 Act 32, amend sec. 71.05(6)(b)28h., effective for taxable years beginning on or after January 1, 2011.)

The subtraction for the amount of tuition and mandatory student fees paid may not be claimed if the source of the payment is an amount withdrawn from a college savings account or a college tuition and expenses program (e.g., EdVest or “tomorrow’s scholar”) and if the owner of the account or a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary claimed a subtraction for contributions to the college savings account or the tuition and expenses program.

4. **Donations to Badger Chapter of the American Red Cross** (2011 Act 32, create secs. 20.435(1)(gd) and 71.10(5k), effective for taxable years beginning on or after January 1, 2011.)

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 Badger Chapter of the American Red Cross for its Wisconsin Disaster Relief Fund.

If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for the Badger Chapter 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 Badger Chapter, the department shall 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 shall deduct the amount designated on the return for the Badger Chapter 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 Badger Chapter (after any error correction and deduction for a delinquency or offset), the department shall reduce the designation for the Badger Chapter 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 Badger Chapter, the designation is void. If a designation for the Badger Chapter is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place shall be provided on the individual income tax return for designations to the Badger Chapter.

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

5. **Cancer Research Designations Revised** (2011 Act 32, amend secs. 71.10(5f)(i) and (5h)(i), 255.054(1), and 255.055(1), effective July 1, 2011.)

Under prior law, moneys received from designations on the individual income tax returns for breast cancer research and prostate cancer research were divided equally between the Medical College of Wisconsin and the University of Wisconsin Comprehensive Cancer Center. Under this Act, the references to the University of Wisconsin Comprehensive Cancer Center are changed to the University of Wisconsin Carbone Cancer Center.

6. **Campaign Fund Designation Repealed** (2011 Act 32, repeal sec. 71.10(3), effective July 1, 2011.)

The provision allowing individuals to designate \$3 for the Wisconsin election campaign fund and the democracy trust fund is repealed.

B. Homestead Credit

Homestead Credit Indexing Repealed (2011 Act 32, amend sec. 71.54(1)(f)(intro.), (2)(b)3., and (2m) and create sec. 71.54(1)(g) and (2)(b)4., effective for calendar years beginning on or after January 1, 2011.)

The homestead credit indexing provisions are repealed. The threshold household income (\$8,060), maximum property taxes or rent constituting property taxes (\$1,460), maximum household income (\$24,680), and slope (8.785 percent) used in computing the credit will remain unchanged from calendar year 2010.

C. Individual and Fiduciary Income Taxes

1. Internal Revenue Code References Updated for 2011 for Individuals, Estates, and Trusts (2011 Act 32, create sec. 71.01(6)(un), effective for taxable years beginning on or after January 1, 2011.)

Certain provisions of federal laws enacted in 2005 through 2010 that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes. For taxable years that begin on or after January 1, 2011, the following provisions of federal law apply for Wisconsin income and franchise tax:

- Section 209 of P.L. 109-222 and section 425 of Division A of P.L. 109-432 relating to loans to continuing care facilities.
- Section 844 of P.L. 109-280 relating to the treatment of annuities and life insurance contracts with a long-term care insurance feature.
- Section 117 of Division A of P.L. 109-432 relating to the extension of Archer medical savings accounts.
- Section 406 of Division A of P.L. 109-432 relating to whistleblower reforms.
- Section 409 of Division A of P.L. 109-432 relating to Superfund settlement funds.
- Section 410 of Division A of P.L. 109-432 relating to the active business test.
- Section 412 of Division A of P.L. 109-432 relating to capital gains treatment for self-created musical works.
- Section 417 of Division A of P.L. 109-432 and section 113 of P.L. 110-245 relating to gain on the sale of residence by members of the intelligence community.
- Section 418 of Division A of P.L. 109-432 relating to sales of property by judicial officers.
- Section 424 of Division A of P.L. 109-432 relating to unrelated business income for charitable remainder trusts.
- Section 403 of Division C of P.L. 109-432 relating to sale of mineral and geothermal rights to tax-exempt entities.
- Section 8215 of P.L. 110-28 relating to husband and wife partnership election.
- Section 8231 of P.L. 110-28 relating to eliminating gains from sales or exchanges of stock or securities from passive investment income of S-corporations.
- Section 8232 of P.L. 110-28 relating to treatment of bank director shares of S-corporation bank stock.
- Section 8234 of P.L. 110-28 relating to sale of interest in qualified subchapter S subsidiary.
- Section 8236 of P.L. 110-28 relating to interest deduction for electing small business trusts.
- P.L. 110-141 relating to payments from the Hokie Spirit Memorial Fund.
- Section 4 of P.L. 110-142 relating to cooperative housing pass-through treatment of interest and real estate taxes.
- Section 7 of P.L. 110-142 relating to the capital gain exclusion on sale of principal residence by surviving spouse.
- P.L. 110-172, except sections 3(b) and 11(b), (e), and (g), relating to technical corrections.

- Section 110 of P.L. 110-245 relating to gain on the sale of residence by Peace Corps volunteers.
- Section 4 of P.L. 110-246 relating to the repeal of P.L. 110-234.
- Sections 15312 – 15314 of P.L. 110-246 relating to Timber Real Estate Investment Trusts.
- Section 15316 of P. L. 110-246 relating to tax credit bonds.
- Section 15342 of P.L. 110-246 relating to the exchange of water rights.
- Sections 3031 – 3033, 3041, 3051, 3052, and 3061 of P.L. 110-289 relating to Real Estate Investment Trust income and asset tests.
- Section 3092 of P.L. 110-289 relating to nonqualified use of a principal residence.
- Section 3093 of P.L. 110-289, section 15 of P.L. 111-92 , and section 551 of P.L. 111-147 relating to delay in application of worldwide allocation of interest.
- Section 9 of P.L. 110-317 relating to the limitation on funeral trusts.
- Sections 116 and 208 of Division B of P.L. 110-343 relating to publicly traded partnership income treatment of alternative fuels.
- Section 211 of Division B of P.L. 110-343 relating to transportation fringe benefit to bicycle commuters.
- Section 301 of Division B of P.L. 110-343 relating to qualified energy conservation bonds.
- Section 313 of Division C of P.L. 110-343 relating to zone academy bonds.
- Section 504 of Division C of P.L. 110-343 relating to Exxon Valdez settlements.
- P.L. 110-351 relating to the uniform definition of a child.
- Sections 1261 and 1262 of Division B of P.L. 111-5 relating to the repeal of Internal Revenue Service Notice 2008-83, which affects section 382 of the Internal Revenue Code.
- Sections 1401, 1402, 1521, 1522, and 1531 of Division B of P.L. 111-5 relating to recovery zone economic development and facility bonds, tribal economic development bonds, school construction bonds, zone academy bonds, and Build America bonds.
- Section 1541 of Division B of P.L. 111-5 relating to the pass through of tax credit bonds by regulated investment companies.
- Section 14 of P.L. 111-92 relating to military base realignment and closure.
- Section 301 of P.L. 111-147 relating to tax credit bonds treated as Build America bonds.
- Sections 531-533 of P.L. 111-147 relating to foreign trusts.
- Section 1322 of P.L. 111-148 relating to non-profit health insurers.
- Section 1515 of P.L. 111-148 relating to qualified health plan benefits under cafeteria plans.
- Section 9003 of P.L. 111-148 relating to disallowing over-the-counter medicine expenses under a flexible spending arrangement.
- Section 9021 of P.L. 111-148 relating to an income exclusion for Indian health care benefits.
- Section 9022 of P.L. 111-148 relating to cafeteria plans of small employers.
- Section 10108 of P.L. 111-148 relating to an income exclusion for free-choice vouchers to purchase a health plan.
- Section 10908 of P.L. 111-148 relating to loan repayments for health care professionals.
- Section 10909 of P.L. 111-148 relating to the income exclusion for employer-provided adoption assistance.

- Section 1407 of P.L. 111-152 relating to delay in effective date for elimination of the deduction of the subsidy for employers who maintain prescription drug coverage for retirees.
 - P.L. 111-192 relating to qualified retirement plans.
 - Section 1601 of P.L. 111-203 relating to the section 1256 mark-to-market requirements.
 - Section 215 of P.L. 111-226 relating to the treatment of foreign subsidiary redemptions.
 - Section 217 of P.L. 111-226 relating to the 80/20 rule for interest and dividends paid by a corporation.
 - Section 2014 of P.L. 111-240 relating to the recognition period for S-corporation built-in gain tax.
 - Section 2043 of P.L. 111-240 relating to documentation for claiming cell phones as a business expense.
 - Section 2111 of P.L. 111-240 relating to allowing a section 457(b) plan to add a designated Roth account and allow rollovers to that account.
 - Section 2112 of P.L. 111-240 relating to the treatment of rollovers from a section 401(k) or section 403(b) to a designated Roth account.
 - Section 2113 of P.L. 111-240 relating to split annuity contracts.
 - P.L. 111-325 relating to a Regulated Investment Company.
2. **Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2011 Act 32, amend sec. 71.01(6)(u) and (um), effective for taxable years beginning before January 1, 2011.)

Certain changes to the Internal Revenue Code made by the following federal laws enacted in 2006, 2008, 2009, and 2010 apply for Wisconsin purposes at the same time as for federal purposes:

- Section 15316 of the Food Conservation and Energy Act of 2008 (P.L. 110-246) relating to tax credit bonds.
- Section 844 of the Pension Protection Act of 2006 (P.L. 109-280) relating to the treatment of annuities and life insurance contracts with a long-term care feature.
- Section 3093 of the Housing Assistance Act of 2008 (P.L. 110-289) relating to the delay in worldwide interest allocation.
- Sections 301 of Division B and 313 of Division C of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) relating to qualified energy conservation bonds and zone academy bonds.
- The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) relating to the uniform definition of a child.
- Sections 1261 and 1262 of Division B of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) relating to the repeal of IRS Notice 2008-83, which affects section 382 of the Internal Revenue Code.
- Sections 1401, 1402, 1521, 1522, and 1531 of Division B of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) relating to recovery zone economic development and facility bonds, tribal economic development bonds, school construction bonds, zone academy bonds, and Build America bonds.
- Section 1541 of Division B of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) relating to the pass through of tax credit bonds by regulated investment companies.
- Section 301 of the Hiring Incentives to Restore Employment Act of 2010 (P.L. 111-147) relating to Build America bonds.
- The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (P.L. 111-192) relating to qualified retirement plans.
- Section 1601 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203) relating to section 1256 mark-to-market requirements.

- Section 215 of P.L. 111-226 relating to the treatment of foreign subsidiary redemptions.
- Section 2112 of the Small Business Jobs Act of 2010 (P.L. 111-240) relating to the treatment of rollovers from a section 401(k) or section 403(b) account to a designated Roth account.
- The Regulated Investment Company Modernization Act of 2010 (P.L. 111-325) relating to a Regulated Investment Company.

3. **Capital Gains Exclusion for Wisconsin-Source Assets** (2011 Act 32, amend secs. 71.01(13) and 71.05(8)(b) and create secs. 71.05(25) and 238.145, effective for taxable years beginning on or after January 1, 2016.)

For taxable years beginning on or after January 1, 2016, for a Wisconsin capital asset that is purchased on or after January 1, 2011, and held for at least five years, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts:

- The amount of the claimant's federal net capital gain as reported on Schedule D of the claimant's federal income tax return for the taxable year to which the claim relates, but only if, in that taxable year, the claimant has a qualifying gain, or
- The amount of the claimant's qualifying gain in the year to which the claim relates.

If a claimant excludes the capital gain under this provision, the claimant may not use the gain to claim the 30 percent or 60 percent capital gain exclusion under sec. 71.05(6)(b)9. or 9m., Wis. Stats.

“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.

“Qualifying gain” means the gain realized from the sale of any asset which is a Wisconsin capital asset in the year it is purchased by the claimant and for at least 2 of the subsequent 4 years; that is purchased after December 31, 2010; that is held for at least 5 uninterrupted years; and that is treated as a long-term gain under the Internal Revenue Code; except that a qualifying gain may not include any amount for which the claimant deferred gain and claimed a subtraction under sec. 71.05(24)(b) or (26)(b), Wis. Stats. (See Item C.4 for information on the deferral of gain under sec. 71.05(26).)

“Wisconsin business” means a business certified by the Wisconsin Economic Development Corporation (WEDC).

“Wisconsin capital asset” means any of the following:

- Real or tangible personal property that is located in Wisconsin and used in a Wisconsin business.
- Stock or other ownership interest in a Wisconsin business.

The WEDC shall implement a program to certify businesses. A business must submit an application in each calendar year for which the business desires certification.

A business may be certified if, in the taxable year of the business ending immediately before the date of the application, all of the following are true:

- (a) The amount of payroll compensation paid by the business in Wisconsin is equal to at least 50 percent of the amount of all payroll compensation paid by the business, and
- (b) The value of real and tangible personal property owned or rented and used by the business in Wisconsin is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

The WEDC shall compile a list of businesses certified and the taxable years for which the businesses are certified. The list shall be available to the public through the WEDC web site.

The WEDC shall notify the Department of Revenue of every certification issued and the date on which a certification is revoked or expires.

The capital gain exclusion is not allowed when determining modified taxable income when computing a Wisconsin net operating loss carry-forward.

4. **Gain Deferred on Sale of Capital Assets** (2011 Act 32, amend sec. 71.01(13) and create secs. 71.05(26) and 238.146, effective for taxable years beginning on or after January 1, 2011.)

A claimant may subtract from federal adjusted gross income any amount 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 Wisconsin business, 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. If the gain is deferred under this provision, it may not be deferred under the provisions of sec. 71.05(24), Wis. Stats. Deferred gain is not a "qualifying gain" for purposes of the capital gain exclusion under sec. 71.05(25), Wis. Stats. (See Item C.3 for information on the capital gain exclusion under sec. 71.05(25).)

"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 Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation (WEDC) under sec. 238.146, Wis. Stats.

A business desiring certification shall submit an application to the WEDC in each calendar year for which the business desires certification. A business may be certified if, in the taxable year of the business ending immediately before the date of the application, all of the following are true:

- (a) The amount of payroll compensation paid by the business in Wisconsin is equal to at least 50 percent of the amount of all payroll compensation paid by the business, and
- (b) The value of real and tangible personal property owned or rented and used by the business in Wisconsin is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

The WEDC shall compile a list of businesses certified and the taxable years for which the businesses are certified. The list shall be available to the public through the WEDC web site.

The WEDC shall notify the Department of Revenue of every certification issued and the date on which a certification is revoked or expires.

5. **Southeastern Regional Transit Authority Bonds** (2011 Act 32, repeal sec. 71.05(1)(c)9., effective September 28, 2011.)

The exemption for interest received on bonds or notes issued by the Southeastern Regional Transit Authority is repealed.

6. **Wisconsin Housing and Economic Development Authority Bonds** (2011 Act 32, create sec. 71.05(1)(c)12., effective July 1, 2011.)

Interest received on bonds or notes issued by the Wisconsin Housing and Economic Development Authority is exempt if the bonds or notes are issued to provide loans to a public affairs network under sec. 234.75(4), Wis. Stats.

7. **Computation of “Modified Taxable Income” Clarified** (2011 Act 32, amend sec. 71.05(8)(b), effective July 1, 2011.)

A Wisconsin net operating loss may be carried forward and offset against Wisconsin taxable incomes of the next 15 taxable years to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry-forward is claimed. The Wisconsin capital gain exclusion is not allowed when determining modified taxable income. This provision clarifies that both the 30% capital gain exclusion and the 60% capital gain exclusion for farm assets are not allowed when determining modified taxable income.

8. **Certification of Business for Deferral of Gain** (2011 Act 32, renumber sec. 560.2085 to 238.20 and amend as renumbered and amend sec. 71.05(24)(a)4., effective July 1, 2011.)

Section 71.05(24), Wis. Stats., provides that long-term gain on the sale of a capital asset may be deferred if the gain is invested in a qualified new business venture. Under prior law, the Department of Commerce had the responsibility to certify the new business venture. The responsibility for certifying the new business venture is transferred to the Wisconsin Economic Development Corporation.

9. **Certain Development Zones Statutes Amended** (2011 Act 32, amend secs. 71.07(2dd)(b), (2de)(a)(intro.) and 1., (2di)(a)(intro.) and 1., (b)2. and 3., (d)1., (f), and (g), (2dj)(am)(intro.), 4.a. and b., 4c., and 4t. and (e)1. and 3.a. and b., (2dL)(a), (ag), (ar), (bm), and (c), (2dr)(a) and (b), and (2ds)(a)1., (b), and (d)1. and 73.03(35), effective July 1, 2011.)

The statutes relating to certain development zones credits are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes. The affected credits are those that cannot be claimed for taxable years that began on or after January 1, 1998, except that a carryforward of unused credits applies. The affected development zones credits are: day care credit, environmental remediation credit, investment credit, jobs credit, location credit, research credit, and sales tax credit.

10. **Administration of Development Zones Capital Investment Credit Transferred** (2011 Act 32, renumber secs. 560.795 to 238.395, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered and amend secs. 71.07(2dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k) and 73.03(35), effective July 1, 2011.)

The administration of the development zones capital investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

11. **Administration of Development Zones Credit Transferred** (2011 Act 32, repeal sec. 560.70(1), renumber secs. 560.70(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7) to 238.30(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7), 560.765 to 238.365, 560.785 to 238.385, 560.795 to 238.395, 560.797 to 238.397, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered, and amend secs. 71.07(2dx)(a)2., (b)(intro.), 2., 3., 4., and 5., (be), (bg), (c), and (d) and 73.03(35), effective July 1, 2011.)

The administration of the development zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

12. **Administration of Economic Development Tax Credit Transferred** (2011 Act 32, renumber secs. 560.701 to 238.301, 560.702 to 238.302, 560.703(title) to 238.303(title), 560.703(1)(a), as affected by 2011 Act 4, to 238.303(1)(a), 560.703(1)(am), as created by 2011 Act 4, to 238.303(1)(am), 560.703(1)(b), (2), and (3) to 238.303(1)(b), (2) and (3), 560.704 to 238.304, 560.705 to 238.305, and 560.706 to 238.306 and amend as renumbered and amend sec. 71.07(2dy)(a), (b), (c)1. and 2., and (d)2., effective July 1, 2011.)

Administration of the economic development tax credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

13. **Administration of Technology Zones Credit Transferred** (2011 Act 32, renumber sec. 560.96 to 238.23 and amend as renumbered and amend secs. 71.07(3g)(a)(intro.), (b), (e)2., and (f)1. and 2. and 73.03(35m), effective July 1, 2011.)

Administration of the technology zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

14. **Dairy Manufacturing Facility Investment Credit Revised** (2011 Act 32, renumber sec. 560.207 to 93.535 and amend as renumbered and amend sec. 71.07(3p)(b), (c)2., 2m.a., b., and bm., 4., and 6., various effective dates.)

For taxable years beginning on or after January 1, 2011, the aggregate amount of dairy manufacturing facility investment credit is \$200,000 for each of the claimant's dairy manufacturing facilities.

If two or more persons own and operate a dairy manufacturing facility, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the dairy manufacturing facility shall not exceed \$200,000.

Effective July 1, 2011, administration of the dairy manufacturing facility investment credit is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection.

15. **Jobs Tax Credit Revised** (2011 Act 32, renumber sec. 560.2055 to 238.16 and amend as renumbered and amend sec. 71.07(3q)(a)1. and 2., (b)(intro.), 1., and 2., and (c)2. and 3., various effective dates.)

Effective July 1, 2011, administration of the jobs tax credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation (WEDC).

For taxable years beginning before January 1, 2011, an eligible employee must satisfy the wage requirements under sec. 560.2055(3)(a) or (b), 2009 Stats. For taxable years beginning after December 31, 2010, a person who is certified by the WEDC may receive tax benefits if, in each year for which the person claims tax benefits, the person increases net employment in the person's business, and one of the following applies:

- In a tier I county or municipality, an eligible employee for whom the person claims a tax credit will earn at least \$20,000 in wages from the person in the year for which the credit is claimed.
- In a tier II county or municipality, an eligible employee for whom the person claims a tax credit will earn at least \$30,000 in wages from the person in the year for which the credit is claimed.

The WEDC may award to a person who is certified, tax benefits for each eligible employee in an amount equal to 10 percent of the wages paid by the person to that employee or \$10,000, whichever is less, if the employee earned wages in the year for which the tax benefit is claimed equal to one of the following:

- In a tier I county or municipality, at least \$20,000.
- In a tier II county or municipality, at least \$30,000.

16. **Administration of Certain Credits Transferred to DATCP** (2011 Act 32, renumber secs. 560.2056 to 93.54, 560.208 to 93.545, and 560.209 to 93.547 and amend as renumbered and amend sec. 71.07(3r)(b) and (c)3.a. and b. and 6., (3rn)(b) and (c)3., and (3rn)(b) and (c)3.a., b., and c. and 6., effective July 1, 2011.)

Administration of the following credits is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection:

- Meat processing facility investment credit
- Woody biomass harvesting and processing credit
- Food processing plant and food warehouse investment credit

17. **Manufacturing Investment Credit Statutes Amended** (2011 Act 32, amend sec. 71.07(3t)(b) and (c)1., effective July 1, 2011.)

The statutes relating to the manufacturing investment credit are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes.

18. **Administration of Enterprise Zone Jobs Credit Transferred** (2011 Act 32, renumber sec. 560.799 to 238.399 and amend as renumbered and amend sec. 71.07(3w)(a)2., 3., 4., 5d., and 5e., (b)(intro.) and 5., (bm)1., 2., 3., and 4., (c)3., and (d), effective July 1, 2011.)

The administration of the enterprise zone jobs credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

19. **Early Stage Seed Investment Credit and Angel Investment Credit Revised** (2011 Act 32, renumber sec. 560.205 to 238.15 and amend as renumbered and amend secs. 71.07(5b)(a)2., (b)1. and 2., and (d)3. and (5d)(a)1.(intro.), 2m., and 3., (b)(intro.), 1., and 2., (c)2., and (d)1. and 73.03(63), effective July 1, 2011.)

For purposes of both the early stage seed investment credit and the angel investment credit, for investments made after December 31, 2007, if an investment for which a claimant claims a credit is held by the claimant for less than 3 years, 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. Under prior law, the repayment applied to calendar years beginning after December 31, 2007.

The administration of the early stage seed investment credit and the angel investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

20. **Administration of Film Credits Transferred** (2011 Act 32, amend sec. 71.07(5f)(a)1.(intro.) and 3. and (c)6. and (5h)(c)4., effective July 1, 2011.)

The administration of the film production services credit and the film production company investment credit is transferred from the Department of Commerce to the Department of Tourism.

21. **Administration of Electronic Medical Records Credit Transferred** (2011 Act 32, repeal sec. 560.204(3), renumber sec. 560.204(title), (1), (2), and (4) to 73.15(title), (1), (2), and (3) and amend as renumbered, and amend sec. 71.07(5i)(c)1., effective July 1, 2011.)

The administration of the electronic medical records credit is transferred from the Department of Commerce to the Department of Revenue.

The Department of Revenue shall implement a program to certify health care providers as eligible for the electronic medical records credit. If the department certifies a health care provider, the department shall determine the amount of credits to allocate to the health care provider. The total amount of electronic medical records credits allocated to health care providers in any year may not exceed \$10,000,000.

The department shall promulgate rules to administer the credit.

22. **Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred** (2011 Act 32, amend secs. 71.07(5j)(a)2d. and 2m. and (c)3. and 73.0301(1)(b) and (e) and (2)(a)1. and 2. and (b)1.a. and b., 2., 3., and 4., effective July 1, 2011.)

The administration of the ethanol and biodiesel fuel pump credit is transferred from the Department of Commerce to the Department of Safety and Professional Services.

23. **Qualified Production Activities Credit Created** (2011 Act 32, amend secs. 71.05(6)(a)15., 71.21(4), and 77.92(4) and create secs. 71.07(5n) and 71.10(4)(cr), effective for taxable years beginning on or after January 1, 2013.)

A credit may be claimed against the income or franchise tax imposed, up to the amount of the tax, for an amount equal to one of the following percentages of the claimant's eligible qualified production activities income in the taxable year:

- For taxable years beginning after December 31, 2012, and before January 1, 2014, 1.875 percent.
- For taxable years beginning after December 31, 2013, and before January 1, 2015, 3.75 percent.
- For taxable years beginning after December 31, 2014, and before January 1, 2016, 5.526 percent.
- For taxable years beginning after December 31, 2015, 7.5 percent.

“Eligible qualified production activities income” means qualified production activities income that derives from property located in Wisconsin that is assessed as manufacturing property under sec. 70.995, Wis. Stats., or as agricultural property under sec. 70.32(2)(a)4., Wis. Stats.

“Qualified production activities income” means qualified production activities income as defined in 26 USC 199(c).

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 share of the eligible qualified production activities income. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

The amount of the computed credit must be added to income.

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

If a 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 15 taxable years to the extent not offset by the 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.

In the case of a change in ownership or business of a corporation, section 383 of the Internal Revenue Code applies to the carry-over of unused credits.

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

D. Corporation Franchise or Income Taxes

1. **Internal Revenue Code References Updated for 2011 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies** (2011 Act 32, create secs. 71.22(4)(un) and (4m)(sn), 71.26(2)(b)23., 71.34(1g)(un), and 71.42(2)(tn), effective for taxable years beginning on or after January 1, 2011.)

Certain provisions of federal laws enacted in 2005 through 2010 that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes. For taxable years that begin on or after January 1, 2011, the provisions of federal law listed in Item C.1 apply for Wisconsin income and franchise tax. 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** (2011 Act 32, amend secs. 71.22(4)(u) and (um) and (4m)(s) and (sm), 71.26(2)(b)21. and 22., 71.34(1g)(u) and (um), 71.42(2)(t) and (tm), and nonstatutory provision, effective for taxable years beginning before January 1, 2011.)

Certain changes to the Internal Revenue Code made by federal laws enacted in 2006, 2008, 2009, and 2010 apply for Wisconsin purposes at the same time as for federal purposes. See Item C.2 for a list of these law changes.

3. **Wisconsin Housing and Economic Development Authority Bonds** (2011 Act 32, create secs. 71.26(1m)(m) and 71.45(1t)(m), effective July 1, 2011.)

Interest received on bonds or notes issued by the Wisconsin Housing and Economic Development Authority is exempt if the bonds or notes are issued to provide loans to a public affairs network under sec. 234.75(4), Wis. Stats.

4. **Certain Development Zones Statutes Amended** (2011 Act 32, amend secs. 71.28(1dd)(b) and (e), (1de)(a)(intro.) and 1. and (d), (1di)(a)(intro.) and 1., (b)2. and 3., (d)1., (f), (g), and (i), (1dj)(am)(intro.), 4.a. and b., 4c., and 4t. and (e)1. and 3.a. and b., (1dj)(i), (1dL)(a), (ag), (ar), (bm), (c), and (i), (1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), (1ds)(a)1., (b), (d)1., and (i), and (4)(am)1. and 2., 71.47(1dd)(b), (1de)(a)(intro.) and 1., (1di)(a)(intro.) and 1., (b)2. and 3., (d)1., (f), and (g), (1dj)(am)(intro.), 4.a. and b., 4c., and 4t. and (e)1. and 3.a. and b., (1dL)(a), (ag), (ar), (bm), and (c), (1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), (1ds)(a)1., (b), and (d)1., and (4)(am), and 73.03(35), effective July 1, 2011.)

The statutes relating to certain development zones credits are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes. The affected credits are those that cannot be claimed for taxable years that began on or after January 1, 1998, except that a carryforward of unused credits applies. The affected development zones credits are: day care credit, environmental remediation credit, investment credit, jobs credit, location credit, research credits, and sales tax credit.

5. **Administration of Development Zones Capital Investment Credit Transferred** (2011 Act 32, renumber secs. 560.795 to 238.395, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered and amend secs. 71.28(1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), 71.47(1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), and 73.03(35), effective July 1, 2011.)

The administration of the development zones capital investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

6. **Administration of Development Zones Credit Transferred** (2011 Act 32, repeal sec. 560.70(1), renumber secs. 560.70(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7) to 238.30(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7), 560.765 to 238.365, 560.785 to 238.385, 560.795 to 238.395, 560.797 to 238.397, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered and amend secs. 71.28(1dx)(a)2., (b)(intro.), 2., 3., 4., and 5., (be), (bg), (c), and (d), 71.47(1dx)(a)2., (b)(intro.), 2., 3., 4., and 5., (be), (bg), (c), and (d), and 73.03(35), effective July 1, 2011.)

The administration of the development zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

7. **Administration of Economic Development Tax Credit Transferred** (2011 Act 32, renumber secs. 560.701 to 238.301, 560.702 to 238.302, 560.703(title) to 238.303(title), 560.703(1)(a), as affected by 2011 Act 4, to 238.303(1)(a), 560.703(1)(am), as created by 2011 Act 4, to 238.303(1)(am), 560.703(1)(b), (2), and (3) to 238.303(1)(b), (2) and (3), 560.704 to 238.304, 560.705 to 238.305, and 560.706 to 238.306 and amend as renumbered and amend secs. 71.28(1dy)(a), (b), (c)1. and 2., and (d)2. and 71.47(1dy)(a), (b), (c)1. and 2., and (d)2., effective July 1, 2011.)

Administration of the economic development tax credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

8. **Administration of Technology Zones Credit Transferred** (2011 Act 32, renumber sec. 560.96 to 238.23 and amend as renumbered and amend secs. 71.28(3g)(a)(intro.), (b), (e)2., and (f)1. and 2., 71.47(3g)(a)(intro.), (b), (e)2., and (f)1. and 2., and 73.03(35m), effective July 1, 2011.)

Administration of the technology zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

9. **Dairy Manufacturing Facility Investment Credit Revised** (2011 Act 32, renumber sec. 560.207 to 93.535 and amend as renumbered and amend secs. 71.28(3p)(b), (c)2., 2m.a., b., and bm., 4., and 6. and 71.47(3p)(b), (c)2., 2m.a., b., and bm., 4., and 6., various effective dates.)

For taxable years beginning on or after January 1, 2011, the aggregate amount of dairy manufacturing facility investment credit is \$200,000 for each of the claimant's dairy manufacturing facilities.

If two or more persons own and operate a dairy manufacturing facility, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the dairy manufacturing facility shall not exceed \$200,000.

Effective July 1, 2011, administration of the dairy manufacturing facility investment credit is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection.

10. **Jobs Tax Credit Revised** (2011 Act 32, renumber sec. 560.2055 to 238.16 and amend as renumbered and amend secs. 71.28(3q)(a)1. and 2., (b)(intro.), 1., and 2., and (c)2. and 3. and 71.47(3q)(a)1. and 2., (b)(intro.), 1., and 2., and (c)2. and 3., various effective dates.)

See Item C.15.

11. **Controlled Group Election** (2011 Act 32, amend sec. 71.255(2m)(d), effective January 1, 2009.)

If a commonly controlled group makes a combined group election, the department may not disregard the tax effect or disallow the election for any controlled group member for any year of the election period.

12. **Sharing Under Combined Reporting of Loss Carry-Forwards Incurred Before 2009** (2011 Act 32, renumber secs. 71.26(4) to 71.26(4)(a) and 71.45(4) to 71.45(4)(a) and amend as renumbered, amend sec. 71.255(6)(a), and create secs. 71.255(6)(bm), 71.26(4)(b), and 71.45(4)(b), effective for taxable years beginning after December 31, 2011.)

A corporation that is part of a combined group may offset against its Wisconsin net business income any unused pre-2009 net business loss carryforward for the 20 taxable years that begin after December 31, 2011.

“Pre-2009 net business loss carryforward” means a corporation’s total net Wisconsin business loss carryforward computed under sec. 71.26(4) or 71.45(4), Wis. Stats., as of the beginning of its first taxable year that begins after December 31, 2008, but not used by the corporation in any taxable year beginning before January 1, 2012.

Starting with the first taxable year beginning after December 31, 2011, and for each of the 19 subsequent taxable years, and subject to the limitations provided under sec. 71.26(3)(n), Wis. Stats., for each taxable year that a corporation that is a member of a combined group has a pre-2009 net business loss carryforward, the corporation may, after using the pre-2009 net business loss carryforward to offset its own income for the taxable year, and after using sharable losses to offset its own income for the taxable year, use up to 5 percent of the pre-2009 net business loss carryforward, until used or expired, to offset the Wisconsin income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 5 percent of the pre-2009 net business loss carryforward cannot be fully used to offset the Wisconsin income of all other members of the combined group in a subsequent year, the remainder may be added to the portion that may offset the Wisconsin income of all other members of the combined group in a subsequent year, until it is completely used or expired, except that unused pre-2009 net business loss carryforwards may not be used in any taxable year that begins after December 31, 2031.

Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group the corporation’s pre-2009 net business loss carryforward shall be available only to that corporation.

The department shall promulgate rules to administer these provisions.

13. **Administration of Certain Credits Transferred to DATCP** (2011 Act 32, renumber secs. 560.2056 to 93.54, 560.208 to 93.545, and 560.209 to 93.547 and amend as renumbered and amend secs. 71.28(3r)(b) and (c)3.a. and b. and 6., (3rm)(b) and (c)3., and (3rn)(b) and (c)3.a., b., and c. and 6. and 71.47(3r)(b) and (c)3.a. and b. and 6., (3rm)(b) and (c)3., and (3rn)(b) and (c)3.a., b., and c. and 6., effective July 1, 2011.)

Administration of the following credits is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection:

- Meat processing facility investment credit
- Woody biomass harvesting and processing credit
- Food processing plant and food warehouse investment credit

14. **Manufacturing Investment Credit Statutes Amended** (2011 Act 32, amend secs. 71.28(3t)(b) and (c)1. and 71.47(3t)(b) and (c)1., effective July 1, 2011.)

The statutes relating to the manufacturing investment credit are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes.

15. **Administration of Enterprise Zone Jobs Credit Transferred** (2011 Act 32, renumber sec. 560.799 to 238.399 and amend as renumbered and amend secs. 71.28(3w)(a)2., 3., 4., 5d., and 5e., (b)(intro.) and 5., (bm)1., 2., 3., and 4., (c)3., and (d) and 71.47(3w)(a)2., 3., 4., 5d., and 5e., (b)(intro.) and 5., (bm)1., 2., 3., and 4., (c)3., and (d), effective July 1, 2011.)

The administration of the enterprise zone jobs credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

16. **Early Stage Seed Investment Credit Revised** (2011 Act 32, renumber sec. 560.205 to 238.15 and amend as renumbered and amend secs. 71.28(5b)(a)2., (b)1. and 2., and (d)3., 71.47(5b)(a)2., (b)1. and 2., and (d)3., and 73.03(63), effective July 1, 2011.)

For purposes of the early stage seed investment credit, for investments made after December 31, 2007, if an investment for which a claimant claims a credit is held by the claimant for less than 3 years, 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. Under prior law, the repayment applied to calendar years beginning after December 31, 2007.

The administration of the early stage seed investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

17. **Administration of Film Credits Transferred** (2011 Act 32, amend secs. 71.28(5f)(a)1.(intro.) and 3. and (c)6. and (5h)(c)4. and 71.47(5f)(a)1.(intro.) and 3. and (c)6. and (5h)(c)4., effective July 1, 2011.)

The administration of the film production services credit and the film production company investment credit is transferred from the Department of Commerce to the Department of Tourism.

18. **Administration of Electronic Medical Records Credit Transferred** (2011 Act 32, repeal sec. 560.204(3), renumber sec. 560.204(title), (1), (2), and (4) to 73.15(title), (1), (2), and (3) and amend as renumbered, and amend secs. 71.28(5i)(c)1. and 71.47(5i)(c)1., effective July 1, 2011.)

The administration of the electronic medical records credit is transferred from the Department of Commerce to the Department of Revenue.

The Department of Revenue shall implement a program to certify health care providers as eligible for the electronic medical records credit. If the department certifies a health care provider, the department shall determine the amount of credits to allocate to the health care provider. The total amount of electronic medical records credits allocated to health care providers in any year may not exceed \$10,000,000.

The department shall promulgate rules to administer the credit.

19. **Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred** (2011 Act 32, amend secs. 71.28(5j)(a)2d. and 2m. and (c)3., 71.47(5j)(a)2d. and 2m. and (c)3., and 73.0301(1)(b) and (e) and (2)(a)1. and 2. and (b)1.a. and b., 2., 3., and 4., effective July 1, 2011.)

The administration of the ethanol and biodiesel fuel pump credit is transferred from the Department of Commerce to the Department of Safety and Professional Services.

20. **Qualified Production Activities Credit Created** (2011 Act 32, amend secs. 71.26(2)(a)4., 71.34(1k)(g), and 71.45(2)(a)10. and create secs. 71.28(5n), 71.30(3)(dn), 71.47(5n), and 71.49(1)(dn), effective for taxable years beginning on or after January 1, 2013.)

See Item C.23.

21. **Political Units Revised** (2011 Act 32, amend sec. 71.26(1)(b), effective September 28, 2011.)

Transit authorities created under sec. 59.58(7) or 66.1039, Wis. Stats., are removed from the definition of political units.

22. **Transit Authority Bonds Taxable** (2011 Act 32, repeal secs. 71.26(1m)(j) and 71.45(1t)(j), effective September 28, 2011.)

Transit authority bonds are subject to income tax.

E. Recycling Surcharge

Recycling Surcharge Revised (2011 Act 32, amend secs. 73.03(27), 77.93(intro.), 77.96(6), and 77.97, effective July 1, 2011.)

The recycling surcharge is changed to the economic development surcharge. All provisions of the former recycling surcharge apply to the economic development surcharge.

The Department of Revenue is to refer to the surcharge as the economic development surcharge. The department is to deposit the surcharge, interest and penalties collected in the economic development fund.

F. Sales and Use Taxes

1. **Discounts Given Equal to the Amount of Sales Tax** (2011 Act 18, repeal sec. 77.52(4) and amend secs. 66.0615(1m)(f)2., 77.982(2), 77.991(2), 77.9951(2), and 77.9972(2), effective June 8, 2011.)

The law that prohibited retailers from offering discounts equal to the amount of state and local sales tax has been repealed. Retailers may now offer and advertise such discounts.

Under prior law, retailers were not allowed to advertise that they would absorb or pay the sales tax for their customers. The following advertising statements violated Wisconsin sales and use tax law, even when the retailer paid the correct amount of the sales tax to the Department of Revenue:

“Pay no sales tax!” “We’ll pay your sales tax.” “Receive a discount equal to the sales tax.”

2. **Products Provided Free of Charge** (2011 Act 32, renumber sec. 77.52(21) to 77.52(21)(a) and amend as renumbered and create sec. 77.52(21)(b), effective September 1, 2011.)

Effective September 1, 2011, if a retailer provides an item free of charge with the required purchase of another **taxable** product, the retailer may purchase the item provided free of charge without tax, for resale.

Currently, a retailer is the consumer of the items it provides free of charge in conjunction with the required purchase of another product and is required to pay Wisconsin sales or use tax on its purchases of these free items. This is true under current law regardless of whether the customer is required to purchase a separate taxable or nontaxable item before getting the free item.

3. **Exemption Created for Modular and Manufactured Homes Used in Real Property Construction Activities Outside Wisconsin** (2011 Act 32, create sec. 77.54(5)(am), effective September 1, 2011.)

Effective September 1, 2011, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of modular homes, as defined in sec. 101.76, Wis. Stats., and manufactured homes, as defined in sec. 101.91(2), Wis. Stats., that are used in real property construction activities outside Wisconsin.

Currently, the sale of and the storage, use, or other consumption of a modular or manufactured home in Wisconsin that is subsequently used in real property construction activities is subject to Wisconsin sales or use tax, regardless of whether such real property construction activities take place in or outside Wisconsin.

4. **Exemption Created for Vegetable Oil or Animal Fat Converted to Motor Vehicle Fuel** (2011 Act 32, create sec. 77.54(11m), effective September 1, 2011.)

Effective September 1, 2011, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of vegetable oil or animal fat that is converted into motor vehicle fuel that is exempt under sec. 78.01(2n), Wis. Stats., from the taxes imposed under sec. 78.01(1), Wis. Stats.

5. **Repeal of Regional Transit Authorities** (2011 Act 32, among other provisions renumber sec. 77.9973 to 77.9973(1), amend sec. 59.58(7)(e)(intro.), and create secs. 77.708(3) and 77.9973(2), effective July 10, 2011. Repeal sec. 59.58(6), sec. 59.58(7) as affected by Act 32, sec. 66.1039 as affected by Act 32, and sec. 77.708 as affected by Act 32, amend Ch. 77 (title), subch. V (title) of Ch. 77, secs. 77.71, 77.73(2) and (3), 77.75, 77.76(1), (2), (3r), (4), and (5), 77.77(1) and (3), 77.78, subch. XIII (title) of Ch. 77, sec. 77.9971, sec. 77.9972, and sec. 77.9973 as affected by Act 32, effective September 28, 2011.)

The existing Dane County and Southeastern Regional Transit Authorities are terminated. The authorization to create the Chequamegon Bay and Chippewa Valley Regional Transit Authorities is repealed.

6. **Exemption Created for Advertising and Promotional Direct Mail** (2011 Act 32, create sec. 77.54(59), effective July 1, 2013.)

Effective July 1, 2013, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of advertising and promotional direct mail. "Advertising and promotional direct mail" is defined in sec. 77.51(1ag), Wis. Stats., to mean direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

"Direct mail" is defined in sec. 77.51(3pd), Wis. Stats., to mean printed material that is delivered or distributed by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property or items, property, or goods under sec. 77.52 (1) (b), (c), or (d), Wis. Stats., included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" includes any tangible personal property, or items, property, or goods under sec. 77.52 (1) (b), (c), or (d), Wis. Stats., provided directly or indirectly by the purchaser of the printed material to the seller of the printed material for inclusion in any package containing the printed material, including billing invoices, return envelopes, and additional marketing materials. "Direct mail" does not include multiple items of printed material delivered to a single address.

7. **Exemption Created for Snowmaking and Snow-Grooming Machines and Equipment** (2011 Act 32, create sec. 77.54(58), effective July 1, 2013.)

Effective July 1, 2013, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of snowmaking and snow-grooming machines and equipment, including accessories, attachments, and parts for the machines and equipment and the fuel and electricity used to operate such machines and equipment, that are used exclusively and directly for snowmaking and snow grooming at ski hills, ski slopes, and ski trails.

G. Alcohol Beverages

1. **Definitions of "Primary Source of Supply," "Wholesaler," and "Successor Wholesaler" Revised** (2011 Act 32, renumber sec. 125.02(15) to 125.02(15)(intro.) and amend as renumbered, amend secs. 125.02(21) and 125.33(10)(a)3., and create sec. 125.02(15)(a), effective July 1, 2011.)

"Primary source of supply" means any of the following:

- With respect to fermented malt beverages, the brewer or brewpub that manufactured the fermented malt beverages or the exclusive agent designated by this brewer or brewpub.
- With respect to intoxicating liquor, the manufacturer, the rectifier, or the exclusive agent designated by the manufacturer or rectifier.

“Wholesaler” means a person, other than a brewer, brewpub, manufacturer, or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit to sell alcohol beverages at wholesale.

For purposes of compensation for termination of wholesaler distribution rights, “successor wholesaler” means any wholesaler who enters into an agreement, whether oral or written, to obtain a supply of a brand of fermented malt beverages that is a discontinued brand, or otherwise acquires the right to act as a wholesaler for a discontinued brand, from a brewer, brewpub, brewer’s agent, or holder of an out-of-state shipper’s permit for purposes of selling the discontinued brand in a specifically defined territory, if the discontinued brand was sold by a terminated wholesaler in any portion of this same territory at a time immediately before the brand of fermented malt beverages became a discontinued brand.

2. **Wholesalers’ Source of Supply** (2011 Act 32, create sec. 125.33(13), effective July 1, 2011.)

No wholesaler may purchase fermented malt beverages for resale unless the wholesaler purchases them either from the primary source of supply for the brand of fermented malt beverages sought to be sold or from a wholesaler within Wisconsin that holds a wholesaler’s permit. No wholesaler may sell fermented malt beverages purchased by the wholesaler to any other licensee or permittee if the fermented malt beverages have not been purchased by the wholesaler from the primary source of supply or from a wholesaler within Wisconsin holding a wholesaler’s permit.

3. **Distribution Restrictions on Wholesalers, Brewers, Brewpubs, and Out-of-State Shippers Revised** (2011 Act 32, renumber sec. 125.34(2)(a) to 125.34(2) and amend as renumbered, effective July 1, 2011.)

The general restriction on the sale, transportation, or delivery of fermented malt beverages to a retailer is revised to require that once a shipment of fermented malt beverages is unloaded in a wholesaler’s Wisconsin warehouse, the fermented malt beverages shall be physically at rest before being distributed.

4. **Restrictions on Movie Theaters Licensed to Sell Alcohol Beverages** (2011 Act 32, amend secs. 125.07(3)(a)3., 125.32(3)(c), and 125.68(4)(c)4. and create sec. 125.32(3m)(h), effective July 1, 2011.)

The restrictions concerning the presence of underage persons on, the closing hours of, and the conduct of other business at licensed premises do not apply to movie theaters.

5. **Provisions Concerning Fermented Malt Beverage Wholesalers’ Licenses and Permits Modified** (2011 Act 32, repeal secs. 125.25(2)(b)2., 3., and 4., 125.26(2)(b)2.b. and c., 125.275(2)(b)2. and 3., and 125.28(2)(c), renumber secs. 125.26(2)(b)2.a. to 125.26(2)(b)2., 125.275(2)(b)1. to 125.275(2)(b), and 125.34(2)(a) to 125.34(2) and amend as renumbered, amend secs. 125.01, 125.04(12)(a), 125.05(1)(d), 125.10(4), 125.25(2)(b)1. and (3), 125.28(title), (1), (2)(a) and (b)(intro.), 1.b. and c., and 2., (3), and (4), 125.295(2)(a)6.c., 125.33(1)(a), (7)(a)1.a. and b. and (c), and (11), and 125.34(1)(g), and create sec. 125.28(1)(e) and (f), (2)(b)1.f., (d), and (e), and (5), effective July 1, 2011.)

Authority to Issue Wholesalers’ Licenses and Permits

Municipal governing bodies are no longer authorized to issue licenses to wholesalers for the sale of fermented malt beverages from premises within the municipality. The Department of Revenue is authorized to issue permits to wholesalers for the sale of fermented malt beverages from premises within Wisconsin.

Any person holding an unexpired fermented malt beverages wholesaler’s license prior to January 1, 2012, shall be treated as holding a valid wholesaler’s permit until January 1, 2013. On January 1, 2013, all wholesalers’ licenses shall be void.

After January 1, 2012, the Department of Revenue shall issue to each person holding an unexpired wholesaler’s license a wholesaler’s permit if the person does not hold a Class “A” or “B” license or industrial fermented malt beverages, brewpub, brewer’s, or Class “B” permit. The issuance of a wholesaler’s permit shall invalidate any previous wholesaler’s license issued.

The amount of the permit fee shall be established by the Department of Revenue and shall be an amount that is sufficient to fund one special agent position dedicated to alcohol and tobacco enforcement, but the fee may not exceed \$2,500 per year or fractional part thereof. All fees received for wholesalers' permits shall be credited to the Department of Revenue's appropriation account for administration of liquor tax and alcohol beverages enforcement and funding a special agent position.

Wholesalers' Permits

A wholesaler's permit authorizes sales of fermented malt beverages only in original packages or containers to retailers or wholesalers, except as follows:

- If a wholesaler was issued a retail license prior to January 1, 2011, then the wholesaler may, under its wholesaler's permit, continue to sell at retail fermented malt beverages to individuals as was permitted under the retail license.

No wholesaler authorized to make retail sales under this provision may sell a brand of fermented malt beverages to a retail licensee unless the wholesaler has an agreement for general wholesale distribution of that brand with the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit supplying that brand.

- A wholesaler's permit authorizes the wholesaler to sell or give fermented malt beverages to its employees. Fermented malt beverages may be consumed on a wholesaler's premises at events not open to the general public.

If a wholesaler does not maintain any warehouse in Wisconsin but is licensed and maintains a warehouse in an adjoining state that allows wholesalers holding a wholesaler's permit in Wisconsin to deliver fermented malt beverages to retailers in the adjoining state without warehousing in that state and that further requires that all fermented malt beverages be first unloaded and physically at rest at, and distributed from, the warehouse of the licensed wholesaler in that state, the wholesaler's permit shall be issued by the Department of Revenue. The permit may be issued to a wholesaler described in this paragraph who is a natural person and not a resident of Wisconsin or that is a corporation or limited liability company and has not appointed an agent in Wisconsin.

No additional license or permit is required for the solicitation of orders for sale to or by wholesalers holding a wholesaler's permit.

Wholesalers holding a wholesaler's permit, employees of such wholesalers, and individuals representing such wholesalers may not provide or participate in providing taste samples on Class "A" premises.

A wholesaler's permit may be issued to any person qualified under the general alcohol beverage licensing requirements of sec. 125.04(5), Wis. Stats., except a person acting as an agent for, or in the employ of, another person. Notwithstanding the requirements of sec. 125.04(5), Wis. Stats., a person is not required to complete a responsible beverage server training course to be qualified for a wholesaler's permit.

A wholesaler's permit may not be issued to a person holding or having a direct or indirect ownership interest in a premises operating under a Class "A" or "B" license or industrial fermented malt beverages, brewpub, brewer's, or Class "B" permit, except as follows:

- A wholesaler that holds an ownership interest in a brewer on July 1, 2011, may continue to hold that interest.
- A wholesaler may have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a Class "B" license or permit for the premises, if the wholesaler's license and the Class "B" license or permit were originally issued to the corporation and to the Class "B" licensee or permittee before June 1, 1981.

Wholesalers' permits shall particularly describe the premises for which issued and are generally not transferable. A wholesaler's permit is subject to revocation for violation of any of its terms or provisions.

If by election a municipality prohibits the retail sale of fermented malt beverages, a condition shall be included on any wholesaler's permit issued for a premises within the municipality that the wholesaler may not sell or deliver fermented malt beverages within the municipality to any person residing therein.

Requirements for Warehouse Facilities, Wholesalers, and Retail Licensees

The following requirements apply to warehouse facilities, wholesalers, and retail licensees:

1. The premises described in a wholesaler's permit shall be capable of warehousing fermented malt beverages. Any fermented malt beverages sold by the wholesaler shall be physically unloaded at the premises described in the permit, or at any warehouse premises for which the wholesaler also holds a wholesaler's permit and alcohol beverage warehouse permit, prior to being delivered to a retail licensee or to another wholesaler.
2. A wholesaler shall annually sell and deliver fermented malt beverages to at least 25 retail licensees or other wholesalers that do not have any direct or indirect interest in each other or in the wholesaler. The Department of Revenue may not issue a wholesaler's permit unless the applicant represents an intention to satisfy this requirement, and may not renew a wholesaler's permit unless the wholesaler demonstrates this requirement has been satisfied.
3. No fermented malt beverages retail licensee or wholesaler may receive a benefit from a violation of 1. or 2. with knowledge of the circumstances giving rise to the violation.

A wholesaler that violates any of the above requirements shall be fined not more than \$10,000. In addition, a court shall order the wholesaler to forfeit an amount equal to any profit gained by the wholesaler or retail licensee that violates 3. above, or by both, resulting from the violation, and the court shall further order that the wholesaler's permit be revoked. A court shall order a retail licensee or wholesaler that violates 3. above to forfeit an amount equal to any profit gained by the retail licensee or wholesaler resulting from the violation, and the court shall further order that the retail license or wholesaler's permit be revoked. This paragraph shall not affect the authority of any municipality or the Department of Revenue to revoke, suspend, or refuse to renew or issue a license or permit.

The Department of Revenue shall promulgate rules to administer and enforce the above requirements. The rules shall ensure coordination between the department's issuance and renewal of wholesalers' permits and its enforcement of the above requirements, and shall require that all applications for issuance or renewal of wholesalers' permits be processed by department personnel generally familiar with activities of fermented malt beverages wholesalers. The department shall establish by rule minimum requirements for warehouse facilities on premises described in wholesalers' permits and for periodic site inspections by the department of such warehouse facilities.

6. **Provisions Concerning Brewers Modified** (2011 Act 32, repeal secs. 125.29(4), 125.31, and 125.34(2)(bg), (bm), and (c), (3)(a)3., and (6)(b) and (c), renumber secs. 125.26(2)(b)2.a. to 125.26(2)(b)2., 125.29(2) to 125.29(2)(a), 125.34(2)(a) to 125.34(2), and 125.34(6)(a) to 125.34(6) and amend as renumbered, amend secs. 125.07(3)(a)13., 125.25(1) and (3), 125.26(1) and (2)(b)1., 125.29(1), 125.33(9) and (12), and 125.34(1)(g), (3)(a)1., (4)(a), and (5), repeal and recreate sec. 125.29(2)(title), (3), and (6), and create sec. 125.29(2)(b) and (3m), effective July 1, 2011.)

Interest Restrictions

No person holding a Class "A" license, Class "B" license or permit, or wholesaler's permit may register as a brewer.

No brewer may hold any ownership interest in any wholesaler, with the following exceptions:

- A brewer may hold an ownership interest of less than 50 percent in a wholesaler if this ownership interest will not occur for more than 3 years.

- If a wholesaler that has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the territory for any reason, including the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, then a brewer shall be allowed, for a period of not more than one year, to take temporary control and operation of the wholesaler.

Authorized Activities

The Department of Revenue shall issue brewer's permits to eligible applicants authorizing all of the following:

- The manufacture of fermented malt beverages on the brewery premises.
- The bottling, packaging, possession, and storage of fermented malt beverages on the brewery premises.
- The transportation of fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer.
- The sale, shipment, transportation, and delivery, in original unopened packages or containers, to wholesalers, from the brewery premises, of fermented malt beverages that have been manufactured by the brewer on those premises or on other premises of the brewer.
- The retail sale of fermented malt beverages that have been manufactured on the brewery premises or on other premises of the brewer for on-premise consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer.
- The retail sale to individuals of fermented malt beverages, in original unopened packages or containers, that have been manufactured on the brewery premises or on other premises of the brewer for off-premise consumption by individuals, if the sale occurs at the brewery premises or an off-site retail outlet established by the brewer.
- The retail sale of fermented malt beverages, for on-premise or off-premise consumption in original unopened packages or containers, that have been manufactured on another brewery premises in Wisconsin if the fermented malt beverages have been purchased by the brewer from a wholesaler holding a wholesaler's permit or from another brewery located in Wisconsin that manufactures 300,000 or less barrels of beer in a calendar year.
- The retail sale of intoxicating liquor, for on-premises consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer, if the brewer held, on June 1, 2011, a license or permit authorizing the retail sale of intoxicating liquor and if the intoxicating liquor has been purchased by the brewer from a wholesaler holding a wholesaler's permit.
- The provision of free taste samples on the brewery premises, at an off-site retail outlet established by the brewer, or on Class "A" premises as authorized under sec. 125.33(12), Wis. Stats.
- The ownership, maintenance, or operation of places for the sale of fermented malt beverages at the State Fair Park or any county fairgrounds located in Wisconsin.

Sales to Retailers

No brewer may sell fermented malt beverages to a retail licensee, with the following exceptions:

- A brewer that manufactures 300,000 or less barrels of fermented malt beverages in a calendar year from all locations may sell, ship, transport and deliver to retailers, from the brewery premises, fermented malt beverages, in original unopened packages and containers, that have been manufactured on the brewery premises, if the brewer complies with the requirements in sec. 125.33, Wis. Stats. (restrictions on dealings between brewers, brewpubs, wholesalers, and retailers), and sec. 125.34, Wis. Stats. (distribution restrictions), as applicable, to the same extent as if the brewer were a wholesaler.

- If a wholesaler that has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the territory for any reason, including the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, then a brewer shall be allowed, for a period of not more than one year, to sell or ship any brand of fermented malt beverages to retailers located in the wholesaler's designated sales territory.

Restaurants

A brewer may operate a restaurant on the brewery premises and at an off-site retail outlet established by the brewer. A brewer may not hold a restaurant permit for the operation of a restaurant at any other location except that a brewer may possess or hold an indirect interest in a Class "B" license for not more than 20 restaurants in each of which the sale of alcohol beverages accounts for less than 60 percent of the restaurant's gross receipts if no fermented malt beverages manufactured by the brewer are offered for sale in any of these restaurants.

7. **Provisions Concerning Out-of-State Shippers' Permits Modified** (2011 Act 32, repeal sec. 125.34(6)(b) and (c), renumber sec. 125.34(2)(a) to 125.34(2) and 125.34(6)(a) to 125.34(6) and amend as renumbered, amend secs. 125.25(1), 125.26(1), 125.30(1) and (3), 125.33(9), and 125.34(1)(g) and (5), and create sec. 125.30(4), effective July 1, 2011.)

Requirements for Shipments to Wholesalers

Once a shipment of fermented malt beverages is unloaded in a wholesaler's Wisconsin warehouse, the fermented malt beverages shall be physically at rest before being distributed.

Permit Restrictions Expanded

Out-of-state shippers' permits may be issued only to a person who does not maintain an office or street address in Wisconsin, and who is the primary source of supply for the brand of fermented malt beverages. An out-of-state shipper's permit may not be issued to a person determined by the Department of Revenue to be primarily engaged in wholesale or retail sales in another state.

Out-of-State Brewers

An out-of-state brewer that manufactures 300,000 barrels or less of fermented malt beverages in a calendar year from all locations and that holds an out-of-state shipper's permit may sell and ship fermented malt beverages directly to retail licensees if the out-of-state brewer registers with the Department of Revenue, files required periodic reports with the department, and complies with the requirements in sec. 125.33, Wis. Stats. (restrictions on dealings between brewers, brewpubs, wholesalers, and retailers), and sec. 125.34, Wis. Stats. (distribution restrictions), as applicable, to the same extent as if the out-of-state brewer were a wholesaler holding a wholesaler's permit.

H. Other

1. **Duties of the Department of Revenue Expanded** (2011 Act 10, create sec. 73.03(68), effective June 29, 2011.)

At the request of the Wisconsin Employment Relations Commission, the department shall determine the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the request.

2. **References to Wisconsin Quality Home Care Authority Eliminated** (2011 Act 10, amend secs. 71.26(1)(b) and 77.54(9a)(a), effective June 29, 2011.)

References to the "Wisconsin Quality Home Care Authority" are eliminated.

3. **Persons Qualified to Examine Returns** (2011 Act 32, amend sec. 71.78(4)(m), effective July 1, 2011.)

Under prior law, the Secretary of Commerce and employees of that department were qualified to examine returns, claims, schedules, exhibits, writings or audit reports pertaining to the returns or claims to the extent necessary to administer the development zone program.

The administration of the development zone program is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation (WEDC). This Act deletes the reference to the Secretary of Commerce and employees of that department and provides that the chief executive officer of WEDC and employees of the corporation may examine those documents for the purpose of administering the development zone program.

4. **Definition of “Municipality” Provided** (2011 Act 32, create sec. 71.935(1)(cr), effective July 1, 2011.)

For purposes of setoffs for debts to municipalities and counties, “municipality” means any city, village, or town, and includes any entity providing consolidated services among cities, villages, and towns.

5. **Provisions Related to the Denial, Nonrenewal, Discontinuation, Suspension, or Revocation of a License Based on a Tax Delinquency Revised** (2011 Act 32, amend sec. 73.0301(1)(b) and (e) and (2)(a)1. and 2. and (b)1.a. and b., 2., 3., and 4., effective July 1, 2011.)

The definition of “licensing department” is revised to exclude the Department of Commerce.

References to the “department of regulation and licensing” are changed to “department of safety and professional services.” [✎](#)