

WISCONSIN TAX BULLETIN

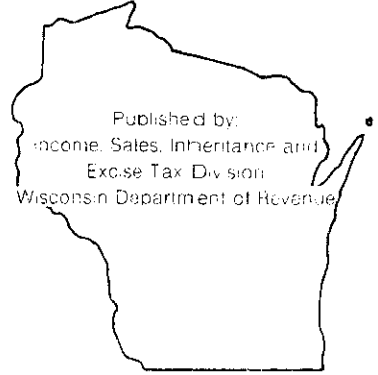
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NEW WISCONSIN TAX LAWS

The 1983-85 budget bill (1983 Wisconsin Act 27, published July 1, 1983) recently signed into law by Governor Earl contains a number of changes to the Wisconsin tax laws. This issue of the Wisconsin Tax Bulletin contains brief descriptions of the major income, corporation franchise/income, homestead credit, farmland preservation credit, inheritance, sales/use and excise tax provisions. The description for each subject indicates what sections of the statutes are affected and the effective date of the new provision.

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EXPLANATIONS OF TAX PROVISIONS IN 1983-85 BUDGET BILL (1983 WISCONSIN ACT 27)

A. INCOME TAXES

1. Update Internal Revenue Code Reference for 1983 Tax Year (Amend s. 71.02(2)(b)8, create 71.02(2)(b)9 and 71.05(1)(a)17 and 23, effective for 1983 tax year and thereafter.)

For the 1983 tax year and thereafter, individuals, estates and trusts will use the Internal Revenue Code in effect on December 31, 1982 with the following exceptions:

- (a) The following Internal Revenue Code provisions which were in effect on December 31, 1982 will not apply for Wisconsin purposes:

- (1) The deduction from gross income allowed two-earner married couples. (For federal purposes this deduction is equal to 10% of the lower-earning spouse's income for 1983 and thereafter, with a maximum of \$30,000 of earned income allowed to be used to compute the deduction.) This deduction is allowed under Section 221 of the Internal Revenue Code.
- (2) The exclusion from income allowed for public utility dividends which are reinvested in the common stock of the utility as provided under Section 305(e) of the Internal Revenue Code.
- (3) Charitable contribution deductions allowed to persons who do not claim itemized deductions. This deduction is allowed under Section 170 (i) of the Internal Revenue Code.
- (4) The exclusion from income allowed for interest received from an "All-Savers" certificate as provided under Section 128 of the Internal Revenue Code.
- (5) The incentive stock option provisions as provided under Section 422A of the Internal Revenue Code.
- (6) The partial exclusion of interest income which will be allowed for federal purposes beginning in tax year 1985 under Section 128 of the Internal Revenue Code, as amended by Section 302(a) and (c) of Public Law 97-34.

- (b) In addition to the above differences, Wisconsin and federal law for 1983 and thereafter will continue to differ with respect to the following items:

- (1) For 1983, child care expenses continue to be allowed as an itemized deduction for Wisconsin purposes. (Note: Beginning in 1984 Wisconsin will have a child care credit which will be equal to 30% of the federal child care credit. See Part A.8 for further details.)
- (2) Political contributions continue to be allowed as an itemized deduction for Wisconsin purposes.

- (3) The foreign earned income exclusion which was allowed to persons who worked abroad, as provided by the Internal Revenue Code as of December 31, 1977, continues to apply for Wisconsin purposes. (The new foreign earned income exclusion limits and deduction provisions enacted in Sections 111 and 113 of Public Law 97-34 may not be used for Wisconsin purposes.)
- (c) The provisions of the following federal laws enacted during 1983 will apply for Wisconsin purposes:
 - (1) Public Law 97-424 which provides for business expense deductions for certain conventions held on cruise ships.
 - (2) Public Law 97-448, the Technical Corrections Act of 1982.
 - (3) Public Law 97-473 which contains provisions relating to: 1) an exclusion for amounts which are received for assuming liability for periodic payments of personal injury damages, 2) an exclusion for amounts received by an individual as "difficult care" payments for a handicapped foster child and 3) Indian tribal governments being treated as a state for purposes of determining if contributions made to the tribal government qualify as an itemized deduction.
 - (4) Public Law 98-4 relating to the income tax treatment for agricultural commodities received under the 1983 payment-in-kind (PIK) program.

(NOTE: A change was also made in the definition of the Internal Revenue Code which applies for the tax year 1982. The provision in federal law which provides an exclusion from income for National Research Service Awards is adopted retroactively for the 1982 tax year and also applies to the 1983 tax year and any subsequent years.)

2. Income Tax Surtax for 1983 and 1984 (Create s. 71.014, 10% surtax effective for 1983 and 1984 tax years.)

An income tax surtax of 10% will be imposed on individuals, estates and trusts for the 1983 and 1984 tax years. The surtax percentage will be multiplied by the gross tax to arrive at the amount of surtax (e.g., gross tax of \$1,000 x 10% equals surtax of \$100).

The surtax will also be imposed on the minimum tax (e.g., minimum tax of \$500 x 10% equals surtax of \$50).

The surtax on the gross income tax will be computed before deducting personal exemptions or any other credits or tax payments.

The 10% surtax is part of the tax for purposes of any underpayment or declaring estimated taxes under s. 71.21. Any declaration of estimated tax payments that would have been due under s. 71.21 before July 1, 1983 solely because of this 10% surtax must be prorated equally among, and paid with, any payments that are due on or after July 1, 1983 for the 1983 tax year.

3. Indexing Income Tax Brackets (Amend s. 71.09(2), effective for 1983 tax year and thereafter.)

The income tax brackets will not be indexed for the 1983, 1984 and 1985 tax years, which means that the income tax brackets in effect for the 1982 tax year will continue in effect for the 1983 through 1985 tax years.

For the 1986 tax year and thereafter, the income tax brackets will be indexed only for the increase in consumer price index (CPI) from June to June that exceeds 3%, with the maximum percentage increase being 7% (e.g., if the CPI increase is 11%, the brackets will be indexed by 7% ($11\% - 3\% = 8\%$, but maximum increase limited to 7%)). The income tax brackets resulting from indexing will be rounded to the nearest \$10.

The income tax brackets will never be reduced below the brackets in effect for the prior year.

4. Index Standard Deduction (Create s. 71.02(2)(gr), effective for 1986 tax year and thereafter.)

For 1986 tax year and thereafter, the \$2,300 standard deduction for single persons and \$3,400 deduction for married persons in s. 71.02(2)(gq)(2) will be indexed by the same percentage that the income tax brackets are indexed, that is, the CPI increase from June of the previous year to June of the current year, less 3%. The maximum increase would be 7%.

The indexed amounts will be rounded to the nearest \$10.

The standard deduction amounts will never be reduced below the amounts in effect for the prior year.

NOTE: The low-income allowance amounts in s. 71.02(2)(gq)3 will not be indexed.

5. Filing Requirements for Dependents with Unearned Income (Amend s. 71.10(2)(a)5. (intro.), create s. 71.10(2)(a)5.d, repeal s. 71.10(2)(a)5.c, effective for 1983 tax year and thereafter.)

Dependents with unearned income (e.g., interest, dividends) will be required to file a Wisconsin income tax return if their unearned income is \$1,000 or more.

6. Deduction for IRA's--Married Persons With Non-Working Spouse IRA May Divide Total Deduction Between Them (Create s. 71.05(3)(h), effective for 1982 tax year and thereafter.)

When only one spouse works during the taxable year and a contribution is made to the non-working spouse's IRA, a married couple may divide the deduction for the total IRA contributions made between them in any manner they choose. (Note: This law is effective for taxable year 1982 and thereafter, thereby voiding rule Tax 2.945. Amended returns may be filed for 1982 to reflect this change in tax treatment.)

(CAUTION: This change pertains only to married couples who have a non-working spouse IRA. It does not allow spouses to divide IRA deductions between them in situations where both spouses have earned income for the tax year.)

Example: Mr. X has earned income of \$20,000 in 1982 and establishes individual retirement accounts for himself and his non-working spouse, who received \$500 of taxable interest income during 1982. Timely contributions totalling \$2,000 were made to his account and \$250 was contributed to his spouse's account for 1982. Mr. X and Mrs. X may divide the total IRA contribution of \$2,250 between them in any manner they choose (e.g., Mr. X could deduct the entire \$2,250 on his 1982 Wisconsin income tax return).

7. IRA Penalties--33% of Federal Penalties (Create s. 71.11(44m), effective with respect to penalties imposed for federal income tax purposes on or after July 2, 1983.)

Any person who is liable for a penalty under the following sections of the Internal Revenue Code for federal income tax purposes is liable for 33% of the federal penalty for Wisconsin purposes:

- (1) IRC Section 408(f) - 10% penalty for an early distribution from an IRA.
- (2) IRC Section 4973 - 6% tax on excess contributions to an IRA.
- (3) IRC Section 4974 - Excise tax on certain accumulations in an IRA.
- (4) IRC Section 4975 - Tax on prohibited transactions concerning an IRA.

These penalties will be assessed, levied and collected in the same manner as income taxes.

8. Child Care Credit--30% of Federal Credit (Amend s. 71.09(13) (cm), create s. 71.09(12c), effective for tax year 1984 and thereafter.)

Individuals may claim a nonrefundable credit equal to 30% of the federal dependent care credit, prior to adjustments for federal tax credits and federal tax liability, for which they are eligible for the tax year under Section 44A of the Internal Revenue code as amended to December 31, 1982.

Married persons may divide the total amount of the credit between them in any manner they choose. The credit is not available if husband and wife report their income on separate income tax returns.

The credit may be claimed by full-year and part-year residents of Wisconsin for tax years 1984 and thereafter. Part-year residents must reduce their credit by 1/12 for any month in which they do not reside in Wisconsin (15 days or more is considered a month). Nonresidents are not eligible for this credit.

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

The civil and criminal penalties, etc., in s. 71.09(13)(cm) will apply to persons filing a false or fraudulent claim for the child care credit.

9. Property Tax/Rent Credit--Changed from 12% to 10% and Limited to Principal Dwelling (Amend s. 71.53(1)(b), (c) and (2), effective for 1983 tax year and thereafter.)

The property tax credit is 10% of the claimant's property taxes and the rent credit is 10% of rent constituting property taxes (percentage was 12% under prior law).

Also, in computing the property tax credit, only property taxes paid on the claimant's "principal dwelling" may be used to compute the credit. Property taxes on nonbusiness property other than an individual's principal dwelling no longer may be used in computing the credit.

"Principal dwelling" is the dwelling used as the primary residence of the claimant and as much of the land surrounding it as reasonably necessary for use of the dwelling as a primary residence. It may also include a part of a multidwelling or multipurpose building and a part of the land upon which it is built that is used as the primary residence.

10. Research Credit--5% of Qualified Research Expenses (Create s. 71.04(2)(b)5, 71.05(1)(a)16, and 71.09(12r), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

This credit may be claimed by individuals, estates, trusts and corporations. Partnerships and tax-option (Sub S) corporations may not claim the credit; however, the individual partners or shareholders may claim the credit that is passed through from the partnership or tax-option corporation. See Part B.6 for an explanation of how to compute the credit.

11. Research Credit--5% of Facility Costs (Create s. 71.04(2)(b)5, 71.05(1)(a)16 and 71.09(12rf), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

This credit may be claimed by individuals, estates, trusts and corporations. Partnerships and tax-option (Sub S) corporations may not claim the credit; however, the individual partners or shareholders may claim the credit that is passed through from the partnership or tax-option corporation. See Part B.7 for an explanation of how to compute the credit.

12. Earned Income Credit--30% of Federal Credit (Create s. 71.09(12t), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

Any natural person may claim as a credit against Wisconsin income taxes due an amount equal to 30% of the federal earned income credit for which the person is eligible under Section 43 of the December 31, 1982 Internal Revenue Code. (See Part A. 20 which shows the sequence for claiming this credit in relation to other credits and payments.)

Married persons may divide this credit between them in any manner they choose. In order for married persons to claim this credit, they must file a combined Wisconsin income tax return. Part-year residents and nonresidents are not eligible for this credit.

In order for the credit to be allowed, it must be claimed within four years of the unextended due date of the person's individual income tax return. This credit is nonrefundable and may not be carried forward. The civil and criminal penalties, etc., in s. 71.09(13)(cm) will apply to persons filing a false or fraudulent claim for the earned income credit.

13. Basis Difference Subject to Capital Gain/Loss Treatment (Create s. 71.05(5), effective for 1983 tax year and thereafter.)

Sections 71.05(1)(c), (f)(3) and (g), and 71.05(2) and (4) of the Wisconsin Statutes currently require additions to or subtractions from federal adjusted gross income to be made to account for differences existing between the Wisconsin and federal basis of assets which have been sold. The purpose of these adjustments is to provide that the amount of gain or loss included in Wisconsin taxable income reflects the amount which is determined by using the Wisconsin basis of the asset sold.

The creation of s. 71.05(5) states that differences in basis of assets accruing under sections 71.05(1)(c), (f)(3) and (g), 71.05(2) and 71.05(4) (provided the assets qualify for capital gain or loss treatment) will be combined with other long-term or short-term capital gains and losses to determine the amount of capital gain exclusion, capital loss, etc.

Example: Taxpayer sells a capital asset for \$3,000 during 1983. The federal basis of the asset is \$2,000 and the Wisconsin basis is \$1,000. The transaction qualifies for long-term capital gain treatment and is the only capital gain transaction the taxpayer has in 1983. The transaction is reported as follows on a 1983 Wisconsin return:

\$ 400	Federal AGI starting point (\$1,000 gain, less 60% exclusion)
200	Modification per s. 71.05(1)(a)2 (For 1983, 60% of a long-term gain is taxable by Wisconsin)
600	Modification for basis difference (Basis difference is \$1,000, but since only 60% of a long-term gain is taxable in 1983, the modification to be made is \$600 (1,000 x 60%))
<u>\$1200</u>	<u>Total gain includible in Wisconsin income.</u>

14. Tax Capital Gains of Certain Trusts (Create s. 71.05(1)(a)22, effective for 1983 tax year and thereafter.)

Any amount excluded from adjusted gross income under Section 641(c)(1) of the Internal Revenue Code must be included in Wisconsin income as an add modification under s. 71.05(1)(a)22. (Note: Because of the special federal method of taxing a capital gain realized on the trustee's sale of an asset within two years of receiving it from the donor, the gain is not included in the grantor's federal adjusted gross income; and, is not included in the trust beneficiary's federal adjusted gross income. With this new add modification in s. 71.05(1)(a)22, the recognized gain taxed by this special method under the Internal Revenue Code will now be included in the Wisconsin income of the trust.)

EXAMPLE

An asset is placed in a trust by a living person and the transfer qualifies as a completed gift for Wisconsin gift tax purposes. The asset is sold by the trust within 2 years of receipt of the asset. The sales price, basis and value on date of transfer are as follows:

Sales price	\$100,000.00
Value when placed in the trust	97,000.00
Basis of the asset	16,000.00
Total gain (\$100,000 - 16,000)	84,000.00

Wisconsin taxable gain computed as follows:

	<u>PRIOR TO 1983 TAX YEAR</u>	<u>NEW LAW -1983 TAX YEAR AND THEREAFTER</u>
Sales price	\$100,000	\$100,000
Basis	16,000	16,000
Total gain	<u>84,000</u>	<u>84,000</u>
Gain excluded from trust taxable income (\$97,000 less \$16,000; IRC section 641)	81,000 *	-0-
Wisconsin taxable gain	<u>\$ 3,000</u>	<u>\$ 84,000</u>

* In this situation for tax years prior to 1983, \$81,000 of the \$84,000 gain is not being taxed by Wisconsin. This \$81,000 is being taxed for federal purposes.

15. Standard Deduction Allocation for Married Persons if Exceed Allowable Amount (Create s. 71.05(3)(g), effective for 1983 tax year and thereafter.)

If the total standard deduction claimed by husband and wife exceeds the total amount allowable, the Department of Revenue may allocate 50% of the total amount allowable to each spouse. If the 50% amount exceeds the Wisconsin adjusted gross income of one spouse, the Department may allocate the excess amount to the other spouse. The Department's allocation is presumed correct unless the Department receives a written notice signed by both spouses agreeing to a different allocation.

16. Minimum Tax Changes (Amend s. 71.60(1)(c), (d) and (2), effective for 1983 tax year and thereafter.)

For the tax year 1983 and thereafter, the term "Internal Revenue Code" as used in the Wisconsin minimum tax provisions in s. 71.60 will mean the Code in effect on December 31, 1982.

The minimum tax provisions in s. 71.60 are amended to clarify that accelerated depreciation claimed under the accelerated cost recovery system (ACRS) provisions of the Internal Revenue Code for real property and leased personal property is a tax preference item for purposes of

the Wisconsin minimum tax. Section 71.60 had referenced sections 57(a)(2) and (3) of the Internal Revenue Code, which sections provided that all accelerated depreciation on real property and leased personal property constituted a tax preference item. An additional reference to section 57(a)(12) of the Code is included in the Wisconsin minimum tax provisions in s. 71.60 to clarify that ACRS deductions are includable as a tax preference item.

As stated in Part A.2, the 10% surtax which will be in effect for 1983 and 1984 will also be imposed on the minimum tax in those years.

17. Endangered Resources Program--Voluntary Payments on Income Tax Returns
(Create s. 71.097, effective for 1983 tax year and thereafter.)

An individual filing an income tax return may designate on the return an additional amount for the endangered resources program. For purposes of this provision (s. 71.097) "endangered resources program" means purchasing or improving land or habitats for any native Wisconsin endangered species as defined in s. 29.415(2)(a) or (b) or for any non-game species as defined in 29.01(3)(e), conducting wildlife and resource research and surveys, providing wildlife management services and providing for wildlife damage control or the payment of claims for damage associated with endangered or threatened species and the payment of administrative expenses relating to the administration of this section.

If an individual has tax due on the income tax return, he or she may designate an additional amount for the endangered resources program and shall remit in full the tax due including the designated amount when the individual files a tax return. If the individual owing a tax fails to remit an amount equal to or in excess of the total of the tax due (after any error corrections) and the designated amount:

- (1) The department will reduce the amount designated to the amount by which the remittance exceeds the tax due (after any error corrections).
- (2) If the amount remitted with the return does not exceed the tax due, the designation will be void.

If the individual still has a refund after applying the refund to any delinquency owing the department, pursuant to s. 71.09(10) and any off-set provided for under 71.10(10)h, the Department of Revenue will deduct the amount designated for the endangered resources program from the remaining refund.

If the individual designating an amount for the endangered resources program places any conditions on the designation, the designation is void.

18. Add Modification Required if Employer Fails to Provide Certain Health Care Plans (Create s. 71.05(1)(a)21 and 24, effective date same as for corporate employers - see Part B. 12).

An employer will be required to make an addition modification to include in Wisconsin taxable income certain amounts deducted as health care costs in determining federal adjusted gross income. A similar requirement applies to corporations. See Part B.12 for additional details as to the situations in which employers will be denied deductions for health care costs.

19. Adoption Expenses--Excess Over 5% of Federal Income (Amend s. 71.05(1)(b)7, effective for 1983 tax year and thereafter.)

The subtract modification for adoption expenses will be limited to the amount by which such expenses when added to other medical deductions exceed 5% of federal adjusted gross income. For the 1982 tax year the percentage was 3%.

20. Specify Order for Claiming Credits and Payments on Tax Returns (Amend s. 71.09(6p)(intro.), 71.60(2), create s. 71.65, effective for 1983 tax year and thereafter.)

The order for deducting personal exemptions, credits and payments from the tax and surtax on income tax forms will be as follows:

- (a) Tax under s. 71.09(1b)
- * (b) Surtax under s. 71.014
- (c) Personal Exemptions under s. 71.09(6p) (non-refundable, husband and wife may split)
- (d) Property Tax and Rent Credit under s. 71.53 (non-refundable, husband and wife may split)
- (e) Child Care Credit under s. 71.09(12c) (non-refundable, husband and wife may split)
- * (f) Earned Income Credit under s. 71.09(12t) (non-refundable, husband and wife may split)
- (g) Minimum Tax including any surtax on minimum tax under s. 71.60
- (h) Credit for Taxes Paid to Other States under s. 71.09(8) (non-refundable)
- * (i) Research Credit - 5% of Qualified Research Expenses under s. 71.09(12r) (non-refundable, 7 year carry forward)
- * (j) Research Property Credit - 5% of Facility Costs under s. 71.09(12rf) (non-refundable, 7 year carry forward)
- (k) Community Development Finance Credit under s. 71.09(12m) (non-refundable, unlimited years carry forward)
- (l) Total of Farmland Preservation Credit, Homestead Credit, Estimated Tax Payments and Taxes Withheld under s. 71.09(11), 71.09(7), 71.21, and 71.19, respectively

* Note: The earned income credit and both research credits will be effective for the 1984 tax year and thereafter, and the surtax will be only for 1983 and 1984 tax years.

Husband and wife must claim their own individual credits and payments unless noted otherwise above.

B. CORPORATION FRANCHISE/INCOME TAXES

1. Surtax of 10% for 1984 (Amend s. 71.013, effective only for 1984 tax year.)

A surtax of 10% will be added to the franchise/income tax payable by corporations for the tax year 1984. The 10% surtax for the 1983 tax year, as enacted in Chapter 317, Laws of 1981, will still be in effect for the 1983 tax year.

The surtax will be computed on the corporation's gross tax, before reduction for any credits and tax payments.

2. Exempt Cash Dividends Received From 80% Owned Subsidiaries (Amend s. 71.04(4)(b), 75% exemption effective for 1984 tax year and 100% exemption effective for 1985 tax year and thereafter.)

The following percentages of cash dividends received during the year from a corporation with respect to its common stock will be exempt from Wisconsin franchise/income taxes if the corporation receiving the dividends owned directly or indirectly during the entire tax year at least 80% of the total combined voting stock of the payor corporation.

(a) For the tax year 1984 - 75% of the amount of such cash dividends.

(b) For the tax year 1985 and thereafter - 100% of such cash dividends.

3. Disallow ACRS Fast Write-Off of Corporate Out-Of-State Property and Utility Property (Amend s. 71.04(15)(b), (bm)(intro.), (c), (d), (e), (f) and (fm), create 71.01(4)(g)7, 71.02(1)(a)8 and 71.04(15)(er), (fn), (fo), (fp) and (fq), effective for property first placed in service on or after January 1, 1983 except s. 71.04(15)(bm)(intro.) relating to utilities is effective for the 1984 tax year and thereafter.)

The federal accelerated cost recovery system (ACRS) will not be allowed for Wisconsin franchise/income tax purposes for property located outside Wisconsin and first placed in service on or after January 1, 1983. Instead, depreciation for out-of-state property first placed in service by the corporation on or after January 1, 1983 must be computed under the methods permitted by the Internal Revenue Code as of December 31, 1980 or, in the alternative, the Internal Revenue Code applicable to the calendar year 1972.

Except for utilities, property located in Wisconsin may be depreciated under ACRS, regardless of when acquired.

Special provisions will apply to (1) corporations which have been operating outside Wisconsin and which first commence business activities in Wisconsin on or after January 1, 1983, (2) property acquired in reorganizations, (3) computing the Wisconsin basis of property transferred in and out of Wisconsin, and (4) establishing whether mobile equipment is or is not located in Wisconsin.

The above depreciation treatment applies to all corporations, including insurance companies, tax-option (Subchapter S) corporations, regulated investment companies and real estate investment trusts.

(Note: Individuals, estates and trusts may continue to depreciate their in-state and out-of-state property under ACRS.)

Utility companies (telephone, telegraph, pipeline companies and light, heat and power companies furnishing gas, electricity, steam or hot water) will not be allowed to use ACRS for property placed in service in the 1984 taxable year and thereafter regardless of whether the property is in or outside of Wisconsin. These companies will be required to determine their depreciation expense for all property acquired in taxable year 1981 and thereafter for Wisconsin franchise/income tax purposes on the basis of the Internal Revenue Code provisions in effect on December 31, 1980 (s. 71.04(15)(bm)(intro.)). (NOTE: This provision was also part of prior law and was scheduled to expire after the 1983 tax year, but has now been made permanent.)

4. Apportionment Sales Factor/Drop Shipments (Create s. 71.07(2)(c)2m, effective for 1983 tax year and thereafter.)

For purposes of computing the sales factor of the apportionment formula under s. 71.07(2)(c), the following will be considered Wisconsin sales:

- (a) Sales of tangible personal property by a taxpayer from an office in Wisconsin to a purchaser in another state if the property is shipped directly by a third party to the purchaser, and
- (b) neither the purchaser's state nor the state from which this property is shipped have jurisdiction for franchise/income tax purposes to tax the taxpayer.

Example: Corporation A, which has nexus and its sales office in Wisconsin, sells office equipment to a purchaser for delivery in Louisiana. Corporation A directs Corporation C in Arkansas to ship the equipment directly to the purchaser in Louisiana. Both Louisiana (purchaser's state) and Arkansas (state from which property is shipped) do not have jurisdiction for franchise/income tax purposes to tax Corporation A. In this situation, the sale is considered a Wisconsin sale for purposes of computing Corporation A's sales factor under s. 71.07(2)(c).

5. Disallow Expenses and Losses Relating to Certain Nontaxable Income (Create s. 71.04(2)(b)9 and 71.04(7m) effective for 1983 tax year and thereafter as well as retroactively to the earliest taxable year in which additional assessments or refunds may be made as of July 2, 1983.)

A deduction is not allowed for franchise/income tax purposes for any amount that is directly or indirectly related to "wholly exempt income" under Chapter 71 or to nondeductible losses under s. 71.04(7m). "Wholly exempt income" for purposes of s. 71.04(2)(b)9 for franchise and income taxes includes amounts received from affiliated or subsidiary corporations for interest, dividends or capital gains that, because of the degree of common ownership, control or management between the payor and payee, are not subject to franchise/income taxes. "Wholly exempt income" for corporations subject to income taxes also includes interest on obligations of the United States.

"Wholly exempt income" does not include income excludable, not recognized, exempt or deductible under specific provisions of Chapter 71. If any expense or amount otherwise deductible is indirectly related both to wholly exempt income or loss and to other income or loss, a reasonable proportion of the expense or amount shall be allocated to each type of income or loss, in light of all the facts and circumstances.

In regard to losses on the sale of assets, no deduction shall be allowed if the loss is from the sale or disposition of assets, the gain on which would be exempt as described in s. 71.04(2)(b)9, if the assets were sold or otherwise disposed of at a gain.

6. Research Credit--5% of Qualified Research Expenses (Create s. 71.04(2)(b)5, 71.05(1)(a)16 and 71.09(12r), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

A "claimant" may claim as a credit against Wisconsin income or franchise taxes due an amount equal to 5% of the following:

(a) qualified research expenses incurred for research conducted in Wisconsin for the tax year, less:

(b) "base period" research expenses incurred for research conducted in Wisconsin. For tax year 1984, "base period" research expenses means the average of such expenses for tax years 1982 and 1983 and for the tax year 1985, "base period" research expenses means the average of such expenses for tax years 1982 through 1984. For tax years 1986 and thereafter, "base period" is as defined in Section 44F of the Internal Revenue Code.

Qualified research expenses and base period research expenses are determined according to the definitions in section 44F of the December 31, 1982 Internal Revenue Code.

"Claimant" includes natural persons, estates, trusts and corporations. Partnerships and tax-option corporations may not claim this credit; however, the individual partners or shareholders may claim the credit that is passed through from the partnership or tax-option corporation. Special computations will be required for situations involving short tax years, change in business ownership, and acquisitions and dispositions.

For natural persons, estates and trusts the amount of the credit constitutes income to the claimant and must be reported as an addition modification in the tax year for which it is computed. For example, if a \$3,000 credit is computed for 1984, \$3,000 is income on the 1984 return, even though a portion of the credit may be carried forward to future years. In the case of corporations, a claimant is required to reduce its deduction for research expenses in the tax year for which a credit is computed by the full amount of the credit.

If the credit is not entirely used in the first year, the excess is not refundable, but may be carried forward 7 years.

This credit will not be allowed unless it is claimed within 4 years of the unextended due date of the franchise or income tax return. The credit may not be split between husband and wife in any manner they choose, but rather, may only be claimed by the "claimant".

The civil and criminal penalties, etc., in s. 71.09(13)(cm) will apply to persons filing a false or fraudulent claim for the research credit.

7. Research Credit--5% of Facility Costs (Create s. 71.04(2)(b)5, 71.05(1)(a)16, and 71.09(12rf), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

The "claimant" may claim as a credit against Wisconsin income or franchise taxes due an amount equal to 5% of the amount paid or incurred during the tax year for tangible personal property (not replacement property) used to construct and equip new facilities or expand existing facilities in Wisconsin for qualified research, as defined in section 44F of the Internal Revenue Code.

"Claimant" includes natural persons, estates, trusts and corporations. Partnerships and tax-option corporations may not claim this credit; however, the individual partners or shareholders may claim the credit that is passed through from the partnership or tax-option corporation. Special computations will be required for situations involving short tax years, change in business ownership, and acquisitions and dispositions.

For natural persons, estates and trusts the amount of the credit constitutes income to the claimant and must be reported as an addition modification in the taxable year for which it is computed. For example, if a \$3,000 credit is computed for 1984, \$3,000 is income on the 1984 return, even though a portion of the credit may be carried forward to future years. In the case of corporations, a claimant is required to reduce its deduction for research expenses in the tax year for which a credit is computed by the full amount of the credit.

If the credit is not entirely used in the first year, the excess is not refundable, but may be carried forward 7 years.

This credit will not be allowed unless it is claimed within 4 years of the unextended due date of the franchise or income tax return. The credit may not be split between husband and wife in any manner they choose, but rather, may only be claimed by the "claimant".

The civil and criminal penalties, etc., in s. 71.09(13)(cm) will apply to persons filing a false or fraudulent claim for the research credit.

8. Update Internal Revenue Code Reference to December 31, 1982 for Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts (Amend s. 71.01(4)(g)6 and 71.02(1)(a)7, create 71.01(4)(g)7 and 71.02(1)(a)8, effective for 1983 tax year and thereafter.)

Insurance companies, regulated investment companies and real estate investment trusts will compute their taxable income for the 1983 tax year and thereafter under the Internal Revenue Code in effect on December 31, 1982, with certain exceptions. The special rules for safe harbor leases provided by section 168(f)(8) of the Internal Revenue Code may not be used for Wisconsin purposes and depreciation of out-of-state property placed in service on or after January 1, 1983 must be computed under the Internal Revenue Code as of December 31, 1980. Also, the December 31, 1982 Internal Revenue Code will be considered to include four federal laws enacted in 1983 -- P.L. 97-424, P.L. 97-448, P.L. 97-473 and P.L. 98-4.

9. Tax-Option (Sub S) Corporation--Reference to Internal Revenue Code Updated to December 31, 1982 (Amend s. 71.02(2)(b)8, create 71.02(2)(b)9, effective for 1983 tax year and thereafter.)

The Internal Revenue Code, as used in s. 71.02(1)(f) and s. 71.042(1) relating to tax-option corporations, will mean the Internal Revenue Code in effect on December 31, 1982 including four federal laws (P.L. 97-424, P.L. 97-448, P.L. 97-473 and P.L. 98-4) enacted in 1983. See Part A.1 for an explanation of the December 31, 1982 Internal Revenue Code as it applies to individuals, estates, trusts and Sub S corporations.

10. License Fee on Utilities Deductible as Taxes (Amend s. 71.04(3), effective on November 11, 1984.)

The license fee imposed on utilities under s. 76.28 will be a deductible expense as "taxes".

11. Payments-In-Kind (PIK) are Income in Year Determined Under Internal Revenue Code (Amend s. 71.03(1)(k), effective for tax years ending after December 31, 1982.)

A corporation receiving agricultural commodities under the federal PIK program will be considered to have realized taxable income in the year in which the PIK commodity is sold or, if the commodity is fed to livestock owned by the corporation, in the year the livestock are sold. This is the treatment prescribed by the Internal Revenue Code for federal income tax purposes.

12. Employers Lose Exempt Status or Deductions If They Fail to Provide Certain Health Care Plans (Create s. 71.01(3)(a)2 and 3, (c)2 and 3 and 71.04(2)(b)7 and 10, effective January 1, 1984 with respect to employers who provide uninsured health care benefits to employees and July 1, 1985 for employers who have 250 or more full-time employees and offer insured or uninsured health care coverage. However, if an employer has a collective bargaining agreement in effect on July 2, 1983 which covers the employees for whom or for whose families health care payments are made, these provisions do not become effective until the day after the expiration of the collective bargaining agreement, if that date is later than January 1, 1984 or July 1, 1985 as specified in the preceding sentence.)

Employers providing health care benefits to employees will be denied deductions for amounts paid for coverage for employees and their families or, in the case of tax-exempt corporations, will lose their exempt status under the following circumstances:

- (1) Employers having 250 or more full-time employees and providing insured or uninsured health care benefits:
 - (a) Corporations or associations which are tax-exempt under the provisions of ss. 71.01(3)(a)1 and (c)(1) will lose their tax-exempt status unless health care coverage provided to employees and their families includes at least 2 plans. All plans must offer substantially the same coverage and one must

be a "health maintenance organization" (HMO) or a "preferred provider organization" (PPO) (as those terms are defined by the Wisconsin Commissioner of Insurance), if the Department of Health and Social Services determines that those organizations are available in the area of the place of employment.

- (b) Corporations which do not qualify as tax-exempt will be denied deductions for amounts paid for health care coverage for employees and their families unless they offer at least 2 plans, including one which is a HMO or PPO as described in (1)(a) above.
- (2) Employers with fewer than 250 employees which provide uninsured health care benefits:
- (a) Corporations or associations which are tax-exempt under the provisions of s. 71.01(3)(a)1 and (c)(1) will lose their tax-exempt status unless the health care plan provided employees includes a provision that the employer shall be bound by those portions of s. 632.897, Wisconsin Statutes, which apply to group insurance policies.
 - (b) Corporations which do not qualify as tax-exempt will be denied deductions for amounts paid for employee health care benefits unless the health care plan provided to employees includes a provision pertaining to s. 632.897, Wisconsin Statutes, as described in (2)(a) above.

(Note: With respect to employers with fewer than 250 employees (Sections (2)(a) and (b) above), the term "employer" does not include a foreign corporation or an association organized under the laws of another state if fewer than the lesser of 150 or 25% of the employees receiving health care benefits reside in Wisconsin.)

13. Declaration of Estimated Tax Payment Requirements and Penalties Changed
(Amend s. 71.22(1), (9)(intro.) and (10)(c)(intro.), effective for 1984 tax year and thereafter. Amend s. 71.22(10)(a) and (b), effective for 1983 tax year and thereafter.)

Beginning with the tax year 1984 a corporation must make installment payments of estimated tax if it can expect to have a tax liability for the year of over \$500 (formerly over \$2,000). The percentage of tax which is required to be prepaid is increased from 80% to 90% for purposes of computing the amount of underpayment in s. 71.22(9).

As a result of amendments to ss. 71.22(10)(a) and (b), the following changes have been made regarding corporations which use exception 1 (preceding year's tax) or exception 2 (recomputing prior year's tax using current year rates) to avoid an addition to the tax penalty:

- (a) Corporations that have a Wisconsin taxable income of less than \$250,000:

For the 1983 tax year and thereafter, they are no longer subject to the 60% of current year tax minimum payment requirement when exception 1 or 2 is being used to avoid the addition to penalty.

(b) Corporations with Wisconsin taxable income of \$250,000 or more:

- (1) For the 1983 tax year they will continue to be required to have made timely estimated tax payments equal to at least 60% of their actual tax due in order to meet the exceptions to the addition to tax penalty in ss. 71.22(10)(a) and (b).
- (2) For the tax year 1984 and thereafter, the minimum payment requirement in ss. 71.22(10) (a) and (b) is increased for such corporations from 60% to 90% of the current year's tax.

14. Treble Damages (Create s. 71.04(2)(b)8, effective for 1983 tax year and thereafter.)

Any amounts not allowed as a deduction for federal income tax purposes under Section 162(g) of the Internal Revenue Code (relating to treble damages under the anti-trust laws), will not be allowed as a deduction for Wisconsin franchise/income tax purposes.

15. Specify Order for Claiming Credits and Payments on Tax Returns (Create s. 71.65, effective for 1983 tax year and thereafter.)

The order for making computations of taxes, credits and payments on franchise/income tax forms will be as follows:

- (a) Tax under s. 71.01(1) or (2)
 - * (b) Surtax under s. 71.013
 - (c) Manufacturing Sales Tax Credit under s. 71.043 (non-refundable, 5 year carry forward)
 - * (d) Research Credit - 5% of Qualified Research Expenses under s. 71.09 (12r) (non-refundable, 7 year carry forward)
 - * (e) Research Property Credit - 5% of Facility Costs under s. 71.09 (12rf) (non-refundable, 7 year carry forward)
 - (f) Community Development Finance Credit under s. 71.09(12m) (non-refundable, unlimited years carry forward)
 - (g) Total of Farmland Preservation Credit and Estimated Tax Payments under s. 71.09(11) and 71.22, respectively (both are refundable)
- * NOTE: Both research credits will be effective for the 1984 tax year and thereafter, and the surtax will be effective only for 1982, 1983 and 1984 tax years.

C. HOMESTEAD CREDIT

1. Increase Household Income Limit to \$15,500 (Amend s. 71.09(7)(gq) (intro.) and create 71.09(7)(gr), effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

No homestead credit will be allowed if household income exceeds \$15,500. For 1982 claims, the limit was \$14,000.

2. Household Income Includes Capital Gains and Dividend Exclusions, etc. (Amend s. 71.09(7)(a)1, effective for 1983 claims (filed in 1984) and subsequent years' claims.)

The following items will be included in household income for homestead credit, even though such items are excluded or deducted in computing adjusted gross income for income tax purposes.

- Capital gain exclusions (e.g., 40% of long-term capital gains will be excluded from adjusted gross income for taxable year 1983, and 60% for 1984 and thereafter).
- Gain on the sale of a principal residence excluded from adjusted gross income under section 121 of the Internal Revenue Code (IRC). (This section of the code provides a one-time exclusion for the gain from the sale of a principal residence by an individual who is age 55 or older.)
- Dividend exclusions (e.g., for 1983 each taxpayer will be allowed to exclude \$100 of dividends from adjusted gross income).
- Deduction for contributions to individual retirement accounts under section 219 of the IRC (except rollover contributions).
- Depletion allowance deduction.
- Intangible drilling cost deduction.
- The amount by which the value of a share of stock at the time a qualified or restricted stock option is exercised exceeds the option price.

Household income will not include the gain on the sale of a principal residence deferred under section 1034 of the IRC or nonrecognized gain from involuntary conversions under section 1033 of the IRC.

3. Increase Property Taxes to \$1,100 (Amend s. 71.09(7)(h)3 and create s. 71.09(7)(h)4, effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

The amount of property taxes or rent constituting property taxes used in computing homestead credit will be limited to \$1,100. For 1982 claims, the limit was \$1,000.

4. "Rent Constituting Property Taxes Accrued" Percentage Changed From 25% to 20% (Amend s. 71.09(7)(a)6, effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

In computing homestead credit, claimants will be allowed one-fifth (20%) of rent paid for occupancy as "rent constituting property taxes accrued". For 1982 and prior years' claims, the percentage was 25%.

5. Definition of "Property Taxes Accrued" Changed (Amend s. 71.09(7)(a)8, effective for 1983 homestead credit claims (filed in 1984) and subsequent years' claims.)

Property taxes on homesteads that are part of a multipurpose or multidwelling building or a farm will be computed as follows:

Multipurpose and Multidwelling Buildings

Claimants owning homesteads that are part of a multipurpose (e.g., part residence, part business) or multidwelling (e.g., part residence, part rental apartment) building will be allowed to claim only the property taxes which relate to the residence portion of the property. The property taxes which relate to the business or rental portion of the property will no longer be allowed for purposes of determining homestead credit. For example, one method for computing allowable property taxes would be to multiply total property taxes on the building times the percentage of the building that is used by the claimant as a personal residence.

Example #1: During all of 1983, claimant owns a duplex and one of the two units is the claimant's personal residence. The square footage of each unit is the same and the duplex is located on one acre of land. The claimant will be allowed $\frac{1}{2}$ of the total 1983 property taxes on the duplex and land. (Property taxes are further limited to \$1,100 in total. See Part C.3.)

Note: Only the property taxes on the building and up to one acre of land may be used in determining the amount of property taxes that relate to the residence.

Example #2: A claimant's duplex is located on three acres of land. One-half of the property taxes on the building relate to the claimant's residence. Claimant will be allowed one-half of the property taxes on the building. Also, claimant will be allowed one-half of the property taxes relating to one acre of land adjoining the building.

For 1982, claimants were allowed the entire property taxes accrued on the multipurpose or multidwelling building plus the property taxes accrued on up to 120 acres adjoining the homestead. In examples #1 and #2 the claimants would have been allowed the entire property taxes accrued (up to \$1,000) if the year involved had been 1982.

Farms

Claimants with homesteads that are a part of a farm will be allowed to claim property taxes on the homestead and 35 acres adjoining it, including all improvements (e.g., buildings) on this same 35 acres.

Example: During all of 1983, claimant's principal residence is part of a farm which the claimant owns. Claimant's farm is located on 40 acres of land. Claimant's 1983 property tax bill covering the homestead itself includes the following information.

Improvements	\$40,000
Land	10,000
Total	<u>\$50,000</u>

Property Taxes Due \$ 1,000

The property tax bill of \$1,000 includes the homestead, a barn and 40 acres of land. (The barn is located on the 35 acres of land adjoining the homestead.)

One method for computing property taxes for 1983 for homestead credit would be as follows:

1. Allowable property taxes for improvements.

$$\frac{\$40,000 \text{ Valuation of Improve. on the 35 acres}}{\$50,000 \text{ Total Valuation}} \times \$1,000 \text{ total property taxes} = \$800$$

2. Property taxes for land.

$$\$10,000 \text{ Valuation of 40 acres} \times \frac{35 \text{ acres}}{40 \text{ acres}} = \$8,750 \text{ Valuation of 35 acres}$$

$$\frac{\$8,750 \text{ Valuation of 35 acres}}{\$50,000 \text{ Total Valuation}} \times \$1,000 \text{ total property taxes} = \$175$$

3. Total property taxes for homestead credit.

Improvements	\$ 800.00
Land	175.00
Total	<u>\$ 975.50</u>

For 1982, claimants with farms were allowed to claim the property taxes on the homestead and the first 120 acres adjoining it, including all improvements on the 120 acres.

6. Homestead Credit Formula Changed (Amend s. 71.09(7)(gq)(intro.) and create 71.09(7)(gr), effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

Claimants with household income of \$7,000 (prior law was \$6,000) or less will receive 80% of their property taxes accrued and/or rent constituting property taxes accrued. If household income is more than \$7,000, the credit will be 80% of the amount by which property taxes and/or rent constituting property taxes accrued exceed 12.94% (prior law was 12.5%) of household income exceeding \$7,000.

D. FARMLAND PRESERVATION CREDIT

1. Definition of "Agricultural Use" Changes (Amend s. 91.01(1), effective for claims filed for the 1983 tax year and subsequent years.)

The definition of "agricultural use" will include placing land in federal programs in return for payments in kind (PIK). (Note: One of the conditions that must be met to qualify for a farmland preservation tax credit is that the farmland must have produced at least \$6,000 of gross farm profits from "agricultural use" during the tax year or at least \$18,000 in gross farm profits from "agricultural use" during the tax year and two years immediately preceding the tax year.)

2. Add-Back for Depreciation (Amend s. 71.09(11)(a)6.a and b, effective for claims filed for the 1983 tax year and subsequent years.)

In computing household income, an individual or a corporate claimant will be allowed to deduct the first \$25,000 of depreciation expenses in respect to the farm. For 1982, the first \$25,000 of depreciation expenses were allowed, regardless of whether the expenses related to the farm or other property.

3. Household Income Includes Exclusion for Capital Gains, Dividends, etc. (Amend s. 71.09(7)(a)1, effective for claims filed for the 1983 tax year and subsequent years.)

The starting point for computing household income for farmland preservation credit purposes is Wisconsin adjusted gross income. The amendment to s. 71.09(7)(a)1 requires that certain items which are excluded or deducted in computing Wisconsin adjusted gross income for income tax purposes must be included in household income for farmland preservation credit purposes. These exclusion and deduction items are the same as those which will be included in household income for homestead credit purposes. See Part C.2 for a complete listing of the items involved.

(Caution: Parts D.2 and D.3 above first apply to farmland and preservation credit claims based on property taxes accrued during 1983, therefore, if the 1983 claim covers a fiscal year in which there was no accrual of 1983 property taxes, Parts D.2 and D.3 would not apply (e.g., a 1983 farmland preservation claim filed for the fiscal period August 1, 1982 to July 31, 1983 (which is a 1983 tax year) would likely be based on property taxes accrued in November or December, 1982 (rather than property taxes accrued in 1983), therefore, the provisions of Parts D.2 and D.3 would not apply to that claim filed for the 1983 tax year.)

4. Definition of "Gross Farm Profits"-Payments-In-Kind (PIK) (Amend s. 71.09(11)(a)3m, effective for claims filed for the 1983 tax year and subsequent years.)

The definition of "gross farm profits" will include the fair market value of payments-in-kind (PIK) at the time of disposition of such payments. (Note: One of the requirements to qualify for a farmland preservation credit is that farmland must produce a minimum amount of "gross farm profits".)

5. Discharge of Lien (Amend s. 91.37(4), effective July 2, 1983.)

Under certain circumstances, the owner of farmland may become responsible for paying back part or all of the credits received under the farmland preservation tax credit program. The amendment to s. 91.37(4) will provide that if after the expiration of an agreement, but prior to January 1, 1983, a farm or any portion thereof is zoned for exclusive agricultural use per the program requirements, all or any part of a lien filed for payback of credits will be discharged.

6. Soil and Water Conservation Ordinance (Create s. 91.80, effective July 2, 1983.)

A county, city, village or town will be allowed to establish a soil and water conservation ordinance which requires owners who receive zoning certificates under the farmland preservation program to farm in accordance with reasonable soil and water conservation standards. The standards will be established by a land conservation committee created by the county board. Deviations may be allowed if personnel are not available to lay out the practices or if needed practices are not economical.

E. INHERITANCE TAXES

1. Update Reference to Internal Revenue Code for Qualified Retirement Plans, Installment Payments and Power of Appointment (Amend s. 72.01(17), 72.12(4)(c)1 and 72.22(4)(a), effective for transfers because of deaths on and after August 1, 1983, except the amendment to 72.01(17) relating to power of appointment becomes effective July 2, 1983.)

The reference to the Internal Revenue Code relating to power of appointment in s. 72.01(17), qualified retirement plans in s. 72.12(4)(c)1 and installment payments in s. 72.22(4)(a) will be updated to December 31, 1982 and as amended by federal Public Laws 97-424, 97-448 and 97-473 which were enacted in 1983.

Also, s. 72.22(4)(a), which pertains to installment payments, will include a reference to Public Law 98-4 relating to the income tax treatment of agriculture commodities received under the 1983 payment-in-kind program.

F. SALES/USE TAXES

1. Service Providers-Purchasing Property as a Consumer or for Resale (Create s. 77.51(4)(L), 77.51(7)(e) and (f) and 77.51(24)(b) and (29), renumber 77.51(24) to 77.51(24)(a) and amend 77.51(24)(a), effective September 1, 1983.)

(a) Services which are taxable under s. 77.52(2):

- (1) Services taxable under s. 77.52(2)(a)7 (photographic services), s. 77.52(2)(a)10 (repair, alteration, fitting, cleaning, painting, etc., of tangible personal property), s. 77.52(2)(a)11 (fabricating, processing, printing or imprinting), and s. 77.52(2)(a)20 (landscaping services):

All tangible personal property physically transferred to the customer in conjunction with the selling, performing or furnishing the service is considered a sale of tangible personal property. This means that such property can be purchased for resale by those service providers described in s. 77.52(2)(a)(7), (10), (11) and (20). However, the total charge for the service, including the charge related to tangible personal property transferred to the customer, is subject to the sales/use tax.

Examples: (A) Person X repairs a furnace for Person Y for \$50, which includes the replacement of a furnace part. Person X may purchase the furnace part tax-free by giving a resale certificate to the seller of the part because the part is physically transferred to the customer. The total charge of \$50 by Person X to Person Y is subject to the 5% tax (\$2.50 tax) including any charge related to the furnace part.

(B) A photographer purchases mounts, frames and paper for use in finished photographs which are transferred to customers. Such mounts, frames and paper may be purchased without tax for resale by the photographer.

(C) An operator of a landscaping service delivers and levels topsoil, then installs sod on the topsoil for a customer in providing a taxable landscaping service. This person may purchase the topsoil and sod without tax for resale.

- (2) All other services which are taxable under s. 77.52(2)(a) (i.e., lodging (s. 77.52(2)(a)1), admissions to amusement, entertainment, etc. (s. 77.52(2)(a)2), telegraph services (s. 77.52(2)(a)3), telephone services (s. 77.52(2)(a)4.), laundry and dry cleaning (s. 77.52(2)(a)6), parking (s. 77.52(2)(a)9) and cable television services (s. 77.52(2)(a)12)): If the tangible personal property transferred by the service provider to the customer is "incidental" to the selling, performing or furnishing of the service, the service provider is considered to be the consumer of such property transferred to the customer. If the property transferred to the customer in conjunction with the service is not "incidental" to the selling, performing or furnishing of the service, the service provider is not the consumer of such property, but rather, the property transferred is considered a sale of tangible personal property separate from the sale of the service.

Examples: (A) The operator of a motel or hotel is subject to tax on its purchases of beds, dressers, tables, linens, soap and other items purchased for use in rooms provided to customers since the customers' main purpose is to obtain access to the room.

(B) A baseball team purchases tickets to admit its customers to games and promotional items to be given to certain ticketholders for specific games. The tax applies to these purchases of tickets and promotional items because the ticketholders' main purpose is to attend the ball game.

(C) A telephone company purchases telephone books which it distributes to its customers. These purchases by the telephone company are subject to the tax since the customers' main purpose is to obtain telephone service.

- (b) Services which are not taxable: If the tangible personal property transferred in conjunction with the selling, performing or furnishing of the service is "incidental" to the service, the service provider is considered the consumer of such property transferred to the customer.

If the property transferred to the customer in conjunction with the service is not "incidental" to the selling, performing or furnishing of the service, the service provider is not the consumer of such property, but rather, the property transferred is considered a sale of tangible personal property separate from the sale of the service.

Examples: (A) A person providing accounting services transfers documents, reports, forms and binders to its clients in the course of setting up an accounting system for the client. Purchases of paper, forms and binders by the service provider are taxable since the client's main purpose is to obtain the accounting service.

(B) An engineer's purchase of specialized paper, which is used to produce drawings transferred to customers, is subject to the tax because the customers' main purpose is to obtain the engineer's drafting services.

(C) A physician purchases tape which is used in providing non-taxable medical services. Such tape purchases by the physician are subject to the tax because the patients' main purpose is to obtain the medical service.

(D) A mover's purchases of containers and packing materials used in providing household goods moving services are subject to the tax because the customers' main purpose is to obtain the moving service.

- (c) Contractors and subcontractors: Except as explained in (a) and (b) above, contractors and subcontractors are still considered the consumers of tangible personal property used by them in real property construction activities in accordance with s. 77.51(18).

Example: A contractor purchases insulation, which is installed by the contractor in the ceiling of a person's plant to reduce heat loss, and topsoil for leveling the plant yard. The contractor's purchases of insulation are taxable; however, it may purchase the topsoil without tax for resale because this is used in providing a taxable landscaping service as described under (a) above.

- (d) Definition of "incidental": "For purposes of s. 77.51(4)(L), (7)(e) and (f) and (24)(a), 'incidental' means depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service." This definition of incidental is found in s. 77.51(29), Wis. Stats.

2. Occasional Sale Standard Changed (Amend s. 77.51(10)(c), effective July 2, 1983.)

Sales of admissions or tickets to events by neighborhood associations, churches, civic groups, garden clubs, social groups and similar organizations are exempt from sales/use tax under s. 77.51(10)(c), if certain standards are met. Under prior law, as amended by 1983 Wisconsin Act 23, one of the standards was that the events could not fall on more than 9 different days within the calendar year. The new law provides that the events may not fall on more than 9 different days or "9 consecutive 24-hour periods" within the calendar year.

Section 77.51(10)(c) now reads as follows: "Sales of admissions or tickets by a neighborhood association, church, civic group, garden club, social club or similar organization to an event, including a meal, not involving professional entertainment, conducted by such organization, when such organization is not engaged in a trade or business and not otherwise required to have a seller's permit, and when no more than 3 such events were conducted by the organization in the previous calendar year and no more than 3 are anticipated during the current calendar year and such events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year." (Underlined words are the Budget Bill amendment to s. 77.51(10)(c).)

3. Definition of "Enjoyment" (Renumber s. 77.51(15) to 77.51(15)(a), create s. 77.51(15)(b), effective for property shipped into Wisconsin on or after September 1, 1983.)

Since 1969 the sales/use tax law has imposed a use tax on the "storage, use or other consumption in this state of tangible personal property or taxable service ...". (s. 77.53(1)) "Use" is defined in s. 77.51(15) to include "the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession or enjoyment of the property or services ..." (underlining supplied).

The new law creates s. 77.51(15)(b) to define "enjoyment" to include a purchaser's right to direct the disposition of property, whether or not the purchaser has possession of the property. "Enjoyment" also includes, but is not limited to, having shipped into this state by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.

Example: A Wisconsin department store contracts for \$100,000 with an out-of-state printer to have the printer produce catalogs and advertising flyers. The printer will mail the catalogs and flyers directly to Wisconsin residents, based upon a mailing list furnished by the Wisconsin department store. As a result of the creation of s. 77.51(15)(b), the Wisconsin department store will be liable for Wisconsin use tax of \$5,000 on the payment of \$100,000 to the out-of-state printer.

4. Clarify Tax Treatment of Exempt Entities (Amend s. 77.54(9a)(intro.), effective September 1, 1983.)

The exemption language in s. 77.54(9a)(intro.) is amended to clarify that only purchases by exempt entities under s. 77.54(9a)(a),(b),(c), (d),(e) and (f) are not subject to the tax. Sales by such entities continue to be taxable.

5. Tax the Sale of Raffle Contest Tickets (Amend s. 77.51(10)(a), 77.52(2)(a)2 and 77.54(7), effective September 1, 1983.)

The sale of raffle contest tickets will be subject to the sales tax. Also, the occasional sales exemption in s. 77.51(10)(a) and s. 77.54(7) does not apply to the sale of raffle contest tickets.

6. Interest on Sales/Use Tax Refunds (Amend s. 77.60(1)(a), effective for refunds certified on or after September 1, 1983.)

Interest on sales/use tax refunds will bear interest to the date on which the refund is certified on the refund rolls. Prior to this amendment to s. 77.60(1)(a), refunds accrued interest until the first day of the month following the month in which the taxes were refunded.

7. Use of Sampling in Sales/Use Tax Audits (Amend s. 77.59(2), effective July 2, 1983.)

In field auditing for sales/use tax under s. 77.59(2), the Department of Revenue's determination of the tax required to be paid may be made on the basis of sampling, whether or not the taxpayer being audited has complete records of transactions and whether or not the taxpayer being audited consents to sampling.

8. Exempt Ingredients and Components of Shoppers Guides, Newspapers and Periodicals (Create s. 77.54(2m), effective July 2, 1983.)

A sales/use tax exemption is provided for tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals, or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals. The exemption applies regardless of whether or not the shoppers guides, newspapers or periodicals are transferred to the recipient for a charge. This exemption in s. 77.54(2m) does not apply to advertising supplements printed by printers other than the newspaper in which they are inserted.

Example 1: Publisher A publishes a shoppers guide and distributes it without charge. It buys paper for \$200 which it gives to Printer B who

will print the shoppers guide for \$400 on Publisher A's paper. The \$200 purchase of paper now is exempt from tax. The printing service of \$400 by Printer B, which was a taxable service under prior law, also now is exempt under s. 77.54(2m).

Example 2: Assume the same facts as in Example 1, except that Publisher A (rather than Printer B) printed the shoppers guides. The \$200 purchase of paper now is exempt under s. 77.54(2m).

9. Exempt Certain Oxygen Equipment (Create s. 77.54(14m), effective September 1, 1983.)

A sales/use tax exemption is provided for equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen.

10. Eliminate Exemption for Non-Subscription Sales of Periodicals (Amend s.77.54(15), effective September 1, 1983.)

Under prior law, all sales of periodicals regularly issued at average intervals of 3 months or less were exempt from tax. Beginning September 1, 1983, the new law provides that all sales of periodicals not sold by subscription will be taxable, regardless of the interval with which they are issued. For example, magazines sold from the magazine rack of a store will now be taxable, regardless of whether they are issued at weekly, monthly, quarterly or other time intervals.

The tax treatment of periodicals sold by subscription has not changed, that is, such sales continue to be taxable only if the periodicals are regularly issued at average intervals of more than 3 months.

11. Definition of "Manufacturing" (Renumber s. 77.51(27) to s. 77.51(27)(intro.) and amend s. 77.51(27)(intro.), create s. 77.51(27)(a) to (c), effective for machines, specific processing equipment and repair or replacement of such machines and equipment acquired on and after September 1, 1983.)

For purposes of the sales/use tax law in Chapter 77, "manufacturing" includes:

- Crushing, washing, grading and blending sand, rock, gravel and other minerals.
- Ore dressing, including the mechanical preparation, by crushing and other processes and the concentration, by floatation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.
- Mixing and processing if performed in mobile units mounted on trucks or trailers.

12. Definition of "Newspaper" (Create s. 77.51(30), effective July 2, 1983.)

For the purposes of the sales/use tax law in Chapter 77, "newspaper" is defined as follows:

"In this chapter 'newspaper' means those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03(1) is a newspaper. "Newspaper" also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A "newspaper" does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."

G. MOTOR FUEL, LIQUOR, BEER, WINE, CIGARETTE AND TOBACCO PRODUCTS TAXES

1. Tax Rate Increase On Motor Fuel and Special Fuel (Amend s. 78.01(1), 78.14, 78.40(1), effective August 1, 1983.)

The excise tax rate on motor vehicle fuels will be increased from 13¢ to 15¢ per gallon for the period August 1, 1983 through June 30, 1984 and to 16¢ per gallon for the period July 1, 1984 through March 31, 1985. The new tax rate applies to motor fuel (gasoline, gasohol) and special fuels (diesel fuel, propane). A floor tax will be imposed on all motor fuel inventory held for sale or resale on the effective dates of the increases.

2. Annual Adjustment of Motor Vehicle Fuel Tax Rate (Create s. 78.015, 78.405, new adjusted rate effective the April 1 after the calculation.)

Beginning in 1985, the motor vehicle fuel tax rate shall be recomputed on or before April 1 of each year to reflect changes in fuel consumption and in the cost of highway maintenance. The new tax rate shall be rounded to the nearest .1 cent and shall apply to motor fuel (gasoline, gasohol) and special fuel (diesel fuel, propane). The effective date of the new tax rate shall be the April 1 after the calculation. A floor tax will be imposed on all motor fuel inventory held for sale or resale on the effective date of a tax rate increase.

3. Motor Fuel Tax Imposed On First Sale (Amend s. 78.07(1)(b), effective July 2, 1983.)

Motor fuel tax will be paid by the first licensed wholesaler receiving motor fuel from a Wisconsin terminal.

Prior to this law change, the motor fuel tax was paid by a licensed wholesaler when the product was unloaded into the wholesaler's storage facilities or delivered into the storage facilities of one of the wholesaler's customers. For example, if motor fuel was withdrawn from a terminal and sold to licensee A and licensee A then sold it licensee B, the tax was paid by licensee B.

The change places the responsibility for payment of the tax on the first person (licensee A) withdrawing motor fuel from a refinery or terminal.

In addition, it will no longer be required that tax-free withdrawals by a licensed wholesaler from a Wisconsin terminal be withdrawn in 4,000 gallon lots or more.

4. Denial Of Interstate Fuel Tax Refunds Not Timely Filed (Amend s. 78.76(2), effective July 2, 1983.)

Section 78.76(2) will specify that an interstate fuel tax report applying for a refund will be denied if the report is not filed within 90 days after the tax is paid to other states.

5. Limitations On Other Business-Class "B" Premises (Amend s. 125.32(4)(a)2, effective July 2, 1983.)

Current law provides that no Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected by a secondary doorway which serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on premises operating under a Class "B" license or permit.

The amendment to s. 125.32(4)(a)2 changes the law to provide that these restrictions will not apply to a restaurant, whether or not it is a part of or located in any mercantile establishment.

6. Increase Rate Of Tax On Liquor Made From Whey Alcohol (Amend s. 139.03(2t), effective September 1, 1983.)

The occupational tax on intoxicating liquor manufactured or distilled in this state from whey produced in Wisconsin will be increased from \$1.00 per wine gallon to \$1.65 per wine gallon. (Note: Retailers defined in s. 139.01(8) will not be subject to a floor tax on their inventories of this type of liquor. However, rectifiers and wholesalers will be subject to a floor tax on all whey alcohol held in inventory on September 1, 1983.)

7. Residency Requirements For Certain Alcohol Beverage Licenses (Amend s. 125.04(5)(d), effective July 2, 1983.)

This law change eliminates the one year Wisconsin residency requirement for persons making application for alcohol beverage operators' and/or managers' licenses in the 1st class city. The requirement to be a resident of the state on date of application remains.

8. Town Liquor Licenses (Create s. 125.51(4)(k), effective July 2, 1983.)

Towns will be allowed to issue "Class B" on premises alcohol beverage licenses to outdoor professional classical theatre companies and to conference center/restaurants used for lodging and meetings of staff and patrons of a professional repertory company without affecting the towns' statutory "Class B" license quotas.

9. Liquor Permit Fees (Amend s. 125.58(3) effective July 2, 1983.)

The annual fee for an alcohol beverage out-of-state shipper's permit will be increased from \$50 to \$250.

10. Cigarette Sales To and By Indians (Create s. 139.30(14) to (16), 139.323 and 139.325, 139.38(7), amend 139.31(1)(intro.), 139.32(1), 139.32(7), and 139.33(1), (3) and (4), effective October 1, 1983.)

The cigarette occupational tax will be changed to an excise tax, thereby making sales to Indians taxable. Indians who resell cigarettes on a reservation will be eligible for a refund of 70% of the taxes collected under s. 139.31 provided: (1) the tribal council files claim for the refund; (2) the tribal council has approved the retailer; (3) the land on which the sale of cigarettes occurred was designated a reservation or trust land on or before January 1, 1983; and (4) the cigarettes were not delivered by the retailer to the consumer by means of common carrier, contract carrier or U.S. postal service.

The Department of Revenue may enter into agreements to refund to the Indian sellers 100% of the tax revenue derived from cigarettes sold on reservations to enrolled members of the tribe residing on the tribal reservation.

11. Tobacco Products Occupational Tax (Amend s. 139.76(1), effective July 2, 1983.)

The amendment to s. 139.76(1) distinguishes between the occupational tax imposed upon the sale of domestic tobacco products and tobacco products imported from another country. Domestic tobacco products are taxed at the rate of 20% of the manufacturer's established list price to distributors without diminution by volume or other discounts. On tobacco products imported from another country the rate of tax is 20% of the amount obtained by adding the manufacturer's list price to the federal tax, duties and transportation costs to the United States. The tax attaches at the time the tobacco products are received by the distributor in Wisconsin.

12. Cigarette and Tobacco Products Permits (Repeal and recreate s. 139.79(3) and 139.81(3), effective July 2, 1983.)

The holder of a cigarette distributor permit may obtain a tobacco products distributor permit at no charge, and any person holding a cigarette jobber permit may obtain a tobacco products subjobber permit at no charge. Also, the holder of a cigarette salesperson's permit may obtain a tobacco products salesperson's permit at no charge.

13. Cigarette and Tobacco Products Retailer License (Amend s. 134.65(1) and (4), effective July 2, 1983.)

Sections 134.65(1) and (4) have been amended to include the required licensing of persons selling tobacco products at retail. Prior to sale, a license must first be obtained from the clerk of the city, village or town wherein such privilege is sought to be exercised. Every licensed retailer is also now required to keep complete and accurate records of all purchases and receipts of tobacco products. Such records must be

retained on the licensed premises for a period of two (2) years from the date of invoice in sequence and in order; they must be available for inspection at all reasonable hours by authorized state and local law enforcement officials.

14. Reduce Cigarette Stamper's Discount (Amend s. 139.32(5), effective July 2, 1983.)

The discount available to cigarette distributors which purchase and affix cigarette tax indicia will be reduced from 2.1% to 2.0% of the face value of the indicia purchased.

H. OTHER

1. Time Period for Making Assessments - Two Years After Federal Determination Becomes Final (Amend s. 71.11(21)(g)2, effective July 2, 1983.)

Section 71.11(21m) currently provides that if the amount of federal taxable income is changed by the Internal Revenue Service, or the taxpayer files an amended return with the Internal Revenue Service or another state, and information on the amended return or the change by the Internal Revenue Service affects the amount of Wisconsin income reportable or tax payable, the taxpayer is required to furnish such information to the Department of Revenue within 90 days after the final determination by the Internal Revenue Service or within 90 days after filing the amended return.

As a result of the amendment to s. 71.11(21)(g)2, if a taxpayer does not furnish the required information to the department as provided in s. 71.11(21m), the department may make an assessment against the taxpayer within two years after the date when the federal determination becomes final or within ten years after the date on which the tax return was filed, whichever is later. (Underlined part is new.)

2. Inmates Withholding and Wage Statements (Create s. 71.20(13m), effective July 2, 1983.)

The Department of Health and Social Services will not be required to withhold Wisconsin income taxes from wages paid to inmates working in a state prison. Also, that department will not be required to file wage statements (W-2's) with the Department of Revenue for any inmate whose wages are \$2,000 or less in the year.

3. State and Federal Equal Priority In Creditor Actions (Repeal s. 128.17(1)(c) and amend s. 128.17(1)(e), effective July 2, 1983.)

Wisconsin will be given equal priority with the United States government in creditor actions such as bankruptcies.

4. Repeal Escrow Fund (Repeal s. 71.55, effective July 2, 1983.)

The Peoples Escrow Fund, which was enacted in Chapter 1, Laws of 1979, to provide a rebate to taxpayers if the amount in the fund exceeded a certain level, will be repealed.

5. Access to Tax Returns - Legislative Fiscal Bureau (Create s. 71.11(44)(c)10, effective July 2, 1983.)

Employees of the Legislative Fiscal Bureau may have access to Wisconsin tax returns, to the extent that the Department of Revenue deems the examination necessary for Legislative Fiscal Bureau employees to perform their duties under contracts or agreements between the department and the bureau relating to the review and analysis of tax policy and the analysis of state revenue collections.

6. Withholding Tables Adjusted (Amend s. 71.20(2m), effective July 2, 1983.)

Section 71.20(2m) is amended to provide the following:

- (a) The requirement to adjust the withholding tables annually on January 1, 1983, 1984 and 1985 is eliminated, however, the Department of Revenue will still be required to adjust the tables "from time to time" to reflect changes in income tax rates, surtax or changes in the income tax brackets.
- (b) On January 1, 1986 and each January 1 thereafter the Department will be required to adjust the withholding tables to reflect changes in the income tax brackets resulting from indexing under s. 71.09(2), provided the indexing adjustment is 4% or more.

7. Withholding on Pensions (Create s. 71.20(11m), effective January 1, 1984.)

If a recipient of a pension furnishes written notification to the payor of a pension that he or she desires to have Wisconsin income tax withheld from the pension, the payor must withhold in accordance with the withholding tables or such amount that the person designates to the payor. The amount withheld from any pension payment may not be less than \$5.00. For purposes of s. 71.20(11m), "pension" includes any retirement payment plan.