

WISCONSIN TAX BULLETIN

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**Wisconsin Department of
Administration
Document Sales**
P.O. Box 7840
Madison, WI 53707
Annual cost - \$5.25

**JANUARY 1984
NUMBER 35**

Published by:
Income, Sales, Inheritance and
Excise Tax Division
Wisconsin Department of Revenue



REMINDER OF MAJOR LAW CHANGES FOR 1983

Listed below are some of the major changes for 1983 that relate to income tax, corporation franchise/income tax, homestead credit and farmland credit.

For information about other new laws enacted in 1983 pertaining to these taxes and credits, see *Wisconsin Tax Bulletin* Number 33 (July, 1983 issue).

INDIVIDUAL INCOME TAXES

1. Update Internal Revenue Code Reference for 1983 Tax Year. For the 1983 tax year individuals, estates and trusts will use the Internal Revenue Code in effect on December 31, 1982 with the following exceptions.

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

- Deduction from gross income allowed two-earner married couples under Section 221 of the IRC.
- Exclusion for public utility dividends which are reinvested in the common stock of the utility as provided under Section 305(e) of the IRC.
- Charitable contribution deductions to persons who do not claim itemized deductions. This deduction is allowed under Section 170 (i) of the IRC.
- Exclusion for interest from an "All-Savers" certificate as provided under Section 128 of the IRC.
- The incentive stock option provisions provided under Section 422A of the IRC.

In addition to the above differences, Wisconsin and federal law for 1983

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will continue to differ with respect to the following items:

- 60% of long-term capital gains will be taxed for Wisconsin (only 40% of such gains are taxed for federal purposes).
- Child care expenses continue to be allowed as an itemized deduction for Wisconsin.
- Political contributions continue to be allowed as an itemized deduction for Wisconsin.
- The foreign earned income exclusion which was allowed to persons who worked abroad, as provided by the IRC as of December 31, 1977, continues to apply for Wisconsin. (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.)

The provisions of the following federal laws enacted during 1983 will apply for Wisconsin:

- Public Law 97-424 which provides for business expense deductions for certain conventions held on cruise ships.
- Public Law 97-448, the Technical Corrections Act of 1982.
- 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.
- Public Law 98-4 relating to the income tax treatment for agricultural commodities received under the 1983 payment-in-kind (PIK) program.

2. Income Tax Surtax for 1983 and 1984. An income tax surtax of 10% will be imposed on individuals, estates and trusts for the 1983 tax year. The 10% surtax will also be imposed on the minimum tax.

3. Property Tax/Rent Credit—Changed from 12% to 10% and Limited to Principal Dwelling. For 1983 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% for 1982).

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.

4. Filing Requirements for Dependents with Unearned Income Changed. Dependents with unearned income (e.g., interest, dividends) will be required to file a 1983 Wisconsin income tax return if their unearned income is \$1,000 or more.

CORPORATION FRANCHISE/INCOME TAXES

1. Surtax of 10% for 1984. A surtax of 10% is added to the franchise/income tax payable by corporations for the tax year 1983.

2. Disallow ACRS Fast Write-Off of Corporate Out-Of-State Property and Utility Property. The federal accelerated cost recovery system (ACRS) is not 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 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) es-

tablishing 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.)

3. Declaration of Estimated Tax Payment Requirements and Penalties Changed. 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:

— 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).

— 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.

HOMESTEAD CREDIT

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

2. Definition of household income changed. The following items must be included in household income even though excluded or deducted in computing adjusted gross income for income tax purposes:

- Capital gain exclusions (40% of long-term capital gains for 1983).
- Gain on sale of principal residence excluded from adjusted gross income under the one-time exclusion available to persons age 55 and over (section 121, Internal Revenue Code).
- Dividend exclusions (\$100 per person).
- Deductions for contributions to individual retirement accounts (IRA's) and Simplified Employee Pension plans (SEP's).
- 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.

3. Property taxes increased to \$1,100. The amount of property

taxes or rent constituting property taxes for homestead credit purposes 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%. Claimants will be allowed 20% of rent paid for occupancy as "rent constituting property taxes accrued".

5. Definition of "property taxes accrued" changed. Property taxes on homesteads that are part of a multi-purpose (part business, part residence) or multidwelling (part rental, part residence) building are limited to the residence portion of the property. The taxes on the building and up to one acre of land are multiplied by the percentage of the building used as a residence to determine the personal residence portion of the property taxes. Claimants with homesteads that are part of a farm may claim property taxes on the homestead and 35 acres adjoining it, including all improvements on this same 35 acres.

FARMLAND PRESERVATION CREDIT

1. Definition of "agricultural use" and "gross farm profits" changed. The definition of "agricultural use" will include placing land in federal programs in return for payments-in-kind (PIK). 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.

2. The first \$25,000 of farm depreciation expenses allowed. In computing household income, the farm depreciation in excess of \$25,000 and all nonfarm depreciation may not be deducted. (For 1982, the first \$25,000 of depreciation expenses were allowed, regardless of whether the expenses were related to the farm or other property.)

3. Definition of household income changed. The following items must be included in household income even though excluded or deducted in computing adjusted gross income for income tax purposes:

- Capital gain exclusions.
- Gain on sale of principal residence excluded by persons age 55 and over.
- Dividend exclusions.

- Deductions for contributions to IRA's and SEP's.
- 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.

IRS STANDARD MILEAGE RATE APPLIES FOR WISCONSIN

The optional standard mileage rate specified by the IRS for computing business automobile expenses for 1983 also applies for Wisconsin. The rate is 20.5¢ for the first 15,000 business miles driven in an auto that is not fully depreciated. After 15,000 miles of business use in one year and for all mileage on a fully depreciated auto, the rate is 11¢ per mile. A rate of 9¢ per mile which is used to calculate auto expenses for charitable, medical and moving expense deductions for federal purposes also applies for Wisconsin for 1983.

Note: The IRS increased the standard mileage rate from 20¢ to 20.5¢ after the 1983 Wisconsin Homestead Credit and Farmland Preservation Credit forms were printed. Although the instructions for these 1983 forms refer to a mileage rate of 20¢ per mile, the new rate of 20.5¢ per mile should be used.

NEW TAX LAWS ENACTED IN SPECIAL SESSION

Eight new laws relating to taxes administered by the ISI&E Division were enacted by the legislature during the special session in October, 1983. Following are brief descriptions of these new laws.

INCOME AND FRANCHISE TAXES

1. Franchise/Income Tax Not Imposed On Certain Foreign Corporations (1983 Wisconsin Act 89, amend 71.01(1) and (2), create 71.01(2m), effective for 1983 tax year and thereafter.)

Beginning with the 1983 tax year, a foreign corporation may do business, exercise its franchise and own property in Wisconsin to the limited extent referred to in the following activities listed below, in addition to those activities permitted under P.L. 86-272, without subjecting itself to the imposition of the Wisconsin income or franchise tax in s. 71.01(1) and (2).

— The storage for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation of its tangible personal property and the delivery of its tangible personal property to another person in Wisconsin when such storage and delivery is for fabricating, processing, manufacturing or printing by that other person in Wisconsin.

— The storage for any length of time in Wisconsin in or on property owned by a person other than the foreign corporation, and the shipment or delivery outside Wisconsin by another person in Wisconsin, of the entire amount of the foreign corporation's tangible personal property fabricated, processed, manufactured or printed in Wisconsin.

— If the foreign corporation is a publisher, the purchase from a printer of a printing service or of tangible personal property printed in Wisconsin for the publisher and the storage of the printed property is subsequently resold or delivered in Wisconsin or shipped or delivered outside Wisconsin.

2. Milk Assessments and Refunds (1983 Wisconsin Act 92, nonstatutory provision — section 17(3), effective November 17, 1983.)

This nonstatutory provision reads as follows:

"(3) MILK ASSESSMENTS AND REFUNDS. For purposes of computing taxes under Chapter 71 of the Statutes, assessments (deductions) under 7 USC 1446(d)(3) are allowable as a business expense deduction in the taxable year when they are paid or are accruable, if the amount deducted is included in gross income; and refunds of amounts deducted under 7 USC 1446(d)(3) are income in the taxable year when they are received or are accruable."

This provision clarifies the Wisconsin tax treatment for both individuals

and corporations of the assessments and refunds under federal law 7 USC 1446(d)(3).

EXCISE TAXES

3. Motor Fuel Tax; Liability (1983 Wisconsin Act 37, amend s. 78.07 (1)(b), effective November 1, 1983.)

Motor fuel tax will be paid by a licensed wholesaler when the product is unloaded into the wholesaler's storage facilities or delivered into the storage facilities of one of the wholesaler's customers. In addition, there is no longer a 4,000 gallon minimum for tax-free withdrawal of motor fuel from a Wisconsin terminal by a licensed wholesaler.

4. Unlawful Possession Of Unstamped Cigarettes; Penalties (1983 Wisconsin Act 63, amend s. 139.44(8)(a) and (b), create s. 139.44(8)(c), effective November 3, 1983.)

The maximum penalties for unauthorized possession of unstamped cigarettes are increased as follows: If the number of cigarettes does not exceed 6,000 (formerly, 20,000), a fine of \$200 or 6 months' imprisonment, or both; if the number of unstamped cigarettes is over 6,000 but not 36,000 (formerly, over 20,000), a fine of \$1,000 or imprisonment for not more than one year, or both; if over 36,000, a fine of \$10,000 or 2 years' imprisonment, or both.

5. Beer Wholesalers And Brewers - Furnishing And Servicing Beer Tap Equipment (1983 Wisconsin Act 67, amend s. 125.33(1)(c)4 and repeal and recreate s. 125.33(1)(c)3, effective November 3, 1983.)

This law removes the limitation on equipment and service of \$25 per year per beer tap that a beer wholesaler or brewer could furnish to a Class B beer licensee (on-premises consumption) or campus. New law provides that the wholesaler or brewer can sell equipment and service at fair market value and must charge the same rate to all licensees.

6. Beer Wholesalers And Brewers - Furnishing Things Of Value To Retailers Licensed For On-Premises Consumption (1983 Wisconsin Act 68, repeal 125.33(1)(c)1 and 2; renumber 125.33(1)(d) to (f), (2) and (3); renumber and amend 125.33(1)(c)(intro.) and (3) to (10); and create 125.33(2)(a) to (c), (3)(ti-

tle), (4)(title) and (5)(title), effective November 3, 1983.)

Beer wholesalers and brewers are authorized to provide things of value to Class B licensees (on-premises consumption) and campuses as follows: Wholesalers and brewers may provide signs, clocks and/or menu boards free of charge to Class B licenses up to an aggregate value of \$150. Wholesalers and brewers may sell, at fair market value, such items to Class B licensees without limitation. Wholesalers and brewers must issue invoices or credit memos covering each item given or sold. Invoices must be retained by the Class B licensee and made available to the department for inspection upon request.

Wholesalers and brewers may give beer tap knobs and paper or cardboard signs to Class B licensees without limit.

Wholesalers and brewers may sell, at fair market value, miscellaneous advertising material, nonmechanical coolers and supply items used in the consumption of food or alcohol beverages. Items in these categories include coasters, napkins, menus, glasses, pitchers, trays, lights, lamps, etc.

7. Liquor Manufacturers And Wholesalers - Furnishing Things Of Value To Retailers Licensed For On-Premises Consumption (1983 Wisconsin Act 69, create s. 125.69(2)(e), effective November 3, 1983.)

Liquor manufacturers, rectifiers and wholesalers are authorized to give, lend, lease or sell wine lists or wine menus to Class B licensees and campuses.

8. Alcohol Beverage Licensees And Permittees - Federal Tax Stamp (1983 Wisconsin Act 72, repeal s. 125.04(7), effective November 3, 1983.)

This law repeals the requirement that an applicant for a license or permit to sell alcohol beverages provide proof of having applied for a federal special tax stamp.

MAILING OF 1983 CORPORATE TAX FORMS

Corporations with taxable years ending July, 1983 through January, 1984 were mailed 1983 corporate franchise/income tax booklets in late 1983. Corporations with fiscal years

ending February, 1984 through June, 1984 will be mailed 1983 booklets in early 1984.

Three types of corporation franchise/income tax booklets are available for 1983 — Form 4, Form 5 and Form 5A. The Form 4 booklet contains a Form 4 and supporting schedules, Form 4S (relating to Tax-Option (S) Corporations), Form 4U (Underpayment of Estimated Tax by Corporations) and instructions for these forms. Form 4 is the corporate "long form" and can be used by any corporate taxpayer. Corporations reporting under the separate accounting method *must* use Form 4. Generally only multi-state corporations who filed a 1982 Form 4 will be mailed the Form 4 booklet.

The Form 5 booklet contains a Form 5, Form 4S, Form 4U, Form BL (relating to business loss) and instructions. Form 5 (the corporate "short form") can be used by all corporate taxpayers except those that determine their Wisconsin net income by the separate accounting method. Corporations operating 100% in Wisconsin will be mailed the Form 5 booklet.

The Form 5A booklet contains a Form 5, Form 4B, Form 5S, Form 4U and instructions. Multi-state corporations that filed a 1982 Form 5 will be mailed this booklet.

NOTE: Form 4-ES for 1984 is not included in the 1983 corporate booklets. Declaration forms will automatically be mailed to all corporations that filed a Form 4-ES and made declaration payments for 1983. A single mailing will provide all 1984 declaration forms (including 4 pre-addressed payment vouchers) and instructions. The 1984 declaration forms will be mailed at least 4 weeks before the due date of the corporation's first installment payment.

The federal Subchapter S Revision Act of 1982 (P.L. 97-354) made changes to the eligibility rules for Subchapter S status and the rules relating to the treatment of income, losses, distributions and terminations of S corporations for tax years beginning after December 31, 1982. Wisconsin does not follow all of the federal law changes. At the time the Wisconsin corporation forms were printed, the federal S corporation return, Form 1120S, was not available. After now reviewing Form 1120S, it has been determined that Wisconsin

Form 5 or 5A should not be used by Tax-option (S) corporations.

In late January, 1984 a copy of publication 102, Wisconsin Tax Treatment Of Tax-Option (S) Corporations And Their Shareholders, will be sent to all corporations which filed as Tax-option (S) corporations for 1982. This publication explains the Wisconsin tax treatment for tax years beginning after December 31, 1982. All Tax-option (S) corporations should file Wisconsin Form 4 for 1983 and follow the instructions in this publication. A Wisconsin Form 4 can be obtained from any Department office.

PERSON CONVICTED OF FILING FRAUDULENT RETURNS

Richard E. Ledin of Iron River, Wisconsin was ordered to serve six years probation for criminal violations of Wisconsin state income tax laws. Under the conditions of probation, Ledin must pay all income taxes, penalties and interest due for the years 1974, 1975 and 1976, file state income tax returns for each of the years 1977 through 1982 and pay the tax, penalties and interest due for those years. He must also file state income tax returns on time in future years during the period of probation and pay the taxes due. Ledin was charged with three counts of filing false and fraudulent Wisconsin income tax returns for 1974, 1975 and 1976. He was charged with failing to report income in excess of \$70,000 and evading more than \$5,000 in state income taxes. Ledin was found guilty on all three counts by a jury on July 13, 1983.

INFORMATIONAL PUBLICATIONS AVAILABLE

The Department publishes informational material called "publications". These are small pamphlets which provide detailed information about specific areas of Wisconsin tax laws.

For 1983, the following publications may be obtained at any of the department's offices located throughout Wisconsin:

Publication

Number	Publication Title
100	1983 Wisconsin Tax Requirements For Nonresidents
101	1983 Wisconsin Tax Requirements For Part-Year Residents

- 102 Wisconsin Tax Treatment Of Tax-Option (S) Corporations And Their Shareholders
- 103 Reporting Capital Gains And Losses For Wisconsin By Individuals, Estates And Trusts
- 104 Wisconsin Taxation Of Military Personnel
- 105 Adoption Expenses: Wisconsin Tax Benefits For 1983
- 106 Wisconsin Deduction For Child And Dependent Care Expenses
- 107 Combining DISC And Parent Or Affiliated Corporations' Incomes
- 200 How Electrical Contractors Determine Their Wisconsin Sales And Use Tax
- 201 Wisconsin Sales And Use Tax Information
- 300 Alcoholic Beverage Laws Relating To Minors
- 500 Tax Guide For Wisconsin Political Organizations And Candidates
- 501 Field Audit Of Wisconsin Tax Returns
- 503 Wisconsin Farmland Preservation Tax Credit For 1983
- 504 Directory For Wisconsin Department Of Revenue
- 508 Wisconsin Tax Requirements Relating To Nonresident Entertainers

If you have suggestions for additional subjects which you believe should be covered by a publication, submit your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8910, Madison, Wisconsin 53708.

NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A and B, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of December 15, 1983. Part C lists new rules and amendments which have been adopted in 1983. Part D lists new rules and amendments which have been approved by legislative standing committees but are not yet effective. Part E lists emergency rules now in effect.

("A" means amendment, "NR" means new rule, "R" means repealed

and "R & R" means repealed and recreated.)

A. Rules at Legislative Council Rules Clearinghouse

- 11.71 Automatic data processing-NR

B. Rules at Legislative Standing Committees

- 9.08 Cigarette tax refunds to Indian tribes-R&R
- 9.09 Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department-NR
- 11.03 Elementary and secondary schools and related organizations-A
- 11.05(3) Governmental units-A
- 11.65 Admissions-A

C. Rules Adopted in 1983 (in parentheses is the date the rule was adopted)

- 1.001 Definition-A, (10/1/83)
- 1.01 Assessment districts-A, (10/1/83)
- 1.10 Depository bank requirements for withholding tax deposit reports-A, (10/1/83)
- 1.11 Requirements for examination of returns-A, (10/1/83)
- 1.13 Power of attorney-A, (10/1/83)
- 2.03 Corporation returns-A, (10/1/83)
- 2.04 Information returns; forms WT-9, 9b, and 9X for corporations-A, (10/1/83)
- 2.045 Information returns; form 9c for employers of nonresident entertainers, entertainment corporations or athletes-A, (10/1/83)
- 2.05 Information returns, forms 8 for corporations-A, (10/1/83)
- 2.06 Information returns required of partnerships and persons other than corporations-A, (10/1/83)
- 2.081(5) Indexed income tax rate schedule for 1982-NR, (1/1/83)
- 2.085 Claim for refund on behalf of a deceased taxpayer-A, (10/1/83)
- 2.09 Reproduction of income tax forms-A, (10/1/83)
- 2.11 Credit for sales and use tax paid on fuel and electricity-A, (10/1/83)

2.12	Amended income and franchise tax returns-A, (10/1/83)	2.992	Computing 1977 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1976-R, (10/1/83)	11.26	Other taxes in taxable gross receipts and sales price-A, (2/1/83)
2.13	Moving expenses-A, (10/1/83)			11.32(4) and (5)	"Gross receipts" and "sales price"-A, (2/1/83)
2.16	Change in method of accounting for corporations-A, (10/1/83)	4.50	Assignment, use and reporting of Wisconsin state tax number-A, (7/1/83)	11.38	Fabricating and processing-A, (2/1/83)
2.19	Installment method of accounting for corporations-A, (10/1/83)	7.21	Labeling-A, (7/1/83)	11.39	Manufacturing-A, (7/1/83)
2.26	"Last in, first out" method of inventorying for corporations-A, (10/1/83)	7.22	Tied house law; volume and quantity discounts-R, (7/1/83)	11.49	Service station and fuel oil dealers-A, (7/1/83)
2.42	Apportionment method-R, (10/1/83)	7.23	Activities of brewers, bottlers and wholesalers-A, (7/1/83)	11.51	Grocers' guidelist-A, (7/1/83)
2.43	Nonapportionment method-R, (10/1/83)	8.02	Revenue stamps-occupational tax-A, (7/1/83)	11.57	Public utilities-A, (7/1/83)
2.44	Permission to change basis of allocation-A, (10/1/83)	8.11	Reports-A (7/1/83)	11.66	Communications and CATV services-A, (2/1/83)
2.45	Apportionment in special cases-A, (10/1/83)	8.21	Purchases by the retailer-A, (7/1/83)	11.67	Service enterprises-A, (7/1/83)
2.73	Involuntary conversion by corporations-A, (10/1/83)	8.22	Purchases made outside of state-A, (7/1/83)	11.69	Financial institutions-A, (2/1/83)
2.83	Requirements for written elections as to recognition of gain in certain corporation liquidations-A, (10/1/83)	8.35	Interstate shipments-A, (7/1/83)	11.84	Aircraft-A, (7/1/83)
2.87	Reduction of delinquent interest rate under s. 71.13 (1)(b), Stats.-A, (10/1/83)	8.42	Wine containers-A, (7/1/83)	11.85	Boats, vessels, and barges-A, (2/1/83)
2.88	Interest rates-A, (10/1/83)	8.43	Empty containers-A, (7/1/83)	11.87	Meals, food, food products and beverages-A, (7/1/83)
2.89	Penalty for underpayment of estimated tax-A, (10/1/83)	8.66	Merchandise on collateral-A, (7/1/83)	11.93	Annual filing of sales tax returns-A, (2/1/83)
2.92	Withholding tax exemptions-A, (10/1/83)	8.76	Salesperson-A, (7/1/83)	11.96	Interest rates-A, (7/1/83)
2.935	Reduction of delinquent interest rate under s. 71.20 (5)(c), Stats.-A, (10/1/83)	8.81	Transfer of retail liquor stocks-A, (7/1/83)	11.97	"Engaged in business" in Wisconsin-A, (2/1/83)
2.945	Spousal individual retirement contributions-NR, (1/1/83)	8.85	Procedure for apportionment of cost of administration of s. 176.05 (23), Stats.-A, (7/1/83)	11.98	Reduction of delinquent interest rate under s. 77.62 (1), Stats.-A, (7/1/83)
2.95	Reporting of installment sales-A, (10/1/83)	8.86	Tied house law; volume and quantity discounts-R, (7/1/83)	D. Rules Approved By Legislature But Not Effective In 1983	
2.955	Credit for income taxes paid to other states-A, (10/1/83)	9.12	Refunds-military-A, (7/1/83)	11.15	Containers and other packaging and shipping materials-A
2.96	Extension of time to file corporation franchise or income tax returns-A, (10/1/83)	11.001	Definitions and use of terms-A, (2/1/83)	11.16	Common or contract carriers-A
2.98	Disaster area losses-R, (10/1/83)	11.01	Sales and use tax return forms-A, (2/1/83)	11.19	Printed material exemptions-A
2.99	Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974-R, (10/1/83)	11.05(2) and (3)	Governmental units-A, (2/1/83)	11.26	Other taxes in taxable gross receipts and sales price-A
2.991	Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975-R, (10/1/83)	11.08	Medical appliances, prosthetic devices and aids-A, (2/1/83)	11.32(3)	"Gross receipts" and "sales price"-A
		11.10	Occasional sales-A, (7/1/83)	11.48	Landlords, hotels and motels-A
		11.12	Farming, agriculture, horticulture, and floriculture-A, (7-1-83)	11.50	Auctions-A
		11.14	Exemption certificates (including resale certificates)-A, (7/1/83)	11.52	Coin-operated vending machines and amusement devices-A
		11.15	Containers and other packaging and shipping materials-A, (7/1/83)	11.68	Construction contractors-A
		11.16	Common or contract carriers-A, (2/1/83)	E. Emergency Rules Now In Effect	
		11.17	Hospitals, clinics and medical professions-A, (2/1/83)	9.08	Cigarette tax refunds to Indian tribes-R&R, (10/1/83)
				9.09	Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department-NR, (10/1/83)

TAXPAYER ASSISTANCE AVAILABLE

During the 1984 filing season (January through April 16th), the department's auditors and tax representatives are available to answer questions.

In the department's larger offices, assistance is provided on a daily basis (Monday through Friday). Assistance in other offices generally is available on Mondays only, although there are exceptions as noted below.

Offices Providing Daily Assistance

<u>Location</u>	<u>Address</u>	<u>Telephone No.</u>	<u>Hours</u>
* Appleton	265 W. Northland	(414) 735-5001	7:45-4:30
* Eau Claire	718 W. Clairemont	(715) 836-2811	7:45-4:30
* Green Bay	200 N. Jefferson St.	(414) 497-4230	7:45-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
Madison	212 East Washington Ave.	NONE	8:00-4:15
* Milwaukee	819 N. Sixth St.	(414) 224-4000	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Ashland	Courthouse	NONE	10:00-2:00 (a)
Baraboo	1007 Washington	(608) 356-8973	7:45-4:30
Barron	57 S. 4th St.	(715) 537-3621	7:45-4:00
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Cedarburg/Grafton	220 Oak Street	(414) 377-6700	7:45-4:30
Elkhorn	300 S. Lincoln St.	(414) 723-4098	7:45-4:30
Fond du Lac	160 S. Macy St.	(414) 929-3985	7:45-4:30
Hayward	221 Kansas Ave.	(715) 634-8478	8:00-12:00
Hudson	759 Sommer St. No.	(715) 386-8225	7:45-4:30
Janesville	115 S. Franklin	(608) 755-2750	7:45-4:30
* Kenosha	5500 - 8th Ave.	(414) 656-7100	7:45-4:30 (c)
LaCrosse	620 Main	(608) 785-9721	7:45-4:30
Lancaster	237 W. Hickory St.	(608) 723-2641	7:45-4:30
Manitowoc	1314 Memorial Dr.	(414) 683-4152	7:45-4:30
Marinette	Courthouse	(715) 735-5498	9:00-12:00
Marshfield	630 S. Central Ave.	(715) 387-6346	7:45-4:30
Monroe	1220 - 16th Ave.	(608) 325-3013	7:45-4:30
Oshkosh	Courthouse	(414) 424-2100	7:45-4:30
Park Falls	1114 S. 4th Ave.	(715) 762-2160	7:45-11:45
* Racine	616 Lake Ave.	(414) 636-3711	7:45-4:30 (c)
Rhineland	Sunrise Plaza	(715) 362-6749	7:45-4:30
Shawano	1456 E. Green Bay St.	(715) 526-5647	7:45-4:30
Sheboygan	504 S. 14th St.	(414) 459-3101	7:45-4:30
Superior	Courthouse	(715) 394-0204	8:00-4:30
Tomah	City Hall	(608) 372-3256	8:30-12:00
Watertown	415 E. Main St.	(414) 261-7700	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 521-5310	7:45-4:30 (b)
Waupaca	201½ S. Main St.	(715) 258-9564	7:45-11:45
Wausau	Courthouse Annex	(715) 847-5380	7:45-4:30
West Bend	429 Walnut St.	(414) 338-4730	7:45-4:30
Wisconsin Rapids	1681 Second Ave. S.	(715) 421-0500	7:45-4:30

(a) Tuesdays only

(b) Monday through Wednesday

(c) Monday and Tuesday

* Open during noon hour

REPORT ON LITIGATION

This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.

The last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: 1) "the department appealed"; 2) "the department has not appealed but has filed a notice of nonacquiescence" or 3) "the department has not appealed" (in this case the department has acquiesced to Commission's decision).

The following decisions are included:

INCOME AND FRANCHISE TAXES

Argyle Industries, Inc. vs. Wisconsin Department of Revenue
 Roman P. Kozicki and Mary B. Kozicki vs. Wisconsin Department of Revenue
 Andrew K. Morris vs. Wisconsin Department of Revenue
 Pabst Brewing Co. vs. Wisconsin Department of Revenue
 Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue
 Ralph H. Schulz vs. Wisconsin Department of Revenue
 Peter Tubic vs. Wisconsin Department of Revenue

SALES/USE TAXES

Alioto's Restaurant, Inc. vs. Wisconsin Department of Revenue
 Milwaukee Solvents and Chemicals Corp. vs. Wisconsin Department of Revenue
 Rice Insulation, Inc. vs. Wisconsin Department of Revenue

GIFT TAX

Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Argyle Industries, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 25, 1983). The issue in this case is whether or not the taxpayer is entitled to a credit under s. 71.043(2),

Wis. Stats., for sales and use tax paid on the purchase of fuel and electricity consumed in manufacturing tangible personal property in the state.

The taxpayer sells "remanufactured" automobile parts, including water pumps, master cylinders and calipers. The company's automobile parts are made on an assembly line basis from component parts. A water pump, for example, has seven or eight component parts. Their trade names are bearings, seals, gaskets, backplates, impellers, castings and hubs. None of these component parts has the same name as the finished product. The taxpayer's automobile parts are assembled from a pool of interchangeable component parts. Some of the component parts are new, while other component parts have been previously used. In a water pump, for example, the gaskets, seals, and bearings will always be new component parts. In addition, approximately one-half of the impellers and hubs will be new component parts, and a quarter of the backplates and castings will be new component parts. The company acquires new component parts from other manufacturers. Used component parts are acquired by purchasing or exchanging for nonfunctional automobile parts (known as "cores"), disassembling these cores, and reprocessing the cores' useable used component parts to original equipment specifications for placement in taxpayer's inventory pool. Nonusable component parts are sold as scrap or thrown away. The company's customers have no use for the cores in the condition in which the company obtains them.

The taxpayer uses machinery in its production process. After assembling the components into a remanufactured automobile part, the automobile part meets or exceeds the original manufacturer's specifications for that part. The company then sells the final product (a new automobile part) to wholesale distributors in competition with original equipment manufacturers.

The Commission ruled that during the period under review, June 30, 1976 through December 31, 1979, the taxpayer did produce, by machinery, a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing, so as to come within the statutory definition of

manufacturing in s. 77.51(27), Wis. Stats. Therefore, the taxpayer is entitled to franchise tax credit for sales and use tax paid on the purchase of fuel and electricity under s. 71.043, Wis. Stats.

The department has not appealed this decision.

Roman P. Kozicki and Mary B. Kozicki vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 25, 1983). The taxpayers each hold a 50% common stock interest in Big Balsam, Inc., a Wisconsin corporation which they organized in 1970. This corporation has held Subchapter S status since at least 1976. The taxpayers claimed carry through losses from Big Balsam, Inc. on their 1979 and 1980 Wisconsin individual income tax returns.

In 1977, Roman P. Kozicki and his two sons, Howard Kozicki and James Kozicki, established a partnership and commenced an excavation business known as K & K Excavating. On August 4, 1977, Big Balsam, Inc. borrowed \$66,450.48 from American National Bank of Green Bay, Wisconsin. This loan was secured by a mortgage and mortgage note (calling for interest at 8.5%) on lands owned by Big Balsam, Inc., located in Oconto County. On the same date, Big Balsam, Inc. re-loaned the \$66,450.48 to K & K Excavating. The loan transaction was handled in this manner because Howard Kozicki and James Kozicki, and/or K & K Excavating, were unable to obtain the direct financing required to purchase the heavy equipment necessary to begin their excavating business.

During 1979 and 1980, K & K Excavating made interest payments on the loan directly to Big Balsam, Inc. which, in turn, made the required interest payments to American National Bank of Green Bay. On its 1979 corporate income tax return, Big Balsam, Inc. reported total income (gross receipts) of \$8,008.56, of which \$7,726.81 was reported as interest received. On its 1980 corporate income tax return, Big Balsam, Inc. reported total income (gross receipts) of \$12,612.48, of which \$5,902.82 was reported as interest received.

The department terminated the Subchapter S election of Big Balsam, Inc. under the 20% passive investment income provision of Internal Reve-

nue Code Sec. 1372(e)(5). Big Balsam, Inc. alleges that it had no interest (passive income) during the years in question, because the interest it received from K & K Excavating was merely "passed through" to the American National Bank of Green Bay.

The Wisconsin Tax Appeals Commission ruled that Big Balsam, Inc. received interest income in 1979 and 1980, and that interest income constituted "passive investment income" as defined in Sec. 1372(e)(5)(c), IRC (1954). In both 1979 and 1980, Big Balsam, Inc. had gross receipts, more than 20% of which were derived from passive investment income (interest). Interest expenses cannot be netted against interest income to determine gross receipts from interest within the meaning of Sec. 1372(e)(5)(B), IRC (1954).

The department acted properly in terminating the Subchapter S election of Big Balsam, Inc. under the provisions of Sec. 1372(e)(5), IRC and in disallowing the carry through losses of Big Balsam, Inc. claimed by the taxpayers on their 1979 and 1980 Wisconsin individual income tax returns.

The taxpayers have not appealed this decision.

Andrew K. Morris vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 26, 1983). On February 15, 1982, the department issued a Notice of Amount Due for the years 1975 to 1978 in the total amount of \$751.64 including tax and interest. The assessment for the years 1975 and 1976 was based upon a Federal Audit Report. Under the Federal Audit Report, certain expenses paid by the corporation, Andrew K. Morris & Associates, Inc., were disallowed and construed to be preferential dividends. These amounts were added into the taxpayer's taxable income for the years 1975 and 1976. The department had received the Federal Audit Report in January, 1980 but did not issue its assessment until February 15, 1982. The taxpayer did not notify the department of the federal changes within 90 days. The taxpayer does not dispute the basis of

the assessment for the years at issue but objects to the imposition of interest at the rate of 12% for the six years arguing that the department sat for two years after receipt of the Federal Audit Report before making an assessment.

By enactment of Chapter 20, section 1090n, Laws of 1981, the rate of interest in assessing additional taxes imposed under s. 71.09(5)(a), Wis. Stats., was increased from 9% to 12%. Chapter 20, section 2203(45)(g), Laws of 1981 provided that "the treatment of sections 71.09(5) . . . of the statutes by this act first applies to all determinations, assessments or other actions made by the department of revenue on August 1, 1981, regardless of the taxable period to which they pertain."

The Wisconsin Tax Appeals Commission held that pursuant to s. 71.11(21)(g), Wis. Stats., because the taxpayer failed to report federal changes to the years at issue, the department has ten years from the date when the tax return was filed within which to make an assessment. The department's assessment was issued within the statute of limitations imposed under s. 71.11(21)(g), Wis. Stats., and was proper. The imposition of interest under s. 71.09(5), Wis. Stats., is mandatory, and the Commission has no authority to abate interest imposed. Pursuant to s. 71.09(5)(a), as amended by Chapter 20, section 1090n, the interest rate of 12% was properly applied for the period at issue.

The taxpayer has not appealed this decision.

Pabst Brewing Co. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 25, 1983). Taxpayer is Pabst Brewing Company, a corporation having its principal offices and place of business located at 917 West Juneau Avenue, Milwaukee, Wisconsin. Taxpayer manufactures fermented malt beverages ("goods") and sells them to wholesalers, both within and outside Wisconsin.

During the tax years 1973 through 1977, taxpayer made certain sales

("dock sales") of fermented malt beverages ("goods") to purchasers located outside of Wisconsin ("out-of-state purchasers"). All of these out-of-state purchasers, using vehicles either owned or rented by them, picked up the goods at the taxpayer's plant in Wisconsin and transported the goods directly to destinations outside Wisconsin. None of these purchasers used common carriers or contract carriers to pick up and transport the goods. All of the out-of-state purchasers were wholesalers and none of them had "wholesalers' licenses", as required by section 66.054(6), Wis. Stats.

The taxpayer is within the jurisdiction for income tax purposes of the destination states to which these goods are transported by the purchasers. It is a corporation doing business within and without Wisconsin and is entitled to the apportionment of income to Wisconsin pursuant to s. 7.07(2), Wis. Stats. For purposes of the apportionment of income to Wisconsin for the tax years 1973 through 1977, pursuant to s. 71.07, Wis. Stats., taxpayer's computation of the sales factor included and aforementioned dock sales in the denominator of said sales factor but not in the numerator thereof, it being taxpayer's position that such sales are not sales in Wisconsin within the meaning and intent of s. 71.07(2)(c)2, Wis. Stats.

On December 4, 1979, the Department of Revenue sent to the taxpayer a Notice of Assessment of Additional Franchise Tax and Interest in the amount of \$962,071.06 for the years 1973 through 1977. The report stated, with respect to the dock sales, that "Sales to distributors located in other states with nexus who send their own trucks to the Wisconsin plant to pick up the products in lieu of direct shipment outside Wisconsin are deemed Wisconsin sales and are includable in the numerator of the sales factor" for purposes of the apportionment of income to Wisconsin.

The dock sales for the years in question were made to wholesalers in the following states and in the following amounts.

	1973	1974	1975	1976	1977
Illinois	\$ 5,658,195	\$ 8,038,251	\$12,564,917	\$13,939,070	\$16,376,150
Iowa	314,538	552,190	1,642,130	2,216,905	3,870,347
Michigan	49,043,823	45,802,343	49,323,053	50,900,495	46,706,437
Minnesota	1,849,498	2,068,116	5,819,596	11,824,523	13,390,217
Montana	21,932	25,883	43,014	53,868	35,563
New York	27,894	22,361	25,199	22,707	6,961
North Dakota	310,866	429,670	747,412	1,182,607	1,400,610
Ohio	<u>9,932,328</u>	<u>11,604,330</u>	<u>12,602,320</u>	<u>12,094,518</u>	<u>9,655,305</u>
TOTALS	\$67,159,074	\$68,543,144	\$82,767,641	\$92,234,693	\$91,441,590

Of the total amount of the above assessment of additional franchise tax and interest due, \$707,729.71 of franchise tax, exclusive of interest, is attributable to the department's inclusion of the dock sales in the total amount of Wisconsin sales for purposes of apportionment of taxpayer's income to Wisconsin.

For additional Findings of Fact, this Commission found as follows: During the years 1973 through 1977, taxpayer filed income or franchise tax returns with Illinois, Minnesota, Montana, North Dakota and New York, in which it allocated dock sales to wholesalers located in said states, for apportionment of income purposes. During the years 1973 through 1977, taxpayer also filed income or franchise tax returns with Iowa, Michigan and Ohio in which they did not allocate dock sales to wholesalers located in those states for apportionment purposes, due to agreements made with the taxing authorities in said states. During the period in issue, the Wisconsin Department of Revenue has consistently treated dock sales picked up in another state by a Wisconsin purchaser as non-Wisconsin sales, for apportionment purposes. Dock sales or pick up sales also occur in other types of businesses. The department's treatment of these sales is the same whether a brewing company or other type of business is involved.

The issue involved in this case is whether dock sales made by taxpayer to purchasers who use their own trucks to take physical possession of goods purchased and to transport said goods directly to out-of-state locations are sales "in this state" and thereby includable in the numerator of the sales factor for purposes of apportionment, under s. 71.07(2), Wis. Stats.

The Commission affirmed the department and concluded that dock sales made by taxpayer to purchasers who pick up the purchased goods in their

own trucks at taxpayer's loading dock and transport said goods to locations outside Wisconsin constitute sales "in this state" within the meaning of s. 71.07(2)(c)2, Wis. Stats., and thereby includable in the numerator of the sales factor pursuant to s. 71.07(2)(c)1, Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.

Production Credit Association of Dodgeville vs. Wisconsin Department of Revenue (Court of Appeals, District IV, July 26, 1983). The issue in this case is the manner in which the taxpayer may compute its addition to bad debt reserves for Wisconsin franchise tax purposes under s. 71.04(9)(b), Wis. Stats. (See WTB #26 for a summary of the Wisconsin Tax Appeals Commission's decision and WTB #30 for the Circuit Court's decision.)

The department contends that the taxpayer's deduction is limited to two-thirds of the amount required to be allocated to the reserve fund under federal law at the end of the fiscal year. Because the taxpayer was required to pay \$47,844.32 into the reserve fund pursuant to federal statute, the department limited the deduction to two-thirds of that amount, or \$31,896.21. The taxpayer maintains that since s. 71.04(9)(b), Wis. Stats., was not enacted until 1967, it should be allowed to deduct a "reasonable" amount under state law in excess of that deducted under federal law to bring the amount in the state fund up to the amount in the federal fund. The taxpayer contends that a "reasonable" amount is two-thirds of one-half percent of the total loans outstanding at the end of 1977, or \$97,398.53.

The Court of Appeals upheld the Circuit Court's decision that the deduction under s. 71.04(9)(b), Wis. Stats., is limited to two-thirds of the amount required under federal statute.

The taxpayer appealed this decision to the Supreme Court. On November 15, 1983, the Supreme Court denied the petition for review.

Ralph H. Schulz vs. Wisconsin Department of Revenue (Court of Appeals, District IV, October 11, 1983. See WTB #31 for a summary of the Circuit Court's decision.) The issue in this case is whether the taxpayer, who is operating on a cash basis, is required to report as income the entitled refund of state income tax withheld and claimed as an itemized deduction in his previous year's tax return. The taxpayer elected not to receive the refund in cash but to apply it as a credit against future income tax liability.

The Court of Appeals affirmed the Circuit Court's decision that the refund must be reported as income in the subsequent year.

The taxpayer appealed this decision to the Supreme Court, which denied his petition for review.

Peter Tubic vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 25, 1983). During the years 1977 through 1979, the taxpayer worked full-time for Sorens Ford and Borden, Inc. Around the middle of 1977, the taxpayer decided to start a private detective agency in Greenfield, Wisconsin, which he called Topaz Investigative Agency. He rented an office at 4810 South 76th Street, in Greenfield, Wisconsin, for approximately the last four months of 1977 for this purpose, but operated his private detective activities out of his home during 1978 and 1979. Sometime in 1979, he closed out his private investigative activities. The department disallowed his losses as an activity not engaged in for profit.

The taxpayer was licensed as a private investigator with the Wisconsin Department of Regulation and Licensing during the years under re-

view. Other than a course in police administration and police science, and a brief stint as a security guard, he had no background or training in law enforcement. Since graduation from high school, he had held numerous jobs, including working as a laborer, a short-order cook, driver, delivery man, machine operator, merchant police security guard, car setup, and salesman. Other than a listing in the telephone book, the taxpayer did not publicly advertise his services as a private investigator. The taxpayer did not have any employees, calls, clients or income from his private investigation activities. His only private investigative efforts were unsolicited efforts on his part to solve various crimes in the Milwaukee area. These efforts were unsuccessful.

The taxpayer claimed the following amount of expenses from his private investigative activities, which are the subject of this dispute:

1977	\$2,300.99
1978	\$1,868.00
1979	\$1,069.01

The Commission found that during the period involved, 1977 through 1979, the taxpayer was not engaged in the private investigative business for profit within the intent and meaning of Sec. 183 of the Internal Revenue Code, and the department acted properly in disallowing the expenses incurred in that activity for each of the years involved.

The taxpayer has not appealed this decision.

SALES/USE TAXES

Alioto's Restaurant, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 20, 1983). During the period under review, the fiscal years ending June 30, 1977 through June 30, 1980, Alioto's Restaurant, Inc. was in the business of selling food and drink to the public for direct consumption on the premises, including private parties and banquets, at their place of business in Wauwatosa, Wisconsin. The issue is whether gratuities added to the sales price of food and drinks sold by the taxpayer in its party and banquet operation are includable in its gross receipts, pursuant to ss. 77.51 (11)(c)2 and 77.52(1), Wis. Stats.

The taxpayer provided parties and banquets for weddings, funerals, retirements and the like. The restaurant's banquet menu contained the following statement of their policy in regard to gratuities: "Prices plus 4% sales tax and customary 15% gratuities". Alioto's manager testified that, up to 50% of the time the customer, not the restaurant, determined the amount of gratuity to be added to its party or banquet bill. In some cases the gratuity exceeded 15%. Tips collected by the taxpayer were normally distributed to its waitresses the day following the party or banquet.

In the audit and assessment under review, the department assessed a sales tax on all party or banquet bills on which a 15% gratuity was in fact added. The department contends that, because the taxpayer has a written policy requiring that a 15% gratuity be added to its party or banquet bill, said gratuity is subject to sales tax under the express language contained in s. 77.51(11)(c)2, Wis. Stats. The taxpayer maintains that because its written policy as stated on its dinner banquet menu was not strictly adhered to, it should not have to pay sales taxes on at least 50% of the bills involved in this proceeding.

The Commission held that the 15% gratuity added to the taxpayer's party and banquet charges during the period under review, pursuant to the taxpayer's written gratuity policy, constitutes "gross receipts", as that term is defined in s. 77.51(11)(c)2, Wis. Stats., and is taxable under the terms of s. 77.52(1), Wis. Stats.

The taxpayer has not appealed this decision.

Milwaukee Solvents and Chemicals Corp. vs. Wisconsin Department of Revenue (Circuit Court of Waukesha County, October 26, 1982). Milwaukee Solvents and Chemicals Corp. is a Wisconsin corporation located in Menomonee Falls, Wisconsin, whose major business is the sale and distribution of solvents, chemicals and containers (i.e., paint cans and 55 gallon drums).

The taxpayer sells all items on a F.O.B. shipping point basis. This is preprinted on shipping and invoice forms. The taxpayer's actual practice is to sell most items at a delivered price where the cost of shipping may or may not be separately stated on the sales invoice. Other items are

sold at a price at the warehouse, a price at the shipping point, or a price at the equalization point, in which case the freight costs may or may not be separately itemized on the invoice to the buyer. The products sold by the taxpayer may be delivered to the buyer's destination by way of the following methods: (a) buyer's pick-up, (b) common carrier freight collect, (c) common carrier freight prepaid, (d) taxpayer's delivery via its vehicle.

The issue in this case is whether the separately stated freight charges on the sales invoice are included in the measure of gross receipts subject to the Wisconsin sales and use tax.

The Circuit Court of Waukesha County held that the freight charges involved are included in the measure of gross receipts, as that term is defined in s. 77.51 (11)(a), Wis. Stats., and thus are subject to sales tax under s. 77.52, Wis. Stats. In addition, the Wisconsin Tax Appeals Commission's action violated no constitutional or statutory provisions or similar right of the taxpayer.

Milwaukee Solvents and Chemicals Corp. appealed the Circuit Court's decision. The taxpayer's appeal was dismissed due to the taxpayer's failure to file a timely appeal. The Court of Appeals, District II, concluded that the thirty-day appeal period set forth in s. 227.21, Wis. Stats., applied in this case. The Supreme Court on June 14, 1983 denied the taxpayer's petition for review of the Court of Appeal's decision.

Rice Insulation, Inc. vs. Wisconsin Department of Revenue (Court of Appeals, District IV, October 10, 1983). The issue in this case is whether Rice Insulation Company is a "contractor" or "subcontractor" for purposes of s. 77.51(18), Wis. Stats., and is liable for use tax on insulation materials. (See WTB #20 for a summary of the Tax Appeals Commission's decision.)

Rice Insulation Company agreed to provide a tax-exempt hospital with insulation materials and the labor to install such materials. The taxpayer purchased the materials for this job without tax, claiming they were purchased for resale by furnishing resale certificates to the suppliers.

The Court of Appeals upheld the Circuit Court's decision that the taxpayer was a subcontractor who

purchased and was the consumer of tangible personal property used by it in real property construction activities, and use tax applies to the sale of the materials used by it.

The taxpayer has not appealed this decision.

GIFT TAX

Gilson Medical Electronics, Inc. and Warren E. Gilson vs. Wisconsin Department of Revenue (Court of Appeals, District IV, October 11, 1983). Gilson Medical Electronics, Inc. and Warren Gilson appealed a Circuit Court judgment affirming a gift tax assessment against the corporation by the Wisconsin Tax Appeals Commission (see WTB #30). The Commission determined that Warren Gilson's conveyance of real property and improvements to the corporation was a gift taxable to the

corporation. The Gilsons contend that the tax should be imposed against the corporate shareholders when, as here, a closely held corporation is involved.

In Wisconsin, a gift to a corporation is taxable to the corporation. Section 72.75(1)(a), Wis. Stats., provides that "[a] tax is imposed upon any transfer to any person . . . when: [t]he transfer is by gift from a donor who . . . was a resident of this state." Section 72.01(10), Wis. Stats., defines "person" as including "all partnerships, associations, corporations and municipalities." All corporations include closely held corporations. Because the Wisconsin gift tax statute is not patterned after the federal gift tax statute, 26 U.S.C. § 2501 (a)(1) (1976), there is no need to make Wisconsin law consistent with federal law. 26 C.F.R. § 25.2511-1(h)(1) (1983) pro-

vides that a gift to a corporation is a gift to the corporation's shareholders. There is, however, a critical difference between the federal gift tax and the Wisconsin gift tax. The federal tax is imposed on the donor, based on the total amount of taxable gifts made by that donor, while the state tax is imposed upon the donee. The Gilsons would gain a substantial Wisconsin gift tax advantage if they were permitted to split there one large transfer to the corporation into several small transfers to the shareholders.

The Court of Appeals affirmed the judgement of the Circuit Court because Wisconsin law unambiguously requires that the gift be taxed to the corporation.

The taxpayers have not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

INDIVIDUAL INCOME TAXES

1. Income Tax Filing Requirements—Marital Status
2. Prorating Deductions and Personal Exemption Credits—Fraction of Wisconsin Adjusted Gross Income to Federal Adjusted Gross Income Includes Zero or a Negative Amount
3. Sale of Reinvested Public Utility Stock Dividends
4. Wisconsin Basis of Investment Credit Property
5. Wisconsin Tax Treatment of Incentive Stock Options

CORPORATION FRANCHISE/INCOME TAXES

1. Corporate Depreciation for 1983 and Thereafter on Investment Credit Property

SALES/USE TAXES

1. Dentists' Purchases and Sales
2. Dry Cleaners' and Laundries' Purchases
3. Mobile Manufacturing Units

HOMESTEAD CREDIT

1. Payments in Lieu of Property Taxes by Exempt Organizations

EXTENSIONS OF TIME TO FILE INCOME, FRANCHISE, SALES & USE AND OTHER RETURNS

INDIVIDUAL INCOME TAXES

1. Income Tax Filing Requirements — Marital Status

Facts: Under s. 71.10(2)(a)5, Wis. Stats., Wisconsin individual income tax filing requirements are determined based on age, gross income, marital status and residency. The following chart illustrates 1983 filing requirements for full-year residents:

Marital Status	Age as of December 31, 1983	Gross Income (or total gross income of husband & wife)
Single	Under 65	\$3,200 or more
	65 or older	\$4,200 or more
Married	Both under 65	\$5,200 or more
	One spouse 65 or older	\$6,200 or more
	Both spouses 65 or older	\$7,200 or more

Part-year and nonresidents with 1983 Wisconsin gross income of \$2,000 or more must file, regardless of age or marital status.

Dependents with unearned income, such as interest or dividends, must file if their unearned income for 1983 is \$1,000 or more.

During the taxable year a taxpayer's marital status may change from married to single, or single to married. For purposes of income tax filing requirements, a taxpayer's marital status is determined as of the last day of the taxable year (unless the taxpayer's spouse died during the year, in which case the determination is made at the time of death).

A taxpayer is considered married for purposes of 1983 income tax filing requirements in the following situations:

1. If on December 31, 1983 the taxpayer is:

- a) Married and living together as husband and wife.
- b) Married and living apart from spouse but not legally separated under a decree of divorce or separate maintenance.
- c) Separated under an interlocutory (not final) decree of divorce.
- d) Not married but spouse died during 1983.

A taxpayer is considered single for 1983 in the following situations:

1. Taxpayer not married during the entire year 1983.
2. Taxpayer legally separated under a decree of divorce or separate maintenance as of December 31, 1983.
3. Taxpayer's divorce finalized during 1983 and taxpayer did not remarry in 1983.

Question: What is the marital status of each of the following taxpayers for the year 1983?

1. Taxpayer's spouse died on January 5, 1983. Taxpayer did not remarry in 1983.
2. Taxpayer separated from spouse during 1983. (Taxpayer not separated under decree of divorce or separate maintenance.) Taxpayer's divorce is finalized in 1984.
3. Taxpayer separated from spouse under decree of divorce as of December 31, 1983.
4. Taxpayer separated from spouse under separate maintenance as of December 31, 1983.
5. Taxpayer granted a divorce on December 15, 1983 under the no-fault divorce law.

Answer: The first two taxpayers are considered married for purposes of 1983 filing requirements; the taxpayers described in numbers 3, 4 and 5 are considered single. An individual separated under a decree of divorce or separate maintenance is considered single. Also, under the no-fault divorce law, divorces are final immediately upon being granted by the court.

2. Prorating Deductions and Personal Exemption Credits - Fraction of Wisconsin Adjusted Gross Income to Federal Adjusted Gross Income Includes Zero or a Negative Amount

Background: Part-year residents and nonresidents are required to prorate their itemized deductions, standard deduction and personal exemption credits on their Wisconsin income tax return. Single persons who are part-year residents or nonresidents must prorate their itemized deductions and standard deduction by a fraction, the numerator of which is the person's Wisconsin adjusted gross income and the denominator is federal adjusted gross income. This fraction is then multiplied by the total itemized deductions or standard deduction claimed by the single person.

For married persons who are both part-year residents or nonresidents, the numerator is the combined Wisconsin adjusted gross income of both husband and wife and the denominator is the combined federal adjusted gross income of both husband and wife. The fraction is then multiplied by the total itemized deductions or standard deduction claimed by husband and wife.

The proration of personal exemption credits for *nonresidents* is based on the same fraction (as mentioned in the preceding paragraphs) for single persons and married persons. Part-year residents must prorate personal ex-

emption credits on the basis of the number of months they were a resident of Wisconsin during the taxable year.

The purpose of this tax release is to explain how itemized deductions, the standard deduction and personal exemption credits should be prorated when the numerator (Wisconsin adjusted gross income) or denominator (federal adjusted gross income) of the fraction includes zero or a negative amount.

Law Relating to Proration: Section 71.02(2)(f), Wis. Stats. - Itemized Deductions - "'Itemized deductions' means deductions from federal adjusted gross income allowable under the internal revenue code in determining federal taxable income, other than the federal standard deduction, low-income allowance and deductions for personal exemptions; but with respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state in the calendar year 1972 or corresponding fiscal year or thereafter, 'itemized deductions' are limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except for married persons 'itemized deductions' are limited to such fraction of the amount so determined as combined Wisconsin adjusted gross income is of combined or joint federal adjusted gross income. In addition, for taxable year 1979 and thereafter, 'itemized deductions' excludes deductions for taxes allowable under section 164 of the internal revenue code. In addition, 'itemized deductions' includes contributions to the community development finance authority under s. 233.03, minus any credit received under s. 71.09(12m)."

Section 71.02(2)(gq)7, Wis. Stats. - Standard Deduction - "With respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state, for the taxable year 1977 and thereafter, the low-income allowance authorized under this paragraph is limited, and for the taxable year 1979 and thereafter, the Wisconsin standard deduction is limited by such fraction of that amount as Wisconsin adjusted gross income is of federal adjusted gross income for unmarried persons, and as combined Wisconsin adjusted gross income is of combined or joint federal adjusted gross income for married persons."

Section 71.09(6p)(d), Wis. Stats. - Personal Exemption Credits - "Beginning with the calendar year 1975 and corresponding fiscal years and thereafter, the deduction for personal exemptions provided for in this subsection shall be limited as follows:

2. With respect to nonresident persons, personal exemptions shall be limited to such fraction of the amount so determined as Wisconsin adjusted gross income is of federal adjusted gross income, except that for married persons personal exemptions shall be limited to such fraction of the amount so determined as combined Wisconsin adjusted gross income is of combined federal adjusted gross income, but the total deduction for all personal exemptions shall not be less than \$5."

How to Determine Proration: The proration of itemized deductions and the standard deduction for part-year residents and nonresidents and the proration of personal ex-

emption credits for nonresidents shall be determined as follows:

1. If both the numerator (Wisconsin adjusted gross income) and denominator (federal adjusted gross income) are both positive amounts, the resulting fraction shall be a positive percentage; however, such percentage may not exceed 100% (see example 1 below).
2. If the numerator (Wisconsin adjusted gross income) is a positive amount and the denominator (federal adjusted gross income) is zero or a negative amount, the resulting fraction shall be 100% (see example 2 below).
3. If the numerator (Wisconsin adjusted gross income) is zero or a negative amount and the denominator (federal adjusted gross income) is either a positive, zero or a negative amount, the resulting fraction shall be zero percent.

The above three situations also apply to married persons who are both nonresidents or part-year residents, except that the numerator would be based on the combined Wisconsin adjusted gross income of both spouses and the denominator would be based on the combined federal adjusted gross income of both spouses.

The five examples that follow illustrate how the proration is determined for married persons. If a single person had identical numerators and denominators as the married persons in these examples, the answers for a single person would be the same as for the married persons.

Examples:

Situation 1: Combined Wisconsin adjusted gross income and federal adjusted gross income are positive amounts.

Facts: Husband and wife are Wisconsin residents for one-half of 1983.

Husband's Wisconsin adjusted gross income (loss)	(\$ 3,000)
Wife's Wisconsin adjusted gross income	10,000
Combined Wisconsin adjusted gross income	<u>\$ 7,000</u>
Combined federal adjusted gross income	\$ 6,000
Itemized deductions before proration	\$ 4,000

Solution: The proration percentage is determined by using the fraction of combined Wisconsin adjusted gross income to combined federal adjusted gross income, limited to 100% (7,000 divided by 6,000 = 117%, therefore 100% is used). One-hundred percent of the itemized deductions of \$4,000 are allowed for Wisconsin.

If the husband and wife were nonresidents of Wisconsin, with the same facts as stated above, 100% of the personal exemption credits would be allowed.

Situation 2: Combined Wisconsin adjusted gross income is positive, federal adjusted gross income is negative.

Facts: Husband and wife are both nonresidents of Wisconsin for 1983.

Husband's Wisconsin adjusted gross income (loss)	(\$ 3,000)
Wife's Wisconsin adjusted gross income	10,000
Combined Wisconsin adjusted gross income	<u>\$ 7,000</u>
Combined federal adjusted gross income	(\$ 1,000)

Itemized deductions before proration	\$ 4,000
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Solution: Since combined Wisconsin adjusted gross income is positive and combined federal adjusted gross income is negative, the proration percentage is 100%. One-hundred percent of the itemized deductions of \$4,000 and personal exemption credits are allowed.

Situation 3: Combined Wisconsin adjusted gross income and federal adjusted gross income are zero.

Facts: Husband and wife are both nonresidents of Wisconsin for 1983.

Husband's Wisconsin adjusted gross income (loss)	(\$ 8,000)
Wife's Wisconsin adjusted gross income	8,000
Combined Wisconsin adjusted gross income	<u>\$ 0</u>
Combined federal adjusted gross income	\$ 0
Standard deductions before proration	\$ 4,000

Solution: Since combined Wisconsin adjusted gross income is zero, the proration percentage is 0%. No standard deduction is allowed. The \$5 minimum personal exemption credit is allowed.

Situation 4: Combined Wisconsin adjusted gross income is negative, federal adjusted gross income is positive.

Facts: Husband and wife are Wisconsin residents for one-half of 1983.

Husband's Wisconsin adjusted gross income (loss)	(\$10,000)
Wife's Wisconsin adjusted gross income	5,000
Combined Wisconsin adjusted gross income	<u>(\$ 5,000)</u>
Combined federal adjusted gross income	\$ 8,000
Itemized deductions before proration	\$ 5,000

Solution: Since combined Wisconsin adjusted gross income is a negative amount, the proration percentage is 0%. No itemized deductions are allowed.

If husband and wife were nonresidents of Wisconsin, with the same facts as stated above, the \$5 minimum personal exemption credit would be allowed.

Situation 5: Combined Wisconsin adjusted gross income and federal adjusted gross income are negative amounts.

Facts: Husband and wife are Wisconsin residents for one-half of 1983.

Husband's Wisconsin adjusted gross income (loss)	(\$10,000)
Wife's Wisconsin adjusted gross income	5,000
Combined Wisconsin adjusted gross income	<u>(\$ 5,000)</u>
Combined federal adjusted gross income	\$ 6,000
Itemized deductions before proration	\$ 5,000

Solution: Since combined Wisconsin adjusted gross income is a negative amount, the proration percentage is 0%. No itemized deductions are allowed.

If the husband and wife were nonresidents of Wisconsin, with the same facts as stated above, the \$5 minimum personal exemption credit would be allowed.

3. Sale of Reinvested Public Utility Stock Dividends

Effective for stock distributions after 1981 in tax years ending after 1981, a qualified public utility can establish a plan under which shareholders who choose to receive a dividend of qualified common stock (instead of cash or property) can elect to exclude from federal income up to \$750 a year (\$1,500 on a joint federal return) of the stock dividends (Section 305(e), IRC). Under s. 71.05(1)(a)12, Wis. Stats., any amount excluded under section 305(e) of the internal revenue code (relating to dividends reinvested in stock of public utilities) must be added back as a modification on the Wisconsin return. The difference in tax treatment between federal and Wisconsin raises questions concerning the subsequent sale of such stock.

Facts:

Prior Federal Treatment: A stock dividend is taxable if the distribution is, at the election of any of the shareholders, payable either in stock or in property (Section 305(b)(1), IRC). Taxable stock dividend distributions are treated as distributions of property to which section 301 applies. For individual shareholders, the basis of the taxable stock dividends received is their fair market value at the time of the distribution (Section 301(d)(1), IRC).

New Federal Treatment: Code Section 305(e) as added by Act 321 of the Economic Recovery Tax Act of 1981 provides special tax treatment for taxable stock dividends issued by qualified public utilities. The special rule for public utility stock dividends distributed after 1981 and before 1986 in taxable years ending after 1981 allows shareholders to elect to exclude from income up to \$750 per year (\$1,500 on a joint return) of the stock dividends received if they choose a dividend of qualified common stock instead of cash or property. The shareholder elects the exclusion, with respect to any share, on his or her return for the tax year in which the dividend would otherwise have been included in income.

If the shareholder elects to exclude the dividend, the federal basis of the stock then becomes zero. Therefore the full amount of the sales proceeds would be taxable. If the stock is held for over one year, capital gain treatment applies to the sale of the stock. If the stock is sold within one year, the gain becomes ordinary income instead of short-term capital gain.

Wisconsin Treatment (Beginning with 1982 taxable year):

If a shareholder elects the exclusion available under section 305(e) of the internal revenue code, an add modification is required for the amount excluded on the federal return (s. 71.05(1)(a)12, Wis. Stats.).

Questions:

1. If a shareholder elects the exclusion available under section 305(e), what is the basis of the stock for Wisconsin purposes?
2. The \$100 dividend exclusion may be used to offset the amount of reinvested public utility stock dividends reported as an add modification, if the entire \$100 dividend exclusion was not used in determining the amount of dividend income reported on line 8 of a 1982 Wisconsin Form 1. Will this \$100 dividend exclusion affect basis?

Example: Taxpayer A received \$400 of dividends for which he reported \$300 (\$400 less \$100 exclusion) on line 8 of his 1983 Form 1. On line 29c of Form 1 he reported reinvested public utility stock dividends of \$500 which he had excluded from federal income. Taxpayer B had no dividends other than \$500 of reinvested public utility stock dividends which he had excluded from federal income. Taxpayer B reported zero on line 8 and \$400 on line 29c (\$500 less \$100 exclusion) of his 1983 Form 1. Is the basis of Taxpayer A's stock different from that of Taxpayer B?

Answers:

1. The basis of the stock for Wisconsin purposes is its fair market value at the time of distribution. Since this creates a difference in basis between federal and Wisconsin, an adjustment should be made on Wisconsin Schedule T in the year of sale per s. 71.05(4)(a), Wis. Stats.
2. The \$100 dividend exclusion does not affect Wisconsin basis. The Wisconsin basis of Taxpayer A's stock is the same as that of Taxpayer B. (Section 116, IRC, which provides for the partial exclusion of dividends received by individuals, does not require a change in the basis of the stock for the dividend exclusion.)

4. Wisconsin Basis of Investment Credit Property

Facts and Question: For property placed in service after December 31, 1982, a taxpayer electing to claim investment tax credit for federal tax purposes must either (1) claim the full 10% credit and reduce the depreciable basis of the property by one-half of such credit, or (2) in the case of regular investment tax credit property, claim a reduced investment credit and depreciate the full cost of the property (IRC Sections 48(q)(1) and (4)(B)(ii)(I)).

Example: During 1983 a taxpayer buys and places in service a new \$25,000 piece of equipment in the five-year ACRS recovery class which qualifies for the regular 10% investment tax credit. For federal tax purposes the taxpayer may either (1) claim the regular 10% investment credit of \$2,500 and have a depreciable basis of \$23,750 (\$25,000 minus one-half of \$2,500), or (2) claim the reduced 8% investment credit of \$2,000 and have a depreciable basis of \$25,000.

If the taxpayer claims the regular investment credit and reduces the depreciable basis of the property accordingly for federal income tax purposes, must this reduced basis also be used for computing depreciation for Wisconsin income tax purposes?

Answer: No. Due to the elections available for claiming investment tax credit, there is more than one allowable method of computing depreciation under the Internal Revenue Code. Therefore, a taxpayer who claims the higher investment tax credit for federal tax purposes (and makes a reduction in the basis of the depreciable property) is not required to use the reduced basis for computing depreciation for Wisconsin income tax purposes. The taxpayer's deduction for depreciation or ACRS may be computed on the full cost of the property rather than on the reduced basis.

In the above example, the depreciation deductions would be computed as follows (assuming the taxpayer elected to depreciate based on the full cost of the property for Wisconsin rather than the reduced basis):

	Federal Return	Wisconsin Return	Difference
ACRS deductions:			
1983 (15%)	\$ 3,562.50	\$ 3,750.00	\$ 187.50
1984 (22%)	5,225.00	5,500.00	275.00
1985 (21%)	4,987.50	5,250.00	262.50
1986 (21%)	4,987.50	5,250.00	262.50
1987 (21%)	4,987.50	5,250.00	262.50
Totals	\$23,750.00	\$25,000.00	\$1,250.00

The taxpayer in this instance would be required to maintain separate depreciation records for Wisconsin income tax purposes. The difference in depreciation allowable may be reflected on the Wisconsin income tax return in one of two ways.

1. Since the amount of depreciation claimed will directly affect the computation of federal adjusted gross income (FAGI), it may also affect other amounts on the federal return which are based on federal adjusted gross income, including the taxable amount of unemployment compensation and itemized deductions for medical expenses, casualty losses, and contributions. (These items use FAGI in computing the taxable unemployment compensation or the amount of itemized deduction.) If the difference in depreciation (e.g., \$187.50 in 1983) will affect other items on the federal return, the taxpayer should submit with the Wisconsin return a federal return and accompanying schedules based on the depreciation allowable for Wisconsin tax purposes. The amounts on lines 6 through 26 and 39 of the 1983 Wisconsin Form 1 will be taken from the federal return using the depreciation allowable for Wisconsin, rather than from the federal return actually filed with the Internal Revenue Service.
2. If no other items on the federal return are affected by the difference in Wisconsin and federal depreciation, the taxpayer may report on lines 6 through 26 and 39 of the 1983 Wisconsin Form 1 the amounts as they appear on the federal return to be filed with the Internal Revenue Service. Then on line 36 of the 1983 Wisconsin Form 1, the taxpayer should write "adjustment to depreciation on investment credit property" and claim a subtraction modification for the difference between the depreciation claimed on the federal return and the amount allowable for Wisconsin. A schedule must be attached to the Wisconsin return showing how the subtraction modification was computed. In the above example, if \$3,562.50 of depreciation was deducted on the federal return and carried over to the Wisconsin return, the taxpayer could claim a subtraction modification of \$187.50 on line 36 of the 1983 Wisconsin return.

5. Wisconsin Treatment of Incentive Stock Options

Facts: Section 422A of the Internal Revenue Code, as added by Section 251 of Public Law 97-34 (the Economic Recovery Tax Act of 1981), provides for favorable federal tax treatment for incentive stock options granted to key employees on a selective and discriminatory basis. Under the provisions of s. 422A, IRC, there is no tax consequence when the incentive stock option is granted or exercised. The employee is taxed at capital gains rates when the stock is sold if the required holding period is met. Wisconsin does not recognize s. 251 of P.L. 97-34 for 1981 and thereafter (ss. 71.02(2)(b)7, 8 and 9, Wis. Stats.).

Example 1: Employee A receives an option which qualifies as an incentive stock option for federal income tax purposes. The option has no readily ascertainable fair market value at the date of grant. If the option is exercised, the shares acquired are not subject to a substantial risk of forfeiture and the shares are transferable.

Question 1: How is this incentive stock option treated for Wisconsin income tax purposes?

Answer 1: The option would be treated as a nonstatutory stock option, subject to the provisions of Section 83 of the Internal Revenue Code. Since the option has no readily ascertainable fair market value, and the shares acquired are not subject to a substantial risk of forfeiture and are transferable, income is realized by A on the date of exercise of the option. The amount of compensation (ordinary income) is the excess of the fair market value of the stock acquired at the date of exercise over the option price paid by employee A.

Employee A's employer is entitled to a deduction under s. 71.04(1), Wis. Stats., for the compensation element of the incentive stock option in the year A exercises the option. The amount deductible by the employer will be equal to the amount of income reportable by employee A.

Question 2: How is the employer to report this additional compensation on an informational return (Form W-2) for Wisconsin tax purposes?

Answer 2: A separate Form W-2 reporting only the additional compensation due to the exercise of the incentive stock option may be submitted in addition to the Wisconsin copy of the regular wage statement which was filed with the Internal Revenue Service. In the alternative, a revised Form W-2 reporting the total compensation for Wisconsin tax purposes may be submitted. In either case, the form should be transmitted with a Form WT-7, "Employer's Reconciliation of Taxable Wages".

Question 3: Is withholding required on the compensation element of the incentive stock option? If so, when must the tax be withheld?

Answer 3: The compensation element of the incentive stock option is "wages", and withholding is required at the time of exercise of the option (ss. 71.19(1) and 71.20(1), Wis. Stats., and s. Tax 2.90(4), Wis. Adm. Code). If the employee's salary is insufficient to pay the additional taxes due, the employee and employer must arrange to have enough money available so the employer can remit the proper amount of withholding tax.

Question 4: What is the basis of stock acquired by the exercise of an incentive stock option?

Answer 4: For Wisconsin purposes, the basis of the stock is the total of the exercise price of the option plus the amount of compensation included in the employee's Wisconsin income (i.e., the fair market value of the stock on the date the Wisconsin income is recognized). For federal purposes, the basis of the stock is the exercise price of the option. A modification for this basis difference should be made on the Wisconsin return for the year in which the stock is sold.

Example 2: An incentive stock option received by employee B has no readily ascertainable fair market value at the date of grant. The shares acquired by B are subject to a substantial risk of forfeiture and not transferable since em-

ployee B is considered an insider subject to Section 16(b) of the Securities Exchange Act of 1934.

Question 1: What is the Wisconsin tax treatment of this option?

Answer 1: For Wisconsin tax purposes, this option would be considered a nonstatutory stock option under Section 83, IRC. Since the shares acquired are subject to a substantial risk of forfeiture and are not transferable, no income is realized by B until the restrictions lapse or the stock is sold. The amount of compensation (ordinary income) realized is the difference between the amount paid for the stock and its fair market value at the first time the employee's rights are no longer subject to a substantial risk of forfeiture or are transferable. If the stock is sold before the restrictions lapse, compensation is measured by the difference between the cost of the stock and its selling price.

Section 83(b), IRC, does provide an exception to this treatment of restricted stock. The employee can elect to have the value of the restricted stock (over its cost) taxed as ordinary income in the year the shares of stock are acquired. Later appreciation would not be treated as compensation but as capital gain income.

Employee B's employer is entitled to a deduction for the compensation element of the incentive stock option at the time B reports the income. The amount deductible by the employer will be equal to the amount of income reportable by employee B.

Question 2: What is the procedure for making a Section 83(b) election for Wisconsin tax purposes only?

Answer 2: If the employee elects to include the income from the exercise of a restricted stock option in Wisconsin income in the year of exercise, an election should be made in the same manner provided by Internal Revenue Service Regulation 1.83-2(b). However, the written election statements should be filed with the Wisconsin Department of Revenue rather than with the Internal Revenue Service.

A timely election must be made no later than 30 days after the exercise of the option. The election is made by filing two copies of a written statement with the department: one copy should be mailed to the Revenue Audit Bureau, P.O. Box 8906, Madison, WI 53708 within 30 days after the exercise of the option, and the other copy should be attached to the employee's Wisconsin income tax return for that year. (Note: For 1982 and 1983 only, the taxpayer will not be required to file the written election statement within 30 days after exercising the option. However, the election must be made no later than the due date, or extended due date, of the income tax return. In 1984 and subsequent years, an election will be considered timely only if made during the 30 day period.)

In addition to stating that the election is being made under Internal Revenue Code Section 83(b), the statement must include the following:

1. name, address and social security number of the taxpayer;
2. description of each property for which the election is being made;
3. date (or dates) when the property was transferred (i.e., the option was exercised), and the taxable year for which such election was made;

4. nature of restriction or restrictions on the property;

5. fair market value of property (determined without considering any restriction other than one which will never lapse) at the time of transfer; and

6. amount of consideration paid for the property.

Question 3: When must Wisconsin income tax be withheld on the compensation element of an incentive stock option received by an insider?

Answer 3: Wisconsin withholding is required when the insider recognizes the income for Wisconsin income tax purposes. If the employee makes the Section 83(b) election to recognize income on the date of exercise of the option, Wisconsin withholding tax must be remitted at that time. In the alternative, if the insider does not make the Section 83(b) election, withholding is required six months after the date of exercise of the option.

Question 4: When does an insider's holding period begin for the stock acquired to qualify for the Wisconsin capital gain deduction?

Answer 4: An individual's holding period for stock subject to Section 83, IRC, begins when the person's rights in the property are not subject to a substantial risk of forfeiture or are transferable, whichever occurs earlier. If an insider does not make the Section 83(b) election, he or she must hold the stock for one and one-half years to qualify for the Wisconsin capital gain treatment (six-month restriction period plus one year). However, if an insider makes the Section 83(b) election, he or she must only hold the stock for one year to qualify for the Wisconsin capital gain deduction.

Question 5: How are dividends paid to insiders during the six-month restriction period treated?

Answer 5: Until the stock becomes substantially vested, the transferor is regarded as the owner of the property. Any dividends received by the employee constitute additional compensation to the employee. Therefore, if the insider does not make the Section 83(b) election, dividends on stock acquired by exercising an incentive stock option received during the six-month restriction period are considered additional compensation for Wisconsin tax purposes. The employer is entitled to a deduction equal to the amount of compensation reported by the employee.

CORPORATE FRANCHISE/INCOME TAXES

1. Corporate Depreciation for 1983 and Thereafter on Investment Credit Property

Facts and Question: Section 48(q) of the Internal Revenue Code provides in part that for property placed in service after December 31, 1982, the basis for purposes of computing depreciation, ACRS deductions, or the gain or loss on such property must be reduced by one-half of the regular 10% federal investment tax credit claimed and allowed. However, in lieu of the regular 10% credit, corporations may elect to claim a reduced 8% investment credit and depreciate the full cost of the assets for qualifying property which is other than 3-year property. (The reduced credit allowable for 3-year property is 4%.)

In computing depreciation for Wisconsin franchise/income tax purposes, is the basis (1) the cost of the

property less one-half of the regular 10% investment tax credit, or (2) the full cost of the property without a reduction for investment tax credit claimed?

Answer: Section 71.04(15)(a), Wis. Stats., provides in part that the depreciation allowable as a deduction from gross income of corporations shall be limited to the amount *allowable* as a deduction from gross income under the Internal Revenue Code. Due to the federal elections available for claiming investment tax credit, the basis for computing federal depreciation under the Internal Revenue Code depends upon the type of investment credit claimed as explained in the first paragraph above. Therefore, a corporation that claims the regular 10% investment tax credit for federal purposes (and makes a reduction in the federal basis of the depreciable property) may choose one of the following two bases for Wisconsin franchise/income tax purposes:

1. Use the same basis for Wisconsin as for federal tax purposes and be allowed a deduction for the federal - Wisconsin basis difference in the year of disposition pursuant to s. 71.04(15)(e), Wis. Stats., or
2. Assume for Wisconsin tax purposes that the reduced 8% tax credit (or no credit) was claimed for federal purposes and claim depreciation using the higher basis. This method will require the corporation to keep a separate set of depreciation records for Wisconsin.

Example: Corporation A, which files returns on the calendar year basis, placed in service on March 1, 1983 five-year property which cost \$50,000 and elected to claim the regular 10% investment tax credit on its 1983 federal return. The depreciable basis of the property for federal purposes is \$47,500 (\$50,000 minus one-half of \$5,000).

For Wisconsin, Corporation A may either (1) depreciate the property using the basis allowable for federal purposes of \$47,500 and receive a deduction for the \$2,500 basis difference when the asset is disposed of, or (2) depreciate the property using a basis of \$50,000.

If Corporation A chooses to claim the reduced 8% tax credit rather than the 10% regular credit on its federal return, the basis for both federal and Wisconsin tax purposes will be \$50,000.

SALES/USE TAXES

1. Dentists' Purchases and Sales

Facts and Question: Dentists are engaged in providing professional services to patients which are not subject to the sales tax. Dentists purchase various types of personal property from dental laboratories and other suppliers which they use in performing their dental services. What is the sales tax status of purchases made by dentists and of tangible personal property they transfer to their patients in the course of providing dental services?

Answer:

A. **Exempt Purchases.** Dentists may purchase the following items without sales or use tax:

1. Medicines such as nitrous oxide, oxygen, novocaine and bone regeneration materials.

2. Gold, silver, other alloys used to fill teeth and cement and bonding agents used in conjunction with such fillings.

3. Crowns, bridges, bridgework, dentures, inlays, fillings and other items fabricated by a dental laboratory which the dentist installs in the patient's mouth. This includes braces and other corrective and supporting devices individually designed or constructed for a particular patient, such as braces made by dental laboratories at the prescription of the orthodontist or dentist, and teeth, mouth and jaw braces and supports which are not fitted until the dentist himself puts them on a patient, but which are recognizable as fabricated supports at the time the dentist buys them.

B. **Taxable Purchases.** Dentists must pay a sales or use tax on their purchases of the following:

1. Metal, wire, plastic or other materials purchased by a dentist which the dentist uses to construct braces and other teeth, mouth and jaw supports.
2. Dental equipment, surgical instruments, office equipment, office supplies and consumable supplies used by dentists to conduct their business. These include tongue depressors, bandages, cleaning paste, tooth brushes, dental floss and cotton.

C. **Exempt Transfers to Patients.** The following items may be transferred to patients without sales tax incidentally to providing dental services:

1. Medicines (nitrous oxide, oxygen, novocaine and bone regeneration materials).
2. Gold, silver and other alloys used by dentists to fill teeth and cement and other bonding agents used in providing dental services.
3. Crowns, bridges, bridgework, partial plates, dentures, inlays, fillings and other items specifically designed for a patient, which are constructed from raw materials by the dentist or are purchased from a dental laboratory, and which are installed in the patient's mouth by the dentist.
4. Corrective and supporting devices for the teeth, mouth, and jaw, individually constructed or altered for an individual.

2. Dry Cleaners' and Laundries' Purchases

Facts and Question: Under 1983 Wisconsin Act 27, effective September 1, 1983, persons providing laundry and dry cleaning services subject to taxation under s. 77.52(2)(a)6, Wisconsin Statutes, are the consumers of, and must pay tax on the purchase of, all of the items transferred to customers incidentally providing these services.

Paragraph (3)(c) of rule Tax 11.72, titled "Laundries, dry cleaners, and linen and clothing suppliers", indicates these persons may purchase the following items without tax (by using a resale certificate) if the items are transferred to customers with clean linen or clothes: hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins.

Can the items in the preceding paragraph be purchased without tax for resale by a laundry or dry cleaner on and after September 1, 1983?

Answer: No, purchases of these items are subject to the 5% sales tax, effective September 1, 1983. If a laundry or dry cleaner has these items in inventory on August 31, 1983 and if they were purchased without tax under the law in effect before September 1, 1983, such inventory items are subject to the tax at the time they are transferred to customers on or after September 1, 1983.

Laundries, dry cleaners, and linen and clothing suppliers also continue to be the consumers of, and must pay tax on purchases of, solvents, soaps, detergents spotting compounds, water repellents, disinfectants, fabric softeners, starch dyes, mat compounds, fire repellent compounds and marking tags which they use for laundering, dry cleaning or identification purposes.

3. Mobile Manufacturing Units

Facts And Question: The Budget Bill, 1983 Wisconsin Act 27, created s. 77.51 (27)(c), Wis. Stats., which defines manufacturing to include "mixing and processing if performed in mobile units mounted on trucks or trailers," effective September 1, 1983. This new exemption most commonly will apply to redi-mix concrete units and feed grinding units mounted on trucks.

Redi-Mix Concrete Trucks

Redi-mix concrete trucks perform both a transportation service and a manufacturing process when concrete is produced as the motor vehicle moves along the highway. These redi-mix trucks may haul from a dry mix or wet mix plant. In the dry mix plant, the proper proportion of dry cement, aggregates and additives are loaded into the truck, and the first mixing takes place in the truck. In the wet mix plant, there is a brief premixing of the ingredients before the mixture is loaded into the truck for hauling to the job site. The truck's motor which moves the truck down the highway also provides the power to operate the rotating mixer.

Feed Grinding Trucks

The *Feedmobile, Inc. vs. Wisconsin Department of Revenue* decision of the Wisconsin Tax Appeals Commission, dated February 26, 1982, held that the mixing unit of a mobile feed mill is entitled to the exemption for manufacturing machinery in s. 77.54(6)(a), Wis. Stats. The feedmobile is the mixing unit, exclusive of the truck body upon which the unit is mounted. The feedmobile has its own power source, a diesel engine, which is completely independent of the truck to which it is attached. It is designed to operate at a fixed location and is often used as an addition to a stationary feedmill operation.

The feedmobile combines raw grains, supplements, minerals, salts, vitamins and molasses through the use of machinery to produce a new product (feed), which is used by farmers for feeding their livestock.

Does the new definition in s. 77.51(27)(c), Wis. Stats., create an exemption under s. 77.54(6)(a), Wis. Stats., for the entire truck, including the mixing unit; or is it restricted to the mixing unit mounted on the truck chassis?

Answer: Section 77.54(6)(a), Wis. Stats., exempts "Machines and specific processing equipment . . . exclusively and directly used by a manufacturer in manufacturing . . ." This exemption does not apply to the truck chassis, including its motor, which are used to provide a transportation service, since the "exclusive test" is not met. However, the mixing unit, and accessories, mounted on the truck can qualify for the exemption. The exemption applies to the redi-mix concrete truck's mixing unit whether the truck hauls from a dry mix or wet mix batching plant. It also applies to the diesel engine used to operate the feedmobile mixing unit, if it is completely independent of the truck to which it is attached and is used exclusively to operate the feedmobile.

If a complete truck is sold, which has a mixing unit attached that qualifies for sales/use tax exemption, and the agreement between the seller and purchaser does not separately set forth the sales price of the exempt mixing unit and the taxable truck chassis, a reasonable allocation shall be made to determine the portion of the price relating to each portion.

HOMESTEAD CREDIT

1. Payments in Lieu of Property Taxes by Exempt Organizations

Facts and Question: A tax-exempt charitable organization owns and operates a low-income housing project. The project is located in Wisconsin and is exempt from real estate taxes imposed under Chapter 70 of the Wisconsin Statutes. However, the charitable organization makes payments in lieu of property taxes to the municipality in which the housing project is located but these payments are not made under s. 66.40(22). These payments are made under the terms of a written agreement between the organization and the municipality.

May rent paid by a tenant of this housing project be used to determine a credit under the Wisconsin Homestead Credit program?

Answer: No. Section 71.09(7)(t), Wis. Stats., provides that rent paid for housing which is exempt from property taxes under ch. 70 may not be used to compute Homestead Credit, except housing for which payments in lieu of taxes are made under s. 66.40(22), Wis. Stats. The tax-exempt charitable organization in this example is not making payments in lieu of taxes under s. 66.40(22). Therefore, the rent paid by the tenant to this organization may not be used to compute the Homestead Credit.

EXTENSIONS OF TIME TO FILE INCOME, FRANCHISE, SALES & USE AND OTHER RETURNS

The Wisconsin Statutes provide that extensions of time may be granted to file certain returns but may not be allowed to file other returns. Listed below are the extensions of time *not* allowed, the extensions of time allowed, and the procedures to be used to request an extension.

I. Extensions of Time NOT Allowed

An extension of time to file is *not* authorized by the Wisconsin Statutes for the forms listed below. The statutory reference under the column "Due Date For Filing With Dept." is the Wisconsin Statute which prescribes the due date for filing the form with the Department of Revenue.

	<u>Due Date For Filing With Dept.</u>
1. Schedule H - Homestead Credit Claim	December 31 of year following year for which claim is filed (e.g., December 31, 1984 for 1983 claim based on taxes levied in 1983 or rent paid in 1983) (s. 71.09(7)(dm))
2. Schedule FC - Farmland Preservation Credit Claim	12 months after end of tax year (e.g., December 31, 1984 for 1983 calendar year) (s. 71.09(11)(d))
3. Form 4H - Wisconsin Declaration of Inactivity	15th day of 3rd month after end of tax year (e.g., March 15, 1984 for 1983 calendar tax year) (s. 71.10(1)(b))
4. Form 7 - Donor's Gift Tax Report	April 15 (e.g., April 16, 1984 for 1983 report) (s. 72.85(2))
5. Form 6 - Donee's Gift Tax Report	April 15 (e.g., April 16, 1984 for 1983 report) (s. 72.85(2))
6. Form 101 - Wisconsin Inheritance Tax Return	No statutory due date. However if tax not paid within one year of date of death, interest charged at 12% per year from date of death to date of payment. No extension of time granted in which tax payment may be made without interest charge (s. 72.22 and 72.23)
7. Form 8 - Report of Transfers of Capital Stock	March 15 (e.g., March 15, 1984 for 1983 transfers) (s. 71.10(1)(a))
8. Form 9b - Wisconsin Information Return (See Part II, 12 for Form 9bs relating to annuities, pensions, etc., of \$500 or more)	
a. Corporations making payments of rent, interest, dividends or royalties of \$100 or more during tax year	March 15 following calendar year in which payments were made (s. 71.10(15))
b. Persons other than corporations (e.g., individuals, partnerships) making payments of rent, interest, dividends or royalties of \$100 or more during tax year	April 15 following calendar year in which payments were made (s. 71.10(15))
9. Form 9c - Report of Compensation Paid to Nonresident Entertainers	90 days after performance (s. 71.10(18))
10. Form WT-6 - Withholding Tax Deposit Report	15 days after end of reporting period for semi-monthly filers; last day of month after end of reporting period for monthly, quarterly and annual filers (s. 71.20(4))
11. Form A-205 - Nonresident Contractor's Surety Bond	60 days after construction begins in Wisconsin (s. 71.10(14)(a))

II. Extensions of Time Allowed

An extension of time to file is authorized by the Wisconsin Statutes for the forms listed below. The statutory references (e.g., s. 71.10(2)(b)) under the columns "Due Date For Filing With Dept." and "Extension Allowed" are the Wisconsin Statutes which (a) prescribe the due date for filing the form with the Department of Revenue and (b) authorize the extension to file. The other references under the column "Extension Allowed" are to federal regulations (e.g., Reg. 1-6081-4).

<u>FORM</u>	<u>DUE DATE FOR FILING WITH DEPT.</u>	<u>EXTENSION ALLOWED</u>	<u>EXTENSION FORM</u>
<u>Income and Franchise Forms</u>			
1. Form 1 and 1A - Wisconsin Income Tax Long Form and Short Form	15th day of 4th month after end of tax year (e.g., April 16, 1984 for 1983 calendar year return) (s. 71.10(2)(b))	(a) 30 days (additional 30-day extensions granted for satisfactory cause) (s. 71.10(5)(b)) (b) 4 months (Reg. 1.6081-4) (c) over 4 months (Reg. 1.6081-1) (d) 2-month automatic extension for taxpayers living or traveling outside United States and Puerto Rico on the due date for filing a return (Reg. 1.6081-2)	(a) Wis Form I-101 (b) Fed Form 4868 (c) Fed Form 2688 (d) Written statement explaining details, no federal or Wisconsin form
2. Form 2 - Wisconsin Fiduciary Income Tax Return	On or before date return is required to be filed with IRS (s. 71.10(3)(e))	(a) 30 days (s. 71.10(5)(b)) (b) 60 days (Reg. 1.6081-1)	(a) Wis Form I-101 (b) Fed Form 2758
3. Form 3 - Wisconsin Partnership Return	15th day of the 4th month after end of tax year (e.g., April 16, 1984 for 1983 calendar year return) (s. 71.10(3)(a))	(a) 30 days (s. 71.10(5)(b)) (b) 60 days (Reg. 1.6081-1)	(a) Wis Form I-101 (b) Fed Form 2758
4. Form 4 and 5 - Wisconsin Corporation Franchise or Income Tax Return (includes Form 4S)	15th day of the 3rd month after end of tax year (e.g., March 15, 1984 for 1983 calendar year) (s. 71.10(1))	(a) 30 days (s. 71.10(5)(a)) (b) 6 months (only applies to DISCs and Co-ops) (s. 71.10(5)(a)) (c) 6 months (Reg. 1.6081-3)	(a) Wis Form IC-830 (b) Wis Form IC-830 (c) Fed Form 7004
5. Form 4I - Wisconsin Insurance Franchise or Income Tax Return	March 15 of year following year for which return is filed (e.g., March 15, 1984 for the calendar year 1983) (s. 71.10(1))	(a) 30 days (s. 71.10(5)(a)) (b) 6 months (Reg. 1.6081-3)	(a) Wis Form IC-830 (b) Fed Form 7004
<u>Withholding Forms</u>			
6. Form WT-7 - Employer's Annual Reconciliation	January 31 of year following year for which return is filed (e.g., January 31, 1984 for year 1983) (s. 71.20(4) and (4m))	30 days (s. 71.26)	Written request, no Wisconsin form
<u>Sales & Use Forms</u>			
7. Form ST-12 - Wisconsin Sales and Use Tax Return	Various, 20 days after end of month, last day of month after end of monthly, quarterly or annual reporting period (s. 77.58(2))	30 days (s. 77.58(7))	Written request, no Wisconsin form
8. Form UT-5 - Consumer Use Tax Return	Last day of month following end of quarterly period (s. 77.58(2))	30 days (s. 77.58(7))	Written request, no Wisconsin form
9. Concessionaire/Temporary Permittee Annual Sales and Use Tax Return	January 31 of year following year for which return is filed (e.g., January 31, 1984 for year 1983) (s. 78.58(5))	30 days (s. 77.58(7))	Written request, no Wisconsin form

<u>FORM</u>	<u>DUE DATE FOR FILING WITH DEPT.</u>	<u>EXTENSION ALLOWED</u>	<u>EXTENSION FORM</u>
10. Wisconsin Nonresident Contractor's Consumer Use Tax Return	January 31 of year following year for which return is filed (e.g., January 31, 1984 for year 1983) (s. 78.58(5))	30 days (s. 77.58(7))	Written request, no Wisconsin form

Information and Other Forms

11. Form W-2 - Wage and Tax Statement	January 31 of calendar year following year of payment (e.g., January 31, 1984 for 1983 year) (s. 71.10(8) and (8m))	30 days (s. 71.26)	Written request, no Wisconsin form
12. Form 9b - Wisconsin Information Return- Annuities, pensions or other fixed or determinable income of \$500 or more not reported on wage statement under s. 71.10(8)(a) and (8m) (Note: See Part I, 8, above regarding Form 9b's filed for rent, interest, dividends and royalties)	January 31 of year following calendar year of payment (e.g., January 31, 1984 for 1983 year) (s. 71.10(8n))	30 days (s. 71.26)	Written request no Wisconsin form

III. Policy Regarding Filing Requests for Extensions

- A. Telephone or Oral Requests: Telephone or oral requests for extensions will *not* be accepted or approved.
- B. Federal Extension Form Used (re: extension for Form 1, 1A, 2, 3, 4, 5 or 4I): Taxpayer must attach copy of federal extension form to Wisconsin return which is filed with the Department of Revenue. Taxpayer is not required to request approval from department if IRS approved extension is obtained from IRS and copy is attached to Wisconsin return.
- C. Wisconsin Extension Form Used: A taxpayer requesting an extension should mail the Wisconsin extension form to the address shown on the extension form before the original due date of the return. If a Wisconsin extension form is not available to the taxpayer, a letter requesting a 30-day extension may be sent to the department postmarked no later than the original due date of the return. (See Part D below for information to include in letter.)

The department approval of the 30-day extension sent to the taxpayer must be attached by the taxpayer to the return filed with the department.

- D. Written Request (no Wisconsin form) (re: Form WT-7, W-2, 9b, ST-12, etc.): Taxpayer should send letter requesting an extension before the original due date of the return. The department approval of the 30-day extension sent to the taxpayer must be attached by the taxpayer to the return filed with the department.

Taxpayer should furnish the following information with the letter requesting an extension:

Individuals:

1. Taxpayer name.
2. Taxpayer social security number (seller's permit number or withholding number if sales/use or withholding extension).
3. Spouse name (if filing combined income tax return).
4. Spouse social security number (if combined income tax return).
5. Name of person to whom reply is to be sent, if different than taxpayer.
6. Complete address of person to whom reply is to be sent.
7. Taxable year or period for which extension is requested.
8. Fiscal year ending date, if filing on other than a calendar year basis.
9. Length (period) of extension requested.
10. Reason for extension request.
11. Signature of requestor, and date signed.

Corporations

1. Corporation name and complete address.
2. Seller's permit number or withholding number if sales/use or withholding extension.
3. Indicate if a "Domestic International Sales Corp." (DISC) or Cooperative.
4. Calendar year or fiscal year ending date.
5. Taxable period or year for which extension is requested.

6. Length (period) of extension requested.
7. Reason for extension request.
8. Signature of corporate officer or representative, and date signed.

IV. Advance Payment With Extensions

- A. **Income or Franchise Tax Payments:** If a taxpayer desires to make a payment with an extension, the payment should be attached to a declaration of estimated tax payment voucher (Form 1-ES for individuals and Form 4-ES for corporations). Such payments should be claimed on the taxpayer's income or franchise tax return in the same manner as other declaration payments.
- B. **Sales/Use or Withholding Tax Payments:** If the taxpayer wishes to make a payment, the payment should accompany the letter (extension request). The letter should include the taxpayer's real name, seller's permit or withholding account number, address and reporting period to which the payment should be applied.

V. Interest During Extension Period

Any income, franchise, sales/use or withholding tax not paid by the original due date of the tax return is subject to 12% interest per year during the extension period. Interest is computed from the day following the due date of the return until the date of payment within the extension period.

If the tax is not paid within the extension period, interest is 12% per year during the extension period and delinquent interest of 18% per year from the end of the extension period until paid.

For corporations filing Form 4, 41 or Form 5, interest at the rate of 18% per year instead of 12% must be added to the amount of any required declaration of estimated tax not paid within 2½ months after the close of the taxable year.

VI. Mailing Addresses

Applications for extensions and related correspondence should be sent to the Wisconsin Department of Revenue at the following addresses:

Individual Returns, Partnership Returns and Fiduciary Returns
P.O. Box 8903
Madison, WI 53708

Corporate Returns and Information Returns
P.O. Box 8908
Madison, WI 53708

Sales & Use Tax Returns and Withholding Tax Returns
Compliance Bureau
P.O. Box 8902
Madison, WI 53708