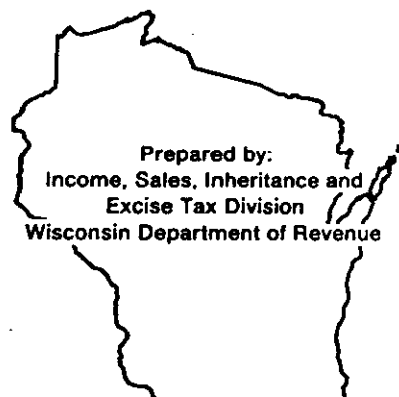


# WISCONSIN TAX BULLETIN

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## NEW WISCONSIN TAX LAWS

The Wisconsin Legislature has enacted changes to the Wisconsin tax laws. This Wisconsin Tax Bulletin contains an index and brief descriptions of the individual income, corporation franchise and income, homestead credit, sales and use, inheritance, gift, and excise tax provisions.

These provisions are contained in the following Acts:

1989 Act 135 - Published March 30, 1990  
1989 Act 198 - Published April 27, 1990  
1989 Act 238 - Published April 30, 1990  
1989 Act 252 - Published May 2, 1990  
1989 Act 253 - Published May 2, 1990  
1989 Act 270 - Published May 3, 1990  
1989 Act 278 - Published May 3, 1990  
1989 Act 294 - Published May 7, 1990  
1989 Act 335 - Published May 10, 1990  
1989 Act 336 - Published May 10, 1990

The description for each item indicates the Act which contains the law change, the sections of the statutes affected, and the effective date of the new provision.

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## A. INDIVIDUAL AND FIDUCIARY INCOME TAXES

1. Reference to the Internal Revenue Code Updated for 1990 for Individuals, Estates, and Trusts (1989 Act 336, amend sec. 71.01(7r) and create sec. 71.01(6)(e), effective for taxable years beginning after December 31, 1989.)

For taxable years that begin after December 31, 1989, "Internal Revenue Code" for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 1989. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

For example, Public Law 101-239 expanded the definition of "listed property" for depreciation purposes to include cellular telephones placed in service or leased in taxable years beginning after December 31, 1989. That same effective date applies for Wisconsin purposes.

Additionally, Public Law 101-239 made the following changes to the alternative minimum tax which are effective for Wisconsin purposes at the same time as for federal purposes:

- A taxpayer can avoid treating intangible drilling and development costs paid or incurred in taxable years beginning after December 31, 1989, as tax preferences for alternative minimum tax purposes by writing those items off ratably over a 60-month period for regular tax purposes.
- All home construction contracts, regardless of duration or amount, entered into in taxable years beginning after September 30, 1990, are exempt from the general rule requiring the use of the percentage-of-completion method for alternative minimum tax purposes.
- Individuals who materially participate in an activity are not required to capitalize and amortize for alternative minimum tax purposes research and experimental expenditures generated by that activity for taxable years beginning after December 31, 1990.

For property placed in service in taxable years beginning after December 31, 1989, individuals and fiduciaries may compute depreciation or amortization under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1989, at the taxpayer's option.

2. Federal Laws Enacted During 1989 Adopted to Apply Simultaneously for Wisconsin Purposes (1989 Act 336, amend sec. 71.01(6)(a), (b), (c), and (d) and create nonstatutory provision, effective for taxable years beginning before January 1, 1990.)

The following federal laws enacted during 1989 apply for Wisconsin income tax purposes at the same time as for federal purposes:

- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73), enacted August 9, 1989

- Debt Limit Extension Act (Public Law 101-140), enacted November 8, 1989
- Support for East European Democracy Act of 1989 (Public Law 101-179), enacted November 28, 1989
- Ethics Reform Act of 1989 (Public Law 101-194), enacted November 30, 1989
- Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), enacted December 19, 1989

As a result of this law change, those items identified in the instructions to the 1989 Wisconsin Schedule I as differences between federal and Wisconsin law no longer are differences for taxable years that begin after December 31, 1988. If "Schedule I adjustments" were made to a 1989 Wisconsin return that has already been filed with the Department of Revenue, Wisconsin Form 1X may be used to reverse those adjustments.

For example, Public Law 101-239 made the following changes which are effective for Wisconsin purposes at the same time as for federal purposes:

- The exclusion for up to \$5,250 of employer-provided educational assistance, which had expired for years beginning after December 31, 1988, was extended through September 30, 1990. For taxable years beginning in 1990, only amounts paid or incurred before October 1, 1990, can be used to determine the exclusion.
- The exclusions for amounts contributed by an employer to a qualified group legal services plan and for benefits received under the plan, which had expired for years ending after December 31, 1988, were extended through September 30, 1990. For taxable years beginning in 1990, only amounts paid or incurred before October 1, 1990, can be used to determine the exclusion.
- In certain circumstances, mutual fund load charges or sales fees incurred after October 3, 1989, in taxable years ending after that date, on the acquisition of mutual fund shares are not taken into account as part of the purchaser's basis for purposes of computing profit or loss on the disposition of those shares.
- Certain exchanges of property between related parties and exchanges of U.S. and foreign real property occurring after July 10, 1989, in taxable years ending after that date, do not qualify as tax-free like-kind exchanges.
- A partner who contributes appreciated property to a partnership after October 3, 1989, in taxable years ending after that date, must recognize pre-contribution gain or loss on that property if the partnership later distributes that property to the other partners within 5 years of the time of contribution.

## B. CORPORATION FRANCHISE OR INCOME TAXES

1. Reference to the Internal Revenue Code Updated for 1990 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits (1989 Act 336, amend secs. 71.26(3)(y), 71.365(1m), and 71.45(2)(a)13. and create secs. 71.22(4)(e) and (4m)(c), 71.26(2)(b)5., 71.34(1g)(e), and 71.42(2)(d), effective for taxable years beginning after December 31, 1989.)

For taxable years that begin after December 31, 1989, "Internal Revenue Code" for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate investment trusts (REITs), and real estate mortgage investment conduits (REMICs) means the federal Internal Revenue Code as amended to December 31, 1989, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- a. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies for property placed in service in taxable years beginning after December 31, 1989, depreciation or amortization may be computed under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1989, at the taxpayer's option.
- b. For corporations (except nonprofit organizations, RICs, REITs, and REMICs) and tax-option (S) corporations, the non-Code provisions created by P.L. 99-514 and P.L. 100-647 that required certain changes in the treatment of inventory property, reserves for bad debts, sales under revolving credit plans, discount coupon redemption costs, and income from utility services to be treated as changes in the method of accounting under IRC sec. 481 do not apply for Wisconsin purposes.
- c. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the federal Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- d. For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in passthroughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- e. For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- f. For RICs, REITs, and REMICs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis of property disposed of during the taxable year for federal and Wisconsin tax purposes.

2. Federal Laws Enacted During 1989 Adopted to Apply Simultaneously for Wisconsin Purposes (1989 Act 336, amend secs. 71.22(4)(a), (b), (c), and (d) and (4m)(a) and (b), 71.26(2)(b)1., 2., 3., and 4., 71.34(1g)(a), (b), (c), and (d), and 71.42(2)(a), (b), and (c) and create nonstatutory provision, effective for taxable years beginning before January 1, 1990.)

The following federal laws enacted during 1989 apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes:

- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73), enacted August 9, 1989
- Debt Limit Extension Act (Public Law 101-140), enacted November 8, 1989
- Support for East European Democracy Act of 1989 (Public Law 101-179), enacted November 28, 1989
- Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), enacted December 19, 1989

For example, the following law changes are effective for Wisconsin purposes at the same time as for federal purposes:

- The repeal of the completed contract method of accounting, by Public Law 101-239, applies for contracts entered into on or after July 11, 1989.
- The denial under certain circumstances of a deduction for amounts paid or incurred to buy a franchise, trademark, or trade name, by Public Law 101-239, applies for assets transferred after October 2, 1989.
- The repeal of the special rules for financially troubled financial institutions, by Public Law 101-73, applies for transactions entered into on or after May 10, 1989.

3. Research Credit and Development Zone Research Credit Revised (1989 Act 336, amend secs. 71.28(4)(a) and (am) and 71.47(3)(a) and (am), effective for taxable years beginning after December 31, 1989.)

For purposes of computing the Wisconsin research credit and the development zone research credit, "qualified research expenses" are defined in sec. 41 of the Internal Revenue Code as amended to December 31, 1989. Therefore, the federal changes made by Public Law 101-239 to the definition of "qualified research expenses" in IRC sec. 41 also apply for Wisconsin purposes.

However, the changes made by Public Law 101-239 with respect to the definition of the "base amount" and the computation of the research credit do not apply for Wisconsin purposes. Instead, "base period research expenses" must be computed under IRC sec. 41(c) in effect on December 31, 1988. Therefore, the "base period" will continue to be the three taxable years immediately before the current taxable year and the "base period research expenses" will continue to be the average of the qualified research expenses for each year in the base period.

## C. HOMESTEAD CREDIT

1. Allow Homestead Credit to Certain Residents of Tax-Exempt Housing Other Than a Housing Authority (1989 Act 198, amend sec. 71.53(2)(e) and create sec. 71.54(2)(c), effective for 1990 and subsequent years' claims filed in 1991 and thereafter.)

If a claimant moves from a homestead he or she owns to housing that is exempt from property taxes, the claimant may claim homestead credit based on the property taxes on the former homestead for up to one year, if the following conditions are met:

- a. The claimant must have attempted to sell the former homestead.
- b. The tax-exempt housing cannot be a housing authority for which payments in lieu of taxes are made. (Note: Claimants residing in housing owned by a housing authority that makes payments in lieu of taxes may continue to claim homestead credit based on rent paid to the tax-exempt housing.)
- c. The tax-exempt housing cannot be a correctional or detention facility.

Property taxes on the former homestead may be claimed for the period of time from the date the claimant moves out of that homestead to the earliest time any one of the following events occurs:

- a. The claimant sells or otherwise disposes of the former homestead.
- b. The claimant rents or leases out the former homestead.
- c. The claimant moves out of qualifying tax-exempt housing.
- d. One year of time elapses.

Example: Mary Smith moves from the homestead she owns to a tax-exempt nursing home on July 1, 1990. She has listed her former homestead for sale with a realtor. As of December 31, 1991, Mary continues to reside in the nursing home, and the former homestead, which she has not sold, remains vacant, except for her personal belongings. Mary's property taxes on her former homestead are \$1,200 for 1990 and \$1,300 for 1991.

Mary may file a 1990 homestead credit claim, based on the 1990 property taxes for the entire year, which are \$1,200. She may also file a 1991 claim, based on property taxes of \$650 (1991 property taxes of \$1,300, prorated from January 1 to June 30, 1991, which is one year after moving out of the former homestead). No taxes or rent may be claimed for the period July 1, 1991, to December 31, 1991.

2. Household Income Limitation and Property Taxes Increased (1989 Act 336, amend sec. 71.54(1)(c)(intro.) and (2)(b)2 and create sec. 71.54(1)(d) and (2)(b)3, effective for 1990 and subsequent years' claims filed in 1991 and thereafter.)



The maximum household income limitation, above which no homestead credit is allowed, is increased from \$18,000 to \$19,154.

The maximum allowable property taxes or rent constituting property taxes that may be claimed in computing homestead credit is increased from \$1,350 to \$1,450.

In addition, the formula for computing the amount of credit is changed. If household income is more than \$8,000, the credit is 80% of the amount by which property taxes or rent constituting property taxes exceeds 13% (was 13.5% for 1989 claims) of household income exceeding \$8,000.

#### D. SALES AND USE TAX

##### 1. Nexus Standards for Foreign Corporations That Are Publishers (1989 Act 336, amend sec. 77.51(13h), see effective dates below.)

Background: Every "retailer engaged in business in this state" (i.e., a retailer who has nexus in Wisconsin for use tax) for purposes of use tax, is required to collect use tax from the purchaser on sales of tangible personal property or taxable services in Wisconsin (sec. 77.53(3), Wis. Stats. (1987-88)).

"Retailer engaged in business in this state" is defined in sec. 77.51(13g), Wis. Stats. (1987-88), and means any of the following (except as provided in sec. 77.51(13h)):

- Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.
- Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or the taking of orders for any tangible personal property or taxable services.

##### New Nexus Standards for Foreign Corporations That Are Publishers:

Section 77.51(13h), Wis. Stats., was created by 1987 Act 399 and amended by 1989 Act 336. As a result of the amendment to sec. 77.51(13h), a "retailer engaged in business in this state" (i.e., a retailer who has nexus in Wisconsin for use tax) does not include a foreign corporation that is a publisher of printed materials if its only activities in Wisconsin do not exceed the four activities described below:

1. The storage of the publisher's raw materials for any length of time in Wisconsin in or on property owned by a person other than the publisher and the delivery of the publisher's raw materials to another person in Wisconsin if that storage and delivery are for printing by that other person.

2. The purchase from a printer of a printing service or of printed materials in Wisconsin for the publisher.
3. The storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the publisher.
4. Maintaining, occupying and using, directly or by means of another person, a place that is in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

Note: (a) For a foreign corporation that is a publisher of books and/or periodicals other than catalogs, this provision is effective January 1, 1980. This includes publishers who publish 1) only books, 2) only periodicals other than catalogs, 3) books and periodicals other than catalogs, 4) either books and/or periodicals other than catalogs, and in addition, other materials (e.g., catalogs, advertising flyers).

(b) For all other publishers that are foreign corporations (other than those included in (a) above, this provision is effective January 1, 1990.

2. Exempt Adaptive Equipment for Handicapped Persons to Enter, Operate or Leave a Vehicle. (1989 Act 238, create sec. 77.54(22)(f), effective June 1, 1990.)

Adaptive equipment that makes it possible for handicapped persons to enter, operate, or leave a vehicle, as defined in sec. 27.01(7)(a)2., Wis. Stats. (1987-88), is exempt from sales and use tax if that equipment is purchased by the individual who will use it, a person acting directly on behalf of that individual, or a nonprofit organization.

Section 27.01(7)(a)2, Wis. Stats. (1987-88), defines a "vehicle" as an automobile, motor truck, motor delivery wagon, motor bus, motorcycle, or other similar motor vehicle.

3. Exempt Snowmobile Trail Groomers (1989 Act 270, create sec. 77.54(38), effective July 1, 1990.)

An exemption from sales and use tax is provided for snowmobile trail groomers and attachments that are purchased, stored, used, or consumed by a snowmobile club that (a) meets at least 3 times a year, (b) has at least 10 members, (c) promotes snowmobiling, and (d) participates in the Department of Natural Resources' snowmobile program under sec. 350.12(4)(b), Wis. Stats.

4. Cloth Diaper and Diaper Services Exempt (1989 Act 335, amend sec. 77.52(2)(a)6 and create secs. 77.51(1m) and (3m) and 77.54(40), effective July 1, 1990.)

Laundry, drycleaning, pressing, and dyeing services performed on cloth diapers by a diaper service are exempt from sales and use tax. Also, the sale, lease, or rental, and the storage, use, or other consumption of cloth diapers are exempt from sales and use tax.

"Cloth diaper" means a cloth diaper used for sanitary purposes.

"Diaper service" means a business primarily engaged in the lease or rental, delivery, and laundering of cloth diapers.

#### E. INHERITANCE AND GIFT TAXES

1. References to Internal Revenue Code Updated for Power of Appointment, Qualified Retirement Plans, and Installment Payments (1989 Act 336, amend secs. 72.01(17), 72.12(4)(c)1., and 72.22(4)(a), effective for deaths occurring on or after January 1, 1990.)

The references to the Internal Revenue Code relating to powers of appointment, employee death benefits, and installment payments of inheritance taxes are updated to the Internal Revenue Code as amended to December 31, 1989.

2. References to Internal Revenue Code Updated for Gift Tax Exemption (1989 Act 336, amend sec. 72.76(4), effective for gifts made on or after May 11, 1990.)

The references to the Internal Revenue Code relating to the gift tax exemption for transfers by an employer to a former employee's distributee or estate of amounts that qualify as employee death benefits are updated to the Internal Revenue Code as amended to December 31, 1989.

#### F. EXCISE TAXES

1. Proof of Age Register Book (1989 Act 135, renumber and amend sec. 125.07(7) and create sec. 125.07(7)(a) 2 and (b), effective March 31, 1990.)

The statutes now require a person alleging that he or she is the parent, guardian or spouse of legal drinking age of an underage person to also supply proof of identification and to sign the age register book if the licensee or permittee has any questions about the person's relationship to the underage person.

2. Change Passenger Capacity of Vessels Eligible for Alcohol Beverage Permits (1989 Act 252, renumber and amend sec. 125.27(2)(a); amend sec. 125.51(5)(c)1; and create sec. 125.27(2)(a)1.b, effective May 3, 1990.)

This provision brings back prior law by allowing a permit to be issued by the Department of Revenue to vessels with an approved passenger capacity of not less than 100 individuals, if the sale of alcohol beverages on the vessel accounts for less than 50% of the gross receipts of the vessel. Food is not required to be served on vessels with an approved passenger capacity of not less than 100 individuals.

To be eligible for a permit authorizing the sale of alcohol beverages on a vessel, the vessel must qualify under the provisions above or the passenger capacity must be 40 persons or more, the vessel must serve food, and the sale of alcohol beverages cannot exceed 50% of the receipts from all food and beverage sales.

3. Chapter 125 of Wisconsin Statutes Revised (1989 Act 253, repeal 125.04(4)(title), 125.04(4)(b), 125.04(12)(b)3, 125.11(1)(title), 125.11(2) and (3), 125.14(4), 125.15, 125.31(2), 125.32(4)(b), 125.32(5)(b), 125.51(6), 125.59, 125.68(3)(a)(title), 125.68(3)(b), 125.68(6), (7) and (9)(a); renumber 125.04(4)(a) and 125.31(1); renumber and amend 125.07(7), 125.085(3)(a), 125.11(1)(a) and (b), 125.32(5)(a) and 125.68(3)(a); to amend 125.037(intro.), 125.04(5)(a)(intro.), 1 and 2, 125.04(5)(b), 125.06(6) and (9), 125.07(1)(b) 1 and 2.a, 125.07(3)(a)2, 3, 5 and 7, 125.07(4)(a)1, 125.07(4)(bs)3, 125.07(4)(c)1, 125.07(4)(c)2 and 3, 125.07(6)(intro.), (a) and (c), 125.075(title), 125.085(3)(b)2, 125.10(4), 125.27(2)(b), (c) and (e), 125.29(2), 125.32(1)(a)(intro.), 125.32(2), 125.32(3)(c), 125.33(1)(a), 125.33(2)(h) and (j), 125.33(7)(d), 125.33(9), 125.51(1)(a), 125.51(5)(c)2 to 4, 125.52(1) and (5), 125.54(1), 125.58(4), 125.60(1) and (4), 125.65(1) and (2), 125.66(3), 125.67, 125.68(1)(a)(intro.) and (2), 125.68(4)(c)4, 125.68(9)(e), 125.68(10)(bm), 125.69(1)(a), 125.69(4)(d) and 125.69(6); repeal and recreate 125.075(2), 125.27(2)(am), 125.51(5)(c)1m and 125.66(1); and create 125.02(15m), 125.03(3), 125.04(5)(a)4, 125.04(13), 125.07(1)(b)2.c and d, 125.07(3)(a)11, 125.07(4)(a)2, 125.07(4)(bs)4, 125.07(4)(c)4, 125.07(6)(d), 125.07(7)(a)2 and (b), 125.085(3)(a)2 and 3, 125.105, 125.315, 125.32(2m) and 125.68(2m), effective May 3, 1990.)

(Repeal 125.28(1)(title), 125.28(2), 125.28(3) and 125.57; renumber and amend 125.28(1)(a) to (d); amend 125.04(3)(g)(intro.), 125.04(5)(c), 125.045(3), 125.25(1) and (4), 125.26(1), (2) and (4) to (6), 125.27(1)(a) and (c), 125.27(2)(a), 125.275(4), 125.29(3), 125.30(4), 125.51(2)(b), 125.51(3)(c), 125.51(5)(a)1 and 5, 125.51(5)(c)1, 125.62(4), 125.63(4) and 125.65(5); repeal and recreate 125.29(1) and 125.51(5)(b)5; and create 125.51(10), effective July 1, 1990.)

(Repeal 125.32(4)(a); repeal and recreate 125.045(3); and create 125.17(6), effective July 1, 1991.)

Chapter 125 of the Wisconsin Statutes, relating to alcohol beverages, is revised to put the material in a more logical order, delete obsolete material, provide consistent regulatory treatment of the different segments of the industry, update the statutes to reflect the current administrative and industry practices, enhance the licensing authority of municipal governments, and revise certain penalty provisions to make them consistent with the penalties for similar non-alcohol offenses.

#### G. OTHER

1. Distribute Information About Physicians' Medicare Program (1989 Act 294, create sec. 71.55(10), effective May 8, 1990.)

Beginning in 1990, the Department of Revenue must annually distribute enrollment cards and materials explaining a program under which a physician voluntarily agrees to 1) accept assignment of medicare Part B reimbursements for services provided to patients age 65 or older, whose household income for the previous year did not exceed \$18,000, and 2) not require patients to pay amounts in excess of the reimbursements allowed under medicare Part B.

The items must be distributed to persons age 65 or older whose household income for the previous year, if known by the department, did not exceed \$18,000. In this section, "household income" has the same meaning as in sec. 71.52(5).

Beginning in 1991, the department must annually submit a report to the Legislature, indicating the number of persons, by county, to whom it distributed enrollment cards.

2. Recycling Fee Imposed on Certain Corporations, Partnerships, and Sole Proprietorships (1989 Act 335, amend secs. 73.01(4)(a), 73.03(27)(intro.), and ch. 77 (title), repeal and recreate sec. 73.01(4)(a), and create sec. 73.03(36) and subch. VII of ch. 77, effective for taxable years ending after April 1, 1991, and before April 1, 1993.)

For taxable years ending after April 1, 1991, and ending before April 1, 1993, corporations, partnerships, and sole proprietorships that operate in Wisconsin are subject to a recycling fee. The fee is imposed on an entity's taxable gross receipts during the taxable year and ranges from \$63 on receipts of at least \$1 million to \$2,170 on receipts of \$4 million or more.

#### Who Is Subject to the Fee

- Corporations that are required to file a Wisconsin franchise or income tax return, Form 4 or 5, except those which have gross receipts only from farming
- Tax-option (S) corporations that are required to file a Wisconsin franchise or income tax return, Form 5S, except those which have gross receipts only from farming
- Insurance companies that are required to file a Wisconsin franchise tax return, Form 4I
- Exempt organizations that are subject to the tax on unrelated business taxable income and must file Form 4T, except those which have gross receipts only from farming
- Partnerships that are required to file a Wisconsin income tax return, Form 3, except those which have gross receipts only from farming
- Individuals who are required to file a Wisconsin income tax return, Form 1 or 1NPR, and who have a profit or loss from a trade or business, as defined in IRC sec. 1402(c), not including farming, for federal income tax purposes
- Trusts and estates that are required to file a Wisconsin income tax return, Form 2, and that have a profit or loss from a trade or business, as defined in IRC sec. 1402(c), not including farming, for federal income tax purposes

Note: The fee is imposed on the gross receipts of tax-option (S) corporations and partnerships at the entity level. The shareholders or partners are not subject to an additional fee on their pro rata share of the gross receipts which the entity passes through to them.

### What Are Gross Receipts

"Gross receipts" means total receipts, less returns and allowances, from all activities. This includes:

- For corporations, the gross receipts reportable for franchise or income tax purposes, except gross receipts from farming
- For insurance companies, the gross receipts reportable for federal income tax purposes
- For exempt organizations, the gross receipts from unrelated businesses the income from which is reportable under sec. 71.24(1m)
- For partnerships, the gross receipts, except from farming, reportable on the federal income tax return
- For individuals, the aggregate gross receipts reportable in calculating the profit or loss from all of the trades or businesses, as defined in IRC sec. 1402(c), not including farming, for federal income tax purposes
- For estates and trusts, the aggregate gross receipts reportable in calculating the profit or loss from all of the trades or businesses, as defined in IRC sec. 1402(c), not including farming, for federal income tax purposes

### What Are Taxable Gross Receipts

"Taxable gross receipts" means gross receipts as apportioned or allocated to Wisconsin by means of the methods used to apportion and allocate income for Wisconsin franchise or income tax purposes under sec. 71.04 for individuals, estates, trusts, and partnerships; under sec. 71.25 for corporations; and under sec. 71.45(3) for insurance companies. In the case of an individual, estate, or trust, income from business activities conducted outside Wisconsin by a resident individual, estate, or trust, shall not be allocated to Wisconsin for purposes of determining the recycling fee.

### What Is a Trade or Business

For purposes of the recycling fee, "trade or business" is defined in IRC sec. 1402(c), relating to self-employment income. In that section, "trade or business" has the same meaning, with certain exceptions, as when used in IRC sec. 162, relating to the deduction of trade or business expenses in computing taxable income.

### What Is Farming

For purposes of the recycling fee, farming is defined in IRC sec. 464(e)1. "Farming" means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees, other than trees bearing fruit or nuts, are not treated as an agricultural or horticultural commodity.

Period Covered by the Fee

The fee is imposed for the same period covered by the taxpayer's Wisconsin franchise or income tax return. The fee is first imposed for taxable years ending after April 1, 1991.

Due Date of the Fee

The recycling fee is due on the date on which the entity's Wisconsin franchise or income tax return is due.

<u>Type of Entity</u>	<u>Due Date of Return</u>
Corporation	15th day of 3rd month following close of taxable year
Tax-option corporation	15th day of 3rd month following close of taxable year
Insurance company	15th day of 3rd month following close of taxable year
Exempt corporation	15th day of 5th month following close of taxable year
Publicly-traded partnership taxed as a corporation	15th day of 3rd month following close of taxable year
Partnership (except publicly-traded partnership)	15th day of 4th month following close of taxable year
Individual	15th day of 4th month following close of taxable year
Estate or trust	15th day of 4th month following close of taxable year
Exempt employee's trust or IRA	15th day of 4th month following close of taxable year

Payment of Estimated Fees

Entities are not required to make quarterly estimated payments to prepay the recycling fee.

Interest and Penalties

The interest and penalty provisions in chapter 71 that apply to the Wisconsin franchise and income taxes also apply to the recycling fee.

### Administrative Provisions

The administrative provisions, including those relating to audits and assessments, claims for refund, statutes of limitations, Internal Revenue Service adjustments, confidentiality, appeals, and collections, that apply for Wisconsin franchise and income tax purposes also apply to the recycling fee.

### Use of Recycling Fees

The Department of Revenue is required to deposit recycling fees, interest, and penalties collected in the recycling fund under sec. 25.49.

### Computation of the Recycling Fee

The recycling fee is imposed on the entity's taxable gross receipts during the taxable year.

If an entity begins to do business in Wisconsin after the beginning of the taxable year, or ceases to do business in Wisconsin before the end of the taxable year, the fee is calculated as follows:

- a. Multiply the taxable gross receipts for the taxable year by a fraction the numerator of which is 365 and the denominator of which is one of the following:
  - 1) the number of days from the day the entity begins to do business in Wisconsin until the end of its taxable year, if the entity begins to do business in Wisconsin after the beginning of its taxable year,
  - 2) the number of days from the beginning of the entity's taxable year until the day that it ceases to do business in Wisconsin, if the entity ceases to do business in Wisconsin before the end of its taxable year, or
  - 3) the number of days from the day that the entity begins to do business in Wisconsin to the day that it ceases to do business in Wisconsin, if the entity both begins to do business in Wisconsin after the beginning of its taxable year and ceases to do business in Wisconsin before the end of its taxable year.
- b. Determine the fee that would be imposed on the taxable gross receipts calculated in a.
- c. Divide the fee calculated in b. by the fraction under a.

"Begins to do business" includes but is not limited to a change in corporate form and the occurrence of any event that creates a short taxable year for Wisconsin franchise or income tax purposes.

"Ceases to do business" includes but is not limited to a change in corporate form, the death of an individual, and the occurrence of any event that creates a short taxable year for Wisconsin franchise or income tax purposes.



Amount of Fee

If taxable gross receipts are at least --	but less than --	Recycling fee is --
\$ 0	\$1,000,000	\$ 0
1,000,000	2,000,000	63
2,000,000	3,250,000	430
3,250,000	3,500,000	590
3,500,000	3,750,000	780
3,750,000	4,000,000	970
4,000,000		2,170

3. Withholding-Statutory Reference Updated (1989 Act 278, amend sec. 71.63(6)(L), effective May 4, 1990.)

The Wisconsin withholding tax law (sec. 71.63(6)) lists several specific types of payments which are excluded from the definition of "wages" subject to withholding. One type of payment excluded from the definition of wages is retirement benefits. To identify these payments, the withholding law referred to a description found in section 815.18(31)(a). This reference has been changed to section 815.18(3)(j) to reflect the repeal and recreation of section 815.18 by 1989 Act 278. Also, the words "or contract" have been added to section 71.63(6)(L) to reflect the use of the word contract in section 815.18(3)(j).