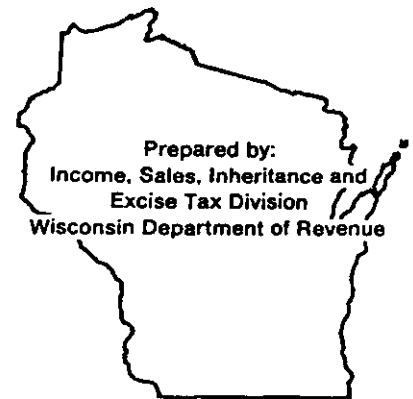


# WISCONSIN TAX BULLETIN

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## NEW WISCONSIN TAX LAWS

The Wisconsin Legislature has enacted numerous changes to the Wisconsin tax laws. This issue of the Wisconsin Tax Bulletin contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, homestead credit, farmland preservation credit, farmland tax relief credit, sales/use, estate, inheritance, gift, and excise tax provisions.

The majority of the provisions described are contained in 1991 Act 39, the 1991-93 budget bill, which was published August 14, 1991. However, tax provisions were also enacted in 1991 Acts 2, 3, 28, and 37. Descriptions of those changes are also included.

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

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## A. INDIVIDUAL AND FIDUCIARY INCOME TAXES

1. Reference to the Internal Revenue Code Updated for 1991 for Individuals, Estates, and Trusts (1991 Act 39, amend secs. 71.01(6)(e) and 71.01(7r) and create sec. 71.01(6)(f), effective for taxable years beginning on or after January 1, 1991.)

For taxable years that begin on or after January 1, 1991, "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, 1990. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

For example, Public Law 101-508 expanded the exclusion from gross income for up to \$5,250 of benefits provided by an employer under an educational assistance program to include graduate level courses leading to advanced academic or professional degrees, effective for taxable years beginning on or after January 1, 1991. That same effective date applies for Wisconsin purposes.

For property placed in service in taxable years beginning on or after January 1, 1991, 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, 1990, at the taxpayer's option.

2. Federal Laws Enacted During 1990 Adopted to Apply Simultaneously for Wisconsin Purposes (1991 Act 39, amend sec. 71.01(6)(a), (b), (c), (d), and (e) and create nonstatutory provision, effective for taxable years beginning before January 1, 1991.)

The following federal laws enacted during 1990 apply for Wisconsin income tax purposes at the same time as for federal purposes:

- Technical Changes in the Ethics Reform Act of 1989 (Public Law 101-280), enacted May 4, 1990
- Revenue Reconciliation Act of 1990 (Public Law 101-508), enacted November 5, 1990

As a result of this law change, those items identified in the instructions to the 1990 Wisconsin Schedule I as differences between federal and Wisconsin law no longer are differences for taxable years that begin after December 31, 1989. If "Schedule I adjustments" were made to a 1990 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 101-508 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 on September 30, 1990, was extended through taxable years beginning before January 1, 1992.

- 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 on September 30, 1990, were extended through taxable years beginning before January 1, 1992.
  - The deduction for 25% of the amounts paid for health insurance on behalf of a self-employed individual and the individual's spouse and dependents, which had expired on September 30, 1990, was extended through taxable years beginning before January 1, 1992.
  - Effective for transfers after October 11, 1990, percentage depletion may be claimed on transferred proven oil and gas properties.
  - For transfers after August 3, 1990, the limitation on tax-free exchanges between related persons is extended to include transfers between a partner and a controlled partnership.
3. Conform Filing Requirements and Standard Deduction for Dependents with Unearned Income to Federal (1991 Act 39, amend secs. 71.03(2)(a)3 and 71.05(22)(f), effective for taxable years beginning on or after January 1, 1991.)

A person who can be claimed as a dependent on another taxpayer's Wisconsin income tax return is required to file a Wisconsin income tax return if he or she has any amount of unearned income and gross income (including both earned and unearned income) of \$550 or more. The \$550 filing requirement applies whether or not the person is actually claimed as a dependent on another taxpayer's Wisconsin income tax return.

The minimum standard deduction for a dependent with unearned income is increased from \$500 to \$550.

In prior years, this filing requirement was based exclusively on unearned income. Earned income was not considered. The change for taxable years beginning on or after January 1, 1991, conforms the Wisconsin filing requirements and standard deduction to the federal filing requirements and standard deduction.

4. Prorate Health Insurance Deduction for Self-Employed Individuals Who are Part-Year Residents or Nonresidents (1991 Act 39, amend sec. 71.05(6)(a)12, effective for taxable years beginning on or after January 1, 1991.)

The deduction allowed for 25% of the health insurance costs of self-employed individuals (sec. 162(L), Internal Revenue Code) is limited for part-year residents and nonresidents of Wisconsin. The deduction allowable for federal tax purposes must be prorated, using the ratio of the individual's net earnings from a trade or business taxable by Wisconsin to the individual's total net earnings from a trade or business.

Example: The taxpayer is self-employed and a part-year resident of Wisconsin for 1991. His/her total self-employment income for 1991 is \$20,000 of which \$5,000 is taxable to Wisconsin. The deduction for federal tax purposes for health insurance costs under section 162(L), Internal Revenue Code is \$800. The deduction allowable for Wisconsin is \$200 computed as follows:

$$\$800 \times \frac{\$5,000}{\$20,000} = \$200$$

5. Prorate Deduction for Self-Employment Taxes for Part-Year Residents or Nonresidents (1991 Act 39, amend sec. 71.05(6)(a)12, effective for taxable years beginning on or after January 1, 1991.)

The deduction for one-half of federal self-employment taxes (sec. 164(f), Internal Revenue Code) is limited for part-year residents and nonresidents of Wisconsin. The deduction allowable for federal income tax purposes must be prorated, using the ratio of the individual's net earnings from a trade or business taxable by Wisconsin to the individual's total net earnings from a trade or business.

Example: The taxpayer is self-employed and a part-year resident of Wisconsin for 1991. His/her total self-employment income for 1991 is \$30,000 of which \$10,000 is taxable to Wisconsin. The deduction for federal tax purposes for one-half of the self-employment tax (sec. 164(f), Internal Revenue Code) is \$2,119. The deduction allowable for Wisconsin is \$706 computed as follows:

$$\$2,119 \times \frac{\$10,000}{\$30,000} = \$706$$

6. Eliminate Penalty on Distribution From Retirement Plan When Distribution is Exempt From Wisconsin Tax (1991 Act 39, amend sec. 71.83(1)(a)6, effective for taxable years beginning on or after January 1, 1991.)

For federal tax purposes, a penalty is imposed on certain distributions from retirement plans. For example, a 10% penalty is imposed on an early distribution.

For Wisconsin tax purposes, any person who is liable for a federal penalty on a distribution from a retirement plan is also liable for a Wisconsin penalty equal to 33% of the federal penalty. However, effective for taxable years beginning on or after January 1, 1991, retirement plan distributions which are exempt from Wisconsin income tax under sec. 71.05(1)(a), Wis. Stats., are not subject to the Wisconsin penalty.

7. Change State Historic Rehabilitation Credit (1991 Act 39, consolidate and renumber sec. 71.74(8)(d)(intro.) and 1 to 71.74(8)(d) and amend as renumbered, repeal secs. 71.07(9r)(b)3.c. and 7 and (h) and 71.74(8)(d)2, amend sec. 71.07(9r)(a), (b)2 and 5, (c), (f), (g), (i), and (j)(intro.) and 2, and create sec. 71.07(9r)(b)1m and (k), effective for taxable years beginning on or after January 1, 1991.)

The state historic rehabilitation credit is modified as follows:

- a. The credit is available only for property owned by individuals. Under prior law, the credit was also available for property owned by corporations, estates, trusts, partnerships and tax-option corporations.
- b. The historic property must be an owner-occupied personal residence which is not actively used in a trade or business, held for the production of income, or held for sale or other disposition in the ordinary course of the claimant's trade or business. Under prior law, the credit also applied to human burial sites, archaeological sites, and other property which was not eligible for the supplement to the federal historic rehabilitation credit.
- c. The expenditures for the preservation or rehabilitation of the historic property must exceed \$10,000. Under prior law, the qualified rehabilitation expenditures were to exceed the greater of \$1,000 or the adjusted basis of the building, if the historic property was a building, or of the entire property, if the historic property was not a building.
- d. The costs to be included in the claim can relate only to preservation or rehabilitation work done to any of the following:
  - (1) The exterior of the historic property.
  - (2) The interior of a window sash if work is done to the exterior of the window sash.
  - (3) Structural elements of the historic property.
  - (4) The heating or ventilating systems.
  - (5) Electrical or plumbing systems, but not electrical or plumbing fixtures.
- e. Eliminate the requirement that the property be subject to an easement, covenant or similar restriction running with the land which is held by the State Historical Society or by an entity approved by the State Historical Society, which protects the historic features of the property, for a term of 20 years.
- f. Eliminate the requirement that costs had to be incurred after the State Historical Society approved the proposed preservation or rehabilitation plan.
- g. A person who receives the state historic rehabilitation credit shall add to his or her Wisconsin tax liability an amount equal to the amount of credits received if, within 5 years after the date on which the preservation or rehabilitation work that was the basis of the credit is completed, the person either (1) sells or conveys the property by deed or land contract, or (2) the State Historical Society certifies to the department that the historic property has been altered to the extent that it does not comply with prescribed standards.

8. Penalties on Distributions From Retirement Plans (1991 Act 39, amend sec. 71.83(1)(a)6, effective for taxable years beginning on or after January 1, 1991.)

Federal penalties imposed on certain retirement plan distributions to a 5% owner (sec. 72(m)(5), IRC) and on early distributions from modified endowment contracts (sec. 72(v), IRC) also apply for Wisconsin purposes. The Wisconsin penalty is equal to 33% of the federal penalty.

9. Require Reduction In Wisconsin Tax Attributes When Discharge of Indebtedness Income Is Excluded From Gross Income (1991 Act 39, create sec. 71.10(7m), effective for taxable years beginning on or after January 1, 1991.)

Section 108 of the Internal Revenue Code provides an exclusion from gross income for discharge of indebtedness income (cancellation of debts) when (1) the debt is discharged in bankruptcy under Title 11 of the U.S. Code, (2) the discharge occurs when the taxpayer is insolvent outside bankruptcy, or (3) the discharge consists of indebtedness that is qualified farm indebtedness.

When a taxpayer excludes income under section 108, IRC, the taxpayer is required to reduce certain federal tax attributes and the basis in qualified property by the amount of indebtedness discharged. Tax attributes are reduced dollar for dollar except for federal carryover credits which are reduced 33 1/3 cents for each dollar excluded. Tax attributes are reduced in the following order:

- a. Net operating loss
- b. General business credit
- c. Capital loss carryovers
- d. Basis reduction
- e. Foreign tax credit carryovers

Effective for taxable years beginning on or after January 1, 1991, a taxpayer who excludes income from discharge of indebtedness from gross income must use the Wisconsin net operating loss, Wisconsin carry-over credits, and the Wisconsin capital loss carryover to reduce tax attributes for Wisconsin purposes. The reduction rate for Wisconsin credit carry-overs is 6.93%.

Example: An insolvent taxpayer had \$15,000 of debt discharged in 1991. The taxpayer had the following tax attributes:

	<u>Federal</u>	<u>Wisconsin</u>
Net operating loss carryover	\$ 10,000	\$ 5,000
Business credit carryover	1,000	-0-
Capital loss carryover	-0-	1,000
Basis of qualified assets	100,000	100,000

For federal purposes, the taxpayer reduces his or her net operating loss to zero, business credit carryover to zero, and the basis of qualified assets to \$98,000. Thus the \$15,000 reduction in federal tax attributes consists of a \$10,000 reduction in the net operating loss carryover, a \$3,000 reduction resulting from decreasing the business credit carryover by \$1,000, and a \$2,000 reduction in the basis of qualified assets.

For Wisconsin purposes, the taxpayer reduces his or her net operating loss to zero, the capital loss carryover to zero, and the basis of the qualified assets to \$91,000. Thus the \$15,000 reduction in tax attributes consists of a \$5,000 reduction in the net operating loss carryover, a \$1,000 reduction in the capital loss carryover, and a \$9,000 reduction in the basis of qualified assets.

10. Wisconsin Earned Income Credit Based on Percentage of Federal Basic Credit (1991 Act 39, amend sec. 71.07(9e)(a)(intro.), effective for taxable years beginning on or after January 1, 1991.)

A person who qualifies for a federal earned income credit and has at least one dependent child qualifies for the Wisconsin earned income credit. The Wisconsin earned income credit is equal to a percentage of the federal basic credit, adjusted for family size. For eligible claimants, the Wisconsin credit is 5% of the federal basic credit if the claimant has one dependent child, 25% of the federal basic credit if the claimant has two dependent children, and 75% of the federal basic credit if the claimant has three or more dependent children.

Congress made changes to the federal earned income credit for taxable years beginning in 1991 and thereafter. The federal earned income credit will consist of three parts:

Part 1. Basic credit

Part 2. Health insurance credit

Part 3. Young child credit

Any portion of an individual's federal earned income credit which is attributable to the health insurance credit or the young child credit may not be used to calculate the Wisconsin earned income credit.

Example: The taxpayer has two dependent children and computes a federal earned income credit totalling \$1,664. The federal earned income credit is comprised of the following three parts:

\$1,017	Basic credit
353	Health insurance credit
294	Young child credit
<u>\$1,664</u>	Total federal credit

The taxpayer's Wisconsin earned income credit is \$254.25.  
( $\$1,017 \times .25 = \$254.25$ )



11. Clarify That Farmland Tax Relief and Farmland Preservation Credits Are Includable in Income (1991 Act 39, create sec. 71.05(6)(a)17, effective August 15, 1991.)

Under current law, secs. 71.07(3m)(d) and 71.61(2), Wis. Stats. (1989-90) require that the entire amount of farmland preservation credit and farmland tax relief credit allowable must be included in Wisconsin taxable income in the year of receipt.

This new provision in sec. 71.05(6)(a)17 clarifies this requirement as it pertains to individuals, estates and trusts, by providing an add modification for the amount of farmland preservation credit and farmland tax relief credit that is not included in federal adjusted gross income.

12. Change Cross-Reference Appearing in Definition of Net Operating Loss (1991 Act 39, amend sec. 71.01(14), effective for taxable years beginning on or after January 1, 1991.)

The definition of "Wisconsin net operating loss" includes a cross-reference to sec. 71.05(6)(b)(intro.), 1 to 8 and 10 to 12. This provision changes this specific cross-reference to sec. 71.05(6)(b), except sec. 71.05(6)(b)9. The change means that any new subtraction modifications that are created will automatically be included in the computation of a Wisconsin net operating loss.

13. Clarify Statutes Related to Taxation of Nonresidents on Lottery and Pari-Mutuel Wager Winnings (1991 Act 39, amend sec. 71.02(1), effective August 15, 1991.)

Under current law, income which nonresident individuals, estates, and trusts receive from the Wisconsin lottery, multistate lottery tickets purchased in Wisconsin, and pari-mutuel wagers made in Wisconsin has a taxable situs in Wisconsin. Income having a situs in Wisconsin is taxable by Wisconsin.

This provision conforms the statute relating to imposition of tax to that of taxable situs by providing that tax is imposed on nonresident individuals, estates, and trusts on income derived from the Wisconsin lottery, multistate lottery tickets purchased in Wisconsin, and pari-mutuel wagers made in Wisconsin.

This provision does not change the taxability of this income. Income which nonresident individuals, estates, and trusts receive from the Wisconsin lottery, multistate lottery tickets purchased in Wisconsin and pari-mutuel wagers made in Wisconsin is still taxable to Wisconsin.

14. Jobs Credit Reference to Federal Definition of a "Dislocated Worker" Corrected (1991 Act 39, amend sec. 71.07(2dj)(am)1, effective for taxable years beginning on or after July 1, 1989.)

For purposes of the Wisconsin development zones job credit, this provision provides that a "dislocated worker" is defined in 29 USC sec. 1651(a). Prior law referenced 29 USC sec. 1652(a). However, the federal definition of dislocated worker was renumbered from sec. 1652(a) to sec. 1651(a) by Public Law 100-418.

15. Repeal Deduction for Inheritance and Estate Tax Administration Expenses (1991 Act 39, repeal sec. 71.05(6)(a)11, 71.05(6)(b)7 and 71.07(5)(a)8, effective for expenses related to transfers because of deaths occurring on or after January 1, 1992.)

Under prior law, an estate could claim administration expenses either for Wisconsin inheritance tax purposes or for Wisconsin income tax purposes. Federal law permits a similar election for federal tax purposes. Different treatment could be elected for Wisconsin purposes from federal treatment.

The election for Wisconsin income tax purposes is repealed for deaths on or after January 1, 1992. Thus, whatever election is made for administration expenses for federal tax purposes will also control for Wisconsin.

16. Income Tax Exemption Repealed for Railroads, Sleeping Car Companies, and Car Line Companies (1991 Act 39, amend secs. 71.04(4) and 71.04(8)(title) and (c) and create nonstatutory provision, effective for taxable years beginning on or after January 1, 1991).

Income from railroads, sleeping car companies, and car line companies (companies which lease railroad cars) is no longer exempt from Wisconsin income taxes. A multistate railroad, sleeping car company, or car line company must apportion its income to Wisconsin based on rules to be promulgated by the Department of Revenue

17. Net Operating Loss Carryforward Limited (1991 Act 39, amend sec. 71.05(8)(b), effective for taxable years beginning on or after January 1, 1991).

In computing its Wisconsin taxable income, a taxpayer may not carry forward a net operating loss sustained in a taxable year in which the taxpayer was not subject to Wisconsin income taxation.

18. Small Business Stock Capital Gains Exclusion Modified (1991 Act 39, amend sec. 71.05(6)(b)6., effective for stock issued on or after August 16, 1991.)

For stock issued on or after August 16, 1991, the original purchaser of small business stock that is purchased at the time that the business is incorporated may claim the exclusion for net capital gains on small business stock if the taxpayer has not acquired the stock by gift, has not acquired the stock in a stock-for-stock exchange, and submits with his or her income tax return a copy of the certification received from the corporation.

Note: A tax release explaining the differences between the old and new laws will be published in a future issue of the Wisconsin Tax Bulletin. If you have questions about the small business stock exclusion, please write to the Technical Services Staff, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708.

19. Tax Treatment of Income From Limited Partnership Interests Changed for Nonresidents and Part-Year Residents (1991 Act 39, amend secs. 71.02(1) and 71.04(1)(a), effective for the partnership's taxable year beginning on or after January 1, 1991, and the limited partner's taxable year as appropriate to conform the limited partner's treatment of the income from the partnership to the partnership's tax treatment.)

All partners who are not full-year Wisconsin residents are subject to taxation by Wisconsin for that part of the taxable year during which they are nonresidents on their proportionate share of all items of partnership income, loss, or deduction attributable to a business in, services performed in, or rental of property in Wisconsin. For any part of the taxable year a partner is a resident of Wisconsin, these same items of partnership income, loss, or deduction are subject to taxation by Wisconsin, regardless of whether attributable to business, services or property in Wisconsin or outside Wisconsin.

Previously, limited partners who were precluded from management of the partnership and who could not act for the partnership did not recognize any items of income, loss, or deduction of the partnership for the part of the taxable year they were nonresidents of Wisconsin.

20. Exempt Interest Income From Certain WHEDA Bonds (1991 Act 37, create sec. 71.05(1)(c), effective August 2, 1991, and 1991 Act 39, create sec. 71.05(1)(d), effective August 15, 1991.)

Interest income from bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) to fund loans under secs. 234.65 (professional sports and entertainment home stadiums exempt from property tax under sec. 70.11(36)) and 234.935 of the Wisconsin Statutes is exempt from Wisconsin income tax.

21. Provide Exclusion for Compensation Received by Members of the Reserves for Operation Desert Shield or Desert Storm (1991 Act 2, create sec. 71.05(6)(b)13 and 14, effective March 28, 1991.)

To the extent included in federal adjusted gross income, a member of a reserve component of the U.S. Armed Forces may subtract all or a portion of basic, special and incentive pay income or compensation received from the federal government for services performed for Operation Desert Shield or Operation Desert Storm in the Desert Shield or Desert Storm theater of operations.

"Services performed for Operation Desert Shield or Operation Desert Storm" means service in a unit of the U.S. Armed Forces if the service is performed by a person who is a member of a reserve component of the U.S. Armed Forces and is activated for Operation Desert Shield or Operation Desert Storm, and the service occurs during the period that there is in effect a designation by the President of the United States that the service is part of Operation Desert Shield or Operation Desert Storm.

The subtraction is limited to \$500 per month for a commissioned officer. There is no limitation for a person below the grade of commissioned officer.

22. Provide Exemption From Interest During Extension Period for Certain Persons (1991 Act 3, amend sec. 71.03(7), effective March 28, 1991.)

For taxable years beginning after December 1, 1989, and before January 1, 1991 (1990 tax returns), certain persons are exempt from interest during the period of time an extension for filing a Wisconsin tax return is in effect. The exemption from interest applies to the following:

- a. Persons who served in support of Operation Desert Shield, Operation Desert Storm, or a successor operation, in the United States.
- b. Persons who served in Egypt, Israel, Diego Garcia, or Germany.
- c. Persons who qualify for a federal extension of time to file under IRC sec. 7508 (extension due to service in a combat zone), who served outside the United States because of their participation in Operation Desert Shield, Operation Desert Storm, or a successor operation, in the theater of operations.

23. Clarify Exclusion for Compensation Received By Members of the Reserves for Operation Desert Shield or Desert Storm (1991 Act 39, amend sec. 71.05(6)(b)13.(intro.) and a. and 14.(intro.) and a., as created by 1991 Act 2, effective August 15, 1991.)

1991 Wisconsin Act 2 provided that a member of a reserve component of the U.S. Armed Forces may exclude from taxable income the amount received (limited to \$500 per month for a commissioned officer) from the federal government for services performed for Operation Desert Shield or Operation Desert Storm in the Desert Shield or Desert Storm theater of operations.

This provision clarifies that the exclusion applies to any member of a reserve component who was called to active duty specifically for Operation Desert Shield or Operation Desert Storm, regardless of where he or she was stationed.

24. Repeal the \$1,200 Limitation on Certain Interest Used in the Computation of the Itemized Deduction Credit (1991 Act 39, repeal sec. 71.07(5)(a)7, effective for taxable years beginning on or after January 1, 1993.)

Effective for taxable years beginning on or after January 1, 1993, the \$1,200 limitation on certain interest which is used in the computation of the Wisconsin itemized deduction credit is repealed. Therefore, all interest which is allowable as an itemized deduction on federal Schedule A is used in the computation of the Wisconsin itemized deduction credit except the following:

- a. Interest paid to purchase or hold securities issued by the federal government which is exempt from Wisconsin tax.
- b. Interest incurred to purchase or refinance a residence that is not a principal residence and is not located in Wisconsin.
- c. Interest incurred to purchase or refinance a residence that is a boat.

25. Certain Credits Not Considered In Calculation of Alternative Minimum Tax (1991 Act 39, amend sec. 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 1991).

An individual or fiduciary is subject to the Wisconsin alternative minimum tax if the computed alternative minimum tax is more than the regular income tax imposed under sec. 71.02, Wis. Stats. For purposes of this comparison, "regular tax" may not be reduced by certain credits. This provision adds the 1988 farmer's drought credit and the earned income credit to the list of credits which are not deducted from regular tax. Thus, for alternative minimum tax purposes, the regular income tax imposed under sec. 71.02, Wis. Stats., is not reduced by any refundable credit.

26. Modify Development Zone Credits for Certain Claimants Doing Business on an Indian Reservation (1991 Act 39, renumber secs. 71.07(2di)(b) to 71.07(2di)(b)1. and 71.07(2dL)(c) to 71.07(2dL)(c)1. and amend sec. 71.07(2di)(b)1. and (2dL)(c)1. as renumbered; amend sec. 71.07(2di)(c) and (2dL)(d); and create sec. 71.07(2di)(b)2., (2dj)(am)4c., and (2dL)(c)2., effective for taxable years of partnerships, tax-option (S) corporations, or persons that begin on or after January 1, 1991, and for the appropriate taxable year of a partner or tax-option (S) corporation shareholder to conform the partner's or shareholder's treatment of a tax credit that is passed through by a partnership or tax-option (S) corporation to the partnership's or tax-option (S) corporation's treatment of the tax credit.)

See Item B.14.

#### B. CORPORATION FRANCHISE OR INCOME TAXES

1. References to the Internal Revenue Code Updated for 1991 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits (1991 Act 39, amend secs. 71.22(4)(e) and (4m)(c), 71.26(2)(b)5. and (3)(y), 71.34(1g)(e), 71.365(1m), 71.42(2)(d), and 71.45(2)(a)13. and create secs. 71.22(4)(f) and (4m)(d), 71.26(2)(b)6., 71.34(1g)(f), and 71.42(2)(e), effective for taxable years beginning on or after January 1, 1991).

For taxable years that begin on or after January 1, 1991, "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, 1990, 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 on or after January 1, 1991, 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, 1990, 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 Public Law 99-514 and Public Law 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 Internal Revenue Code is modified by Wis. Stat. sec. 71.26(3).
  - 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 Wis. Stat. sec. 71.35 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 for federal and Wisconsin tax purposes of property disposed of during the taxable year.
2. Federal Laws Enacted During 1990 Adopted to Apply Simultaneously for Wisconsin Purposes (1991 Act 39, amend secs. 71.22(4)(a), (b), (c), (d), and (e) and (4m)(a), (b), and (c), 71.26(2)(b)1., 2., 3., 4., and 5., 71.34(1g)(a), (b), (c), (d), and (e), and 71.42(2)(a), (b), (c), and (d) and create nonstatutory provision, effective for taxable years beginning before January 1, 1991).

The federal Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), which was enacted November 5, 1990, applies for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, the requirement that a distributing corporation must recognize gain when it distributes certain appreciated property, stock, or securities in a subsidiary applies for both federal and Wisconsin purposes for distributions after October 9, 1990, subject to transitional rules.

3. Interest Imposed on Excessive "Quick Refunds" (1991 Act 39, amend sec. 71.29(1)(a), (3m), and (7)(intro.) and create sec. 71.84(2)(c), effective for taxable years ending on or after August 15, 1991).

Currently, a corporation, nonprofit organization, or insurance company that has overpaid its estimated franchise or income tax may request a "quick refund" from the Department of Revenue after the end of its taxable year and prior to filing its Wisconsin tax return. The overpayment must be at least 10% of the expected Wisconsin franchise or income tax liability and at least \$500.

Under this provision, if such a "quick refund" results in a tax liability when the taxpayer files its Wisconsin franchise or income tax return, the taxpayer is subject to 12% interest on the amount of the unpaid tax liability for the period beginning on the date the refund is issued and ending on the 15th day of the third month following the close of the taxable year, or the date on which the liability is paid, whichever is earlier.

Note: Any tax unpaid on the unextended due date of the tax return continues to be subject to 12% or 18% interest, as appropriate.

For example, Corporation X pays \$30,000 of estimated tax for calendar year 1991. Prior to filing its Wisconsin tax return, Corporation X requests a "quick refund" of \$10,000, which is issued on February 15, 1992. Corporation X computes a \$3,000 balance due (net tax minus estimated tax payments of \$20,000) on its Wisconsin franchise or income tax return, which it files on March 15, 1992. Corporation X is subject to 12% interest on the \$3,000 for the period beginning February 15, 1992, and ending March 15, 1992. If Corporation X does not pay the \$3,000 tax due by March 15, 1992, it will be subject to 18% interest on the \$3,000 from March 15, 1992, until the date paid.

4. Use of Previous Year's Apportionment Percentage for Computing Estimated Tax Payments Expanded (1991 Act 39, amend sec. 71.29(10)(c), effective for taxable years beginning on or after January 1, 1991).

A multistate corporation or nonprofit organization that has Wisconsin net income of \$250,000 or more and that calculates its estimated franchise or income taxes under the annualized income method may use its apportionment percentage for the previous taxable year if

- a. it files the previous year's return by the due date of the third quarterly estimated installment due,
- b. the apportionment percentage on that previous year's return is greater than zero, and
- c. the apportionment percentage used in the computation of the first two installments is not less than the apportionment percentage used on that previous year's return.

Thus, a corporation may calculate its estimated franchise or income taxes for the current taxable year using information relating to the previous taxable year even if it has received an extension for filing its previous year's return.

Under prior law, a corporation or nonprofit organization was required to use the current year information unless the previous year's return was filed before the due date of the installment payment for which the income was being annualized and the apportionment percentage on that previous year's return was greater than zero.

5. Franchise and Income Tax Exemption Repealed for Railroads, Sleeping Car Companies, and Car Line Companies (1991 Act 39, amend secs. 71.22(11), 71.25(6) and (10)(title) and (c), and 71.26(1)(a) and create nonstatutory provision, effective for taxable years beginning on or after January 1, 1991).

Railroads, sleeping car companies, and car line companies (companies which lease railroad cars) are no longer exempt from Wisconsin franchise and income taxes. A multistate railroad, sleeping car company, or car line company must apportion its income to Wisconsin based on rules to be promulgated by the Department of Revenue.

6. Net Business Loss Carryforward Limited (1991 Act 39, amend sec. 71.26(4), effective for taxable years beginning on or after January 1, 1991).

In computing its Wisconsin net income, a corporation may not carry forward a net operating loss sustained in a taxable year in which it was not subject to Wisconsin franchise or income taxation.

7. Deduction Disallowed for Federal Environmental Tax (1991 Act 39, amend sec. 71.26(3)(h) and create secs. 71.26(3)(hd) and 71.45(2)(a)5m., effective for taxable years beginning on or after January 1, 1991).

When computing net income for Wisconsin franchise or income tax purposes, corporations (other than nonprofit organizations, RICs, REITs, and REMICs) and insurance companies may not deduct the federal environmental tax imposed under IRC sec. 59A.

8. Credit Reductions for Excluded Discharge of Indebtedness Income Modified (1991 Act 39, amend sec. 71.26(3)(c), effective for taxable years beginning on or after January 1, 1991).

For a corporation that excludes income from the discharge of indebtedness from gross income for Wisconsin franchise or income tax purposes and must apply such excluded income to reduce its tax attributes as provided in IRC sec. 108, the reduction rate for Wisconsin credit carryovers is 7.9 cents for each dollar excluded from gross income.

Under prior law, IRC sec. 108 was modified so that the Wisconsin net business loss, not the federal net operating loss, and the Wisconsin credits, not the federal credits, were affected. The reduction rate for a Wisconsin credit carryover was the federal rate of 33 1/3 cents for each dollar excluded from gross income.

9. Three-Month Extension Allowed for Foreign Corporations With No Office in the United States (1991 Act 39, amend secs. 71.24(7) and 71.44(3), effective for taxable years beginning on or after January 1, 1992).

If a foreign corporation does not have an office or place of business in the United States, the Department of Revenue may allow an extension not to exceed 3 months for filing its Wisconsin franchise or income tax return.



Under prior law, the Department generally could allow a corporation a 30-day extension for filing its Wisconsin franchise or income tax return. However, a DISC or cooperative could request a 6-month extension. Since the due date for filing the federal income tax return of a foreign corporation that has no office or place of business in the United States is the 15th day of the 6th month following the close of the taxable year, the Wisconsin tax return of a foreign corporation was due before its federal return.

10. Computation of Research Credit and Development Zone Research Credit Modified (1991 Act 39, amend sec. 71.28(4)(a) and (am) and renumber sec. 71.47(3) to 71.47(4) and amend sec. 71.47(4)(a) and (am) as renumbered, effective for taxable years beginning on or after January 1, 1991).

The manner of computing the Wisconsin research credit and the development zone research credit has been modified to more closely conform to that for the federal credit for increasing research activities. The federal changes made to IRC sec. 41 by Public Law 101-239 with respect to the "base amount" and the computation of the research credit apply to the Wisconsin credits, except as indicated below. The reference to the federal termination provision, which does not apply for Wisconsin purposes, is changed from sec. 41(i) to sec. 41(h) to reflect the renumbering of the Internal Revenue Code by Public Law 101-239. In addition, the wording of the development zone research credit is modified to make it identical for corporations and insurance companies.

The Wisconsin research credit is 5% of the excess of the claimant's "qualified research expenses" for the current taxable year (the credit year) over its "base amount." "Qualified research expenses" are defined in IRC sec. 41 as amended to December 31, 1990, but include only expenses incurred for research conducted in Wisconsin, other than compensation used to compute the development zone jobs credit. The development zone research credit is based on qualified research expenses incurred for research conducted in a Wisconsin development zone.

The corporation's "base amount," which is defined in IRC sec. 41(c) as amended to December 31, 1990, is the product of (a) the claimant's "fixed-base" percentage and (b) the average annual gross receipts (net of returns and allowances) of the claimant for the 4 taxable years preceding the credit year. The base amount may not be less than 50% of the qualified research expenses for the credit year. The "fixed-base" percentage is computed by dividing the total of qualified research expenses for all taxable years beginning after December 31, 1983, and ending before January 1, 1989, by the total gross receipts for the same periods. The fixed-base percentage cannot exceed 16%, and it is deemed to be 3% for start-up companies.

For Wisconsin purposes, the gross receipts used in calculating the base amount are the gross receipts attributable to Wisconsin under Wis. Stat. sec. 71.25(9)(b)1. and 2. and (d). Sales of tangible personal property are attributable to Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin. Other sales are in Wisconsin if the income-producing activity is performed in Wisconsin.

Under prior Wisconsin law, a 5% credit was allowed for the smaller of (a) "qualified research expenses" incurred by the claimant for research conducted in Wisconsin for the current year that exceeded the claimant's expenses for the "base period" or (b) 50% of the "qualified research expenses" for the current year. "Qualified research expenses" were defined in IRC sec. 41 as amended to December 31, 1989, for Wisconsin credits for taxable years beginning on or after January 1, 1990. However, the "base period research expenses" were computed under IRC sec. 41(c) in effect on December 31, 1988. The "base period" was the 3 taxable years immediately before the current taxable year and the "base period research expenses" were the average of the qualified research expenses for each year in the base period.

11. State Historic Rehabilitation Credit Repealed for Corporations, Tax-Option (S) Corporation Shareholders, Nonprofit Organizations, and Insurance Companies (1991 Act 39, repeal secs. 71.28(7), 71.30(3)(er), 71.47(6), and 71.49(1)(et) and amend secs. 44.02(24) and 71.74(8)(d), effective for taxable years beginning on or after January 1, 1991).

Corporations, shareholders of tax-option (S) corporations, nonprofit organizations, and insurance companies may no longer claim a credit for rehabilitating or preserving human burial sites, archeological sites, or certain other historic property.

These taxpayers may continue to claim the Wisconsin supplement to the federal historic rehabilitation tax credit for rehabilitating historic buildings used for the production of income.

12. Tax Credits Available to Insurance Companies Renumbered (1991 Act 39, renumber sec. 71.47(2b) to 71.47(3), 71.47(4) to 71.47(5), sec. 71.47(5) to 71.47(6), and sec. 71.49(1)(er) to 71.49(1)(ep) and amend secs. 71.47(5)(b) and (6)(e) and 71.49(1)(ep) as renumbered and amend secs. 71.45(2)(a)10., 71.47(1d)(c) and (h), (1dj)(g), (1dL)(d) and (g), (1ds)(f), and (1fd)(e), 71.49(1)(b), (c), and (d), 71.74(8)(b) and (c), 73.03(35), and 560.70(7) and (8), effective for taxable years beginning on or after January 1, 1991).

The tax credits that are available to insurance companies are renumbered. (Also see Items B.10 and 11.) In sec. 71.49(1), the order for claiming the nonrefundable credits is modified as follows:

- (b) Manufacturing sales tax credit under sec. 71.47(3).
- (c) Research credit under sec. 71.47(4).
- (d) Research facilities credit under sec. 71.47(5).
- (ep) Supplement to federal historic rehabilitation credit under sec. 71.47(6).

13. Jobs Credit Reference to Federal Definition of a "Dislocated Worker" Corrected (1991 Act 39, amend secs. 71.28(1dj)(am)1. and 71.47(1dj)(am)1., effective for taxable years beginning on or after July 1, 1989).

For purposes of the Wisconsin development zones jobs credit, a "dislocated worker" is defined in 29 USC sec. 1651(a). The federal definition of dislocated worker was renumbered from sec. 1652(a) to sec. 1651(a) by Public Law 100-418.

14. Modify Development Zone Credits for Certain Claimants Doing Business on an Indian Reservation (1991 Act 39, renumber secs. 71.28(1d)(b) to 71.28(1d)(b)1., 71.28(1dL)(c) to 71.28(1dL)(c)1., 71.47(1d)(b) to 71.47(1d)(b)1., and 71.47(1dL)(c) to 71.47(1dL)(c)1. and amend secs. 71.28(1d)(b)1. and (1dL)(c)1. and 71.47(1d)(b)1. and (1dL)(c)1. as renumbered; amend secs. 71.28(1d)(c) and (1dL)(d) and 71.47(1d)(c) and (1dL)(d); and create secs. 71.28(1d)(b)2., (1dj)(am)4c., and (1dL)(c)2. and 71.47(1d)(b)2., (1dj)(am)4c., and (1dL)(c)2., effective for taxable years of corporations or tax-option (S) corporations that begin on or after January 1, 1991, and for the appropriate taxable year of a partner or tax-option (S) corporation shareholder to conform the partner's or shareholder's treatment of a tax credit that is passed through by a partnership or tax-option (S) corporation to the partnership's or tax-option (S) corporation's treatment of the tax credit.)

The development zone investment and location credits are refundable credits if the claimant certified for tax credits under the development zone program is an American Indian, an Indian business, or a tribal enterprise, and the business is located on an Indian reservation development zone.

The development zone jobs credit may be claimed for individuals related to the claimant if the claimant certified for the credits under the development zone program is an American Indian, an Indian business, or a tribal enterprise, and the business is located on an Indian reservation development zone.

15. Exempt Interest Income From Certain WHEDA Bonds (1991 Act 37, create secs. 71.26(1)(g) and 71.45(1m), effective August 2, 1991.)

Interest income from bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) to fund an economic development loan under sec. 234.65 (professional sports and entertainment home stadiums exempt from property tax under sec. 70.11(36)) of the Wisconsin Statutes is exempt from the franchise and income tax.

C. HOMESTEAD, FARMLAND PRESERVATION AND FARMLAND TAX RELIEF CREDITS

1. Extend Deadline for Filing Claims for Homestead, Farmland Preservation, and Farmland Tax Relief Credits (1991 Act 39, repeal secs. 71.07(3m)(b)3, 71.28(2m)(b)3, 71.47(2m)(b)3, 71.53(3), and 71.59(3), amend secs. 71.03(title), 71.07(3m)(b)2.a, 71.28(2m)(b)2.a, 71.47(2m)(b)2.a, 71.53(2)(a), and 71.59(2)(a), and create secs. 71.03(6m), 71.55(6m), and 71.61(3m), effective August 15, 1991, for sec. 71.03(title); effective for tax years beginning on or after January 1, 1991, for secs. 71.07(3m)(b)2.a and 3, 71.28(2m)(b)2.a and 3, and 71.47(2m)(b)2.a and 3; and effective for claims based on property taxes accrued or rent constituting property taxes accrued in taxable years beginning on or after January 1, 1991, for secs. 71.03(6m), 71.53(2)(a) and (3), 71.55(6m), 71.59(2)(a) and (3), and 71.61(3m).)

The deadline for filing claims for these 3 credits is changed. The effect of this change is to allow claims to be filed at any time up to 4 years after the unextended due date of the appropriate tax return.

For example, an individual having a calendar-year taxable year and filing a 1991 income tax return and homestead credit claim could file a homestead credit claim at any time up to April 15, 1996 (i.e., 4 years after the income tax due date of April 15, 1992); a trust having a fiscal taxable year ending November 30, 1992, and filing a 1991 fiduciary tax return and farmland preservation credit claim could file a farmland preservation credit claim at any time up to March 15, 1997 (i.e., 4 years after the income tax due date of March 15, 1993); a corporation having a fiscal taxable year ending November 30, 1992, and claiming a 1991 farmland tax relief credit could claim a farmland tax relief credit at any time up to February 15, 1997 (i.e., 4 years after the franchise tax due date of February 15, 1993).

A homestead, farmland preservation, or farmland tax relief credit claim filed by an individual not required to file an income tax return must be filed on a calendar-year basis. For example, an individual without an income tax filing requirement but desiring to claim a homestead credit for 1991 could file the claim any time up to April 15, 1996.

Income tax provisions relating to assessments, refunds, appeals (except the \$5 filing fee for appeals to the Wisconsin Tax Appeals Commission does not apply), and collection also apply to these credits.

Under prior law, the deadline for filing a claim for any of these three credits was 12 months after the close of the taxable year to which the claim related, and no extension was permitted.

2. Include Nontaxable State and Municipal Bond Interest in Household Income (1991 Act 39, amend sec. 71.52(6), effective for claims based on property taxes accrued or rent constituting property taxes accrued in taxable years beginning on or after January 1, 1991.)

"Income" for homestead credit and farmland preservation credit purposes includes all nontaxable interest from state and municipal bonds. Under prior law, only taxable state and municipal bond interest was includable.

Examples of nontaxable state or municipal bond interest include interest from Wisconsin Higher Education Bonds and Wisconsin Housing Finance Authority bonds.

(Note: This change does not affect farmland tax relief credit, as the computation of that credit is not based on income.)

3. Use of Land for Ice Age Trail Considered a Permitted Exception for Farmland Preservation Credit Eligibility (1991 Act 39, create sec. 71.59(1m), effective August 15, 1991.)

The Department of Natural Resources may designate Wisconsin farmland as part of the Ice Age Trail under sec. 23.17, Wis. Stats. Use of farmland for that purpose, if it is so designated, is a permitted use under a farmland preservation agreement or a zoning certificate. That farmland may therefore be used in the computation of a farmland preservation credit.

4. Increase Credit for Farmland Covered by Town Exclusive Agricultural Zoning From 90% to 95% of Potential Credit (1991 Act 39, amend sec. 71.60(1)(c)6, effective for taxable years beginning on or after January 1, 1991.)

Farmland located in an agricultural district which is under a certified county agricultural preservation plan, and in an area zoned for exclusive agricultural use under a certified town ordinance, is eligible for 95% of the credit.

Under prior law, such farmland was eligible for only 90% of the credit.

#### D. SALES AND USE TAXES

1. Exempt Natural Gas and Other Fuels Used in Farming (1991 Act 39, amend sec. 77.54(3)(a) and create sec. 77.54(30)(a)5, effective October 1, 1991.)

Fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, and horticulture, is exempt from Wisconsin sales and use tax.

Example: Natural gas and other fuels for furnaces and boilers in buildings used in farming are exempt from sales and use tax.

2. Limit Exemption for Meals Sold by Hospitals, Etc., to Meals Served on the Premises (1991 Act 39, amend sec. 77.54(20)(c)4, effective October 1, 1991.)

Sales of meals, food, food products, or beverages (other than "mobile meals on wheels") sold by hospitals, sanatoriums, nursing homes, retirement homes, or day care centers registered under ch. 48, Wis. Stats., that are served at a location other than these facilities are subject to Wisconsin sales and use tax. Sales of "mobile meals on wheels" to elderly or handicapped persons remain exempt from Wisconsin sales and use tax.

Example: A hospital operates a catering business. The hospital contracts with a customer to provide a luncheon meal at the customer's business location away from the hospital. The sales of these meals are subject to Wisconsin sales and use tax.

Previously, all sales of meals, food, food products, and beverages by hospitals, sanatoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Wis. Stats., were exempt from Wisconsin sales or use tax, regardless of where they were served.

3. Impose Tax on Materials Removed From Wisconsin for Use Out-of-State (Except Advertising Materials) (1991 Act 39, repeal sec. 77.51(19) and amend sec. 77.51(18), effective October 1, 1991.)

The definitions of "storage" and "use" are revised to provide that purchases of tangible personal property (except advertising materials) from a retailer are subject to Wisconsin use tax if the tangible personal property is stored or used in Wisconsin, regardless of whether the property is subsequently used outside Wisconsin.

Example 1: A Wisconsin corporation with branch offices in neighboring states purchases computer hardware for use in its branch offices from a supplier located outside Wisconsin. The supplier does not have nexus in Wisconsin and is not registered to collect Wisconsin use tax. The supplier has the hardware shipped to Wisconsin by common carrier. The computer hardware is stored in Wisconsin by the Wisconsin corporation and subsequently shipped to its branch offices for installation and set up when needed.

New Law: The Wisconsin corporation is required to report Wisconsin use tax on the purchase price of the computer hardware.

Old Law: The Wisconsin corporation is not required to report Wisconsin use tax on the purchase price of the computer hardware.

Note: For purposes of this example and the following examples, new law means the 1989-90 Wisconsin Statutes as revised by 1991 Act 39. Old law means the 1989-90 Wisconsin Statutes.

Example 2: Assume the same facts as in Example 1 except that the supplier delivers the computer hardware into Wisconsin using its own trucks (rather than by common carrier). As a result, the supplier has nexus in Wisconsin and is registered to collect Wisconsin use tax.

New Law: The supplier is required to collect Wisconsin use tax on the sales price of the computer hardware.

Old Law: The supplier is not required to collect Wisconsin use tax on the sale of the computer hardware if the Wisconsin corporation gives the supplier a properly completed exemption certificate indicating that the property is to be stored in Wisconsin for subsequent use outside Wisconsin.

Example 3: A construction contractor located in Wisconsin purchases lumber from a supplier located outside Wisconsin. The supplier does not have nexus in Wisconsin and is not registered to collect Wisconsin use tax. The lumber is shipped to the contractor in Wisconsin by common carrier. The lumber is subsequently incorporated into real property in Iowa.

New Law: The contractor is required to report Wisconsin use tax on the purchase price of the lumber.

Old Law: The contractor is not required to report Wisconsin use tax on the purchase price of the lumber.

Example 4: Assume the same fact as Example 3 except that the supplier delivers the lumber to Wisconsin in its own trucks rather than by common carrier. As a result, the supplier has nexus in Wisconsin and is registered to collect Wisconsin use tax.

New Law: The supplier is required to collect Wisconsin use tax on the sales price of the lumber.

Old Law: The supplier is not required to collect Wisconsin use tax on the sale of the lumber if the contractor gives the supplier a properly completed exemption certificate indicating that the property is to be stored in Wisconsin for subsequent use outside Wisconsin.

4. Revise Imposition of Sales Tax on Telecommunication Services (1991 Act 39, repeal and recreate sec. 77.52(2)(a)5 and create sec. 77.51(17m) and (21m), effective October 1, 1991.)

I. New Provision

The sale of telecommunication services is subject to sales or use tax if both conditions in A and B listed below are met.

A. The service originates in Wisconsin.

B. The service is charged to a service address in Wisconsin. A "service address" is the location of telecommunication equipment from which telecommunication services are originated or at which telecommunication services are received by a buyer. If there is no defined location, the service address is where a buyer makes primary use of telecommunication equipment as defined by the telephone number, authorization code, or location where bills are sent.

"Telecommunications services" means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. "Telecommunications services" does not include sending collect telecommunications that are received outside of the state.

II. Prior Law

The sale of telecommunication services of whatever nature was subject to sales or use tax if both the conditions in A and B (1 or 2 of B) were met.

A. The service originated in Wisconsin, and

B. The service was charged to a:  
1. Subscriber located in Wisconsin, or  
2. Telephone located in Wisconsin

For information and examples of these conditions under prior law, refer to sec. Tax 11.66, Wis Adm. Code (March 1991 Register).

Note: Telecommunication services paid for by the insertion of coins in a coin-operated telephone are not subject to sales tax under either the new provision or prior law.

5. Exempt Motor Vehicles and Other Registered Items Transferred to In-Laws (1991 Act 39, repeal and recreate sec. 77.54(7), effective August 15, 1991.)

The transfer by an individual of a motor vehicle, snowmobile, mobile home not exceeding 45 feet in length, boat, trailer, semitrailer, all-terrain vehicle, or aircraft is exempt from Wisconsin sales or use tax as an occasional sale if:

- a. Transferred to a child, spouse, parent, father-in-law, mother-in-law, daughter-in-law, or son-in-law of the individual (transferor),
- b. The item has been registered or titled or is required to be registered or titled in Wisconsin in the name of the individual (transferor) (Note: A boat may be registered or titled in Wisconsin or under the laws of the United States.), and
- c. The individual (transferor) is not engaged in the business of selling the type of item that is transferred.

Previously, the occasional sales exemption did not apply to transfers of these items to in-laws (i.e. father-in-law, mother-in-law, daughter-in-law, or son-in-law) of the transferor.

6. Exempt Repair Parts and Accessories of Exempt Medical Equipment (1991 Act 39, amend sec. 77.54(22)(intro.), effective August 15, 1991.)

The sale of parts and accessories for the following property is exempt from sales and use tax:

- a. Artificial devices individually designed, constructed, or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure, including the extremities of the individual.
- b. Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
- c. Artificial teeth sold by a dentist.
- d. Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
- e. Crutches and wheelchairs, including motorized wheelchairs and scooters for the use of persons who are ill or disabled.
- f. Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer.



- g. 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., 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.

The items described in a. through g. above have been and continue to be exempt from tax. However, under prior law, parts and accessories for the types of personal property described in a. through g., above, were subject to Wisconsin sales or use tax.

- 7. Clarify Which Taxes Are Included in Gross Receipts (1991 Act 39, amend sec. 77.51(4)(a)4 and (15)(a)4, effective August 15, 1991.)

This provision clarifies that federal, state, and municipal taxes are included in gross receipts and sales price for purposes of imposing Wisconsin sales or use taxes, except if they are measured by a stated percentage of the gross receipts or sales price.

- 8. Delete Obsolete Language Imposing Sales Tax on Access Charges (1991 Act 39, repeal sec. 77.51(13)(p) and (14)(m), effective August 15, 1991.)

The statutory language which imposes sales tax on access charges paid by telecommunications companies that provide service between local access and transport areas is repealed. This statutory language is obsolete because of the Wisconsin Supreme Court decision in U.S. Sprint Communications vs. Wisconsin Bell, dated May 15, 1990, which held that this tax on access charges violates the Equal Protection Clause of the U.S. Constitution because it does not provide similar treatment for resellers or intra-LATA carriers.

- 9. Change Effective Date for County Tax (1991 Act 39, amend sec. 77.70, effective August 15, 1991.)

If a county adopts the county sales and use tax by county ordinance, the county sales and use tax becomes effective either January 1, April 1, July 1, or October 1 as chosen by the county, provided the Secretary of Revenue receives the ordinance at least 120 days prior to the effective date chosen.

Previously, the county sales and use tax could only become effective on April 1, with the condition that the ordinance be received by the Secretary of Revenue at least 120 days prior to such April 1.

- 10. Expand Exemption for Sales of New Mobile Homes (1991 Act 39, amend sec. 77.51(4)(b)6, effective October 1, 1991.)

A sales and use tax exemption is provided for 35% of the sales price of a new mobile home that is transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

Previously, the 35% exemption for new mobile homes applied only to those that were primary housing units under sec. 340.01(29), Wis. Stats. This exemption continues to apply.

11. Conform Terminology in Sales Tax Law for Snowmobile and All-Terrain Vehicle Dealers (1991 Act 39, amend sec. 77.61(1)(c), effective August 15, 1991.)

Wording is revised to reflect the Department of Natural Resources' requirements of snowmobile dealers and all-terrain vehicle dealers. No substantive changes are intended.

12. Theft of Sales and Use Tax Moneys (1991 Act 39, create sec. 77.60(11), effective August 15, 1991.)

A person who collects state and county sales and use tax moneys from a consumer, user, or purchaser and who intentionally fails or refuses to pay these tax moneys to the department by the due date for payment, or who fraudulently withholds, appropriates, or uses these tax moneys, is guilty of theft under sec. 943.20, Wis. Stats., which is a felony if the amount involved is more than \$1,000. This applies regardless of the person's interest in these tax moneys.

Payment to creditors in preference to the payment of the tax moneys to the department by any person is prima facie evidence of an intent to fraudulently use these tax moneys.

13. Clarify Real Property Construction Includes Fabrication of Modular Units Affixed to Realty (1991 Act 39, amend sec. 77.51(2), effective August 15, 1991.)

Real property construction activities include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modular units. The modular units must have a realty function and must become a permanent accession to the realty.

Persons performing such fabrication activities are the consumers of tangible personal property used in the fabrication, and Wisconsin sales or use tax applies to the sale of tangible personal property to them.

Example: Mr. and Mrs. John Doe want to build a vacation home on their lake front property. Mr. and Mrs. Doe contract with Builder B, who specializes in erection and finishing of prefabricated custom homes.

Builder B and Mr. and Mrs. Doe decide on plans and specifications of the home. Builder B contracts with Company C to prefabricate the home, at the Wisconsin plant of Company C, pursuant to plans and specifications submitted by Builder B.

Company C delivers, on its own trucks, the sections or components of the home to be erected on the foundation at the building site which was constructed by Builder B to the exact specifications of the plan submitted to Company C by Builder B. The driver, employed by Company C, stays at the job site until the erection is completed and the truck is unloaded.

Company C is a subcontractor performing real property construction activity. The amount charged by Company C to Builder B is for real estate construction activities not subject to Wisconsin sales tax. Company C is the consumer of all materials used by Company C in the construction of the home and must pay Wisconsin sales or use tax on the purchase or use of the materials.

Builder B is a contractor performing real property construction activities. The amount charged by Builder B to Mr. and Mrs. Doe is for real estate construction activities not subject to Wisconsin sales tax. The amounts charged by suppliers to Builder B for tangible personal property used by Builder B in the construction of the home (such as additional nails and lumber Builder B purchased from a lumber yard) are subject to Wisconsin sales or use tax.

14. Exempt Materials, Supplies, and Equipment Used in Construction, Renovation, or Development of Professional Sports and Entertainment Home Stadiums (1991 Act 37, create sec. 77.54(41), effective October 1, 1991.)

A sales and use tax exemption is created for "the sale of building materials, supplies and equipment to; and the storage, use or other consumption of those kinds of property by; owners, contractors, subcontractors or builders if that property is acquired solely for or used solely in, the construction, renovation or development of property that would be exempt under s. 70.11(36)."

Section 70.11(36), Wis. Stats., exempts "Property consisting of or contained in a sports and entertainment home stadium; including but not limited to parking lots, garages, restaurants, parks, concession facilities, entertainment facilities, transportation facilities, and other functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located."

15. Clarify Exemptions for Certain Electricity and Natural Gas Sold (1991 Act 39, amend sec. 77.54(30)(a)2 and 3, effective August 15, 1991.)

Section 77.54(30)(a)2 and 3, Wis. Stats., is amended to clarify wording. No substantive changes are intended.

16. Amount of County Tax Distributed to Counties Changed (1991 Act 37, amend sec. 77.76(3) and (4), effective for distributions of county sales tax revenues to counties on or after February 22, 1992.)

Ninety-eight and one-half percent (previously 97%) of county tax reported for each enacting county, less the county portion of the retailer's discount, will be distributed to the county.

17. Claims for Refund of Sales and Use Taxes Must Be Made by Persons Who Remitted the Tax to the Department (1991 Act 39, amend sec. 77.59(4) (intro.), effective for claims for refund filed on or after October 1, 1991.)

Claims for refund of sales and use taxes may be made only by the person who remitted the sales and use taxes to the department. This provision reverses the Wisconsin Court of Appeals, District IV, decision in Dairyland Harvestore, Inc., vs. Wisconsin Department of Revenue; Badgerland Harvestore Systems, Inc., f.k.a. Badgerland Harvestore Products vs. Wisconsin Department of Revenue, dated August 17, 1989, which held that all persons who paid excess sales or use taxes, whether to retailers or the department, could file claims for refund with the department.

Example: Customer A purchases computer software from Company B for \$2,000. Company B charges sales tax of \$100 on this sale of software and remits the \$100 of tax to the department on its monthly sales tax return. Customer A later determines it should not have paid sales tax on the software.

Under this new provision, Customer A may not file with the department a claim for refund of the \$100 sales tax it paid to Company B. Company B is the only person that may file a claim for refund regarding this sale because it is the person that remitted the \$100 tax to the department.

#### E. ESTATE, INHERITANCE AND GIFT TAXES

1. Penalty if Wisconsin Estate Tax is Not Timely Filed; Establish Due Date and Require Copy of Federal Estate Tax Return for Wisconsin Estate Tax (1991 Act 39, repeal sec. 72.33(1) and amend sec. 72.30(1) as affected by 1987 Act 27; and create sec. 72.235, effective for estates of persons dying on or after January 1, 1992.)

The Wisconsin estate tax return is due on or before the due date of the federal estate return and a complete copy of the federal estate tax return must be attached to the Wisconsin return. If the return is not timely filed, the penalty is 5% of the tax due but not less than \$25 nor more than \$500.

2. "Timely Filed" Defined for Estate Tax Purposes (1991 Act 39, create sec. 72.045, effective for documents related to transfers because of deaths occurring on or after January 1, 1992.)

Estate tax returns, documents and payments will be considered timely filed or made on time if mailed in a properly addressed envelope with sufficient postage, postmarked before midnight of the due date, and received by the department no later than 5 days after the due date.

3. Update Reference to Internal Revenue Code for Power of Appointment, Qualified Retirement Plans, and Installment Payments (1991 Act 39, amend secs. 72.01(17), 72.12(4)(c)1 and 72.22(4)(a), effective for transfers because of deaths occurring on or after January 1, 1991.)

The Wisconsin Statutes relating to powers of appointment, employee death benefits, and installment payment of inheritance taxes are updated to the Internal Revenue Code as of December 31, 1990. This change first applies to transfers because of deaths occurring on January 1, 1991.

4. Update Internal Revenue Code Reference for Gift Tax Exemption (1991 Act 39, amend sec. 72.76(4), effective for gifts made on or after August 15, 1991.)

No gift tax is imposed on the transfer of amounts by an employer to a former employee's distributee or estate if the amounts qualify as an employee death benefit taxable as income under the Internal Revenue Code as amended to December 31, 1990, or excluded from gross income under IRC sec. 101(b) as amended to December 31, 1990.

#### F. EXCISE TAXES

1. Adopt Income Tax Administration Provisions for Excise Tax Appeals and Record Retention (1991 Act 39, repeal secs. 139.12, 139.33(5) and 139.78(5); amend secs. 20.913(1)(b), 73.01(4)(a), 78.18, 78.66(3), 78.70(1)(intro.) and (a), 78.77(5), 139.11(1), 139.36(title), 139.38(1), 139.82(1) and 139.83; repeal and recreate secs. 73.01(4)(a) as affected by 1987 Acts 27, 312 and 399 and 1989 Act 335, 78.69, 139.092 and 139.094; create secs. 78.68(10), 78.70(7), 78.80(1m), 139.115, 139.355, 139.365 and 139.39(6), effective August 15, 1991; and repeal and recreate sec. 73.01(4)(a), effective January 1, 1992.)

Provisions in the administration of income tax law concerning taxpayer appeal rights, record retention and statute of limitations also apply to the administration of the following taxes: motor vehicle fuel, general aviation fuel, beer, liquor, wine, cigarettes and other tobacco products.

2. Allow Permanent Motor Fuel Exemption Certificate (1991 Act 39, amend sec. 78.01(2)(e) and repeal and recreate sec. 78.12(3m), effective on July 1, 1992.)

Persons who buy motor fuel for nonhighway use are allowed to obtain a permanent exemption certificate rather than an annual renewal certificate.

3. Change the Highway Maintenance Cost Index Source Used in Computing the Annual Adjustment for the Motor Fuel and Special Fuel Tax Rates. (1991 Act 39, amend secs. 78.015(1) and 78.405 and repeal and recreate sec. 78.015(2), effective April 1, 1992.)

The annual adjustment of the motor fuel and special fuel tax rates effective April 1, 1992 will be calculated using the U.S. consumer price index for all urban consumers, U.S. city average as determined by the U.S. Department of Labor. The Federal Highway Administration will no longer publish an index based on the National Highway Maintenance and Operations Cost Index previously used as the cost factor in computing the annual adjustment.

4. Penalty Imposed Against Person Who Continues to Purchase Tax-Exempt Motor Fuel After Exemption Certificate has Expired (1991 Act 39, amend sec. 78.12(3m), effective August 15, 1991.)

Any person who continues to buy motor fuel without paying tax after his or her exemption certificate expires, may be subjected to a penalty of \$25 for each month that the person does so.

5. Eliminate Obsolete Language Concerning Motor Fuel and Special Fuel Tax Rates (1991 Act 39, amend secs. 78.01(1), 78.14 and 78.40(1) and repeal secs. 78.017 and 78.407, effective April 1, 1992.)

References to obsolete motor fuel and special fuel tax rates effective prior to August 1987 are deleted.

6. Expand Arrest Powers to Alcohol and Tobacco Enforcement Agents (1991 Act 39, create sec. 73.031, effective August 15, 1991.)

Employees of the Department of Revenue may enforce the alcohol beverage laws, the controlled substances laws and the excise tax laws. They may make arrests for violations of those laws. This provision expands the arrest authority for Alcohol and Tobacco Enforcement Agents to include the arrest of persons for whom a felony warrant has been issued in another state, persons for whom an arrest warrant has been issued in this state and persons who commit a crime in the agent's presence.

7. Changes Made to Chapter 125 Alcohol Beverage Law Provisions (1991 Act 39, repeal sec. 125.085(3)(a)(title), 125.085(3)(b)(title), 125.085(3)(b)5 and 125.085(3)(c)(title); amend sec. 125.085(2), 125.085(3)(b)(intro.) and 125.52(4); and create sec. 125.04(5)(d)3, 125.085(3)(bd), 125.085(3)(bh), 125.085(3)(bp), 125.085(3)(bt) and 343.30(6)(bm), see effective dates below.)

The following changes are made to Chapter 125 provisions:

- a. Applicants for operators' or managers' licenses and applicants for temporary licenses for the sale of beer or wine at picnics or similar gatherings are not required to submit proof that the applicant has been issued a sales and use tax seller's permit by the Department of Revenue or has applied for a sellers' permit. (This provision is effective August 15, 1991.)
- b. The graduated penalty structure for underage violations is eliminated. For each violation of one of the offenses that apply only to underage persons, the underage person is subject to a forfeiture of not less than \$100 nor more than \$500, a suspension of his or her driver's license for 30 to 90 days, and required participation in a supervised work program, or any combination of these penalties. (This change applies to violations committed on or after August 15, 1991.)
- c. Limited manufacturers' permits will expire on August 1 of each even-numbered year. A limited manufacturer's permit authorizes the use or sale of alcohol that is unfit for use as a beverage and that is used or sold for use as fuel. (This change applies to permits issued on or after August 15, 1991.)

8. Clarify and Delete Obsolete Language Concerning Primary Source of Supply for Intoxicating Liquor Manufacturers, Rectifiers and Wholesalers. (1991 Act 39, amend secs. 125.02(15), 125.58(1) and 125.69(5), effective August 15, 1991.)

An out-of-state person may sell intoxicating liquor to a Wisconsin wholesaler if that person is a holder of an out-of-state shipper's permit issued by the department and that out-of-state shipper is the primary source of supply for that intoxicating liquor.

9. Allow Fermented Malt Beverage Taxpayers to Furnish Other Types of Security (1991 Act 39, amend sec. 139.05(4), effective August 15, 1991.)

Under current law, persons who are liable for fermented malt beverage tax are required to file surety bonds with the department. Under this provision, persons liable for fermented malt beverage tax payments to the department are now allowed to submit certificates of deposit, cash, and other types of security acceptable to the department.

10. Change the Payment of Liquor Tax From a Quarterly Estimated Basis to a Monthly Basis (1991 Act 39, repeal sec. 139.06(1)(d) and amend sec. 20.002(2) and 139.06(1)(a), effective October 1, 1991.)

Under prior law, liquor tax payments were made on an estimated basis in the middle of each calendar quarter. Under this provision, monthly payments of the tax will be due 15 days after the close of the month in which the sales took place.

11. Deletes the Cigarette Inventory Tax Exemption for Retailers (1991 Act 39, amend sec. 139.315(1), effective August 15, 1991.)

Under prior law, when the rates for the cigarette tax increased an inventory tax was imposed on all persons who handle cigarettes for resale, except for retailers. This provision eliminates the exemption for retailers from the inventory tax.

12. Coordinate Issuance of Cigarette Permits with Registration for Sales and Use Taxes (1991 Act 39, amend sec. 139.34(1)(c); and create sec. 139.34(1)(c) 7, effective August 15, 1991.)

Retailers are required to hold a seller's permit for sales tax as a condition for obtaining a cigarette permit.

13. Create Penalties for the Late Filing of Tobacco Products Tax Returns (1991 Act 39, renumber sec. 139.85 to 139.85(1); amend sec. 139.77(7); and create sec. 139.85(2), effective August 15, 1991.)

A penalty similar to the late filing penalties imposed for the late filing of motor vehicle fuel tax returns and beverage tax returns of 5% of the amount of tax due for each month that the return is overdue, up to a maximum of 25% of the tax, is imposed on the late filing of tobacco products tax returns.

14. Create a New Tax Rate Schedule for Illegal Drugs. (1991 Act 39, amend secs. 139.87(2), 139.88(2), 139.89, 139.91 and 139.95; create secs. 139.87(5) and (6), 139.88(1g) and (1r); and repeal secs. 139.87(1) and 139.88(3), effective October 1, 1991.)

A tax rate schedule is created for illegal drugs containing more than 14 grams of mushrooms containing psilocin or psilocybin or more than 100 milligrams of any material containing lysergic acid diethylamide.

15. Allow Beverage Servers to Qualify for Licensure Through Completion of an EAB Approved Training Course (1991 Act 39, amend sec. 125.17(6)(a) (intro.), effective August 15, 1991.)

Under prior law, in order to receive an operator's license, the applicant was required to complete a beverage server training course offered by a VTAE district. This provision permits applicants to complete other comparable training courses which have been approved by the Educational Approval Board (EAB).

16. Permit Brewers and Wholesalers to Purchase Products From and Provide Items of Value to Retailers (1991 Act 39, create sec. 125.33(2)(m) and (n), effective August 15, 1991.)

Brewers and beer wholesalers are allowed to purchase products from Class "B" (on-sale) licensees without restriction; brewers and beer wholesalers may also provide \$75/day business entertainment to Class "B" licensees and permittees. This includes tickets or free admissions, as well as ground transportation to athletic events, concerts or similar activities, food, and beverages.

17. Prohibit Issuance of Class "B" License on Premises Where Other Business is Conducted (1991 Act 39, create sec. 125.32(3m), effective August 15, 1991.)

Limitations are imposed on businesses for which Class "B" licenses may be issued. No other business may be conducted on Class "B" premises, except that this restriction doesn't apply if the other business is conducted by a secondary doorway that is not the primary entrance to the Class "B" premises. It also doesn't apply to hotels, restaurants, grocery stores, novelty stores, bowling alleys/recreation premises, clubs, societies or lodges, or to sporting goods stores in towns, villages, and fourth class cities.

18. Create a "Class C" Restaurant Wine License for Use in Municipalities That Have Reached Their On-premises Quota (1991 Act 39, create secs. 125.05(1)(a)3m, 125.07(3)(a)6m, and 125.51(3m); amend secs. 125.04(3)(g)(intro.), 125.10(4), 125.17(6)(a)2, 125.51(1)(a) and (8), 125.68(1)(title), (a)(intro.) and 3 and (b), (2), (2m)(a), (4)(c)(title) and 1, (5), and (8)(a)3, and 125.69(1)(b)1, effective August 15, 1991.)

A new "Class C" license is created for the retail sale of wine for on-premise consumption. Licenses may be issued only for restaurants in which the sale of alcohol beverages accounts for less than 50% of gross receipts, and which do not have a barroom, if the municipality's quota prohibits the issuance of a "Class B" liquor license to the applicant.



19. Change References to Use the Term "Bowling Center" (1991 Act 28, amend secs. 125.07(3)(a)3, 125.32(3)(c), 125.32(4)(a)6, and 125.68(4)(c)4, effective July 13, 1991.)

The term "bowling alley" as used in the statutes is changed to "bowling center."

G. OTHER

1. Recycling Fee Replaced With Temporary Surcharge (1991 Act 39, repeal sec. 77.92(1m) and (2), amend secs. 73.03(27)(intro.) and (36), ch. 77(title), subch. VII(title) of ch. 77, 77.93(title), (intro.), and (1) through (3), 77.94(2)(b), 77.95, 77.96(1), (2), (3), and (4), and 77.97, repeal and recreate sec. 77.94(title) and (1), and create secs. 77.92(3) and (4), 77.93(5), 77.94(4), and 77.96(5) and (6), and nonstatutory provision, see effective dates below.)

The recycling fee that was to apply for taxable years ending after April 1, 1991, and before April 1, 1993, has been repealed for taxable years ending after April 1, 1991. If an entity pays the recycling fee under secs. 77.93 and 77.94, Stats. (1989-90), the department shall recalculate such recycling fee under the temporary surcharge provisions as provided by this Act. The department shall refund any overpayment and collect any underpayment determined under the recalculation. Interest and penalties may not be imposed on an underpayment which is caused solely by the recalculation.

For taxable years ending after April 1, 1991, and before April 1, 1999, corporations, partnerships, and sole proprietorships are subject to a temporary surcharge for the privilege of doing business in Wisconsin. The temporary surcharge is imposed on the gross tax liability of a corporation, on the net income of a tax-option (S) corporation, and on the net business income of an individual, partnership, estate, or trust. For years that end after April 1, 1991, and before April 1, 1992, the temporary surcharge ranges from a minimum of \$25 to a maximum of \$9,800.

Who Is Subject to the Temporary Surcharge?

- Corporations that are required to file a Wisconsin franchise or income tax return, Form 4 or 5.
- Tax-option (S) corporations that are required to file a Wisconsin franchise or income tax return, Form 5S.
- 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 a Wisconsin franchise or income tax return, Form 4T.
- Partnerships that are required to file a Wisconsin income tax return, Form 3.

- Individuals who are required to file a Wisconsin income tax return, Form 1 or INPR, and who have a profit or loss from a trade or business, as defined in IRC sec. 1402(c) for federal income tax purposes, or who are statutory employees, as defined in IRC sec. 3121(d)(3). The temporary surcharge is imposed on each individual regardless of marital property law and regardless of whether married individuals file joint or separate Wisconsin income tax returns.

Note: Individuals who are tax-option (S) corporation shareholders or partners are not subject to an additional surcharge on their pro rata shares of net business income which the entity passes through to them. However, if a tax-option (S) corporation's or a partnership's temporary surcharge is delinquent, its shareholders or partners are jointly and severally liable for it.

- 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), for federal income tax purposes.

#### What Is the "Gross Tax Liability"?

"Gross tax liability" means a corporation's (including an insurance company's) Wisconsin franchise or income tax liability under ch. 71 without regard to any tax credit.

#### What Is "Net Business Income"?

For a partnership, "net business income" means ordinary income from trade or business activities as reported under subch. III of ch. 71.

For an individual, estate, or trust, "net business income" means profit from a trade or business as defined in IRC sec. 1402(c), not including farming, for federal income tax purposes and net income as a statutory employee as defined in IRC sec. 3121(d)(3).

#### What Is a "Trade or Business"?

For purposes of the temporary surcharge, "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 a "Statutory Employee"?

A "statutory employee" is defined in IRC sec. 3121(d)(3) and means any individual, other than an individual who is an employee under sec. 3121(d)(1) or (2), who performs services for remuneration for any person --

- a. as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for his or her principal,

- b. as a full-time life insurance salesperson,
- c. as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person which are required to be returned to that person or that person's designee,
- d. as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations,

if the contract of service contemplates that substantially all of these services in a. through d. above are to be performed personally by that individual. An individual is not a "statutory employee" if he or she has a substantial investment in facilities used in connection with the performance of these services, other than facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

#### What Is "Farming"?

For purposes of the temporary surcharge, "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. Raising or harvesting Christmas trees is not considered farming under IRC sec. 464(e)(1).

#### Period Covered by the Temporary Surcharge

The temporary surcharge is imposed for the same period covered by the taxpayer's Wisconsin franchise or income tax return. The temporary surcharge is first imposed for taxable years ending after April 1, 1991, and it will expire for taxable years beginning after April 1, 1999.

#### Due Date of the Temporary Surcharge

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

- Corporations: 15th day of 3rd month following close of taxable year
- Tax-option (S) corporations: 15th day of 3rd month following close of taxable year
- Insurance companies: 15th day of 3rd month following close of taxable year
- Exempt corporations: 15th day of 5th month following close of taxable year

- Publicly-traded partnerships taxed as corporations: 15th day of 3rd month following close of taxable year
- Partnerships (except publicly-traded partnerships): 15th day of 4th month following close of taxable year
- Individuals: 15th day of 4th month following close of taxable year
- Estates or trusts: 15th day of 4th month following close of taxable year
- Exempt employees' trusts or IRAs: 15th day of 4th month following close of taxable year

For returns due on or after December 1, 1991, an entity that receives an extension of time to file its Wisconsin franchise or income tax return must pay an estimated surcharge, as explained in the following section.

#### Payment of Estimated Surcharge

Entities are not required to make quarterly estimated payments to prepay the temporary surcharge. However, if an entity receives an extension of time to file its Wisconsin franchise or income tax return, the entity must, on or before the unextended due date of the return, pay an estimate of the temporary surcharge based on the entity's gross tax liability or net business income for the previous year. After the tax return is filed, any overpayment of the temporary surcharge will be refunded or the entity will be billed for the difference between the estimated payment and the amount due.

#### Interest and Penalties

The interest and penalty provisions in ch. 71 that apply to Wisconsin franchise or income taxes also apply to the temporary surcharge, including any estimated payment of the temporary surcharge.

#### Administrative Provisions

The administrative provisions, including those relating to audits and assessments, claims for refund, statutes of limitations, Internal Revenue Service adjustments, confidentiality, appeals, collections, and setoffs for debts owed other state agencies, that apply for Wisconsin franchise and income tax purposes also apply to the temporary surcharge.

#### Computation of the Temporary Surcharge

For taxable years ending after April 1, 1991, and before April 1, 1992, the temporary surcharge is equal to one of the following amounts:

- Corporations (except tax-option (S) corporations), insurance companies, and exempt organizations taxable as corporations that are subject to the tax on unrelated business taxable income: The greater of \$25 or 5.5% of gross tax liability, but not more than \$9,800.

- Tax-option (S) corporations: The greater of \$25 or 0.4345% of Wisconsin net income, but not more than \$9,800.
- Partnerships, except partnerships engaged only in farming: The greater of \$25 or 0.4345% of net business income as allocated or apportioned to Wisconsin by means of the methods under sec. 71.04, Stats., but not more than \$9,800.

Note: Partnerships that have less than \$1,000 of gross receipts are not subject to the temporary surcharge.

- Individuals, estates, trusts, and exempt organizations taxable as trusts which are subject to the tax on unrelated business taxable income: The greater of \$25 or 0.4345% of net business income as allocated or apportioned to Wisconsin by means of the methods under sec. 71.04, Stats., but not more than \$9,800.

Note: Individuals, estates, trusts, and exempt organizations taxable as trusts having less than \$1,000 of gross receipts are not subject to the temporary surcharge.

- Individuals, estates, trusts, exempt organizations taxable as trusts, and partnerships engaged in farming: \$25, regardless of whether the entity is subject to a surcharge based on nonfarm net business income.

Note: The \$25 surcharge does not apply if the net farm profit is less than \$1,000.

#### Use of the Temporary Surcharge

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

#### Note:

- 1) Entities filing an income or franchise tax return on a fiscal year basis who have a fiscal year ending in April through November of 1991, must report the temporary surcharge on a special form. In October of 1991 the department will mail the special form to entities which appear to be subject to the temporary surcharge based on prior year income or franchise tax returns filed.
- 2) Since the special form for reporting the temporary surcharge will not be available until October, 1991, entities having a fiscal year ending in April, May, June, or July of 1991 are granted an automatic extension until November 15, 1991, to file the special form and pay the surcharge. (This automatic extension will not apply to the Wisconsin franchise or income tax return.) No interest, penalties, or late filing fees will be charged on the temporary surcharge during this special extension period. If you have either a federal or state extension of time to file your franchise or income tax return, that will automatically extend the due date of the temporary surcharge.

- 3) If you have any further questions about the temporary surcharge, please contact any Wisconsin Department of Revenue office.
2. Allow Taxpayer To File Claim For Refund During Waiver Period (1991 Act 39, amend secs. 71.75(2) and 71.77(5), and renumber sec. 77.59(3)(a) to 77.59(3m) and amend sec. 77.59(3m) as renumbered, effective August 15, 1991.)

If the taxpayer and department have executed a waiver agreement to extend the time in which the department may make an assessment or refund, the taxpayer may file a claim for refund within the waiver period.

Example: The 1987 calendar tax year of John Doe would be closed to adjustment, by the four-year statute of limitations, on April 15, 1992. On March 1, 1992, John Doe and the department execute a waiver agreement which extends the statute of limitations for making an assessment or refund by one year, to April 15, 1993. This provision provides that John Doe may file a claim for refund for the 1987 year during the waiver period of April 16, 1992 to April 15, 1993.

3. Time Period For Department To Act On Claim For Refund May Be Extended (1991 Act 39, amend secs. 71.75(7) and 77.59(4)(intro.), effective August 15, 1991, for sec. 71.75(7), effective for claims for refund filed on or after October 1, 1991, for sec. 77.59(4)(intro.).)

The one-year time period during which the department is directed to act on any claim for refund or claim for credit may be extended if the taxpayer consents in writing to an extension.

4. Prohibit Refund Claims After Field Audit Notice of Refund or No Tax (1991 Act 39, amend sec. 71.75(4), effective for field audit notices issued on or after October 1, 1991.)

A taxpayer may not file a claim for refund for any year covered by a field audit which resulted in either no change in the tax owed, a refund, or an assessment of additional tax that has become final under secs. 71.88(1)(a) or (2)(a), 71.89(2), 73.01, or 73.015, provided the department notifies the taxpayer that the field audit is final, unless the taxpayer appeals the result of the field audit.

Under prior law, a taxpayer could file a claim for refund for a year covered by a field audit that resulted in a refund or in no change in tax.

5. Modify Civil Penalty for Intent to Defeat or Evade Income and Franchise Taxes (1991 Act 39, amend sec. 71.83(1)(b)1, effective August 15, 1991.)

Repeated late filing of an income or franchise tax return evinces an intent to defeat or evade the income or franchise tax assessment required by law.

6. Provide That Nonresident Entertainers Must File Surety Bond 7 Days Prior to Performance (1991 Act 39, amend sec. 71.80(15)(b), effective for performances occurring on or after August 25, 1991.)

Entertainers and entertainment corporations not otherwise employed or regularly engaged in business in Wisconsin are required to file a surety bond, to guarantee payment of Wisconsin taxes with the department, at least seven days prior to a Wisconsin performance.

Under prior law, the bond had to be filed at least two days prior to the performance.

Changing the time from two to seven days gives the department an opportunity to notify the Wisconsin employer that a surety bond has been filed prior to the time the performance is to take place.

7. Permit Civil Action for Recovery Under Levy Law (1991 Act 39, amend sec. 71.91(6)(d)1 and 2, effective August 15, 1991.)

The department may enforce collection of a liability or penalty imposed on a third party for failure to surrender levied (seized) property by issuing an assessment against the third party or by bringing a civil action against the third party in the Circuit Court.

Under prior law, only the assessment method of recovery was available.

8. Expand Reporting Requirements for Internal Revenue Service and Other State Adjustments (1991 Act 39, amend sec. 71.76, effective for changes or corrections to a federal income tax return that become final on or after August 15, 1991, and for amended federal and state returns filed on or after that date.)

If the Internal Revenue Service adjusts a taxpayer's federal net income tax payable, a federal credit, a federal net operating loss carried forward, or a capital loss carried forward, the taxpayer is required to report the adjustment to the Department of Revenue within 90 days after it becomes final, if the adjustment affects the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net operating loss or net business loss carried forward, or a Wisconsin capital loss carried forward.

A taxpayer filing an amended return with the Internal Revenue Service, or with another state if a credit was allowed for Wisconsin for taxes paid to that state, is required to file an amended Wisconsin return if any information on the federal or other state amended return affects the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net operating loss or net business loss carried forward, or a Wisconsin capital loss carried forward.

In prior years, only IRS adjustments to taxable income were required to be reported.

9. Require Use of Magnetic Media (1991 Act 39, amend secs. 71.65(2)(a) and (b) and (5), 71.66(1)(f), 71.70, 71.71(2), 71.72, 71.73(2), and 71.80(14)(a), and create sec. 71.80(20), effective January 1, 1992.)

Persons (including corporations) required to file federal wage statements and information returns on magnetic media or in other machine-readable form with the Internal Revenue Service must also file comparable Wisconsin wage statements and information returns in the same manner with the Department of Revenue.

10. Withholding From Pari-Mutuel Wager Winnings To Be Deposited On The Same Basis as Withholding From Wages (1991 Act 39, amend sec. 71.67(5)(b), effective October 1, 1991.)

Amounts withheld from pari-mutuel wager winnings must be deposited on the same basis that employers deposit income tax withheld from employees' wages. This may be semimonthly, monthly, quarterly, or annually. This means, for example, that when amounts withheld during any calendar quarter exceed \$5,000, the Department of Revenue may require semimonthly deposits to be made.

Under prior law, deposits of amounts withheld from pari-mutuel wager winnings were required to be made on a monthly basis.

11. Permit Assessment of Fees to Persons Owing Delinquent Taxes (1991 Act 39, repeal sec. 73.03(33), create sec. 73.03(33m), and create a nonstatutory provision, effective July 1, 1992, for each account that is delinquent on June 30, 1992, or thereafter.)

The department may assess all persons who owe delinquent taxes, a fee for each delinquent account of the greater of \$25 or 4.5% of the taxes, fees, interest, and penalties owed on that account. For delinquent accounts existing on June 30, 1992, the fee is computed based on the balance as of June 30, 1992. For accounts that become delinquent on or after July 1, 1992, the fee is computed based on the amount owed on that account as of the due date specified in the assessment, notice of amount due, or notice of redetermination.

12. Clarify Law Allowing Refund of Overpaid Interest and Penalties (1991 Act 39, amend sec. 71.75(5), effective August 15, 1991.)

The department is authorized to refund allocable interest and penalties on claims for refund of overpaid tax assessments.

(Note: This law change merely codifies the department's prior policy of refunding allocable interest and penalties.)

13. Send Copy of Delinquent Tax Warrant Satisfaction to Taxpayer Only If Requested (1991 Act 39, amend sec. 71.91(5)(f), effective August 15, 1991.)

The department is required to send a copy of a satisfaction of delinquent tax warrant to a taxpayer only if the taxpayer requests a copy.

Under prior law, the department was required to send a copy to the taxpayer in all cases.



14. Responsible Person Assessments Include Penalties and Interest (1991 Act 39, amend sec. 71.83(1)(b)2, effective for failures to withhold, account for, or pay over a tax imposed under ch. 71, Wis. Stats., on or after August 15, 1991.)

Any person who intentionally fails to withhold income, franchise, or mining taxes, or account for or pay over such taxes to the department is liable for a penalty equal to the amount of tax, interest, and penalties. Previously, the penalty was only the amount of the tax.

"Person" includes an officer, employee, or other responsible person of a corporation and a member, employee, or other responsible person of a partnership who is under a duty to perform the act in respect to which the violation occurs.

15. Department of Revenue Exempt from Photocopying Fees Charged by Registers of Deeds (1991 Act 39, amend sec. 59.57(4), effective August 15, 1991.)

County Registers of Deeds are authorized under sec. 59.57(4), Wis. Stats., to charge a fee for copies of their records or papers. The Department of Revenue is exempt from those fees.

16. Require the Department of Revenue to Publicize Property Tax Deferral Loan Program on Homestead Credit Form (1991 Act 39, create sec. 73.03(40m), effective August 15, 1991.)

Information about the property tax deferral loan program must be included on the homestead credit claim form, Schedule H.

17. References to "Franchise Tax" Added to Wisconsin Statutes (1991 Act 39, amend secs. 19.50(5), 20.566(1)(a), 59.071(2), 59.39(7), 66.30(2m)(e), 66.39(7)(m), 66.521(1)(a), 66.94(5)(c), 70.375(4)(e) and (em), 70.39(4), 70.40(3), 70.42(3), 70.421(3), 70.51(2), 71.24(6)(b), (7), (9)(b), and (10), 71.26(1)(e), 71.28(2m)(b)1.a., 71.30(8)(b), 71.39(1)(b), 71.40, 71.44(1)(c), (2)(b), (3), and (4)(c), 71.45(2)(b)2. and 3., 71.47(2m)(b)1.a., 71.57, 71.59(1)(a), 71.74(6), (8)(a), (b), and (c), (12), (13)(a), and (14), 71.80(1)(e), (2), (8), (9), (16)(a) and (b), and (17), 71.83(1)(a)3., 6., and 7., (b)2. and 6., and (3), 71.88(2)(b), 71.89(2) and (5), 71.91(5)(c) and (j), (5m)(a), and (7)(d), 71.92(2), (3), (4), and (6), 72.86(4), 72.87(2), 73.01(5)(a), 73.03(20), 75.521(3)(am)2., 76.38(12)(a), 76.39(4)(c) and (5), 76.48(1r) and (6), 77.26(3), 77.51(4)(b)4., 77.52(6), 77.53(4), 77.54(4), 77.59(6)(b), 78.70(6), 78.80(3), 101.583(1m), 139.11(4), 139.38(6), 139.82(6), 144.027(4m)(b) and (c), 163.11(1)(intro.), 163.90, 185.50, 218.01(3)(a)3., 218.11(6)(c), 218.22(3)(c), 218.32(3)(c), 218.41(3)(c), 218.51(4)(c), 230.08(4)(b)1., 551.235(5)(d)1., 565.10(14)(a)(intro.), 701.20(12)(d)4., 806.11(intro.), (1), and (4), 859.02(2)(a), and 893.33(5) and repeal and recreate secs. 20.566(1)(a), 66.30(2m)(e), 73.03(20), 75.521(3)(am)2., 859.02(2)(a), and 893.33(5), effective August 15, 1991, except the repeals and recreations take effect on January 1, 1992).

Under current law, sec. 71.23(2) provides that all provisions of chs. 71 and 73 relating to income taxation of corporations shall apply to franchise taxes imposed under sec. 71.23(2) unless the context requires otherwise. The franchise tax is a Wisconsin tax that is imposed on

corporations for the privilege of doing business in the state and is measured by net income. These provisions revise references to the "income tax" to include references to the "franchise tax."

18. Standardize Administrative Provisions Relating to Credits (1991 Act 39, amend secs. 71.74(8)(a), (b), and (c), 71.80(3m)(c) and (d), 71.82(1)(c) and (2)(c), 71.83(2)(b)4, and 71.88(1)(b) and (2)(b), see effective dates below.)

Under prior law, certain administrative provisions relating to income and franchise tax credits applied to some, but not all, of the available tax credits. This Act applies those administrative provisions to all income and franchise tax credits. The affected provisions are as follows:

Adjustment of Credits

- a. If an audit of a claim for a credit indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor within 4 years of the last day prescribed by law for filing the claim (sec. 71.74(8)(a), Stats.).

Under prior law, this provision applied only to the farmland tax relief credit, the married persons credit, homestead credit, farmland preservation credit, and all credits available to corporations and insurance companies. This change is effective for taxable years beginning on or after January 1, 1991.

- b. If a claim for a credit is false or excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid or a credit has been allowed against income or franchise taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income or franchise taxes are assessed (sec. 71.74(8)(b), Stats.). If a claim for a credit is excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid or credited against income or franchise taxes otherwise payable, the credit shall be reduced or canceled and the proper portion of any amount paid shall be recovered by assessment as income or franchise taxes are assessed (sec. 71.74(8)(c), Stats.).

Under prior law, these provisions applied only to the claim of right credit, community development finance authority credit, farmland tax relief credit, itemized deduction credit, married persons credit, other state tax credit, personal exemption credit, research credit, research facilities credit, homestead credit, and farmland preservation credit. These changes are effective for taxable years beginning on or after January 1, 1991, as they relate to the farmland tax relief credit and to insurance company credits, and on August 15, 1991, for all other credits.

### Crediting of Overpayments on Joint Returns

The department is required to notify the spouses when it intends to reduce any state tax refund or refundable credit from a joint return and apply such amount to offset any liability of either spouse owed the department. If the spouse does not receive the notice and the department incorrectly credits the state tax overpayment, refund, or refundable credit of a spouse or spouses against a liability, a claim for refund of the incorrectly credited amount may be filed within 2 years after the notice (sec. 71.80(3m)(c) and (d), Stats.).

Under prior law, references were to homestead and farmland preservation credit rather than to refundable credits. These changes are effective August 15, 1991.

### Interest

Any assessment made as a result of the adjustment or disallowance of a claim for a credit, except in the case of fraud or negligence, shall bear interest at 12% per year from the due date of the claim. Any assessment made as a result of the disallowance of a claim for a credit made with fraudulent intent, or of a portion of a claim that was excessive and was negligently prepared, shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month. (Section 71.82(1)(c) and (2)(c), Stats.)

Under prior law, these provisions applied only to the farmland tax relief credit, married persons credit, community development finance credit (corporations and insurance companies), homestead credit, and farmland preservation credit. These changes are effective for taxable years beginning on or after January 1, 1991.

### Criminal Penalties

A claimant who filed a claim for a credit that is false or excessive and was filed with fraudulent intent and any person who assisted in the preparation or filing of the false or excessive claim or supplied information upon which the false or excessive claim was prepared, with fraudulent intent, may be fined not more than \$10,000 or imprisoned for not more than 5 years, or both, together with the cost of prosecution (sec. 71.83(2)(b)4, Stats.).

Under prior law, this provision applied only to the farmland tax relief credit, married persons credit, community development finance credit (corporations and insurance companies), homestead credit and farmland preservation credit. This change is effective for taxable years beginning on or after January 1, 1991.

### Time for Filing an Appeal

Any person feeling aggrieved by the determination made by the department to adjust a credit may, within 60 days after receipt, petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is

filed and notify the claimant. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive (sec. 71.88(1)(b), Stats.).

Under prior law, this provision applied only to the farmland tax relief credit, married persons credit, community development finance credit (corporations and insurance companies), homestead credit, and farmland preservation credit. This change is effective for taxable years beginning on or after January 1, 1991.

19. Provide Exemption from Penalties and Interest for Certain Members of the Reserves (1991 Act 2, create sec. 71.85(3), effective March 28, 1991.)

A member of a reserve component of the U.S. Armed Forces may exclude from Wisconsin income all or a portion of basic, special, and incentive pay income or compensation received from the federal government for services performed for Operation Desert Shield or Operation Desert Storm in the Desert Shield or Desert Storm theater of operations. (See Item A.21)

For persons eligible for this exclusion, no penalty or interest that has been imposed by the department under Subchapter XII of Chapter 71 of the Wisconsin Statutes will accrue while the taxpayer is in the theater and for 180 days after the taxpayer leaves the theater.