



Wisconsin TAX BULLETIN

New Wisconsin Tax Laws

In the legislative session which ended June 30, 1995, the Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, temporary recycling surcharge, sales/use, excise and estate tax provisions. All of the provisions are in 1995 Act 27, except item B.9 which is in 1995 Act 2, and items E.3 and E.4 which are in 1995 Act 23.

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

Wisconsin Tax Bulletin

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code Reference Updated for 1995 for Individuals, Estates, and Trusts (1995 Act 27, repeal sec. 71.01(6)(b), amend sec. 71.01(6)(i) and (7r) and create sec. 71.01(6)(j), effective for taxable years beginning on or after January 1, 1995.)

For taxable years that begin on or after January 1, 1995, "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, 1994, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- Although enacted **after** December 31, 1994, the amendment made by federal Public Law 104-7 restoring the self-employed health insurance deduction will also apply for Wisconsin. (**Note:** Wisconsin's adoption of this provision simplifies the preparation of the Wisconsin return for self-employed persons. They will not be required to complete a 1995 Wisconsin Schedule I to remove the federal self-employed health insurance deduction.)
 - Although enacted **before** December 31, 1994, section 13113 of federal Public Law 103-66 relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years does not apply for Wisconsin.
 - For property placed in service in taxable years beginning on or after January 1, 1995, 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, 1994, at the taxpayer's option.
- ### 2. Federal Laws Enacted During 1994 Apply Simultaneously for Wisconsin Purposes (1995 Act 27, amend sec. 71.01(6)(h) and (i), effective for taxable years beginning after December 31, 1992, and before January 1, 1995.)

The Social Security Independence and Program Improvements Act of 1994 (federal Public Law 103-296), National Defense Authorization Act for Fiscal Year 1995 (federal Public Law 103-337), and Uruguay Round Agreements Act (federal Public Law 103-465) apply for Wisconsin income tax purposes at the same time as for federal purposes. For example, Public Law 103-465 requires a partner to recognize gain upon the distribution of marketable securities to the extent that the sum of the fair market value of marketable securities and money received exceeds the partner's basis in the partnership interest. This provision applies for both federal and Wisconsin purposes for partnership distributions after December 8, 1994.

3. Earned Income Credit Revised (1995 Act 27, amend sec. 71.07(9e)(ad)(intro.), (ah)(intro.), (ap)(intro.), and (at)1.(intro.) and 3.(intro.); repeal sec. 71.07(9e)(at)2; and create sec. 71.07(9e)(ac) and (af), various effective dates.)

Taxable years beginning in 1995

The Wisconsin earned income credit is equal to a percentage of the federal earned income credit as follows:

- If the person has one qualifying child who has the same principal place of abode as the person, 4% of the federal credit.
- If the person has two qualifying children who have the same principal place of abode as the person, 16% of the federal credit.
- If the person has three or more qualifying children who have the same principal place of abode as the person, 50% of the federal credit.

Taxable years beginning on or after January 1, 1996:

The Wisconsin earned income credit is equal to a percentage of the federal credit as follows:

- If the person has one qualifying child who has the same principal place of abode as the person, 4% of the federal credit.

- If the person has two qualifying children who have the same principal place of abode as the person, 14% of the federal credit.
- If the person has three or more qualifying children who have the same principal place of abode as the person, 43% of the federal credit.

The Wisconsin earned income credit is only available to persons who have at least one qualifying child.

4. Social Security Benefits — Subtraction Modification Created (1995 Act 27, create sec. 71.05(6)(b)21, effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, there is a change in the manner in which the difference in the amount of social security taxable for federal and Wisconsin purposes is reported on the Wisconsin income tax return.

For 1995 returns and thereafter, the difference between the amount of social security taxable for federal and Wisconsin purposes is claimed as a subtraction from federal adjusted gross income (Schedule 2 of Form 1). (Note: For federal purposes up to 85% of social security benefits may be taxable. The maximum amount of social security benefits taxable for Wisconsin is 50%.)

For 1994 returns, Wisconsin Schedule I was completed to report the difference between the amount of social security taxable for federal and Wisconsin purposes.

5. Qualified Rehabilitation Expenditures — Reference Corrected (1995 Act 27, amend sec. 71.07(9m)(a), July 29, 1995.)

For purposes of the Wisconsin supplement to the federal historic rehabilitation credit, "qualified rehabilitation expenditures" are defined in sec. 47(c)(2) of the Internal Revenue Code. (Note: The federal definition of qualified rehabilitation expenditures was renumbered from sec. 48(g)(2) to sec. 47(c)(2) by federal Public Law 101-508.)

6. Alternative Minimum Tax — Certain Credits Not Considered In Calculation (1995 Act 27, amend sec. 71.08(1)(intro.), effective for taxable years beginning on or after January 1, 1995.)

The amendment to sec. 71.08(1)(intro.), Wis. Stats., provides that the newly created development zones day care and environmental remediation credits (see Items B.11 and B.12) may not be deducted from regular tax in determining whether an individual or fiduciary is subject to the Wisconsin alternative minimum tax.

Note: 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., after such tax is reduced by certain credits.

7. Order of Computation Revised to Include New Credits (1995 Act 27, amend sec. 71.10(4)(i) and create sec. 71.10(4)(gd), (ge), (gs), and (gt), effective for taxable years beginning on or after January 1, 1995.)

An individual or fiduciary income tax liability is computed in the following order:

- a. Tax under sec. 71.06
- b. Personal exemption credits under sec. 71.07(8)
- c. Itemized deduction credit under sec. 71.07(5)
- d. School property tax credit under sec. 71.07(9)
- e. Supplement to federal historic rehabilitation credit under sec. 71.07(9m)
- f. State historic rehabilitation credit under sec. 71.07(9r)
- g. Alternative minimum tax under sec. 71.08
- h. Married persons credit under sec. 71.07(6)
- i. Development zones jobs credit under sec. 71.07(2dj) if the credit is based on activity in an enterprise development zone (new for 1995)

- j. Development zones sales tax credit under sec. 71.07(2ds) if the credit is based on activity in an enterprise development zone (new for 1995)
- k. Development zones investment credit under sec. 71.07(2di)
- l. Development zones location credit under sec. 71.07(2dL)
- m. Development zones day care credit under sec. 71.07(2dd) (new for 1995)
- n. Development zones environmental remediation credit under sec. 71.07(2de) (new for 1995)
- o. The total of claim of right credit under sec. 71.07(1), farmland preservation credit under subch. IX, homestead credit under subch. VIII, farmland tax relief credit under sec. 71.07(3m), development zones sales tax credit under sec. 71.07(2ds) unless the credit is based on activity in an enterprise development zone, development zones jobs credit under sec. 71.07(2dj) unless the credit is based on activity in an enterprise development zone, earned income tax credit under sec. 71.07(9e), estimated tax payments under sec. 71.09, and taxes withheld under subch. X.

8. Minnesota-Wisconsin Reciprocity Study (1995 Act 27, repeal and recreate 20.005(3), effective July 29, 1995.)

As part of a Minnesota and Wisconsin study to determine the revenue effect of the Minnesota-Wisconsin reciprocity agreement, the 1995 Wisconsin individual income tax returns will include questions for all taxpayers to answer indicating whether they have income from services performed in Minnesota during the tax year and to enter the amount of that income.

9. Enterprise Development Zones Created (1995 Act 27, amend sec. 71.07(2dj)(d) and (2ds)(c) and create sec. 71.07(2dj)(h) and (2ds)(h), effective for taxable years beginning on or after January 1, 1995.)

See Item B.10.

10. Development Zones Day Care Credit Created (1995 Act 27, amend sec. 71.05(6)(a)15 and create sec. 71.07(2dd), effective for taxable years beginning on or after January 1, 1995.)

See Item B.11.

11. Development Zones Environmental Remediation Credit Created (1995 Act 27, amend sec. 71.05(6)(a)15 and create sec. 71.07(2de), effective for taxable years beginning on or after January 1, 1995.)

See Item B.12.

B. Corporation Franchise or Income Taxes

1. Internal Revenue Code References Updated for 1995 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Non-profit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits (1995 Act 27, repeal secs. 71.22(4)(b), 71.26(2)(b)2, and 71.34(1g)(b), amend secs. 71.22(4)(i) and (4m)(g), 71.26(2)(b)9 and (3)(y), 71.34(1g)(i), 71.365(1m), 71.42(2)(h), and 71.45(2)(a)13, and create secs. 71.22(4)(j) and (4m)(h), 71.26(2)(b)10, 71.34(1g)(j), and 71.42(2)(i), effective for taxable years beginning on or after January 1, 1995.)

For taxable years that begin on or after January 1, 1995, "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, 1994, 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, 1995, 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, 1994, at the taxpayer's option.

- b. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- c. For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in passthroughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- d. For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- e. 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 1994 Apply Simultaneously for Wisconsin Purposes (1995 Act 27, amend secs. 71.22(4)(h) and (i) and (4m)(f) and (g), 71.26(2)(b)8 and 9, 71.34(1g)(h) and (i), and 71.42(2)(g) and (h), effective for taxable years beginning after December 31, 1992, and before January 1, 1995.)

The Social Security Independence and Program Improvements Act of 1994 (federal Public Law 103-296), National Defense Authorization Act for Fiscal Year 1995 (federal Public Law 103-337), and Uruguay Round Agreements Act (federal Public Law 103-465) apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, under certain circumstances, partners must recognize gain on the distribution of marketable securities for both federal and Wisconsin purposes for distributions made after December 8, 1994.

3. Health Maintenance Organizations and Limited Service Health Organizations — Exemption Repealed (1995 Act 27, amend secs. 71.26(1)(a) and (2)(a), 71.45(1) and (2)(a)(intro.), 185.981(5), 613.81, and 614.80, and create sec. 71.45(5), effective for taxable years beginning on or after January 1, 1996.)

This provision repeals any franchise or income tax exemptions that may be available for income from health maintenance organizations (HMOs), as defined in sec. 609.01(2), Wis. Stats., and limited service health organizations (LSHOs), as defined in sec. 609.01(3), Wis. Stats. For taxable years beginning on or after January 1, 1996, the following tax-exempt entities are subject to Wisconsin franchise or income tax to the extent that they derive income from an HMO or LSHO:

- Cooperative sickness care associations organized under sec. 185.981, Wis. Stats.
- Service insurance corporations organized under chapter 613, Wis. Stats.
- Religious, scientific, educational, benevolent, or other corporations or associations of individuals not organized or conducted for pecuniary profit.

The net income of a cooperative sickness care organization organized under sec. 185.981, Wis. Stats., or of a service insurance corporation organized under chapter 613, Wis. Stats., that is derived from an HMO or an LSHO is the net income that would be determined if the cooperative sickness care association or service insurance corporation were subject to federal income taxation and as if that income were that of an insurance company.

4. University of Wisconsin Hospitals and Clinics Authority Income Exempted From Franchise and Income Tax (1995 Act 27, create sec. 71.26(1)(be), effective July 29, 1995.)

Income of the University of Wisconsin Hospitals and Clinics Authority is exempt from Wisconsin franchise and income tax.

5. Franchise Tax Exemption Repealed for Certain State Bond Interest (1995 Act 27, repeal secs. 71.26(1)(g) and (h) and 71.45(1m) and

(1s), effective for taxable years beginning on or after January 1, 1995.)

Interest income from the following obligations is included in the measure of net income for corporations and insurance companies subject to the franchise tax:

- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).
- Bonds issued by a local exposition district under subchapter II of chapter 229, Wis. Stats.

6. Income Tax Exemption Clarified for Certain State and Municipal Bond Interest (1995 Act 27, amend secs. 71.26(3)(b) and 71.45(2)(a)3, and create secs. 71.26(1m) and 71.45(1t), effective for taxable years beginning on or after January 1, 1995.)

Interest and income derived from the following obligations are exempt only from the corporate income tax imposed under secs. 71.23(1) and 71.43(1):

- Municipal housing authority bonds issued under sec. 66.40, Wis. Stats.
- Municipal redevelopment authority bonds issued under sec. 66.431, Wis. Stats.
- Housing and community development authority bonds issued under sec. 66.4325, Wis. Stats.
- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).

- Bonds issued by a local exposition district under subchapter II of chapter 229, Wis. Stats.

7. Foreign Sales Corporations — Tax Treatment Federalized (1995 Act 27, repeal sec. 71.26(3)(r), effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, the treatment of foreign sales corporations (FSCs) is federalized. Corporations that qualify as FSCs will compute their taxable income as provided under secs. 921 to 927 of the Internal Revenue Code. Under the Internal Revenue Code, a portion of the foreign trade income of a FSC is treated as foreign source income not effectively connected with the conduct of a trade or business within the United States and is exempt from tax. This income will also be excluded from Wisconsin taxable income.

8. Tax-Option Corporations Subjected to Franchise Tax Measured by Certain State and Municipal Bond Interest (1995 Act 27, amend sec. 71.36(1m), effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, a tax-option (S) corporation's net income for franchise tax purposes includes interest income from the following obligations:

- Municipal housing authority bonds issued under sec. 66.40, Wis. Stats.
- Municipal redevelopment authority bonds issued under sec. 66.431, Wis. Stats.
- Housing and community development authority bonds issued under sec. 66.4325, Wis. Stats.
- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65, Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).

- Bonds issued by a local exposition district under subchapter II of chapter 229, Wis. Stats.

9. Development Opportunity Zone Created (1995 Act 2, renumber sec. 560.795(3)(a) to 560.795(3)(a)1 and amend sec. 560.795(3)(a)1 as renumbered, amend secs. 71.28(1d)(i), (1dj)(i), (1dL)(i), (1ds)(i), and (4)(am)2 and 560.795(2)(a) and (b)1, and create sec. 560.795(1)(c), (2)(b)3, and (3)(a)2, effective April 28, 1995.)

A development opportunity zone is created in the city of Eau Claire. Corporations (except insurance companies) conducting economic activities in a development opportunity zone may qualify for the development zone tax credits.

10. Enterprise Development Zones Created (1995 Act 27, amend secs. 71.28(1dj)(d) and (1ds)(c), 71.47(1dj)(d) and (1ds)(c), and 73.03(35) and create secs. 71.28(1dj)(h) and (1ds)(h), 71.47(1dj)(h) and (1ds)(h), and 560.797, effective for taxable years beginning on or after January 1, 1995.)

A new enterprise development program is created that allows the Department of Development to designate up to 50 areas as enterprise development zones. The program is modeled after the current development zone program. A business certified to operate in an enterprise development zone may claim the development zone tax credits available to businesses located in development zones, with one difference. For claimants operating in enterprise development zones, the jobs credit and sales tax credit are nonrefundable credits rather than refundable credits.

The enterprise development zone jobs credit and sales tax credit may be offset only against the amount of the tax attributable to income from the business operations of the claimant in the enterprise development zone and against tax attributable to income from directly related business operations. Unused credits may be carried forward for up to 15 years. In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

11. Development Zones Day Care Credit Created (1995 Act 27, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10, 73.03(35), 77.92(4), and 560.70(7) and create secs. 71.28(1dd), 71.47(1dd), and 560.797(1)(d), effective for taxable years beginning on or after January 1, 1995.)

Eligible persons may claim a nonrefundable credit of up to \$1,200 of employment-related day care expenses for each qualifying individual. The credit is available to:

- a person that is certified for development zone tax benefits and begins business operations in a development zone after July 29, 1995,
- a corporation that is entitled to development opportunity zone tax benefits and begins business operations in a development opportunity zone after July 29, 1995, and
- a person that is certified for enterprise development zone tax benefits.

“Day care center benefits” means benefits provided at a day care facility that is licensed under sec. 48.65 or 48.69, Wis. Stats., and that for compensation provides care for at least 6 children.

“Employment-related day care expenses” means amounts paid or incurred by a claimant for providing or making day care center benefits available to a qualifying individual in order to enable a member of a targeted group to be employed by the claimant.

“Member of a targeted group” means a person who is a member of a targeted group for purposes of the development zones jobs credit.

“Qualifying individual” means:

- a dependent of a member of a targeted group who is employed by a claimant and with respect to whom the member is entitled to a deduction under sec. 151(c) of the Internal Revenue Code for federal income tax purposes,

- a dependent of a member of a targeted group who is employed by a claimant if the dependent is physically or mentally incapable of caring for himself or herself, or
- the spouse of a member of a targeted group who is employed by a claimant if the spouse is physically or mentally incapable of caring for himself or herself.

The day care credit may be offset only against the amount of the tax attributable to income from the business operations of the claimant in the zone and against tax attributable to income from directly related business operations.

Partnerships, limited liability companies treated as partnerships, and tax-option (S) corporations may not claim the credit, but the eligibility for, and the amount of, the credit will be based on their economic activity. The entity will compute the amount of credit that will pass through to its partners, members, or shareholders. Partners, members, or shareholders may claim the credit based on the entity's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the entity's business operations in the zone and against the tax attributable to their income from the entity's directly related business operations.

Unused credits may be carried forward for up to 15 years. In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

If the certification for tax benefits is revoked, credits may not be claimed for that year and unused credits may not be carried forward to succeeding years. If a claimant ceases business operations in the zone, unused credits may not be carried forward to any taxable year following the year in which the operations cease.

To claim the credit, a person must attach the following information to its Wisconsin franchise or income tax return:

- A copy of the claimant's certification for tax benefits, and

- A statement from the Department of Development verifying the amount of qualifying employment-related day care expenses.

The day care credit is taxable income and must be included in income for the taxable year for which the credit is computed.

12. Development Zones Environmental Remediation Credit Created (1995 Act 27, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10, 73.03(35), 77.92(4), and 560.70(7) and create secs. 71.28(1de), 71.47(1de), and 560.797(1)(d), effective for taxable years beginning on or after January 1, 1995.)

Eligible persons may claim a nonrefundable credit equal to 7.5% of the amount expended to remove or contain environmental pollution, as defined in sec. 144.01(3), Wis. Stats., in the zone or to restore soil or groundwater that is affected by environmental pollution, as defined in sec. 144.01(3), Wis. Stats., in the zone. The credit is available to:

- a person that is certified for development zone tax benefits and begins business operations in a development zone after July 29, 1995,
- a corporation that is entitled to development opportunity zone tax benefits and begins business operations in a development opportunity zone after July 29, 1995, and
- a person that is certified for enterprise development zone tax benefits.

The person must begin the work, other than planning and investigating, for which the credit is claimed after the area that includes the site where the work is done is designated a development zone, a development opportunity zone, or an enterprise development zone and after the claimant is certified for tax benefits.

The environmental remediation credit may be offset only against the amount of the tax attributable to income from the business operations of the claimant in the zone and against tax attributable to income from directly related business operations.

Partnerships, limited liability companies treated as partnerships, and tax-option (S) corporations may not claim the credit, but the eligibility for, and the amount of, the credit will be based on their economic activity. The entity will compute the amount of credit that will pass through to its partners, members, or shareholders. Partners, members, or shareholders may claim the credit based on the entity's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the entity's business operations in the zone and against the tax attributable to their income from the entity's directly related business operations.

Unused credits may be carried forward for up to 15 years. In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

If the certification for tax benefits is revoked, credits may not be claimed for that year and unused credits may not be carried forward to succeeding years. If a claimant ceases business operations in the zone, unused credits may not be carried forward to any taxable year following the year in which the operations cease.

To claim the credit, a person must attach the following information to its Wisconsin franchise or income tax return:

- A copy of the claimant's certification for tax benefits, and
- A statement from the Department of Development verifying the amount of the investment and that it meets all the requirements.

The environmental remediation credit is taxable income and must be included in income for the taxable year for which the credit is computed.

13. Supplement to the Federal Historic Rehabilitation Credit — Reference to the Internal Revenue Code Corrected (1995 Act 27, amend secs. 71.28(6)(a) and 71.47(6)(a), effective July 29, 1995.)

For purposes of the supplement to the federal historic rehabilitation credit, qualified rehabilitation expenditures are defined in sec. 47(c)(2) of the Internal Revenue Code.

14. Order of Claiming the Tax Credits Modified for Corporations and Insurance Companies (1995 Act 27, amend secs. 71.30(3)(f) and 71.49(1)(f) and create secs. 71.30(3)(eb), (ec), (en), and (eo) and 71.49(1)(eb), (ec), (en), and (eo), effective for taxable years beginning on or after January 1, 1995.)

Corporations and insurance companies must claim their nonrefundable credits in the following order:

- a. Manufacturing sales tax credit
- b. Research credit
- c. Research facilities credit
- d. Community development finance credit
- e. Development zone jobs credit if the credit is based on an activity in an enterprise development zone
- f. Development zone sales tax credit if the credit is based on an activity in an enterprise development zone
- g. Development zones investment credit
- h. Development zones location credit
- i. Development zones day care credit
- j. Development zones environmental remediation credit
- k. Supplement to federal historic rehabilitation credit

C. Temporary Recycling Surcharge

1. Corporations With Less Than \$4,000 of Total Receipts Exempted From Temporary Recycling Surcharge (1995 Act 27, amend sec. 77.93(1) and (4) and create sec. 77.92(4r), effective for taxable years beginning on or after January 1, 1995.)

The temporary recycling surcharge does not apply to corporations, tax-option (S) corporations, and insurance companies required to file

Wisconsin franchise or income tax returns that have less than \$4,000 of total receipts from all activities.

“Total receipts from all activities” means gross receipts, gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, and all other receipts that are included in gross income under chapter 71, Wis. Stats.

D. Sales and Use Taxes

1. Central Office Equipment of Telephone Companies — Exemption Repealed (1995 Act 27, repeal sec. 77.54(24), effective September 1, 1995.)

The exemption under sec. 77.54(24), Wis. Stats., (1993-94), for apparatus, equipment, and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals is repealed.

Note: As a result of the repeal of sec. 77.54(24), Wis. Stats., the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of the property described in sec. 77.54(24), Wis. Stats., is subject to Wisconsin sales or use tax.

2. Motor Vehicles Used by Dealer — Measure of Tax Changed (1995 Act 27, amend secs. 77.53(1), 77.56(2), and 77.71(2) and create sec. 77.53(1m), effective September 1, 1995.)

This provision changes the computation of use tax due on motor vehicles which are used by licensed motor vehicle dealers.

Motor vehicles purchased and used by a dealer for any purpose, in addition to retention, demonstration, or display, are subject to use tax as follows:

a. *Motor vehicles held for sale and assigned to specific dealer employees subject to withholding of federal income taxes*

The amount subject to use tax is \$96 per month per plate (regular or dealer).

The department will annually, beginning January 1, 1997, adjust the \$96 amount to the nearest whole dollar to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Customers, U.S. City Average, as determined by the U.S. Department of Labor, for the 12 months ending on June 30 of the year before the change.

Examples of motor vehicles subject to use tax based on \$96 per month include (this list is not all-inclusive):

- Automobiles assigned to salespersons who use the automobiles for personal travel (e.g., travel to and from home)
- Automobiles assigned to the owner, controller, and other employees subject to withholding for federal income tax purposes who use the automobiles for personal travel (e.g., travel to and from home)

b. *Motor vehicles held for sale and not assigned to specific dealer employees subject to withholding for federal income tax purposes*

The amount subject to tax is the “lease value” of the motor vehicle for the period the motor vehicle is used by the dealer for any purpose, in addition to retention, demonstration, or display. The “lease value” is computed using the IRS Lease Value Table contained in IRS Reg. § 1.61-21(d)(2).

Examples of motor vehicles subject to use tax based on amounts from the IRS Lease Value Table include (this list is not all-inclusive):

- Motor vehicles provided to customers without charge for use while their motor vehicle is being serviced
- Motor vehicles used to transport customers (e.g., courtesy shuttle)
- Motor vehicles used by spouses of family members of the dealer who are not dealer

employees subject to withholding for federal income tax purposes

- Motor vehicles assigned to officers and directors of the dealer who are not subject to withholding for federal income tax purposes
- Motor vehicles provided by a dealer to municipalities and nonprofit organizations who use them for community service projects (e.g., DARE)
- Automobiles provided to athletic coaches, celebrities, and other dignitaries without charge for their use

c. *Motor vehicles not held for sale which are properly capitalized for income or franchise tax purposes*

The amount subject to use tax is the sales price of the motor vehicle to the dealer.

Examples of motor vehicles subject to use tax based on the sales price to the dealer include (this list is not all-inclusive):

- Tow trucks not held for sale
- Parts trucks not held for sale
- Antique vehicles held for promotional purposes and not for sale
- Snow plows not held for sale

Prior to this law change, the amount subject to use tax for motor vehicles used for any purpose, in addition to retention, demonstration or display, by a license dealer or its employees was the sales price of the vehicle to the dealer, with the following exceptions:

- a. For motor vehicles licensed in the name of the dealer and used by salespersons and other employees, the amount subject to tax was \$83 per month per vehicle.
- b. For motor vehicles operated with dealer plates and used by salespersons and other employees, the amount subject to tax was \$22 per month per plate issued to the dealership.

3. **Exemption for Sales to University of Wisconsin Hospitals and Clinics Authority** (1995 Act 27, amend sec. 77.54(9a)(a), effective July 29, 1995.)

Sales of tangible personal property and taxable services to the University of Wisconsin Hospitals and Clinics Authority are exempt from Wisconsin sales or use tax.

E. Excise Taxes

1. **Cigarette Tax Rate Increased** (1995 Act 27 amend sec. 139.31(1)(a) and (b), effective September 1, 1995.)

The cigarette tax rate is increased from 38¢ to 44¢ per package of 20 cigarettes.

2. **Department of Revenue to Collect Petroleum Inspection Fees** (1995 Act 27, repeal 168.12(2), (3), (4), and (6), repeal and recreate 168.12(1), amend secs. 168.10, 168.13, 168.17 and create secs. 168.12(1g), (1r), (7), (8), (9) and 168.125, effective for fees for inspections of petroleum products received on or after January 1, 1996.)

Collection of the 3¢ per gallon petroleum inspection fee is transferred from the Department of Industry, Labor and Human Relations (DILHR) to the Department of Revenue (DOR), effective January 1, 1996. Fees collected are placed in a segregated account which funds the Petroleum Environmental Cleanup Fund Award Program (PECFA), petroleum tank and inspection programs, and various clean air and environmental programs in Wisconsin.

The petroleum inspection fee is imposed on motor vehicle fuels (gasoline and clear diesel): kerosene, aviation gasoline, racing fuel and dyed fuel oil. Previously, DILHR computed the fee at various levels in the fuel distribution chain and billed it to fuel wholesalers. Under the new law, the fee will be imposed at the same level as the motor vehicle fuel tax (i.e., when fuel is metered out at the pipeline terminal or refinery rack, or upon its receipt in Wisconsin by any other method). Similar to the motor vehicle fuel tax, the petroleum inspection fee will not be imposed on fuel exported from Wisconsin (or sold for export) or on fuel transferred to tax-free terminal storage.

Reporting of the motor vehicle fuel tax and the petroleum inspection fee will be combined on one report (MF-002 plus schedules) now filed each month by suppliers of motor vehicle fuels. The fee will be added to any motor vehicle fuel tax due, with the total payable by EFT (electronic funds transfer) on or before the 15th day of the month following the month in which fuel is received. For example, inspection fees and motor vehicle fuel taxes for January 1996 will be payable on or before February 15, 1996.

DOR has authority to license, require security, conduct audits, make assessments, issue refunds, and impose interest and penalties for the collection of the petroleum inspection fee in the same manner as for motor vehicle fuel tax.

3. Certain Corporation and Limited Liability Company Agents Not Required to Complete Responsible Beverage Server Course Requirements (1995 Act 23, amend sec. 125.04(5)(a)5, effective July 15, 1995.)

Corporation and limited liability company agents are not required to complete the responsible beverage server training requirements as a condition of licensing if the agent served as the appointed agent of a corporation holding a license to sell alcohol beverages within the past two years. An agent is also exempt from the training requirements if he or she held, within the past two years, a Class A license, Class C license, Class B license or permit, or a manager's or operator's license.

4. Create Provisional Retail Licenses (1995 Act 23, create sec. 125.185, effective July 15, 1995.)

A municipal governing body that issues retail alcohol licenses shall also issue provisional retail licenses. A provisional license will expire 60 days after issuance, or when a Class A, Class B or Class C license is issued to the holder, whichever is sooner.

5. Above Quota Liquor Licenses (1995 Act 27, renumber sec. 125.51(4)(t) to 125.51(4)(t)1 and create secs. 125.51(4)(t)2 and (u), effective July 29, 1995.)

"Class B" licenses issued under sec. 125.51(4)(t) are "grandfathered" and may be renewed, but no

such new licenses may be issued after July 29, 1995.

Notwithstanding the quota of a municipality, its governing body may issue a license to a corporation that holds a Class "B", "Class C" and a "Class A" license since January 1, 1992, if the licenses are issued by that governing body. No such license may be issued after September 1, 1995, but such licenses issued on or before September 1, 1995 may be renewed.

6. Penalties for Retailers Purchasing Intoxicating Liquor From Unauthorized Sources Revised (1995 Act 27, create secs. 125.66(4) and 125.69(6)(c) and amend sec. 125.69(6), effective July 29, 1995.)

No campus or retail licensee or permittee may purchase or possess intoxicating liquor from any person other than a Wisconsin manufacturer, rectifier, or wholesaler. Penalties for violations include a forfeiture of not more than \$100 if the total volume of liquor purchased in one month is 12 liters or less. If a person purchases or possesses more than 12 liters in one month, the fine is not less than \$1,000 nor more than \$10,000. Under prior law there was no 12 liter monthly threshold for purposes of determining penalties. Also, prior law did not prescribe a minimum penalty.

"Class B" licensees who purchase intoxicating liquor from "Class A" licensees may be fined not more than \$100. "Class A" licensees who sell intoxicating liquor to "Class B" licensees may be fined not more than \$100.

F. Estate Taxes

1. Installment Payments (1995 Act 27, amend secs. 72.22(1) and (3), and 72.23 and create sec. 72.225, effective for transfers because of deaths that occur on or after July 29, 1995.)

If a percentage of the federal tax on an estate may be paid in installments under section 6166 of the Internal Revenue Code, the same percentage of Wisconsin estate tax may be paid under the same installment schedule, if written notice of the election to pay in installments is given to the Department of Revenue within 9 months after the decedent's death. The interest rate on install-

ment payments is 12%, and is calculated from the date of death.

The provisions on acceleration of installment payments under section 6166(g) of the Internal Revenue Code apply to installment payments of Wisconsin estate tax.

When an election is made to make installment payments of estate tax, distributees of real estate must provide the Department of Revenue a certified copy of a lien for unpaid taxes and interest on the property to secure payment, and must record the lien in the office of the Register of Deeds of the County in which the property is located.

Distributees of personal property must provide either a lien or a financial guarantee bond equal to the estimated tax and interest to be paid in installments to secure payment if the tax has not been determined. Upon determination of the tax, distributees of personal property must provide a lien or provide a financial guarantee bond sufficient to secure payment of the tax and interest, or pay the Department of Revenue the excess over the amount of tax and interest secured by the bond. Any distributee who fails to provide the security required, or who disposes of one-third or more of the property on which tax is secured, must pay the tax in full.

G. Other

1. **Delinquent Account Fee Increased** (1995 Act 27, amend sec. 73.03(33m), effective December 31, 1995, and create nonstatutory provision.)

The fee assessed taxpayers who owe delinquent taxes, fees, interest, or penalties is increased from 4.5% (with a \$25 minimum) to 6.5% (with a \$35 minimum) of the taxes, fees, interest and penalties owed.

The fee on accounts already delinquent on December 31, 1995 is also increased. These accounts are subject to an additional fee equal to 2% of the taxes, fees (other than the delinquent account fee under sec. 73.03(33m)), interest, and penalties owed on December 31, 1995, or \$10, whichever is greater.

2. **Refund Setoff Provisions Expanded** (1995 Act 27, amend secs. 71.55(1), 71.61(1), and 71.75(1) and (9), 71.80(3), (3m)(a) and (b)2, and 71.88(1)(a) and create sec. 71.935, effective July 29, 1995.)

A municipality or county may certify unpaid fines, fees, restitutions, and forfeitures of at least \$20 to the Department of Revenue for setoff against state tax refunds (including homestead and farmland preservation credits).

3. **Business Registration Certificate Required** (1995 Act 27, repeal secs. 77.52(7), (8), (10), and (11)(b), 78.10(2) to (5), 78.48(2) to (5), 78.57(2) to (5), and 139.34(2) and (3); renumber sec. 77.52(11)(a) to 77.52(11) and amend 77.52(11) as renumbered; amend secs. 77.52(12) and (17m)(a) and (b)7, 77.53(9) and (9m), 77.58(5), 77.60(2)(intro.), 78.09(2) and (5), 139.05(7)(b), 139.09, 139.34(1)(c)7, 139.37(1)(a), and 139.79(2); repeal and recreate secs. 77.52(9), 78.10(1), 78.48(1), 78.57(1) and 480.24(2)(h); and create secs. 71.67(6) and 139.34(1)(f), effective January 1, 1996; and repeal secs. 125.04(11)(a)2, 125.19(3), 125.27(1)(c), 125.27(2)(c), 125.275(4), 125.30(4), 125.51(5)(a)5, (b)5, and (c)2, 125.52(4) and (5), 125.53(3), 125.54(3) and (4), 125.55(3), 125.58(3), 125.60(5), 125.62(4), 125.63(4), and 125.65(5); renumber sec. 125.04(11)(a)1 to 125.04(11)(a) and amend 125.04(11)(a) as renumbered; amend secs. 125.19(2), 125.27(1)(a), 125.27(2)(a)1.(intro.), 125.275(1), 125.29(1), 125.30(3), 125.51(5)(a)1 and 4, (b)2, and (c)1, 125.52(3), 125.53(1), 125.54(2), 125.58(2), 125.60(2), 125.62(2), 125.63(2), and 125.65(2); create sec. 73.03(50) and a nonstatutory provision, effective July 29, 1995.)

New Certificate Required

1. Persons who do not hold a permit or license prior to January 1, 1996

Persons who first apply with the Department of Revenue for permits or licenses relating to withholding, sales, use, motor vehicle fuel, alternate fuel, general aviation fuel, alcohol beverage, cigarette, or tobacco product taxes (except medicinal alcohol and sacramental wine) are required to apply for and hold a business tax registration certificate. A fee

will be charged upon application for the initial certificate.

2. Persons who already hold any permit or license before January 1, 1996

Persons who already hold permits or licenses issued by the Department of Revenue relating to withholding, sales, use, motor vehicle fuel, alternate fuel, general aviation fuel, alcohol beverage, cigarette, or tobacco product taxes (except medicinal alcohol and sacramental wine) will automatically be issued an initial business registration certificate at no charge.

Renewal

The business registration certificate must be renewed every two years for a fee. The renewal fee is in addition to any fee charged for obtaining the initial business registration certificate.

Amount of Fees

The Department of Revenue is authorized to set the amount for fees to obtain and renew a business registration certificate. The fee for original registration may not be less than \$20 and the fee for renewal may not be less than \$10. The fee schedule is subject to the approval of the Legislature's Joint Committee on Finance.

Fees and Expiration Dates for Separate Permits and Licenses

The requirements to have permits or licenses have not been changed. However, fees are no longer imposed for obtaining permits and licenses from the Department of Revenue and there are no expiration dates for the separate permits and licenses.

Note: The repeal of fees and expiration dates for permits and licenses relating to alcohol beverages is effective July 29, 1995. The repeal of fees and expiration dates for permits and licenses relating to withholding, sales, use, motor vehicle fuel, alternate fuel, general aviation fuel, cigarette, and tobacco product taxes is effective January 1, 1996.

4. **Confidentiality Provisions Modified** (1995 Act 27, amend sec. 71.78(5), and (9) and create sec. 71.78(4)(n), and (o), effective July 29, 1995.)

The following additional persons are granted access to information from an income, franchise, withholding, fiduciary, partnership, limited liability company, estate, fuel, beverage, cigarette and tobacco products tax returns, and tax credit claims:

- a. The Department of Revenue may supply the address of a debtor to a Wisconsin municipality or county certifying the debt of a debtor under sec. 71.935.
- b. The State Public Defender and the Department of Administration, for the purpose of collecting payments ordered under secs. 48.275, 757.66, 973.06(1)(e) and 977.076(1) for legal representation.
- c. The Department of Regulation and Licensing (DRL), for the purpose of determining whether an applicant for renewal of a credential is liable for any delinquent taxes owed to the state. (**Note:** 1995 Act 27 provides that DRL may not renew credentials which expire on or after January 1, 1996, if the applicant is liable for any delinquent taxes owed to the state.)

The persons listed in paragraphs b. and c. above are also permitted to obtain copies of returns, claims, and related schedules, exhibits, writings, and audit reports.

5. **Allow Electronic Filing of Tax Warrants** (1995 Act 27, renumber sec. 71.91(5)(a) to 71.91(5)(ar) and amend 71.91(5)(ar) as renumbered, amend sec. 71.91(5)(b) and create sec. 71.91(5)(ag), effective July 29, 1995.)

Section 71.91(5) establishes the method of filing delinquent tax warrants. This amendment provides that delinquent tax warrants can be filed via electronic transmission. The amendment also prescribes delinquent tax warrants be filed with the clerk of circuit court, rather than the sheriff.