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Wisconsin TAX BULLETIN

New Wisconsin Tax Laws

The Wisconsin Legislature has enacted a number of 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, sales/use, withholding and excise tax provisions.

These provisions are contained in the following Acts:

1995 Act 118 – Published 1/3/96
1995 Act 209 – Published 4/24/96
1995 Act 225 – Published 4/30/96
1995 Act 233 – Published 5/2/96
1995 Act 255 – Published 5/3/96
1995 Act 261 – Published 5/6/96
1995 Act 280 – Published 5/8/96
1995 Act 282 – Published 5/8/96
1995 Act 289 – Published 5/9/96
1995 Act 320 – Published 5/15/96
1995 Act 329 – Published 5/16/96
1995 Act 334 – Published 5/16/96
1995 Act 351 – Published 6/5/96
1995 Act 371 – Published 6/11/96
1995 Act 380 – Published 6/13/96
1995 Act 400 – Published 6/20/96
1995 Act 403 – Published 6/20/96
1995 Act 408 – Published 6/20/96
1995 Act 418 – Published 6/20/96
1995 Act 428 – Published 6/20/96
1995 Act 448 – Published 7/8/96
1995 Act 453 – Published 7/10/96

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

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code Reference Updated for 1996 for Individuals, Estates, and Trusts (1995 Act 380, repeal sec. 71.01(6)(c), amend sec. 71.01(6)(j) and (7r), and create sec. 71.01(6)(k), effective for taxable years beginning on or after January 1, 1996.)

For taxable years that begin on or after January 1, 1996, "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, 1995, 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, 1995, the provisions of federal Public Law 104-117 also apply for Wisconsin. These provisions (1) extend the combat pay exclusion to certain members of the Armed Forces of the United States serving in a qualified hazardous duty area (Bosnia and Herzegovina, Croatia, or Macedonia) and (2) increase the combat pay exclusion for commissioned officers.

- Although enacted **before** December 31, 1995, 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, 1996, 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, 1995, at the taxpayer's option.

2. Federal Laws Enacted During 1995 and 1996 Apply Simultaneously for Wisconsin Purposes (1995 Act 380, amend sec. 71.01(6)(i) and (j), effective for taxable years beginning after December 31, 1993, and before January 1, 1996.)

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

- Public Law 104-7, enacted April 11, 1995, excluding Section 1. (**Note:** Section 1 of Public Law 104-7, relating to the self-employed health insurance deduction, was previously adopted for Wisconsin purposes for taxable years beginning in 1995 by 1995 Wisconsin Act 27 - see *Wisconsin Tax Bulletin* 93, August 1995.)

- Public Law 104-117, enacted March 20, 1996. (**Note:** For Wisconsin purposes, this federal law only affects taxable years beginning in 1995.)

As a result of the amendment to sec. 71.01(6)(i) and (j), Wis. Stats. (1993-94), in Act 380, the following changes in federal law are effective for Wisconsin purposes at the same time as for federal purposes:

- Repeal of the nonrecognition of gain provisions relating to certain sales of broadcast facilities to minority owners.

- Allow certain sales or exchanges to implement microwave reallocation policies to be treated as involuntary conversions.

- Increase in the combat pay exclusion for commissioned officers.

- Extension of the combat pay exclusion to certain members of the Armed Forces of the United States serving in a qualified hazardous duty area (Bosnia and Herzegovina, Croatia, or Macedonia).

3. **Development and Enterprise Zone Credits Amended** (1995 Act 209, repeal secs. 71.07(2dj)(d) and (2ds)(c), amend secs. 71.05(6)(a)15, 71.07(2dd)(a)1 and 2, (2dj)(am)1, 3, and 8m and (h), (2dL)(ar), and (2ds)(h), 71.08(1)(intro.), 71.10(4)(gd), (ge), and (i), 73.03(35), and 77.92(4), and create secs. 71.07(2dj)(am)4h and 4i and (2dr) and 71.10(4)(gm), effective dates are listed below.)

Expansion of Research Credit

For taxable years beginning on or after January 1, 1997, individuals, estates, and trusts may qualify for the development and enterprise zones research credit. However, shareholders of tax-option (S) corporations continue to be ineligible for the credit. The credit is equal to 5% of the amount obtained by subtracting from the person's qualified research expenses the person's base amount.

"Qualified research expenses" are defined in section 41 of the Internal Revenue Code (IRC), with the following exceptions: (a) "qualified research expenses" include only expenses incurred by the claimant in a development or enterprise zone, and (b) "qualified research expenses" do not include (1) compensation used in computing the development or enterprise zones jobs credit nor (2) research expenses incurred before the claimant is certified for tax benefits.

The person's "base amount" is defined in IRC section 41(c), with the following exceptions: (a) gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under sec. 71.04(7)(b)1 and 2 and (d), Wis. Stats., and (b) research expenses used in calculating the base amount include research expenses incurred in a development or enterprise zone before the claimant is certified for tax benefits.

The claimant must submit with his or her tax return a copy of the certification to claim tax benefits issued by the Department of Commerce and a statement from the Department of Commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development or enterprise zone.

If a research credit computed is not entirely offset against the claimant's income tax liability for the current year, the unused portion may be carried forward for up to 15 years.

The amount of development and enterprise zones research credit computed is income and must be reported on the claimant's income tax return for the year in which the credit is computed.

Changes to Day Care Credit, Jobs Credit, Location Credit, and Sales Tax Credit

See Item B.3 on page 10 for a description of the changes and their effective dates.

4. **Deduction for Adoption Expenses** (1995 Act 261, create sec. 71.05(6)(b)22, effective for taxable years beginning on or after January 1, 1996.)

A deduction is allowed to an adoptive parent for adoption fees, court costs, or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under sec. 48.91(3), Wis. Stats. (1993-94), during the taxable year.

The deduction is for the amount up to $5,000 that is expended during the period that consists of the year to which the claim relates and the prior two tax years. The deduction is only available to a full-year resident of Wisconsin.

5. **Exemption for Certain Income from Viatical Settlement Contracts** (1995 Act 371, create sec. 71.05(1)(f), effective for taxable years beginning on or after January 1, 1996.)

Income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract is exempt from Wisconsin income tax.

A viatical settlement contract is a written agreement providing for the payment to the policyholder of a life insurance policy, or to the certificate holder of a group life insurance certificate, insuring the life of a person who has a catastrophic or life-threatening illness or condition, in an amount that is less than the expected death benefit under the policy or certificate, for assigning, selling, devising, or otherwise transferring the ownership of or the death benefit under the policy or certificate to the person paying the viatical settlement.

6. **Medical Savings Accounts Established** (1995 Act 453, create secs. 71.05(6)(a)19 and (b)22, 71.07(5)(a)7, 71.10(4)(j), 71.83(1)(c) and 632.898, effective for taxable years beginning on or after January 1 of the year in which the federal government enacts a broad-based medical savings account program, as certified by the Secretary of Revenue.)

An employer that, in providing health insurance coverage for its employes, offers its employes a choice of health benefit plan options that includes a high cost-share health plan may establish a medical savings account for an employe who chooses a high cost-share health plan. "High cost-share health plan" means any health insurance policy, certificate or contract with deductibles, copayments or other cost-sharing provisions of at least $1,500 ($3,000 for family coverage).

The medical savings account shall be established as a separate account in the employe's name and shall be the employe's property. The account may be established with any account administrator that is approved by the Commissioner of Insurance to administer medical savings accounts.

Only the employer may make deposits in the medical savings account of an employe. The employer shall deposit in the account the difference between what the employer pays on behalf of the employe (or the employe and dependents) for the high cost-share health plan and what the employer would pay on behalf of the employe (or the employe and dependents) for the most expensive health benefit plan that the employer offers that is not a high cost-share plan.

A self-employed person may also establish a medical savings account in his or her name. The self-employed person shall deposit in the account the difference between what the self-employed person pays for the high cost-share health plan (including dependent coverage) and what the self-employed person would pay for a more expensive health plan.

An employer or self-employed person is not required to deposit in the account more than $2,000 per year for single coverage or more than $2,000 per year for the employe or self-employed person, $2,000 per year for his or her spouse, or $1,000 per year for each non-spouse dependent for family coverage.

"Dependent" means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

The employer or self-employed person shall notify the Department of Revenue, in the manner prescribed by the department, of the establishment of the account, the employe's or self-employed person's name and social security number, the name and address of the account administrator and any other information the department may require.

Amounts deposited in the account and any interest, dividends, or other accrued gain may be used only for any of the following:

(a) To pay expenses for medical care as defined in IRC sec. 213(d)(1) and as limited by sec. 213(b), including amounts treated as paid for medical care under sec. 213(d)(2).

(b) To pay long-term care expenses of the employe or self-employed person or dependents.

(c) To purchase a long-term care insurance policy for the employe or self-employed person or dependents.

This does not apply after the death of the employe or self-employed person.

An employe or self-employed person shall provide information about the use of account funds, in the manner prescribed by the Department of Revenue, in conjunction with the filing of his or her Wisconsin income tax return.

To the extent included in federal adjusted gross income, the employe or self-employed person may subtract the amount that is deposited each year in the medical savings account, up to $2,000 for an individual, up to $2,000 for his or her spouse, and up to $1,000 for each nonspouse dependent, and any interest, dividends, or other gain that accrues in the account if it is redeposited in the account. This subtraction applies if the account is used exclusively to pay medical care expenses and long-term care expenses of the individual, his or her spouse and each minor dependent, or to purchase long-term care insurance for such individuals.

The maximum amount of deposit to an account shall be increased each year, beginning in 1998, by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the current year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of June of the previous year, as determined by the U.S. Department of Labor.

If any amount of money or other assets in the account is withdrawn for any reason other than the payment of medical care expenses or long-term care expenses or the purchase of long-term care insurance for the account holder, his or her spouse and all nonspouse dependents, an addition to federal adjusted gross income must be made for any principal that is withdrawn and any interest, dividends, or other gain that accrues during the taxable year in which a withdrawal occurs. This does not apply after the death of the account holder.

If a person is required to add any amount to federal adjusted gross income, the person shall pay a penalty equal to 10% of the amount that is withdrawn from the account. The penalty does not apply and up to 25% of the balance in the account may be withdrawn each year if either of the following occurs:

(a) The account holder or his or her spouse reaches the age of 59.5 years during the year in which the withdrawal occurs.

(b) The balance in the account exceeds $100,000.

Medical care expenses paid for with amounts withdrawn from a medical savings account cannot be used in the computation of the Wisconsin itemized deduction credit.

7. Subtraction for Increase in Value of Investment in Prepaid Tuition Plan (1995 Act 403, create sec. 71.05(6)(b)22, effective July 1, 1996.)

To the extent included in federal adjusted gross income, a subtraction from federal adjusted gross income is allowed for any increase in value of a tuition unit purchased under a tuition contract under sec. 16.24 of the Wisconsin Statutes (College Tuition Prepayment Program).

8. Credit for Taxes Paid to Another State by a Limited Liability Company (1995 Act 400, amend sec. 71.07(7)(b), effective for taxable years of a limited liability company that begin on or after January 1, 1996, and for the appropriate taxable year of a member of a limited liability company to conform the member's treatment of the credit to the limited liability company's treatment.)

A Wisconsin resident who is a member of a limited liability company (LLC) that is treated as a partnership may claim a credit against

Wisconsin net income tax for income and franchise taxes paid to another state by the LLC. The credit is allowed only if the income taxed by the other state is also considered income for Wisconsin tax purposes.

Example: John Smith files his Wisconsin income tax returns on a calendar year basis. He is a member of an LLC treated as a partnership whose taxable year ends on June 30. For its taxable year ending June 30, 1997, the LLC pays tax to Iowa. John may claim credit for his share of the Iowa tax on his Wisconsin income tax return for the 1997 calendar year.

9. **Exemption from Interest During Extension Period for Certain Persons for Operation Balkan Endeavor, etc.** (1995 Act 255, renumber sec. 71.03(7) to 71.03(7)(intro.) and amend as renumbered and create sec. 71.03(7)(b), effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning after December 31, 1994, and before January 1, 1997 (1995 and 1996 tax returns), certain persons are exempt from interest during the period of time an extension for filing a Wisconsin income tax return is in effect. The exemption from interest applies to the following:

- Persons who served in support of Operation Balkan Endeavor or a successor operation.
- Persons who served in Croatia, Bosnia and Herzegovina, Serbia, Macedonia, Montenegro, Hungary, Austria, Slovakia, Czech Republic, or Slovenia.
- Persons who qualify for a federal extension of time to file under sec. 7508 of the Internal Revenue Code (extension due to service in a combat zone), who served outside the United States because of their participation in Operation Balkan Endeavor or a successor operation in the Balkan Endeavor theater of operations.

10. **Deduction Denied to Partnerships for State Taxes Paid** (1995 Act 400, create sec. 71.21(5), effective for the entity's taxable year beginning on or after January 1, 1996, and for the appropriate taxable year of the member to conform the member's treatment to the entity's treatment.)

The net income of a partnership or limited liability company treated as a partnership is computed under the Internal Revenue Code in effect for Wisconsin purposes, with certain exceptions. For taxable years beginning on or after January 1, 1996, sec. 164(a)(3) of the Internal Revenue Code is modified so that state taxes and taxes of the District of Columbia that are value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross income, gross receipts, or capital stock are not deductible.

B. Corporation Franchise or Income Taxes

1. **Internal Revenue Code References Updated for 1996 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits** (1995 Act 380, repeal secs. 71.22(4)(c) and (4m)(a), 71.26(2)(b)3, 71.34(lg)(c), and 71.42(2)(b), amend secs. 71.22(4)(j) and (4m)(h), 71.26(2)(b)10 and (3)(y), 71.34(lg)(j), 71.365(lm), 71.42(2)(i), and 71.45(2)(a)13, and create secs. 71.22(4)(k) and (4m)(i), 71.26(2)(b)11, 71.34(lg)(k), and 71.42(2)(j), effective for taxable years beginning on or after January 1, 1996.)

For taxable years that begin on or after January 1, 1996, "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, 1995, 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, 1996, 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, 1995, 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 1995 Apply Simultaneously for Wisconsin Purposes** (1995 Act 380, amend secs. 71.22(4)(i) and (j) and (4m)(g) and (h), 71.26(2)(b)9 and 10, 71.34(lg)(i) and (j), and 71.42(2)(h) and (i), effective for taxable years beginning after December 31, 1993, and before January 1, 1996.)

The federal Act Dealing With Self-Employeds' Health Insurance Deduction and Other Provisions (Public Law 104-7) applies for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, the Act prohibits C corporations and certain partnerships from deferring gain on certain involuntary conversions that occur on or after February 6, 1995, if the replacement property or stock is purchased from a related person. This provision also applies for Wisconsin purposes for involuntary conversions on or after February 6, 1995.

3. **Development and Enterprise Zone Credits Amended** (1995 Act 209, repeal secs. 71.28(1dj)(d) and (1ds)(c) and 71.47(1dj)(d) and (1ds)(c), amend secs. 71.28(1dd)(a)1 and 2, (1dj)(am)1, 3, and 8m and (h), (1dL)(ar), and (1ds)(h), 71.30(3)(eb), (ec), and (f), 71.47(1dd)(a)1 and 2, (1dj)(am) 1, 3, and 8m and (h), (1dL)(ar), and (1ds)(h), and 71.49(1)(eb), (ec), and (f), and create secs. 71.28(1dj)(am)4h and 4i and 71.47(1dj)(am)4h and 4i, effective dates are listed below.)

Changes to Day Care Credit

a. For taxable years beginning on or after January 1, 1995, "day care center benefits" means benefits provided at a facility for persons who are physically or mentally incapable of caring for themselves as well as 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.

b. For taxable years beginning on or after January 1, 1997, "employment-related day care expenses" means amounts paid or

incurred by a claimant, during the 2-year period beginning with the day that the member of the targeted group begins work for the 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.

Changes to Jobs Credit

a. For taxable years beginning on or after January 1, 1996, the term "member of a targeted group" is defined in sec. 51(d) of the Internal Revenue Code as amended to December 31, 1995, with certain exceptions.

b. Beginning April 25, 1996, for an employer to qualify for the jobs credit, its employes must be certified as members of a targeted group within 90 days after they begin employment. Under prior law, the deadline for receiving certification was 30 days.

c. For taxable years beginning on or after January 1, 1997, the amount of the jobs credit is (a) 25% of the qualified first-year wages if the wages are paid to an applicant for a Wisconsin works employment position for service either in an unsubsidized position or in a trial job under sec. 49.147(3), Wis. Stats., and (b) 20% of the qualified first-year wages paid to persons who are not applicants for Wisconsin works employment positions. Under prior law, the amount of credit was 40% of the qualified first-year wages paid.

d. For taxable years beginning on or after January 1, 1997, the amount of qualified first-year wages that may be taken into account in calculating the jobs credit is increased from $6,000 to $13,000.

e. For taxable years beginning on or after January 1, 1997, an additional 10% credit may be claimed for qualified second-year wages paid to a person who is a resident of the development zone in which he or she is employed, up to a maximum credit of $600. Under prior law, the additional credit was limited to 10% of qualified first-year wages paid to a person who is a resident of the development zone in which he or she is employed, up to a maximum credit of $600.

f. For taxable years beginning on or after January 1, 1997, the development zones jobs credit is a nonrefundable credit, instead of a refundable credit, except in the case of an Indian business located on an Indian reservation.

The credit, including any credits carried over, may be offset only against the amount of the tax attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from the claimant's directly related business operations.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and amount of, the credit shall be determined based on the entity's economic activity. The corporation, partnership, or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners, or members. Partners, members of limited liability companies, and tax-option corporation shareholders may claim the jobs credit 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 development zone and against the tax attributable to their income from the entity's directly related business operations.

If a credit computed is not entirely offset against Wisconsin franchise or income tax otherwise due, the unused balance may be carried forward and credited against Wisconsin franchise or income taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was in-

curred and the year in which the carryforward credit is claimed.

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.

Changes to Location Credit

Effective April 25, 1996, if the development zones location credit is claimed for an amount expended to acquire property, the property must have been acquired by the claimant after the place where the property is located was designated a development zone and the completed project must be placed in service after the claimant is certified for development zone tax benefits. In addition, the property must not have been previously owned by the claimant or a related person during the 2 years prior to the designation of the development zone.

Under prior law, the property had to be acquired by the claimant after the claimant was certified for tax benefits and the property must not have been previously owned by the claimant or a related person during the period the development zone was in existence or during the 2 years prior to the designation of the development zone.

Changes to Sales Tax Credit

For taxable years beginning on or after January 1, 1997, the development zones sales tax credit is a nonrefundable credit, instead of a refundable credit, except in the case of an Indian business located on an Indian reservation.

The credit, including any credits carried over, may be offset only against the amount of the tax attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from the claimant's directly related business operations.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and amount of, the credit shall be determined based on the entity's economic activity. The corporation, partnership, or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners, or members. Partners, members of limited liability companies, and tax-option corporation shareholders may claim the sales tax credit 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 development zone and against the tax attributable to their income from the entity's directly related business operations.

If a credit computed is not entirely offset against Wisconsin franchise or income tax otherwise due, the unused balance may be carried forward and credited against Wisconsin franchise or income taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

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.

4. Corporations Required to Report Nontaxable Income (1995 Act 428, amend secs. 71.24(l) and 71.44(l)(a), effective for taxable years beginning on or after January 1, 1996.)

Every corporation, which is required to file a Wisconsin franchise or income tax return and has income that is not subject to Wisconsin taxation, must include with its return a report that identifies each item of its nontaxable income.

5. Exemption for Certain Income from Viatical Settlement Contracts (1995 Act 371, renumber sec. 71.26(3)(a) to sec. 71.26(3)(ar) and create secs. 71.26(3)(ag) and 71.45(2)(a)14, effective for taxable years beginning on or after January 1, 1996.)

Income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract is exempt from Wisconsin franchise or income tax.

A viatical settlement contract is a written agreement providing for the payment to the policyholder of a life insurance policy, or to the certificate holder of a group life insurance certificate, insuring the life of a person who has a catastrophic or life-threatening illness or condition, in an amount that is less than the expected death benefit under the policy or certificate, for assigning, selling, devising, or otherwise transferring the ownership of or the death benefit under the policy or certificate to the person paying the viatical settlement.

6. **Deduction for Certain Telephone Company Taxes** (1995 Act 351, amend sec. 71.26(3)(f) and repeal and recreate sec. 71.26(3)(f), effective dates are listed below.)

The changes to sec. 71.26(3)(f) modify sec. 164(a) of the Internal Revenue Code so that the license fees imposed on the gross receipts of telephone companies under sec. 76.38, Wis. Stats., are deductible until the license fees are discontinued on May 15, 1998. Beginning with taxes due in 1998, the tax imposed under sec. 76.81, Wis. Stats., on the real property and tangible personal property of telephone companies and the transitional adjustment fee imposed under sec. 76.91, Wis. Stats., on cellular mobile radio communications utilities and on each person that provides basic local exchange service on the effective date of this section are deductible.

7. **Deduction Denied for Wages Paid to Entertainers if Withholding Requirements Are Not Met** (1995 Act 428, renumber sec. 71.26(3)(e) to sec. 71.26(3)(e)(intro.) and amend sec. 71.26(3)(e)(intro.) as renumbered and create secs. 71.26(3)(e)3 and 71.34(1)(h), effective for taxable years beginning on or after January 1, 1996.)

A corporation or tax-option (S) corporation may not deduct payments for wages, salaries, bonuses, interest, or other expenses paid to an entertainer or entertainment corporation unless it has complied with secs. 71.63(3)(b), 71.64(4) and (5), and 71.80(15)(e), Wis. Stats., relating to withholding from payments made to entertainers.

Note: This provision does not apply to insurance companies.

8. **Extensions for Filing Corporate Franchise or Income Tax Returns** (1995 Act 428, amend secs. 71.24(7) and 71.44(3), effective for taxable years beginning on or after January 1, 1996.)

A corporation that has not received an extension of time to file its federal income tax return from the Internal Revenue Service may receive an extension to file its Wisconsin return of 30 days or until the original due date of the corporation's federal return, whichever is later.

Under prior law, extensions of time to file generally could not exceed 30 days. However, the department could allow a 6-month extension to cooperatives and domestic international sales corporations and a 3-month extension to foreign corporations that do not have an office or place of business in the United States.

Any extension of time granted by federal law or the Internal Revenue Service for the filing of the corresponding federal return continues to extend the time for filing the Wisconsin return to 30 days after the federal due date.

9. **Define Date a Franchise or Income Tax Return is Considered Filed** (1995 Act 428, amend sec. 71.77(8) and create secs. 71.22(5s), 71.42(2s), and 71.738, effective June 21, 1996.)

Under current law, sec. 71.77(2), Wis. Stats., requires the department to give notice of assessments within 4 years of the date the taxpayer's franchise or income tax return was

filed. Prior to being amended in Act 428, sec. 71.77(8), Wis. Stats., provided that for purposes of sec. 71.77, Wis. Stats., a return filed before the last day prescribed by law for filing the return is considered filed on such last day.

The amendment to sec. 71.77(8) and the creation of secs. 71.22(5s), 71.42(2s), and 71.738 in Act 428 define the "last day prescribed by law" as the unextended due date of the return. A return filed on or before the last day prescribed by law for the filing of the return is considered as filed on such last day, and a return filed after the last day prescribed by law is considered as filed on the date that the return is received by the Department of Revenue.

C. Homestead Credit

1. Wisconsin Works Benefits May Reduce Rent or Property Taxes (1995 Act 289, amend sec. 71.54(2)(a)(intro.), effective May 10, 1996.)

A provision in the Homestead Credit statutes requires property tax or rent constituting property taxes to be reduced by one-twelfth for each month or portion of a month for which a claimant received certain public assistance payments. This provision is amended so it also applies if a claimant participated in Wisconsin Works ("W-2")in the community service job program or the transitional placement program.

D. Sales and Use Taxes

1. Retailers' Discount Changed (1995 Act 280, repeal sec. 77.61(4)(b) and amend secs. 25.40(1)(a)1 and 77.61(4)(c), effective for taxes payable on returns filed for periods that end on or after January 1, 1997.)

The retailer's discount deducted on a sales and use tax return (e.g., Form ST-12) is computed by multiplying the sales and use tax payable on retail sales by 0.5%, with the following exception.

Exception: If multiplying the sales and use tax payable on retail sales by 0.5% results in $10 or less, the retailer's discount is the lesser of the following:

1. $10, or

2. Sales or use tax payable on retail sales

Example 1: Company A files its sales and use tax return (Form ST-12) on a monthly basis. On Form ST-12 for the month ending January 31, 1997, Company A reports taxable receipts of $60,000. The sales tax payable on those receipts is $3,000 ($60,000 X 5%).

Multiplying the sales tax payable ($3,000) by 0.5% equals $15. Since this amount ($15) is more than $10, the exception described above does not apply. Company A may deduct a retailer's discount of $15.

Example 2: Company B files its sales and use tax return (Form ST-12) on an annual basis. On Form ST-12 for the year ending December 31, 1997, Company B reports taxable receipts of $1,120. The sales tax payable on those receipts is $56 ($1,120 X 5%).

Multiplying the sales tax payable ($56) by 0.5% equals 28¢. Since this amount (28¢) is $10 or less, the exception described above applies. Company B may deduct a retailer's discount of $10 (the lesser of $10 or the $56 of sales tax payable on retail sales).

Example 3: Company C files its sales and use tax return (Form ST-12) on a quarterly basis. On Form ST-12 for the quarter ending March 31, 1997, Company C reports taxable receipts of $120. The sales tax payable on those receipts is $6 ($120 X 5%).

Multiplying the sales tax payable ($6) by 0.5% equals 3¢. Since this amount (3¢) is $10 or less, the exception described above applies. Company C may deduct a retailer's discount of $6 (the lesser of $10 or the $6 sales tax payable on retail sales).

2. **Receipts from Coin-Operated Telephones Taxable** (1995 Act 351, amend sec. 77.52(2)(a)5, effective August 1, 1996).

   Telecommunications services paid for by the insertion of coins in a coin-operated telephone, when such services originate in Wisconsin, are subject to Wisconsin sales or use tax. Previously, such services were not subject to Wisconsin sales or use tax.

3. **Definition of Motor Vehicle Dealer Expanded** (1995 Act 329, amend sec. 218.01(1)(n)1 and 2 and create sec. 218(1)(o)5, effective October 1, 1996.)

   The definition of "motor vehicle dealer" in sec. 218.01(1)(n), Wis. Stats., used by the Department of Transportation for licensing purposes, has been expanded to include any person, firm, or corporation, with certain exceptions, who:

   1. For commission, money, or other thing of value, leases, offers, or attempts to negotiate a consumer lease of a motor vehicle.

   2. Is engaged wholly or in part in the business of leasing motor vehicles, including motorcycles, whether or not such motor vehicles are owned by such person, firm, or corporation.

   "Motor vehicle dealer" under sec. 218.01(1)(o), Wis. Stats., does not include sales finance companies when engaged in purchasing or otherwise acquiring consumer leases from a motor vehicle dealer.

   The following sales and use tax provisions in ch. 77, Wis. Stats., specifically relate to motor vehicle dealers:

   1. Section 77.53(1m), Wis. Stats., as created by 1995 Wis. Act 27, which provides the amounts used by licensed motor vehicle dealers in computing use tax on motor vehicles used by them for a purpose, in addition to retention, demonstration, or display, while holding them for sale or lease in the regular course of business.

      For more information, see *Wisconsin Tax Bulletin 93*, page 12.

   2. Section 77.56(2), Wis. Stats., which provides an exemption from use tax for the loan of a motor vehicle by a motor vehicle dealer to any school or school district for a driver training educational program conducted by the school or school district.

   3. Sections 77.61(1) and 77.785(2), Wis. Stats., which require that licensed motor vehicle dealers collect and remit to the Department of Revenue the Wisconsin state, county, and stadium sales or use tax on the sale, lease, or rental of motor vehicles. In the case of motor vehicles purchased from a person who is not a licensed motor vehicle dealer, the purchaser of the motor vehicle pays the state, county, and stadium tax to the Department of Transportation at the time of registering the motor vehicle.

E. Withholding Tax

1. **Withholding from Unemployment Compensation** (1995 Act 118, create secs. 71.67(7), and 108.135, effective for unemployment compensation payments made on and after January 1, 1997.)

   The Wisconsin Department of Industry, Labor, and Human Relations (DILHR) may permit individuals filing claims for unemployment compensation to elect to have Wisconsin income tax withheld from their benefit payments. Also, DILHR is required to advise each individual filing a new claim for unemployment compensation that the benefits they receive are subject to federal and Wisconsin income taxes.

F. Excise Taxes

1. **Underage Persons Allowed on Certain Licensed Premises** (1995 Act 334, amend sec. 125.07(3)(a)3, effective May 17, 1996.)

Additional exceptions are created to the prohibition of unaccompanied underage persons entering or being on premises having a license or permit for retail sale of alcohol beverages. Underage persons may now enter and be present in indoor golf simulator facilities which sell alcohol beverages, and outdoor volleyball courts that are contiguous to a licensed premises.

2. **Free Samples of Alcohol Beverages at Trade Meetings** (1995 Act 320, amend sec. 125.32(6)(a) and create secs. 125.33(2)(o) and 125.70, effective May 16, 1996.)

A brewer, intoxicating liquor manufacturer or alcohol beverage wholesaler may furnish for tasting, free of charge, samples of alcohol beverages to any person attending a trade show, conference, convention or similar business meeting of a bona fide national or statewide trade association that derives income from membership dues of certain alcohol retailers, if the meeting is held on premises that are licensed to sell and serve fermented malt beverages. Taste samples may not be furnished at more than 2 such events of any one trade association per year. Alcohol beverages brought on premises for distribution as taste samples may not remain on the premises after the close of the event.

3. **Municipalities May Issue Additional Temporary Class "B" Licenses** (1995 Act 282, amend sec. 125.26(6), effective May 9, 1996.)

Municipalities are authorized to issue a temporary Class "B" license for premises that are also covered by a "Class B" permit issued by the Department of Revenue.

A temporary Class "B" license authorizes the sale of fermented malt beverages (for consumption either on or off the premises where sold) at a particular picnic, meeting, fair, or other similar gathering. A "Class B" permit authorizes the sale of intoxicating liquor by the glass (for consumption on the premises where sold) to a concessionaire who conducts business in a public facility, such as an airport, coliseum, related exposition facilities, or arts center.

4. **Sampling May Be Used to Determine Fuel Tax Liability** (1995 Act 428, amend sec. 78.80(1), effective June 21, 1996.)

The Department of Revenue may determine any person's liability under chapter 78 (motor vehicle fuel, alternate fuels, and general aviation fuels tax) on the basis of sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents.

5. **Changes to Excise and Occupational Tax Provisions** (1995 Act 408, amend secs 78.70(7), 139.092 and 139.39(6), effective July 1, 1996, and amend sec. 78.75(1m)(c) and 139.84, effective June 21, 1996.)

The following changes are made:

- The statute of limitation period for excise and occupational tax purposes is clarified to provide that it begins on the due date of the excise or occupational tax report, not the due date of the taxpayer's Wisconsin income tax return. The statute of limitation provisions in sec. 78.70(7) for motor vehicle fuel, alternate fuels and general aviation fuel tax, sec. 139.092 for alcohol beverage taxes, and sec. 139.39(6) for cigarette and tobacco products taxes are provided by references to the statute of limitations in the Wisconsin income tax law.

- The amendment to sec. 78.75(1m)(c) changes the retention period from 3 years to 4 years for taxpayer records relating to claims for refunds of motor vehicle fuel and alternate fuel taxes.

- The amendment to sec. 139.84 of the tobacco products tax law corrects terminology used in a reference to motor vehicle fuel tax provisions. "Wholesalers of motor fuel" (terminology which is obsolete) is replaced with "suppliers of motor vehicle fuel."

G. Other

1. Revisor's Correction Bill Makes Non-Substantive Changes (1995 Act 225, effective May 1, 1996.)

The following changes are included in this Revisor's correction bill for the purposes indicated:

- Sec. 72.35(1) is amended to make it gender neutral and to conform its numbering with current style.
- Sec. 72.35(5) is amended to make it gender neutral.
- Sec. 77.52(14) is renumbered 77.52(14)(a)(intro.) and amended. This change subdivides the provision for greater readability and conformity with current style.
- Sec. 77.54(20)(a) is renumbered 77.54(20)(a)(intro.) and amended. This change subdivides the provision and replaces parentheses for greater readability and conformity with current style.
- Sec. 77.54(20)(a)12, 13, 15, and 16 are created to maintain text in its previously existing order.
- Sec. 125.04(5)(a)5, as affected by 1995 Act 23, is amended to reflect that the Vocational, Technical and Adult Education System has been renamed the Technical College System.
- Secs. 125.06(12) and 125.28(2)(b)2 are amended to correct cross-references.
- Sec. 139.10(2) is amended to delete parentheses and replace language for greater consistency with current style.
- Sec. 139.43 is amended to correct a spelling error.

2. Delinquent Taxes — Denial of Occupational License (1995 Act 233, amend secs. 71.78(4)(o), 77.62(1), 78.70(1)(intro.), 139.03(2x)(c), 139.03(4), 139.315(3), and 139.39(6) and create secs. 71.91(8), 73.03(28g), and 77.61(5)(b)10, effective for applications submitted to the Department of Regulation and Licensing to renew credentials that expire on or after May 3, 1996.)

The Department of Regulation and Licensing (DORL) and examining boards and affiliated credentialing boards attached to DORL (attached boards) issue certain professional and occupational credentials. A person who holds a credential issued by DORL or by an attached board (a credential holder) must renew his or her credential periodically (generally every 2 years). At the time a credential holder applies to renew a credential, DORL must determine whether the credential holder is liable for any delinquent taxes owed to the State of Wisconsin.

Prior law did not specify what it means for a credential holder to be liable for any delinquent taxes owed to this state. If the credential holder is liable for any delinquent taxes owed to this state, DORL must deny the person's application for renewal of the credential. A person whose renewal application has been denied is entitled to a hearing before DORL.

Act 233 makes the following changes in that part of the credential renewal process that relate to the determination of a credential holder's tax delinquency:

- The Act defines "liable for delinquent taxes" to mean that a person has been finally determined to be delinquent in the payment of specified state taxes (including income and franchise taxes, estate taxes and sales and use taxes) and that the person remains delinquent in the payment of those taxes at the time that DORL requests the Department of Revenue (DOR) to certify whether the credential holder is liable for delinquent taxes.

- The Act provides that, instead of making its own determination as to whether a credential holder is liable for any delinquent taxes, DORL must request DOR to certify whether a credential holder is liable for delinquent taxes.

- The Act provides that, instead of having a hearing before DORL if his or her credential renewal application is denied due to tax delinquency, a credential holder is entitled to a hearing before DOR. The hearing before DOR is limited to the questions of: a) mistaken identity of the credential holder; and b) whether the credential holder has paid the delinquent taxes for which he or she is liable. If, after the hearing, DOR affirms its certification that the credential holder is liable for delinquent taxes, DORL must affirm its denial of the credential holder's renewal application. The credential holder may then seek judicial review of DORL's affirmance in the Dane County Circuit Court.

- The Act provides that if a credential holder's renewal application was denied due to tax delinquency and he or she subsequently reapplies for renewal of his or her credential, DORL must deny the reapplication unless the credential holder submits a certificate from DOR that states that he or she is not liable for delinquent taxes.

- The Act eliminates the requirement that a credential holder sign and submit to DORL a statement attesting that he or she is not liable for any delinquent taxes.

3. **Refund Offsets Limited by Terms of Divorce Judgment** (1996 Act 418, renumber sec. 71.10(6m) to 71.10(6m)(a); amend sec. 71.80(3m)(b)3; and create sec. 71.10(6m)(b), effective for a judgment of divorce entered on or after June 21, 1996.)

The Department of Revenue may not apply an overpayment, credit, or refund otherwise due an individual against any tax liability owed to the department by the individual or by the former spouse of the individual if:

- a judgment of divorce apportions that liability to the former spouse of the individual, and

- the individual includes with his or her tax return a copy of that portion of the judgment of divorce that relates to the apportionment of tax liability.

4. **Provide Uniform Determination of "Date Delinquent"** (1995 Act 428, amend secs. 71.91(1)(b) and 77.60(2)(c), effective June 21, 1996.)

An uncontested assessment for personal liability of withholding tax or an uncontested deficiency determination for sales and use tax shall become delinquent if not paid on or before the due date specified in the notice of deficiency.

Under prior law, these assessments or determinations were not delinquent until the first day of the calendar month following the calendar month in which the assessment or determination became final.

5. **Penalty for Failure to File Information Return** (1995 Act 428, create sec. 71.83(1)(a)1m, effective for taxable years beginning on or after January 1, 1996.)

If a person fails to file an information return required under subch. XI by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of $10 for each violation. The penalty shall be waived if the person shows that the violation is due to reasonable cause and not due to wilful neglect.

Subchapter XI currently requires information returns for reporting certain stock transfers, rent or royalty payments, wages, and nonwage payments.

6. **Define Date An Income Tax Return or Homestead Credit Claim is Considered Filed** (1995 Act 428, amend secs. 71.03(2)(i)2, (j)1 and 2, (k), and (m)1 and 71.77(8) and create secs. 71.01(7u) and 71.738, effective June 21, 1996.)

Section 71.77(2), Wis. Stats., requires the department to give notice of assessments within 4 years of the date the taxpayer's income tax return or homestead credit claim was filed. Prior to being amended, sec. 71.77(8), Wis. Stats., provided that for purposes of sec. 71.77, Wis. Stats., a return filed before the last day prescribed by law for filing the return is considered filed on such last day.

Act 428 generally defines the "last day prescribed by law" as the unextended due date of the return or homestead credit claim. A return filed on or before the last day prescribed by law for the filing of the return is considered as filed on such last day, and a return filed after the last day prescribed by law is considered as filed on the date that the return is received by the Department of Revenue.

However, for purposes of filing joint returns under sec. 71.03(2)(e)1 and 2, Wis. Stats., for the taxable year in which the death of one or both spouses occurs, the "last day prescribed by law" includes extensions.

7. **Controlled Substances Provisions Changed** (1995 Act 448, amend secs. 125.12(2)(ag)5 and 6, 125.12(4)(ag)7 and 8, 139.34(1)(c)3, 139.37(1)(c)3, 139.87(2), (5) and (6), 139.88(1) and (1d), renumber sec. 161.01(14) to 961.01(14) and amend sec. 961.01(14) as renumbered, effective July 9, 1996.)

Act 448 makes a number of changes to various Wisconsin statutes which restrict the manufacture, distribution, and possession of controlled substances (i.e., dangerous drugs). Among these changes are the following:

- Restrictions on the manufacture, distribution, and possession of controlled substance analogs which are the same as those imposed by prior law on the manufacture, distribution, and possession of controlled substances. Statutes which previously referred only to "controlled substances," including a number of statutes in the alcohol beverage and cigarette tax laws, have been amended to also refer to "controlled substance analogs."

- A change in the definition of "marijuana." The new definition provides that "marijuana" includes mature stalks if mixed with other parts of the plant. This change may increase the tax imposed by sec. 139.88(1), which is computed on the basis of the weight of the controlled substance in a dealer's possession.

8. **Procedures Changed for Employers Withholding Delinquent Tax of Employes** (1995 Act 428, amend sec. 71.91(7)(b), (d), and (h), effective September 1, 1996.)

Changes are made to the procedures which apply when an employer is required to withhold delinquent state taxes (including penalties, interest and costs). The changes are as follows:

- The notice to the employer may be served by mail or by delivery by an employe of the Department of Revenue. The certified mail requirement is eliminated.

- The department may direct the employer to withhold up to 25% of the compensation due an employe for any one pay period until the total amount as shown by the notice, plus interest, has been withheld. Under prior law, the department could arrange for withholding of not less than 10% or more than 25% of compensation due an employe.

- The employer (including an employer of an entertainer or entertainment corporation) shall remit the amount withheld on or before the last day of the month after the month during which an amount was withheld. Under prior law, the remittance was not due until the last day of the next month after every calendar quarter.