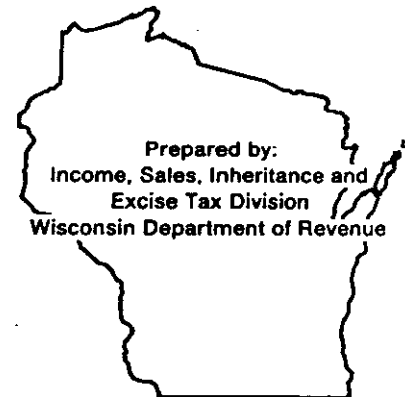


WISCONSIN TAX BULLETIN

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NEW WISCONSIN TAX LAWS

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

These provisions are contained in the following Acts:

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

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

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A. INDIVIDUAL AND FIDUCIARY INCOME TAXES

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

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

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

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

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

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

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

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

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

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

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

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

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

B. CORPORATION FRANCHISE OR INCOME TAXES

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

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

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

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

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

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

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

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

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

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

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

C. HOMESTEAD CREDIT

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

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

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

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

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

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

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

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

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

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

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

D. SALES AND USE TAX

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

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

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

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

New Nexus Standards for Foreign Corporations That Are Publishers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. INHERITANCE AND GIFT TAXES

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

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

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

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

F. EXCISE TAXES

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

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

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

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

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