

B. CORPORATION FRANCHISE/INCOME TAXES

1. Surtax of 10% for 1984 (Amend s. 71.013, effective only for 1984 tax year.)

A surtax of 10% will be added to the franchise/income tax payable by corporations for the tax year 1984. The 10% surtax for the 1983 tax year, as enacted in Chapter 317, Laws of 1981, will still be in effect for the 1983 tax year.

The surtax will be computed on the corporation's gross tax, before reduction for any credits and tax payments.

2. Exempt Cash Dividends Received From 80% Owned Subsidiaries (Amend s. 71.04(4)(b), 75% exemption effective for 1984 tax year and 100% exemption effective for 1985 tax year and thereafter.)

The following percentages of cash dividends received during the year from a corporation with respect to its common stock will be exempt from Wisconsin franchise/income taxes if the corporation receiving the dividends owned directly or indirectly during the entire tax year at least 80% of the total combined voting stock of the payor corporation.

(a) For the tax year 1984 - 75% of the amount of such cash dividends.

(b) For the tax year 1985 and thereafter - 100% of such cash dividends.

3. Disallow ACRS Fast Write-Off of Corporate Out-Of-State Property and Utility Property (Amend s. 71.04(15)(b), (bm)(intro.), (c), (d), (e), (f) and (fm), create 71.01(4)(g)7, 71.02(1)(a)8 and 71.04(15)(er), (fn), (fo), (fp) and (fq), effective for property first placed in service on or after January 1, 1983 except s. 71.04(15)(bm)(intro.) relating to utilities is effective for the 1984 tax year and thereafter.)

The federal accelerated cost recovery system (ACRS) will not be allowed for Wisconsin franchise/income tax purposes for property located outside Wisconsin and first placed in service on or after January 1, 1983. Instead, depreciation for out-of-state property first placed in service by the corporation on or after January 1, 1983 must be computed under the methods permitted by the Internal Revenue Code as of December 31, 1980 or, in the alternative, the Internal Revenue Code applicable to the calendar year 1972.

Except for utilities, property located in Wisconsin may be depreciated under ACRS, regardless of when acquired.

Special provisions will apply to (1) corporations which have been operating outside Wisconsin and which first commence business activities in Wisconsin on or after January 1, 1983, (2) property acquired in reorganizations, (3) computing the Wisconsin basis of property transferred in and out of Wisconsin, and (4) establishing whether mobile equipment is or is not located in Wisconsin.

The above depreciation treatment applies to all corporations, including insurance companies, tax-option (Subchapter S) corporations, regulated investment companies and real estate investment trusts.

(Note: Individuals, estates and trusts may continue to depreciate their in-state and out-of-state property under ACRS.)

Utility companies (telephone, telegraph, pipeline companies and light, heat and power companies furnishing gas, electricity, steam or hot water) will not be allowed to use ACRS for property placed in service in the 1984 taxable year and thereafter regardless of whether the property is in or outside of Wisconsin. These companies will be required to determine their depreciation expense for all property acquired in taxable year 1981 and thereafter for Wisconsin franchise/income tax purposes on the basis of the Internal Revenue Code provisions in effect on December 31, 1980 (s. 71.04(15)(bm)(intro.)). (NOTE: This provision was also part of prior law and was scheduled to expire after the 1983 tax year, but has now been made permanent.)

4. Apportionment Sales Factor/Drop Shipments (Create s. 71.07(2)(c)2m, effective for 1983 tax year and thereafter.)

For purposes of computing the sales factor of the apportionment formula under s. 71.07(2)(c), the following will be considered Wisconsin sales:

- (a) Sales of tangible personal property by a taxpayer from an office in Wisconsin to a purchaser in another state if the property is shipped directly by a third party to the purchaser, and
- (b) neither the purchaser's state nor the state from which this property is shipped have jurisdiction for franchise/income tax purposes to tax the taxpayer.

Example: Corporation A, which has nexus and its sales office in Wisconsin, sells office equipment to a purchaser for delivery in Louisiana. Corporation A directs Corporation C in Arkansas to ship the equipment directly to the purchaser in Louisiana. Both Louisiana (purchaser's state) and Arkansas (state from which property is shipped) do not have jurisdiction for franchise/income tax purposes to tax Corporation A. In this situation, the sale is considered a Wisconsin sale for purposes of computing Corporation A's sales factor under s. 71.07(2)(c).

5. Disallow Expenses and Losses Relating to Certain Nontaxable Income (Create s. 71.04(2)(b)9 and 71.04(7m) effective for 1983 tax year and thereafter as well as retroactively to the earliest taxable year in which additional assessments or refunds may be made as of July 2, 1983.)

A deduction is not allowed for franchise/income tax purposes for any amount that is directly or indirectly related to "wholly exempt income" under Chapter 71 or to nondeductible losses under s. 71.04(7m). "Wholly exempt income" for purposes of s. 71.04(2)(b)9 for franchise and income taxes includes amounts received from affiliated or subsidiary corporations for interest, dividends or capital gains that, because of the degree of common ownership, control or management between the payor and payee, are not subject to franchise/income taxes. "Wholly exempt income" for corporations subject to income taxes also includes interest on obligations of the United States.

"Wholly exempt income" does not include income excludable, not recognized, exempt or deductible under specific provisions of Chapter 71. If any expense or amount otherwise deductible is indirectly related both to wholly exempt income or loss and to other income or loss, a reasonable proportion of the expense or amount shall be allocated to each type of income or loss, in light of all the facts and circumstances.

In regard to losses on the sale of assets, no deduction shall be allowed if the loss is from the sale or disposition of assets, the gain on which would be exempt as described in s. 71.04(2)(b)9, if the assets were sold or otherwise disposed of at a gain.

6. Research Credit--5% of Qualified Research Expenses (Create s. 71.04(2)(b)5, 71.05(1)(a)16 and 71.09(12r), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

A "claimant" may claim as a credit against Wisconsin income or franchise taxes due an amount equal to 5% of the following:

(a) qualified research expenses incurred for research conducted in Wisconsin for the tax year, less:

(b) "base period" research expenses incurred for research conducted in Wisconsin. For tax year 1984, "base period" research expenses means the average of such expenses for tax years 1982 and 1983 and for the tax year 1985, "base period" research expenses means the average of such expenses for tax years 1982 through 1984. For tax years 1986 and thereafter, "base period" is as defined in Section 44F of the Internal Revenue Code.

Qualified research expenses and base period research expenses are determined according to the definitions in section 44F of the December 31, 1982 Internal Revenue Code.

"Claimant" includes natural persons, estates, trusts and corporations. Partnerships and tax-option corporations may not claim this credit; however, the individual partners or shareholders may claim the credit that is passed through from the partnership or tax-option corporation. Special computations will be required for situations involving short tax years, change in business ownership, and acquisitions and dispositions.

For natural persons, estates and trusts the amount of the credit constitutes income to the claimant and must be reported as an addition modification in the tax year for which it is computed. For example, if a \$3,000 credit is computed for 1984, \$3,000 is income on the 1984 return, even though a portion of the credit may be carried forward to future years. In the case of corporations, a claimant is required to reduce its deduction for research expenses in the tax year for which a credit is computed by the full amount of the credit.

If the credit is not entirely used in the first year, the excess is not refundable, but may be carried forward 7 years.

This credit will not be allowed unless it is claimed within 4 years of the unextended due date of the franchise or income tax return. The credit may not be split between husband and wife in any manner they choose, but rather, may only be claimed by the "claimant".

The civil and criminal penalties, etc., in s. 71.09(13)(cm) will apply to persons filing a false or fraudulent claim for the research credit.

7. Research Credit--5% of Facility Costs (Create s. 71.04(2)(b)5, 71.05(1)(a)16, and 71.09(12rf), amend 71.09(13)(cm), effective for 1984 tax year and thereafter.)

The "claimant" may claim as a credit against Wisconsin income or franchise taxes due an amount equal to 5% of the amount paid or incurred during the tax year for tangible personal property (not replacement property) used to construct and equip new facilities or expand existing facilities in Wisconsin for qualified research, as defined in section 44F of the Internal Revenue Code.

"Claimant" includes natural persons, estates, trusts and corporations. Partnerships and tax-option corporations may not claim this credit; however, the individual partners or shareholders may claim the credit that is passed through from the partnership or tax-option corporation. Special computations will be required for situations involving short tax years, change in business ownership, and acquisitions and dispositions.

For natural persons, estates and trusts the amount of the credit constitutes income to the claimant and must be reported as an addition modification in the taxable year for which it is computed. For example, if a \$3,000 credit is computed for 1984, \$3,000 is income on the 1984 return, even though a portion of the credit may be carried forward to future years. In the case of corporations, a claimant is required to reduce its deduction for research expenses in the tax year for which a credit is computed by the full amount of the credit.

If the credit is not entirely used in the first year, the excess is not refundable, but may be carried forward 7 years.

This credit will not be allowed unless it is claimed within 4 years of the unextended due date of the franchise or income tax return. The credit may not be split between husband and wife in any manner they choose, but rather, may only be claimed by the "claimant".

The civil and criminal penalties, etc., in s. 71.09(13)(cm) will apply to persons filing a false or fraudulent claim for the research credit.

8. Update Internal Revenue Code Reference to December 31, 1982 for Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts (Amend s. 71.01(4)(g)6 and 71.02(1)(a)7, create 71.01(4)(g)7 and 71.02(1)(a)8, effective for 1983 tax year and thereafter.)

Insurance companies, regulated investment companies and real estate investment trusts will compute their taxable income for the 1983 tax year and thereafter under the Internal Revenue Code in effect on December 31, 1982, with certain exceptions. The special rules for safe harbor leases provided by section 168(f)(8) of the Internal Revenue Code may not be used for Wisconsin purposes and depreciation of out-of-state property placed in service on or after January 1, 1983 must be computed under the Internal Revenue Code as of December 31, 1980. Also, the December 31, 1982 Internal Revenue Code will be considered to include four federal laws enacted in 1983 -- P.L. 97-424, P.L. 97-448, P.L. 97-473 and P.L. 98-4.

9. Tax-Option (Sub S) Corporation--Reference to Internal Revenue Code Updated to December 31, 1982 (Amend s. 71.02(2)(b)8, create 71.02(2)(b)9, effective for 1983 tax year and thereafter.)

The Internal Revenue Code, as used in s. 71.02(1)(f) and s. 71.042(1) relating to tax-option corporations, will mean the Internal Revenue Code in effect on December 31, 1982 including four federal laws (P.L. 97-424, P.L. 97-448, P.L. 97-473 and P.L. 98-4) enacted in 1983. See Part A.1 for an explanation of the December 31, 1982 Internal Revenue Code as it applies to individuals, estates, trusts and Sub S corporations.

10. License Fee on Utilities Deductible as Taxes (Amend s. 71.04(3), effective on November 11, 1984.)

The license fee imposed on utilities under s. 76.28 will be a deductible expense as "taxes".

11. Payments-In-Kind (PIK) are Income in Year Determined Under Internal Revenue Code (Amend s. 71.03(1)(k), effective for tax years ending after December 31, 1982.)

A corporation receiving agricultural commodities under the federal PIK program will be considered to have realized taxable income in the year in which the PIK commodity is sold or, if the commodity is fed to livestock owned by the corporation, in the year the livestock are sold. This is the treatment prescribed by the Internal Revenue Code for federal income tax purposes.

12. Employers Lose Exempt Status or Deductions If They Fail to Provide Certain Health Care Plans (Create s. 71.01(3)(a)2 and 3, (c)2 and 3 and 71.04(2)(b)7 and 10, effective January 1, 1984 with respect to employers who provide uninsured health care benefits to employees and July 1, 1985 for employers who have 250 or more full-time employees and offer insured or uninsured health care coverage. However, if an employer has a collective bargaining agreement in effect on July 2, 1983 which covers the employees for whom or for whose families health care payments are made, these provisions do not become effective until the day after the expiration of the collective bargaining agreement, if that date is later than January 1, 1984 or July 1, 1985 as specified in the preceding sentence.)

Employers providing health care benefits to employees will be denied deductions for amounts paid for coverage for employees and their families or, in the case of tax-exempt corporations, will lose their exempt status under the following circumstances:

- (1) Employers having 250 or more full-time employees and providing insured or uninsured health care benefits:
  - (a) Corporations or associations which are tax-exempt under the provisions of ss. 71.01(3)(a)1 and (c)(1) will lose their tax-exempt status unless health care coverage provided to employees and their families includes at least 2 plans. All plans must offer substantially the same coverage and one must

be a "health maintenance organization" (HMO) or a "preferred provider organization" (PPO) (as those terms are defined by the Wisconsin Commissioner of Insurance), if the Department of Health and Social Services determines that those organizations are available in the area of the place of employment.

- (b) Corporations which do not qualify as tax-exempt will be denied deductions for amounts paid for health care coverage for employees and their families unless they offer at least 2 plans, including one which is a HMO or PPO as described in (1)(a) above.
- (2) Employers with fewer than 250 employees which provide uninsured health care benefits:
- (a) Corporations or associations which are tax-exempt under the provisions of s. 71.01(3)(a)1 and (c)(1) will lose their tax-exempt status unless the health care plan provided employees includes a provision that the employer shall be bound by those portions of s. 632.897, Wisconsin Statutes, which apply to group insurance policies.
  - (b) Corporations which do not qualify as tax-exempt will be denied deductions for amounts paid for employee health care benefits unless the health care plan provided to employees includes a provision pertaining to s. 632.897, Wisconsin Statutes, as described in (2)(a) above.

(Note: With respect to employers with fewer than 250 employees (Sections (2)(a) and (b) above), the term "employer" does not include a foreign corporation or an association organized under the laws of another state if fewer than the lesser of 150 or 25% of the employees receiving health care benefits reside in Wisconsin.)

13. Declaration of Estimated Tax Payment Requirements and Penalties Changed (Amend s. 71.22(1), (9)(intro.) and (10)(c)(intro.), effective for 1984 tax year and thereafter. Amend s. 71.22(10)(a) and (b), effective for 1983 tax year and thereafter.)

Beginning with the tax year 1984 a corporation must make installment payments of estimated tax if it can expect to have a tax liability for the year of over \$500 (formerly over \$2,000). The percentage of tax which is required to be prepaid is increased from 80% to 90% for purposes of computing the amount of underpayment in s. 71.22(9).

As a result of amendments to ss. 71.22(10)(a) and (b), the following changes have been made regarding corporations which use exception 1 (preceding year's tax) or exception 2 (recomputing prior year's tax using current year rates) to avoid an addition to the tax penalty:

- (a) Corporations that have a Wisconsin taxable income of less than \$250,000:

For the 1983 tax year and thereafter, they are no longer subject to the 60% of current year tax minimum payment requirement when exception 1 or 2 is being used to avoid the addition to penalty.

(b) Corporations with Wisconsin taxable income of \$250,000 or more:

(1) For the 1983 tax year they will continue to be required to have made timely estimated tax payments equal to at least 60% of their actual tax due in order to meet the exceptions to the addition to tax penalty in ss. 71.22(10)(a) and (b).

(2) For the tax year 1984 and thereafter, the minimum payment requirement in ss. 71.22(10) (a) and (b) is increased for such corporations from 60% to 90% of the current year's tax.

14. Treble Damages (Create s. 71.04(2)(b)8, effective for 1983 tax year and thereafter.)

Any amounts not allowed as a deduction for federal income tax purposes under Section 162(g) of the Internal Revenue Code (relating to treble damages under the anti-trust laws), will not be allowed as a deduction for Wisconsin franchise/income tax purposes.

15. Specify Order for Claiming Credits and Payments on Tax Returns (Create s. 71.65, effective for 1983 tax year and thereafter.)

The order for making computations of taxes, credits and payments on franchise/income tax forms will be as follows:

(a) Tax under s. 71.01(1) or (2)

\* (b) Surtax under s. 71.013

(c) Manufacturing Sales Tax Credit under s. 71.043 (non-refundable, 5 year carry forward)

\* (d) Research Credit - 5% of Qualified Research Expenses under s. 71.09 (12r) (non-refundable, 7 year carry forward)

\* (e) Research Property Credit - 5% of Facility Costs under s. 71.09 (12rf) (non-refundable, 7 year carry forward)

(f) Community Development Finance Credit under s. 71.09(12m) (non-refundable, unlimited years carry forward)

(g) Total of Farmland Preservation Credit and Estimated Tax Payments under s. 71.09(11) and 71.22, respectively (both are refundable)

\* NOTE: Both research credits will be effective for the 1984 tax year and thereafter, and the surtax will be effective only for 1982, 1983 and 1984 tax years.

C. HOMESTEAD CREDIT

1. Increase Household Income Limit to \$15,500 (Amend s. 71.09(7)(gq) (intro.) and create 71.09(7)(gr), effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

No homestead credit will be allowed if household income exceeds \$15,500. For 1982 claims, the limit was \$14,000.

2. Household Income Includes Capital Gains and Dividend Exclusions, etc. (Amend s. 71.09(7)(a)1, effective for 1983 claims (filed in 1984) and subsequent years' claims.)

The following items will be included in household income for homestead credit, even though such items are excluded or deducted in computing adjusted gross income for income tax purposes.

- Capital gain exclusions (e.g., 40% of long-term capital gains will be excluded from adjusted gross income for taxable year 1983, and 60% for 1984 and thereafter).
- Gain on the sale of a principal residence excluded from adjusted gross income under section 121 of the Internal Revenue Code (IRC). (This section of the code provides a one-time exclusion for the gain from the sale of a principal residence by an individual who is age 55 or older.)
- Dividend exclusions (e.g., for 1983 each taxpayer will be allowed to exclude \$100 of dividends from adjusted gross income).
- Deduction for contributions to individual retirement accounts under section 219 of the IRC (except rollover contributions).
- Depletion allowance deduction.
- Intangible drilling cost deduction.
- The amount by which the value of a share of stock at the time a qualified or restricted stock option is exercised exceeds the option price.

Household income will not include the gain on the sale of a principal residence deferred under section 1034 of the IRC or nonrecognized gain from involuntary conversions under section 1033 of the IRC.

3. Increase Property Taxes to \$1,100 (Amend s. 71.09(7)(h)3 and create s. 71.09(7)(h)4, effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

The amount of property taxes or rent constituting property taxes used in computing homestead credit will be limited to \$1,100. For 1982 claims, the limit was \$1,000.



4. "Rent Constituting Property Taxes Accrued" Percentage Changed From 25% to 20% (Amend s. 71.09(7)(a)6, effective for 1983 homestead claims (filed in 1984) and subsequent years' claims.)

In computing homestead credit, claimants will be allowed one-fifth (20%) of rent paid for occupancy as "rent constituting property taxes accrued". For 1982 and prior years' claims, the percentage was 25%.

5. Definition of "Property Taxes Accrued" Changed (Amend s. 71.09(7)(a)8, effective for 1983 homestead credit claims (filed in 1984) and subsequent years' claims.)

Property taxes on homesteads that are part of a multipurpose or multidwelling building or a farm will be computed as follows:

#### Multipurpose and Multidwelling Buildings

Claimants owning homesteads that are part of a multipurpose (e.g., part residence, part business) or multidwelling (e.g., part residence, part rental apartment) building will be allowed to claim only the property taxes which relate to the residence portion of the property. The property taxes which relate to the business or rental portion of the property will no longer be allowed for purposes of determining homestead credit. For example, one method for computing allowable property taxes would be to multiply total property taxes on the building times the percentage of the building that is used by the claimant as a personal residence.

Example #1: During all of 1983, claimant owns a duplex and one of the two units is the claimant's personal residence. The square footage of each unit is the same and the duplex is located on one acre of land. The claimant will be allowed  $\frac{1}{2}$  of the total 1983 property taxes on the duplex and land. (Property taxes are further limited to \$1,100 in total. See Part C.3.)

Note: Only the property taxes on the building and up to one acre of land may be used in determining the amount of property taxes that relate to the residence.

Example #2: A claimant's duplex is located on three acres of land. One-half of the property taxes on the building relate to the claimant's residence. Claimant will be allowed one-half of the property taxes on the building. Also, claimant will be allowed one-half of the property taxes relating to one acre of land adjoining the building.

For 1982, claimants were allowed the entire property taxes accrued on the multipurpose or multidwelling building plus the property taxes accrued on up to 120 acres adjoining the homestead. In examples #1 and #2 the claimants would have been allowed the entire property taxes accrued (up to \$1,000) if the year involved had been 1982.

#### Farms

Claimants with homesteads that are a part of a farm will be allowed to claim property taxes on the homestead and 35 acres adjoining it, including all improvements (e.g., buildings) on this same 35 acres.