The husband's Wisconsin NOLC to 1984 is $(10,000). The taxpayers claim the standard deduction and allocate it to the wife. The subtraction modification for the Wisconsin NOLC and the net taxable incomes are computed as follows:

	Husband	Wife
Wisconsin NOLC:		
Federal adjusted gross income	$(7,700)	$ 10,300
Add: Federal NOLC	9,000	-0-
Subtotal	$ 1,300	$ 10,300
Standard deduction	____	(3,500)
Wisconsin taxable income before NOLC	$ 1,300	$ 6,800
Allowable Wisconsin NOLC	$ 1,300	
Wisconsin taxable income:		
Federal adjusted gross income	$(7,700)	$ 10,300
Add: Federal NOLC	9,000	-0-
Subtract: Wisconsin NOLC	(1,300)	-0-
Wisconsin total income	$ -0-	$ 10,300
Standard deduction	____	(3,600)
Wisconsin taxable income	$ -0-	$ 6,700

The Wisconsin net operating loss carryforward to 1985 is $(8,700).

Net Operating Losses and Household Income For Homestead/Farmland Preservation Credit: "Household income" for purposes of the Homestead Credit means all "income" received by a claimant and his or her spouse in a calendar year while members of the household (ss. 71.09(7)(a)2 and 3, Wis. Stats.). "Household income" for purposes of the Farmland Preservation Credit means all "income" of the claimant, the claimant's spouse, and the minor dependents attributable to the income year while members of the household (ss. 71.09(11)(a)4 and 5, Wis. Stats.). "Income" means adjusted gross income plus adjustments defined in sections 71.09(7)(a)1 and 71.09(11)(a)6, Wis. Stats. Therefore, married persons must combine their incomes or losses in computing the household income and allowable credits.

In a year in which one spouse incurs a net operating loss, the Wisconsin total loss may be used to offset the Wisconsin total income of the other spouse in computing household income. In a year subsequent to the year of loss, a net operating loss carryforward may not be used to reduce the income of the other spouse in computing household income. The spouse that incurred the net operating loss may claim a subtraction modification for the carryforward in an amount not exceeding his or her Wisconsin net taxable income as computed before any net operating loss carryforward deduction. The Wisconsin total income computed after claiming the subtraction modification is then carried to Homestead Credit Schedule H or Farmland Preservation Credit Schedule FC for computation of household income.

Example: A 1984 Homestead Credit claimant is married, he and his spouse are under age 65 and they have one dependent. The claimant has business income of $3,000 and a Wisconsin and federal net operating loss carryforward to 1984 of $(9,000). The claimant's spouse has interest income of $8,000. Their federal adjusted gross income on their joint federal return is $2,000.

Assuming that these taxpayers have Wisconsin total itemized deductions of $9,000 in 1984 and they allocate the deductions as shown, the Wisconsin total incomes of each spouse to be carried forward to Homestead Credit Schedule H are computed as follows:

	Husband	Wife
Wisconsin net operating loss carryforward:		
Federal adjusted gross income	$(6,000)	$ 8,000
Add: Federal NOLC	9,000	____
Subtotal	$ 3,000	$ 8,000
Itemized deductions	(1,000)	(8,000)
Wisconsin net income before NOLC	$ 2,000	$ -0-
Allowable Wisconsin NOLC	$ 2,000	$ -0-
Wisconsin total income:		
Federal adjusted gross income	$(6,000)	$ 8,000
Add: Federal NOLC	9,000	
Subtract: Wisconsin NOLC	(2,000)	____
Wisconsin total income (to Schedule H)	$ 1,000	$ 8,000

CORPORATION FRANCHISE/INCOME TAXES

1. ACRS Depreciation Not Allowable on Non-Wisconsin Assets

Facts: The federal accelerated cost recovery system (ACRS) is not allowed for Wisconsin franchise/income tax purposes for property located outside Wisconsin and first placed in service on or after January 1, 1983 pursuant to 1983 Wisconsin Act 27. Instead, depreciation for out-of-state property first placed in service by a corporation on or after January 1, 1983 must be computed under the methods permitted by the Internal Revenue Code (IRC) as of December 31, 1980 or, in the alternative, the IRC applicable to the calendar year 1972.

Except for utility companies (which are required to use the same methods available for out-of-state property), property located in Wisconsin may be depreciated under ACRS, regardless of when acquired.

Special provisions 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 into and out of Wisconsin, and (4) establishing whether or not mobile equipment is located in Wisconsin. The above depreciation treatment applies to all corporations, including insurance companies, tax-option (S) corporations, regulated investment companies and real estate investment trusts.

Question 1: How is depreciation to be computed on property placed in service on or after January 1, 1983 and located outside of Wisconsin?

Answer 1: Depreciation is to be computed under the IRC applicable to the 1972 calendar year or as of December 31, 1980. These codes allow any consistent method as long as the total deductions during the first two-thirds of the useful life are not more than the total allowable under the double declining balance method. These methods include the declining balance method, declining balance with change to straight line, sum of the years-digits method, sum of the years-digits remaining life method, straight line method, etc. The life of the property must be determined under either Revenue Procedure 72-10 or Revenue Procedure 77-10.

Question 2: How must records be kept to comply with the new Wisconsin law?

Answer 2: A separate set of depreciation records will have to be kept for Wisconsin tax purposes (unless the taxpayer desires to claim book depreciation and book depreciation is within the guidelines noted in answer 1 above).

Question 3: Must ACRS be used on Wisconsin property placed in service on or after January 1, 1983?

Answer 3: No. If the taxpayer does not desire to use ACRS on property located in Wisconsin it may use any method that comes within the guidelines noted in answer 1 above.

Question 4: How is depreciation to be computed when property is transferred into or out of Wisconsin?

Answer 4: For any out-of-state asset (first placed in service on or after January 1, 1983) transferred into Wisconsin, ACRS depreciation is allowable beginning with the year the asset is placed in service in Wisconsin. However, the taxpayer may continue to depreciate the asset using the method and life elected for Wisconsin purposes when the asset was first placed in service.

If the taxpayer elects to switch to ACRS depreciation, the remaining Wisconsin basis of the asset would be depreciated over the ACRS life as if the asset was newly acquired.

On assets transferred out of Wisconsin, which were placed in service on or after January 1, 1983 and on which ACRS depreciation is being claimed, ACRS is no longer allowable. In this case the depreciation must be computed using the ADR life over the remaining years. On an asset transferred out of Wisconsin ACRS depreciation may be used until the date of transfer.

Example: Property with a cost of $10,000 was placed in service in Wisconsin in February, 1983. It qualifies as five (5) year ACRS property and ten (10) year ADR property. In 1985, it is transferred out of Wisconsin. Taxpayer elects the double declining balance method with change to straight line. Taxpayer files on a calendar year basis. Depreciation would be computed as follows:

	Method	Basis Beginning Year	Rate	Depreciation
1983	ACRS	$10,000	15%	$1,500
1984	ACRS	8,500	22	2,200
1985	DDB	6,300	25	1,575
1986	DDB	4,725	25	1,181
1987	DDB	3,544	25	886
1988	DDB	2,658	25	665
1989	DDB	1,993	25	498
1990	SL	1,495	33	498
1991	SL	997	33	498
1992	SL	499	33	499

The double declining balance rate is determined from the eight years of life remaining at the time of the transfer (10 − 2 = 8; 1/8 × 2 = 25%).

Question 5: How is gain or loss to be computed on dispositions of property?

Answer 5: If property is sold before it is entirely depreciated, depreciation is computed in the year of sale based on the method in use at the time of sale. Gain or loss is computed using this adjusted basis.

Examples:

A. Same facts as in 4 above except that the property was sold on October 16, 1987 for $5,000. Depreciation in 1987 would be $738 (10/12 × $886). The gain on the sale would be $2,194 ($5,000 − $2,806).

B. Same facts as in 4 above except that the property was sold on October 15, 1987 for $5,000. Depreciation in 1987 would be $665 (9/12 × $886). The gain on the sale would be $2,121 ($5,000 − $2,879). Note: Depreciation is not allowed for October since the property was owned for less than half a month.

C. Same facts as in 4 above except that the property was sold on October 16, 1984 for $5,000. Depreciation for 1984 is zero (under ACRS no depreciation is allowed in the year of disposition for 5 year property). The loss on the sale is $3,500.

Question 6: How is depreciation to be computed on mobile equipment?

Answer 6: ACRS depreciation is allowable for mobile equipment placed in service on or after January 1, 1983 and deemed to be located in Wisconsin. If mobile equipment is not deemed to be located in Wisconsin, the allowable depreciation is computed as noted in answer 1 above.

Section 71.04 (15)(fq) of the Wisconsin Statutes provides that mobile equipment is deemed to be located in the state it is licensed or registered. If mobile equipment is not required to be licensed or registered, then it is deemed to be in Wisconsin provided it is in Wisconsin at least 50% of the days from the date placed in service to the end of the year.

Example: A contractor located in Beloit owns and garages a truck in Beloit. The truck, which was placed in service on July 1, 1983, is registered in Wisconsin but is used 75% of the time in Illinois. Since the truck is registered in Wisconsin it is considered located in Wisconsin and ACRS depreciation is therefore allowable.

Question 7: If an existing corporation first commences business in Wisconsin after January 1, 1983, what is the basis of its out-of-state assets and how is depreciation computed?

Answer 7: Section 71.04 (15)(fn) of the Wisconsin Statutes provides that an existing corporation operating in Wisconsin for the first time on or after January 1, 1983 must compute the adjusted basis of its out-of-state property first placed in service on or after January 1, 1983 under the IRC as of December 31, 1980.

Example: Corporation X has two properties, one acquired in 1982 and one in 1983. Both properties cost $10,000 and are five year ACRS property. Corporation X starts doing business in Wisconsin in 1984, and files its first return for that year. The basis of the property acquired in 1982 is $6,300 based on ACRS deductions for 1982 and 1983 (15% and 22% respectively).

The basis of the 1983 property must be computed based on an allowable method. Double declining balance and a 10 year life would give the 1983 property a $9,000 basis (1/2 year × 10,000 × 20%).

Question 8: If out-of-state property is acquired in a reorganization, what is the basis of these assets and how is depreciation computed?

Answer 8: Section 71.04 (15)(fo) of the Wisconsin Statutes provides that the basis of out-of-state property first placed in service on or after January 1, 1983 and acquired in a reorganization on or after January 1, 1983 must be computed under the IRC as of December 31, 1980. The same principal applies here as in question 7 above.

2. Wisconsin Net Operating Loss and Wisconsin Net Operating Loss Carryforward

(This Tax Release supersedes the Tax Release with the same title contained in *Wisconsin Tax Bulletin* #21, January 1981.)

Background: Section 71.06 of the Wisconsin Statutes provides in part that "a corporation may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 5 preceding income years to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the income year for which an offset is claimed. For purposes of this section Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions under s. 71.04."

Facts and Questions: How is s. 71.06 interpreted as it relates to the situations described below:

A. What constitutes an income year?

An income year is any period for which a corporation is required to file a return. This normally is for a 12 month period. However, if a corporation changes its year end from one fiscal year to another fiscal year or to a calendar year or from a calendar year to a fiscal year, a short period return is required. In such a case, this short period return constitutes one income year. (In no case shall a return be made for a period of more than 12 months.)

B. What happens to the net business loss of a corporation which is a party to a reorganization?

If the laws of the state pursuant to which the reorganization was accomplished provide for continued existence of the dissolved company in the survivor, the Wisconsin net business loss may be carried forward; if they do not provide for continued existence, the Wisconsin net business loss may not be carried forward. The laws of Wisconsin do not provide for continued existence, so that in reorganizations accomplished pursuant to Wisconsin statutes, the Wisconsin net business loss of the dissolved corporation *cannot* be carried forward.

C. For what items of income must the loss be adjusted or offset against?

In light of the recent Wisconsin Supreme Court decision in Midland Financial Corporation vs. Wisconsin Department of Revenue (116 Wis. 40 (1983)) and the Winnebago County Circuit Court decision in Overly, Inc. vs. Wisconsin Department of Revenue (83 CV 293, March 26, 1984), the computation of a corporation's Wisconsin net operating loss carryforward has been altered for all corporations *except* insurance companies, real estate investment trusts and regulated investment companies.

Prior to the above court decisions the Department's interpretation of s. 71.06 was that the Wisconsin net business loss carryforward must be adjusted for items such as exempt interest, deductible dividends, nontaxable life insurance proceeds and s. 71.337 gains for all corporations except insurance companies, real estate investment trusts and regulated investment companies.

As a result of the Midland and Overly decisions, the Department's policy regarding the Wisconsin net business loss carryforward is as follows:

(1) For all corporation *franchise* taxpayers (except insurance companies, real estate investment trusts and regulated investment companies) the offset is the net loss without any adjustment for the above items.

(2) For all corporation *income* taxpayers (except insurance companies, real estate investment trusts and regulated investment companies) the net loss must be adjusted by exempt interest on obligations of the U.S. government in all affected years (Red Star Yeast and Products Company, a Wisconsin Corporation, vs. Wisconsin Department of Taxation (2 WBTA 17)).

(3) For insurance corporation taxpayers, both franchise and income, the net loss computed under s. 71.01(4) must continue to be adjusted by deductible dividends received in all affected years based on the specific statutory language found in s. 71.06(3) which refers to the dividends received deduction for insurance companies under s. 71.01(4)(a)7. No adjustment is required for interest received on obligations of the U.S. government because such interest is includable in both federal and Wisconsin gross income.

(4) For real estate investment trusts and regulated investment companies the provisions of the Internal Revenue Code in effect for the year in question govern the computation of the net business loss offset (s.71.02(1)(a)).

The above policy applies to all years open to assessment or refund.

The following examples illustrate the change in the computation of Wisconsin net business loss carryforward in light of the Midland and Overly decisions:

Example 1:

(a) Facts: A domestic manufacturing corporation which operates entirely within Wisconsin reported the following on its 1982 and 1983 Wisconsin franchise tax returns:

	1982	1983
Wisconsin net income (loss) before offset	$(30,000)	$ 50,000
Deductible dividends or exempt income:		
Deductible dividends	1,000	2,000
Gain on life insurance death benefit	15,000	

(b) Computation of Loss Offset Available:

(1) Old Method:

Wisconsin net income (loss) before offset	$(30,000)	$ 50,000
Adjustments:		
Deductible dividends	1,000	2,000
Gain on life insurance death benefit	15,000	
Adjusted Wisconsin net income (loss)	$(14,000)	$ 52,000
Net income before offset per return		$ 50,000
Income to reduce loss offset		$ 2,000
1982 adjusted loss		(14,000)
Wisconsin net business loss offset to claim on 1983 return		$(12,000)

(2) New Method:

Wisconsin net income (loss) before offset	$(30,000)	$ 50,000
Adjustments:		
None	-0-	-0-
Adjusted Wisconsin net income (loss)	$(30,000)	$ 50,000
Net income before offset per return		50,000
Income to reduce loss offset		$ -0-
1982 adjusted loss		(30,000)
Wisconsin net business loss offset to claim on 1983 return		$(30,000)

Example 2:

(a) Facts: A domestic manufacturing corporation files a 1982 Wisconsin franchise tax return and files Wisconsin income tax return for 1983 as a result of a liquidation during the year. This corporation reported the following:

	1982	1983
Wisconsin net income (loss) before offset	$(30,000)	$ 40,000
Deductible dividends or exempt income:		
Deductible dividends	3,000	5,000
Sec. 337 gains excluded		20,000
U.S. interest income		1,000

(b) Computation of Loss Offset Available:

(1) Old Method:

Wisconsin net income (loss) before offset	$(30,000)	$ 40,000
Adjustments:		
Deductible dividends	3,000	5,000
Sec. 337 gains excluded		20,000
U.S. interest income		1,000
Adjusted Wisconsin net income (loss)	$(27,000)	$ 66,000
Net income before offset per return		$ 40,000
Income to reduce loss offset		$ 26,000
1982 adjusted loss		(27,000)
Wisconsin net business loss offset to claim on 1983 return		$ (1,000)

(2) New Method:

Wisconsin net income (loss) before offset	$(30,000)	$ 40,000
Adjustments:		
U.S. interest income		1,000
Adjusted Wisconsin net income (loss)	$(30,000)	$ 41,000
Net income before offset per return		40,000
Income to reduce loss offset		$ 1,000
1982 adjusted loss		(30,000)
Wisconsin net business loss offset to claim on 1983 return		$(29,000)

Example 3:

(a) Facts: A unitary manufacturing corporation with business in more than one state filed its Wisconsin franchise tax returns for 1982 and 1983 using the apportionment method. The following information was included in these returns:

	1982	1983
Total company net income (loss)	$(25,000)	$ 32,000
Total company nonapportionable income (loss)	(1,000)	2,000
Apportionable income (loss)	$(24,000)	$ 30,000
Percent to Wisconsin	66.67%	60%
Amount to Wisconsin	$(16,000)	$ 18,000
Wisconsin nonapportionable income (loss)	-0-	-0-
Wisconsin net income before offsets per return	$(16,000)	$ 18,000
Items included or deducted in above:		
Loss on sale of out-of-state business assets	$ (6,000)(1)	
Loss on sale of out-of-state nonbusiness assets	(4,000)(2)	
Net nonbusiness rental income outside Wisconsin	3,000 (2)	$ 2,000(2)
Deductible dividends	9,000	10,000

(1) Apportionable loss
(2) Income (loss) included in nonapportionable

(b) Computation of Loss Offset Available

(1) Old Method:

	1982	1983
Total company net income (loss)	$(25,000)	$ 32,000
Adjustment:		
Deductible dividends	9,000	10,000
Adjusted total net income (loss)	$(16,000)	$ 42,000
Total company nonapprotionable income (loss)	(1,000)	2,000
Apportionable income (loss)	$(15,000)	$ 40,000
Percent to Wisconsin	66.67%	60%
Amount to Wisconsin	$(10,000)	$ 24,000
Wisconsin nonapportionable income	-0-	-0-
Adjusted Wisconsin net income (loss)	$(10,000)	$ 24,000
Wisconsin net income before offset per return		18,000
Income to reduce loss offset		$ 6,000
1982 adjusted loss		(10,000)
Wisconsin net business loss offset to claim on 1983 return		$ (4,000)

(2) New Method:

	1982	1983
Total company net income (loss)	$(25,000)	$ 32,000
Adjustment:		
None	-0-	-0-
Adjusted total net income (loss)	$(25,000)	$ 32,000
Total company nonapportionable income (loss)	(1,000)	2,000
Apportionable income (loss)	$(24,000)	$ 30,000
Percent to Wisconsin	66.67%	60%
Amount to Wisconsin	$(16,000)	$ 18,000
Wisconsin nonapportionable income	-0-	-0-
Adjusted Wisconsin net income (loss)	$(16,000)	$ 18,000
Wisconsin net income before offset per return		18,000
Income to reduce loss offset		$ -0-
1982 adjusted loss		(16,000)
Wisconsin net business loss offset to claim on 1983 return		$(16,000)

HOMESTEAD CREDIT

1. The Definition of a "Farm" for Homestead Credit Purposes

Law: For purposes of computing allowable taxes in the computation of homestead credit, Wisconsin Statutes s. 71.09(7)(a)8 provides that "If the homestead is part of a farm, 'property taxes accrued' are the property taxes accrued on up to 120 acres of land contiguous to the claimant's principal residence and include the property taxes accrued on all improvements to real property located on such land, except as the limitations of par. (h) apply." If a homestead is not part of a farm nor a multipurpose nor multidwelling building, property taxes are allowed on the dwelling and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling as a home.

Question: What is a "farm" as used in s. 71.09(7)(a)8?

Answer: If the current or most recent use of the land, while owned by the present owner, was for agricultural purposes, then the property would generally be considered a farm and the claim would be based on the homestead and other improvements on up to 120 acres. ("Agricultural purposes" in this Tax Release means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product and includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses for sale; and raising ginseng, mushrooms and sod. The term "agricultural purposes" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; raising earthworms; operating sporting or recreational facilities such as riding stables or shooting preserves; operating stockyards, slaughterhouses or feed lots; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.) However, if the current or most recent use of the land was non-agricultural, such as use for recreational purposes, then the property would not be considered a farm and a homestead located on such land would be limited to one acre.

Examples:

A. Claimant's homestead is located on a 120 acre tract of land on which he is currently growing crops. He is entitled to base his claim on the 120 acres including his residence and other improvements on the property.

B. Claimant's homestead is located on a 200 acre tract of land which he rents out to his neighbor. His neighbor grows crops on the land. The claimant is entitled to base his claim on the 120 acres which includes his residence and other improvements.

C. Claimant's homestead is located on a 40 acre tract of land which is currently sitting idle. He previously had grown crops on this land but since his retirement three years ago, the land has not been used. Claimant is entitled to base his claim on the 40 acres including his residence and other improvements.

D. Claimant's homestead is located on a 40 acre tract of land on which, up until his retirement five years ago, he had grown crops. During the last five years he has leased this land to an organization which has utilized it for recreational purposes. The claimant is entitled to base his claim on his residence and up to only one acre of land.

E. Claimant bought a 10 acre tract of land from a farmer and built his residence on it two years ago. This land has not been used for commercial agricultural purposes since he purchased it. Claimant is entitled to base his claim on his residence and up to only one acre of land.