Question 2: What types of expenses would be included as nondeductible under s. 71.04(2)(b)9, 1983 Wis. Stats.?

Answer 2: Section 71.04(2)(b)9, 1983 Wis. Stats., specifies any amount directly or indirectly related to producing wholly exempt income is not deductible. Examples of such expenses would be taxes, interest, and administrative fees related to the production of this wholly exempt income.

3. Certificate of Authority and Nexus

Statutes: section 71.07(1m) and (2), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.82, September 1983 Register

Facts and Question: Corporation A is a New York based multistate corporation with manufacturing operations in several states. On May 1, 1984 Corporation A sold its Wisconsin plant and ceased all of its Wisconsin operations. Corporation A continued, however, to make sales into Wisconsin and maintained its certificate of authority to operate in Wisconsin through December 31, 1984.

Does Corporation A, a calendar year taxpayer, have nexus in Wisconsin in 1984 for four months (up to the sale of its plant on May 1, 1984) or for the entire 1984 taxable year?

Answer: Corporation A is considered to have nexus in Wisconsin for all of 1984, even though it had no activity in Wisconsin, except for destination sales during the last eight months of 1984. Nexus, once established, is for the entire taxable year.

As such, Corporation A is required to file a 1984 Wisconsin corporation franchise/income tax return for the entire year, reporting its total Wisconsin income in accordance with s. 71.07(1m) and (2), 1983 Wis. Stats.

In arriving at its 1984 apportionment percentage, Corporation A would include its total property, payroll and sales for all of 1984 in the denominator of its property, payroll and sales factors. The property and payroll factor numerators would include all Wisconsin property and payroll in Wisconsin up to the time of the sale of its Wisconsin plant on May 1. The sales factor numerator would include all applicable Wisconsin sales as defined in s. 71.07(2)(c), 1983 Wis. Stats., up to the time of the sale of the plant, plus all sales shipped into Wisconsin during the remainder of 1984.

4. Throwback Sales - Shipments by Third Parties

Statutes: section 71.07(2)(c)1 and 2m, 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.39 (5)(c)7, September 1983 Register

Note: This Tax Release applies only with respect to taxable years 1983 and thereafter.

Facts and Questions: Section 71.07(2)(c)2m was created by 1983 Wisconsin Act 27 to provide that in computing the sales factor of the apportionment formula, Wisconsin sales will include sales of tangible personal property made by an office in Wisconsin to a purchaser in another state if the property is shipped directly by a third party to the purchaser and neither the purchaser's state nor the state from which the property is shipped have jurisdiction for franchise/income tax purposes to tax the taxpayer. Section 71.07(2)(c)2m is effective for the 1983 taxable year and thereafter.

In 1984, Corporation X negotiates a sale of tangible personal property of $1,000 from its Wisconsin office to Corporation Z located in Texas. The property is manufactured by Corporation Y in Ohio and shipped from Ohio to Texas. Corporation X does not have any property, payroll or other activities in either the state of shipment (Ohio) or the destination state (Texas).

Question 1: If Corporation X arranges to have the tangible personal property shipped from the loading dock of Corporation Y by hiring a common or contract carrier to transport the property to Corporation Z, is the sale of $1,000 treated as a Wisconsin sale for purposes of computing the sales factor of the apportionment formula?

Answer 1: No. Section 71.07(2)(c)2m, 1983 Wis. Stats., does not apply since the property is not shipped directly by a third party to the purchaser, Corporation Z.

Question 2: If Corporation Y arranges to have the property shipped to Corporation Z, either by common, contract or private carrier, is this sale treated as a Wisconsin sale for purposes of computing the sales factor of the apportionment formula?

Answer 2: Yes. Since Corporation Y ships the property, or arranges for the shipping, the property is shipped directly by a third party and s. 71.07(2)(c)2m would apply.

Question 2a: If this sale of $1,000 is treated as a Wisconsin sale in Question 2 above, is it included in the numerator of Corporation X's sales factor at 50% ($500) or 100% ($1,000)?

Answer 2a: Pursuant to s. 71.07(2)(c)1, this sale would be included in the numerator of Corporation X's sales factor at 50% ($500) because Corporation X would not be within the jurisdiction of the destination state (Texas) for income tax purposes.

Question 3: How does the creation of s. 71.07(2)(c)2m by 1983 Wisconsin Act 27 affect the decision in *Business and Institutional Furniture, Inc. vs. Wisconsin Department of Revenue* (Circuit Court of Milwaukee County, May 29, 1981)?

Answer 3: In its decision the Circuit Court held that sales directed by Business and Institutional Furniture, Inc.'s Wisconsin office which were shipped from third parties located outside Wisconsin to purchasers located outside Wisconsin, where neither the purchaser's state nor the state from which the property was shipped had jurisdiction to tax Business and Institutional Furniture, Inc. for income tax purposes, were not Wisconsin sales under Wis. Adm. Code section Tax 2.39 (5)(c)7 because there was no statutory authority to include such sales in the numerator of the sales factor. Section 71.07(2)(c)2m, 1983 Wis. Stats., gives Wisconsin such statutory authority and overrides this decision for taxable years 1983 and thereafter.

5. Wisconsin Destination Sales

Statutes: section 71.07(2)(c)1, 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.39 (5)(c), September 1983 Register

Question: If a manufacturer transfers merchandise to a public warehouse in Wisconsin for delivery outside Wisconsin at a later date and title passes to the customer at the time of transfer to storage, is this a Wisconsin sale for purposes of s. 71.07(2)(c)1, 1983 Wis. Stats.?

Answer: Pursuant to s. 71.07(2)(c)1, 1983 Wis. Stats., and Wis. Adm. Code section Tax 2.39(5)(c), this is a Wisconsin sale since the shipment terminates in Wisconsin, even though the property is subsequently transferred by the purchaser to another state, unless the activity in Wisconsin is exempted by s. 71.01(2m)(b), 1983 Wis. Stats. If the customer takes title to the merchandise and temporarily stores the merchandise on rented space in Wisconsin, this is deemed to be a delivery into Wisconsin. Such sales therefore are includable in the numerator of the sales factor at 100%.

6. Wisconsin Treatment of Government Sales for Sales Factor Purposes

Statutes: section 71.07(2)(c)l and 2, 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.39(5)(d), September 1983 Register

Facts and Questions: Section 71.07(2)(c)2, 1983 Wis. Stats., provides in part that sales are in Wisconsin if the property is shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and the purchaser is the United States government or the taxpayer is not within the jurisdiction, for income tax purposes, of the destination state.

Are sales to the United States Government included in the numerator of the sales factor at 100% or 50% of such sales?

Answer: Sales to the U.S. Government are included in the sales factor at 100%. Section 71.07(2)(c)1, 1983 Wis. Stats., provides in part that the numerator of the sales factor includes the following:

A. 100% of the property delivered or shipped to a purchaser, other than the U.S. Government, within Wisconsin regardless of the f.o.b. point or other conditions of sale.

B. 100% of the property shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and the purchaser is the U.S. Government.

C. 50% of the property shipped from an office, store, warehouse, factory or other place of storage in Wisconsin and the corporation is not within the jursidiction for income tax purposes of the destination state.

Section 71.07(2)(c)1, 1983 Wis. Stats., clearly sets forth that sales includable in the numerator of the sales factor at 50% are those deemed to be in Wisconsin because the corporation is not within the jursidiction of the destination state for income tax purposes.

Example: Corporation W, a multistate corporation, ships property from its Wisconsin factory to customers in numerous states, including Illinois and Missouri. Among its customers in these two states is the U.S. Government. During 1984 Corporation W's shipments from Wisconsin into Illinois totalled $4,000,000 which included $500,000 to the U.S. Government, while its shipments into Missouri amounted to $2,000,000, including $600,000 to the U.S. Government. Assuming Corporation W has nexus in Illinois but not in Missouri during 1984, its 1984 sales factor numerator would include the following Illinois and Missouri sales:

Wisconsin shipments to U.S. Government in Illinois	$ 500,000
Wisconsin shipments to all other Illinois customers	-0-
Wisconsin shipments to U.S. Government in Missouri	600,000
Wisconsin shipments to all other Missouri customers ($1,400,000 x 50%)	700,000
Total Wisconsin shipments includable in sales factor numerator to Illinois and Missouri	$1,800,000

7. Wisconsin Treatment of Government-Owned and Company-Operated Plants for Property Factor Purposes

Statutes: section 71.07(2)(a), 1983 Wis. Stats.

Wis. Adm. Code: section Tax 2.39(3)(a) and (c), September 1983 Register

Question: Section 71.07(2)(a), 1983 Wis. Stats., provides in part that property owned or rented and used in the production of apportionable income is to be included in the computation of the property factor. Does s. 71.07(2)(a), 1983 Wis. Stats., require the inclusion in the property factor of amounts attributable to United States or state government real or personal property which is used or leased by a corporation in the operation of a government-owned and company-operated plant?

Answer: If the government-owned property is leased by a corporation, the rental payments times eight would be included in the property factor under s. 71.07(2)(a)3, 1983 Wis. Stats. If the property is used by a corporation without payment of any kind to the government, no value is attributed to such use for inclusion in the property factor since the corporation neither owns or rents the property.

Example: The U.S. Government owns an ammunition plant in Wisconsin. Corporation A is furnished free use of this plant to produce ammunition for the U.S. Government. However, it must pay $100,000 per year to the U.S. Government for use of the machinery and equipment in this plant.

The machinery and equipment will be included in both the numerator and denominator of the property factor pursuant to s. 71.07(2)(a)3, 1983 Wis. Stats., at $800,000 (rent paid of $100,000 x 8). Since Corporation A paid no rent to the U.S. Government for use of the plant it will have a value of -0- for the property factor.

8. Taxability of ACT (Advance Corporation Tax) Refunds

Statutes: section 71.03(1)(k), 1983 Wis. Stats.

Facts and Question: The United Kingdom levies on companies the Advance Corporation Tax (ACT). ACT is an advance payment of the corporation's general corporate tax. Pursuant to federal Rev. Proc. 80-18, the Internal Revenue Service treats ACT refunds as a dividend. These are actually refunds of taxes from the United Kingdom. How are these refunds to be reported for Wisconsin franchise/income tax purposes?

Answer: The Wisconsin Statutes do not include a provision to treat these refunds as dividends. To the extent that a corporation received a tax benefit from the deduction of these taxes, the refund must be included in its net income (s. 71.03(1)(k), 1983 Wis. Stats.).

9. Wisconsin Tax Treatment of Stock Purchases Treated as Asset Purchases Under Sections 334 and 338 of the Internal Revenue Code

Statutes: section 71.334(2)(b), 1983 Wis. Stats.

Note: This tax release is effective with respect to all transactions occurring after August 31, 1982.

Facts and Question: The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) made extensive changes to the 300 Sections of the Internal Revenue Code (IRC). One change made by TEFRA was to repeal Section 334(b)(2) of the IRC and replace it with Section 338.

Under the provisions of Section 334(b)(2) of the IRC (commonly referred to as the Kimbell-Diamond doctrine) an acquiring corporation could receive stepped up basis in the assets of the acquired corporation (target corporation) equal to its adjusted basis of the stock in the target corporation. To qualify for the stepped up basis, the acquiring corporation must have purchased within a twelve month period at least 80% of the total stock of the target corporation and within a two year period after that purchase adopt a plan of liquidation for the target corporation. The acquiring corporation can receive the same treatment for Wisconsin tax purposes pursuant to s. 71.334(2)(b), 1983 Wis. Stats.

Under the provisions of Section 338 of the IRC, the acquiring corporation, within 75 days after making a "qualified stock purchase" with respect to the acquired corporation (target corporation), may make an irrevocable election to treat the target corporation as if the target corporation had sold and repurchased its assets in a complete liquidation on the stock acquisition date for an amount generally equal to the acquiring corporation's basis in the target's stock. This gives the acquiring corporation a basis in the target's assets generally equal to its basis in the target's stock without the necessity of liquidating the target corporation. For purposes of Section 338 of the IRC a "qualified stock purchase" is the same as set forth under Section 334(b)(2) of the IRC (80% of the total stock within a twelve month period).

Wisconsin has not enacted legislation similar to Section 338 of the IRC. However, the provisions of Section 334 of the IRC prior to TEFRA are contained in s. 71.334(2)(b), 1983 Wis. Stats.

What differences between Wisconsin and federal treatment exist due to the fact that Wisconsin has not adopted the provisions of Section 338 of the IRC?

Answer: Some of the major differences between the treatment received under s. 71.334(2)(b), 1983 Wis. Stats., and Section 338 of the IRC are as follows:

A. The period of time in which to make a decision on stepped up basis is reduced from two years from the acquisition date to 75 days from the acquisition date under Section 338 of the IRC.

B. Under Section 338 of the IRC, the target corporation is deemed to have sold its assets for an amount equal to the purchasing corporation's "grossed up basis" in the target's stock on the acquisition date.

C. The target corporation will not be forced to liquidate under Section 338 of the IRC to receive a stepped up basis. Since Wisconsin has not adopted Section 338 of the IRC, a corporation must be liquidated to get a stepped up basis under s. 71.334(2)(b), 1983 Wis. Stats. The following example illustrates this difference:

ABC Corporation wants to acquire the operating assets in XYZ Corporation. To accomplish this the ABC Corporation buys 100% of the outstanding stock in XYZ Corporation for $505,500. Within 75 days after buying the stock of XYZ Corporation, the ABC Corporation makes an election under Section 338 of the IRC to treat this purchase of stock as if it had purchased the assets of XYZ Corporation and immediately resold them back to ABC Corporation's new subsidiary. XYZ Corporation is not liquidated.

XYZ Corporation's Balance Sheet

	(Col. A) Tax Basis	(Col. B) Fair Market Value	(Col. C) Basis Using S. 338
Cash	$ 16,000	$ 16,000	$ 16,000
Accounts Receivable	23,000	19,000	19,000
Land	6,000	10,000	10,000
Machinery & Equipment (Net)	122,000	588,000	588,000
Total	$167,000	$633,000	$633,000
Accounts Payable	$110,500	($110,500)	$110,500
Accrued Expenses	17,000	(17,000)	17,000
Capital Stock	15,000		15,000
Earned Surplus	24,500		490,500
Total	$167,000	$505,500	$633,000

Unless XYZ Corporation is liquidated into ABC Corporation pursuant to a plan of liquidation adopted within two years from the date of the stock purchase, the basis of the assets for Wisconsin tax purposes will be the original tax basis (Column A). To get the stepped up basis in assets, XYZ Corporation must be liquidated under the provisions of s. 71.334(2)(b), 1983 Wis. Stats.

HOMESTEAD CREDIT

1. Alien Student's Qualification for Homestead Credit

Statutes: section 71.09(7)(a)5, 1983 Wis. Stats.

Facts and Question: For homestead credit purposes, a claimant must be domiciled in Wisconsin during the entire calendar year for which the claim is filed (s. 71.09(7)(a)5, 1983 Wis. Stats.). A foreign student in this country with an "F" visa under Section 101(a)(15)(F) of the Immigration and Nationality Act may be classified for federal tax purposes as a nonresident alien or as a resident alien depending on his or her intended length of stay in the country. However, regardless of the student's alien status, the student maintains his or her domicile in his or her homeland.

May a foreign student in Wisconsin under an "F" visa, with resident alien status for federal tax purposes, claim homestead credit?

Answer: No, since a student in Wisconsin under an "F" visa is not domiciled in Wisconsin but rather is domiciled in his or her homeland, he or she is not eligible for homestead credit.

FARMLAND PRESERVATION CREDIT

1. "Property Taxes Accrued" for the Year Farmland Is Inherited

Statutes: section 71.09(11)(a)(7), 1983 Wis. Stats.

Facts and Question: Under s. 71.09(11)(a)1, 1983 Wis. Stats., a farmland preservation credit claimant is an owner of farmland who has been a resident of Wisconsin for the entire taxable year for which the credit is being claimed. A claimant bases his or her farmland credit on household income and "property taxes accrued" on qualified farmland.

Under s. 71.09(11)(a)7, 1983 Wis. Stats., "property taxes accrued" means the real property taxes (less the state credit) levied on the farmland and improvements owned by the claimant or any member of the claimant's household. Property taxes are "levied" when the tax roll is delivered to the local treasurer with a warrant for collection. Therefore, in order for property taxes to be eligible for the farmland preservation credit, a claimant or any member of the claimant's household must be the owner of the farmland at the date of the property tax levy (an exception applies to buyers and sellers of farmland).

The Wisconsin Statutes provide that "property taxes accrued" must be prorated in the case of joint ownership of farmland, and by persons who buy or sell farmland during the year. However, the Statutes do not require the taxes to be prorated in other circumstances.

In determining the farmland preservation credit must the "property taxes accrued" be prorated for a taxable year when during the year the farmland was owned by an estate, the estate closed prior to the tax levy and the farmland was distributed to a beneficiary?

For example, Mrs. Farmer owned farmland which is subject to a certified zoning ordinance. She died on March 20, 1983. Her estate was settled and closed on May 31, 1984. All assets, including the farmland, were distributed to her son, John, who was the sole beneficiary of the estate. The distribution was made on May 31, 1984. The property taxes were levied on November 15, 1984. John meets all the qualifications needed to claim the farmland preservation credit for 1984. In computing his 1984 farmland credit, must John prorate the property taxes to include only those taxes for 7/12 (June through December) of the year?

Answer: No proration of the "property taxes accrued" is required because of inheriting farmland during the taxable year. In the example above, the beneficiary, John Farmer, was the owner of the farmland at the time the real property taxes were levied and is eligible to claim the farmland preservation credit for the 1984 taxable year. In determining the amount of his 1984 credit, John Farmer may use the entire amount of the 1984 property taxes levied on the farmland and improvements.