11. Revise Calculation of Payroll Factor in Apportionment Cases (1987 Act 27, amend s. 71.07(2)(c)3 and repeal and recreate s. 71.07(2)(b), effective for taxable year 1987 and thereafter.)

Compensation is paid in Wisconsin if

a. The individual's service is performed entirely in Wisconsin;

b. The individual's service is performed within and without Wisconsin, but the service performed outside Wisconsin is incidental to the individual's service in Wisconsin;

c. A portion of the service is performed in Wisconsin and the base of operations of the individual is in Wisconsin;

d. A portion of the service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin;

e. A portion of the service is performed in Wisconsin and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in Wisconsin; or

f. The individual is neither a resident of nor performs services in Wisconsin but is directed or controlled from an office in Wisconsin and returns to Wisconsin periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

Compensation includes deductible management or service fees paid to a related corporation for personal services performed. The situs of those fees is in Wisconsin if it meets any of the requirements of "compensation paid in this state." However, the recipient (related corporation) of the fees may not include in its payroll factor payment to its employes for the personal services performed.

The department may order or permit the elimination of the payroll factor in computing the apportionment percentage if a company has no employes and pays no management or service fees or the department determines that employes are not a substantial income-producing factor and that management or services fees paid are insubstantial.

12. Broaden Definition of "Public Utility" for Apportionment Purposes (1987 Act 27, amend s. 71.07(2)(d)2, effective for taxable year 1987 and thereafter.)

Business entities providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01(4), are considered public utilities regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency. Therefore, deregulated transportation companies may still use the two-factor apportionment formula prescribed by the department.

13. Change Wisconsin Corporate Estimated Tax Law (1987 Act 27, amend s. 71.10(5)(a), repeal and recreate s. 71.22, and nonstatutory provision, effective for taxable year 1988 and thereafter.

The changes, which are effective for the 1988 taxable year and thereafter, are as follows:

a. The "return" on which the estimated tax requirements are based will generally be the last return filed by the due date, including extensions, except that if such return reflects less than 75% of the tax properly due and such understatement results in an addition to the tax of at least $300, the addition to the tax computation will be based on amounts reported on a subsequent return or on adjusted amounts.

b. No addition to the tax will be due if either of the following conditions apply:

(1) The tax shown on the return or, if no return is filed, the tax is less than $500.

(2) The preceding taxable year was 12 months and the corporation had no liability under ss. 71.01 for that year.

c. The four exceptions to the addition to the tax allowable for taxable years prior to 1988 have been repealed for 1988 and thereafter.

d. The required installments for 1988 and thereafter are one-fourth of the lower of the amounts computed under (1) or (2) or the amounts computed under number (3):

(1) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(2) The tax shown on the return for the preceding taxable year (if the taxpayer filed a return for that prior year covering a 12-month period). (Corporations having taxable incomes of $250,000 or more may not use this method but must compute required installments under either (1) or (3).)

(3) If 22.5% for the first installment, 45% for the 2nd installment, 67.5% for the 3rd installment and 90% for the 4th installment of the tax for the taxable year computed by annualizing, under methods prescribed by the department, the taxpayer's income for the months in the taxable year ending before the installment's due date is less than the installment under (1) or (2) above, the taxpayer may pay this amount. Any taxpayer who pays an installment computed under this method (annualizing) shall increase the next installment computed under (1) or (2) above by an amount equal to the difference between the amount paid under (3) and the amount that would have been paid under (1) or (2).

For purposes of computing annualized income, the apportionment percentage computed under s. 71.07(2) from the return filed for the previous taxable year may be used if that return was filed with the department on or before the due date of the installment for which the income is being annualized and if the apportionment percentage on that previous year's return was greater than zero.

e. The estimated tax payment requirements shall be applied to taxable years of less than 12 months under rules promulgated by the department.

f. Any increase to required estimated tax payments that would have been due before July 1, 1987, solely because of changes affecting income or franchise tax liability made by 1987 Act 27 must be prorated equally among, and paid with, any payments that are due on or after July 1, 1987, for the taxable year 1987. Any addition to the tax for underpayment of estimated tax must be computed on the basis that the tax due for the 1987 taxable year solely because of changes affecting income or franchise tax liability made by 1987 Act 27 was required to be included only with installment payments due on or after July 1, 1987.

C. TAX-OPTION (S) CORPORATIONS

1. Impose Additional Tax on Tax-Option (S) Corporations (1987 Act 27, create s. 71.016, effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

Every tax-option (S) corporation that has a recognized built-in gain, as defined in section 1374(d)(2) of the Internal Revenue Code, during a recognition period and that had not made a tax-option(s) corporation election before January 1, 1987, shall compute a tax similar to that under section 1374 of the Internal Revenue Code in addition to other taxes imposed under Chapter 71 except that the tax rate is 7.9%, taxable income is Wisconsin taxable income and the credit and net operating losses are those under Chapter 71.

2. Adopt Federal Treatment of Distributions From Tax-Option (S) Corporations for 1983 and 1984 (1987 Act 27, amend s. 71.02(2)(d)9 and 10, effective for taxable years 1983 and 1984.)

For taxable years 1983 and 1984, "Internal Revenue Code" includes the changes to section 1368 of the Code made by section 721(r) of Public Law 98-369, relating to the treatment of distributions from tax-option (S) corporations. Section 721(r) provides that tax-option (S) corporation losses for any taxable year beginning after December 31, 1982, may cause the Accumulated Adjustment Account to become negative.

3. Revise Treatment of a Tax-Option (S) Corporation's Income, Loss and Deductions (1987 Act 27, renumber s. 71.042(1) to 71.042(2) and s. 71.042(2) to 71.042(1) and amend s. 71.042(2) as renumbered, amend ss. 71.02(1)(d) and 71.05(1)(f)3, create s. 71.042(3) and (5), effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

A "tax-option item" is an item of income, loss or deduction that the department specifies. The tax treatment of all tax-option items is determined at the corporate level.

All shareholders of tax-option (S) corporations must treat tax-option items on their Wisconsin returns in a manner consistent with the corporate treatment or notify the department of any inconsistency and the reason for it.

Items of income and loss of the tax-option (S) corporation that would be capital gains or losses if attributed to an individual shall retain their character as net income or loss and business income or loss under s. 71.07 but shall be treated by the shareholders as capital gain or loss in computing their Wisconsin adjusted gross income.

A tax-option (S) corporation must notify its shareholders of any administrative or judicial proceeding relating to a tax-option item.

4. Provide That a Nonresident Shareholder's Share of Tax-Option (S) Corporation Intangible Income Is Taxable (1987 Act 27, renumber s. 71.042(1) to 71.042(2) and amend s. 71.042(2) as renumbered, amend ss. 71.05(1)(b)(intro.) and 71.07(1) and (2m), effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

Items of income and loss and deductions of nonresident individuals and nonresident estates and trusts derived from tax-option (S) corporations not requiring apportionment follow the situs of the business of the corporation from which derived.

Nonresident individuals and nonresident estates and trusts deriving income from a tax-option (S) corporation engaged in business within and without Wisconsin are taxed only on income derived from business transacted and property located in Wisconsin. Such intangible income of tax-option (S) corporations passed through to shareholders follows the situs of the business.

5. Provide That Tax-Option Status Is Optional for Wisconsin Tax Purposes (1987 Act 27, amend s. 71.02(1)(g), create s. 71.042(4), effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

If persons who hold more than 50% of the shares of a tax-option (S) corporation on the day on which the election is made consent, a corporation that is a Subchapter S corporation for federal tax purposes may elect, on or before the due date or extended due date of its return, not to be a tax-option (S) corporation for Wisconsin tax purposes.

Once the election not to be a tax-option (S) corporation is made, the corporation or its successor may not claim tax-option status for the next 4 taxable years after the taxable year to which the election first applies.

6. Change Tax-Option (S) Corporation Deduction (1987 Act 27, renumber s. 71.042(1) to 71.042(2) and amend s. 71.042(2) as renumbered, effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

   A tax-option (S) corporation may deduct from its net income all amounts included in the Wisconsin adjusted gross income of its shareholders and all amounts not taxable to nonresident shareholders under s. 71.07. Therefore, a tax-option (S) corporation is taxed on only a delinquent shareholder's share of the corporation's net income. Under prior law, failure of any shareholder to file a Wisconsin return and report his or her proper share of the tax-option (S) corporation's net income would cause the tax-option (S) corporation to be taxed on its entire net income.

7. Deny Credits to Shareholders of Tax-Option (S) Corporations (1987 Act 27, renumber s. 71.042(1) to 71.042(2) and amend s. 71.042(2) as renumbered, create s. 71.043(3g), effective for tax-option corporation's 1987 taxable year and thereafter and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

   Shareholders of tax-option (S) corporations may no longer claim the corporation's manufacturer's sales tax credit or any other credit that would be available to the corporation if it were a regular C corporation on their Wisconsin individual income tax returns.

8. Clarify Modification for Distributions of Pre-1979 Earnings and Profits (1987 Act 27, amend s. 71.05(1)(a)10, effective for taxable year 1979 and thereafter.)

   An addition modification is required for any amount received in taxable year 1979 or thereafter by a Wisconsin resident shareholder of a tax-option (S) corporation as a distribution of pre-1979 earnings and profits and not considered a dividend when received under section 1375(d)1 of the Internal Revenue Code as amended to December 31, 1978. This amendment clarifies that it is the Code as of December 31, 1978, that applies.

9. Clarify Modification for Amounts Affecting Shareholders' 1979 Federal Adjusted Gross Income (1987 Act 27, amend s. 71.05(1)(f)2, effective for taxable year 1979.)

   A modification is required for amounts affecting the computation of a shareholder's federal adjusted gross income for taxable year 1979 under section 1373 or 1374 of the Internal Revenue Code as amended to December 31, 1978, as the shareholder's proportionate share of a tax-option (S) corporation's federal taxable income or loss for taxable year 1978. This amendment clarifies that it is the Code as of December 31, 1978, that applies.

10. Provide That Resident Shareholders May Claim Credit for Taxes Paid to Other States (1987, Act 27, amend s. 71.09(8)(c), effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

Income and franchise taxes paid to another state by a tax-option (S) corporation may be claimed as a credit by the corporation's shareholders who are residents of Wisconsin and otherwise qualify for the credit.

11. Prescribe Return Requirements (1987 Act 27, amend s. 71.10(1)(d), effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income, loss or deduction to the tax-option corporation's treatment.)

    In addition to its federal return and any other return, statement or document required to be filed with the IRS, a tax-option (S) corporation must file any form required and prescribed by the department with its Wisconsin franchise or income tax return.

12. Permit Proration for Short Period Return (1987 Act 27, amend s. 71.10(3m)(c), effective for tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year as appropriate to conform the shareholder's treatment of income loss or deductions to the tax-option corporation's treatment.)

    A tax-option (S) corporation may prorate its net income for short period returns due when a corporation terminates its tax-option status during the year according to the method under section 1362(e)(2) of the Internal Revenue Code.

D. HOMESTEAD CREDIT

1. Clarify Definition of "Claimant" (1987 Act 27, amend s. 71.09(7)(a)1, effective for claims filed in 1988 based on property taxes or rent for calendar year 1987 and thereafter.)

    "Claimant" means a person who has filed a homestead credit claim and who was domiciled in Wisconsin during the entire calendar year to which the claim relates.

2. Change Definition of "Gross Rent" (1987 Act 27, amend s. 71.09(7)(a)2, effective for claims filed in 1988 based on rent for calendar year 1987 and thereafter.)

    "Gross rent" means rent paid solely for the right to occupy a homestead, reduced by charges for food furnished by the landlord as a part of the rental agreement. It is no longer necessary to reduce rent paid by the value of utilities, services, furniture, furnishings or personal property appliances furnished by the landlord.

    "Gross rent" includes the rental paid to a landlord for parking of a mobile home, reduced by any charges for food furnished by the landlord as a part of the rental agreement, plus parking fees paid under s. 66.058(3)(c) for a rented mobile home.

    If a homestead is part of a multipurpose or multidwelling building, "gross rent" is the percentage of the gross rent on that part of the multipurpose or multidwelling building occupied by the household as a principal residence plus the same percentage of the gross rent on the

land surrounding it, not exceeding one acre, that is reasonably necessary for use of the multipurpose or multidwelling building as a principal residence.

If a homestead is part of a farm, "gross rent" is the rent on up to 120 acres of the land contiguous to the claimant's principal residence plus the rent on all improvements to real property on that land.

3. Divide Rent Equally Among Joint Occupants of a Rental Unit (1987 Act 27, amend s. 71.09(7)(a)2, effective for claims filed in 1988 based on rent for calendar year 1987 and thereafter.)

If a claimant and persons who are not members of the claimant's household share a homestead, the claimant's gross rent is the gross rent paid for the homestead divided by the number of adults residing in the homestead and not related to the claimant as husband or wife.

4. Change Definition of "Household Income" (1987 Act 27, amend s. 71.09(7)(a)6, effective for claims filed in 1988 based on property taxes or rent for calendar year 1987 and thereafter.)

The following amounts must now be included in household income for homestead credit purposes:

a. Net operating loss carryforward
b. Capital loss carryforward
c. Minister's housing allowance
d. The value of a resident manager's free or reduced rent
e. Nontaxable income of an American Indian
f. Nontaxable income from sources outside Wisconsin
g. Keogh plan deductions
h. Nontaxable deferred compensation
i. Income from a nonresident or part-year resident who is married to a full-year resident
j. Amortization
k. Section 179 expense deductions

Amounts not included in adjusted gross income but added to income on a homestead credit claim in a previous year and repaid may be subtracted from household income in the year they are repaid.

Foster care payments received by a claimant which are not includable in federal adjusted gross income do not have to be included in household income. In addition, long-term support community options program payments under s. 46.27 are not includable in household income.

5. Clarify Definition of "Property Taxes Accrued" (1987 Act 27, amend s. 71.09(7)(a)7, effective for taxable year 1986 and thereafter.)

If a homestead is owned by spouses as marital property or survivorship marital property and one of the owners is not a member of the claimant's household, the property taxes must be divided equally among the owners, and "property taxes accrued" is that portion of the property taxes allocated to the claimant and the claimant's household.

6. Change Definition of "Property Taxes Accrued" (1987 Act 27, amend s. 71.09(7)(a)7, effective for claims filed in 1988 based on property taxes or rent for calendar year 1987 and thereafter.)

"Property taxes accrued" includes personal property taxes for a mobile home or for a home built on leased land.

If a homestead is sold during the calendar year, the seller may use the closing agreement pertaining to the sale of the homestead, the property tax bill for the year before the year to which the claim relates or the property tax bill for the year to which the claim relates as the basis for computing property taxes accrued, but the taxes are allowable only for the portion of the year during which the seller owned and occupied the sold homestead. The buyer of a homestead must use the property tax bill for the year to which the claim relates and prorate the taxes based on the time the buyer owned and occupied the homestead during the year to which the claim relates.

7. Change Definition of "Rent Constituting Property Taxes Accrued" (1987 Act 27, amend s. 71.09(7)(a)8, effective for claims filed in 1988 based on rent for calendar year 1987 and thereafter.)

"Rent constituting property taxes accrued" means 25% of the gross rent paid for the calendar year to which the claim relates if heat is not included in the rent, or 20% of the gross rent paid if heat is included in the rent, except as provided in s. 71.09(7)(m) and (p).

8. Specify Items a Claimant Must Verify (1987 Act 27, repeal and recreate s. 71.09(7)(j), effective for claims filed in 1988 based on property taxes or rent for calendar year 1987 and thereafter.)

To ascertain the correctness of any homestead credit claim, the department may examine any books, papers, records or memoranda bearing on a person's homestead credit, may require the production of such information, and require the attendance of any person having knowledge relating to the claim, and may take testimony and require proof material for its information.

9. Clarify Homestead Credit Language (1987 Act 27, renumber s. 71.09(7)(gz)1 to 71.09(7)(w), renumber s. 71.09(7)(gz)2 to 71.09(7)(x) and amend s. 71.09(7)(x) as renumbered, amend s. 71.09(7)(a)3, (b), (c), (r) and (s) and 71.09(13)(cm), effective for claims filed in 1988 based on property taxes or rent for calendar year 1987 and thereafter.)

Various homestead credit provisions were revised to clarify confusing statutory language and eliminate obsolete language.

10. Delete Obsolete Language as of January 1, 1989 (1987 Act 27, repeal s. 71.09(7)(gn) to (gr), (gs) and (h) 1 to 4, effective for taxable year 1989 and thereafter.)

Language relating to limits on household income, property taxes accrued and rent constituting property taxes accrued for years closed to audit has been deleted.

E. FARMLAND PRESERVATION CREDIT

1. Change Definition of "Household Income" (1987 Act 27, amend s. 71.09(11)(a)6.a, effective for claims filed for taxable year 1987 and thereafter.)

The following amounts must now be included in household income for farmland preservation credit purposes:

a. Capital loss carryforward

b. Minister's housing allowance

c. The value of a resident manager's free or reduced rent

d. Nontaxable income of an American Indian

e. Nontaxable income from sources outside Wisconsin

f. Keogh plan deductions

g. Nontaxable deferred compensation

h. Income from a nonresident or part-year resident spouse who is married to a full-year resident

i. Amortization

Long-term support community options program payments under s. 46.27 continue to be includable in household income.

Amounts not included in adjusted gross income but added to income on a farmland preservation credit claim in a previous year and repaid may be subtracted from household income in the year they are repaid.

Foster care payments received by a claimant which are not includable in federal adjusted gross income do not have to be included in household income.

2. Change Depreciation Add-Back (1987 Act 27, amend s. 71.09(11)(a)6.a, effective for claims filed for taxable year 1987 and thereafter.)

In the case of an individual claimant, the total of the farm depreciation expenses claimed by all of the individuals in the household may not exceed $25,000. Therefore, the $25,000 limit applies to each household's farm depreciation expenses, not to each individual's farm depreciation expenses.

3. Clarify Definition of "Property Taxes Accrued" (1987 Act 27, amend s. 71.09(11)(a)7, effective for taxable year 1986 and thereafter.)

If farmland is owned by spouses as marital property or survivorship marital property and one of the owners is not a member of the claimant's household, the property taxes must be divided equally among the owners, and "property taxes accrued" is that portion of the property taxes allocated to the claimant and the claimant's household.