

19. Historic Structure Credit

See Item A16.

20. Rehabilitation of Nondepreciable Historic Property Credit

See Item A15.

21. Order of Computation Revised for Computing Tax Liability (1987 Act 399, create s. 71.65(2)(fh), effective for taxable year 1989 and 1990 for projects begun after December 31, 1988; 1987 Act 395 create s. 71.65(2)(fg), effective May 3, 1988; and 1987 Act 328, amend s. 71.65(2)(g) and create s. 71.65(2)(fb) and (fc), effective for taxable year 1988 and thereafter.)

Corporations must compute their tax liability in the following order.

- a. Tax under s. 71.01(1) or (2)
- b. Surtax under s. 71.013
- c. Credit for sales tax on fuel under s. 71.043
- d. Research credit under s. 71.09(12r)
- e. Research property credit under s. 71.09(12rf)
- f. Community development finance credit under s. 71.09(12m)
- g. Development zones investment credit under s. 71.09(12di)
- h. Development zones location credit under s. 71.09(12dL)
- i. Historic structure credit under s. 71.09(12p)
- j. Historic rehabilitation credit under s. 71.09(12q)
- k. The total of farmland preservation credit under s. 71.09(11), the development zones sales tax credit under s. 71.09(12ds), the development zones jobs credit under s. 71.09(12dj), and estimated tax payments under s. 71.22.

C. TAX-OPTION (S) CORPORATIONS

1. Internal Revenue Code for Tax-Option Corporations Defined (1987 Act 399, create s. 71.02(1)(bh), see effective dates below.)

- a. For tax-option corporations for taxable year 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, as it applies to taxable year 1987, with the following exceptions:
  - (1) For 1987 taxable years that end after July 1 and before December 31, "Internal Revenue Code" does not include changes to the federal Internal Revenue Code made by sections 142 (limitations

on deductions for meals, travel, and entertainment), 801 (limitations on use of cash method of accounting), 802 (simplified dollar-value LIFO method for certain small businesses), and 803 (capitalization and inclusion in inventory costs of certain expenses) of the Tax Reform Act of 1986 (P.L. 99-514).

- (2) Changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.
  - (3) Section 1366(f), IRC, relating to the pass-through of items to shareholders, is modified by substituting the built-in gains tax under s. 71.016, Stats., for the taxes under sections. 1374 and 1375, IRC.
- b. For tax-option corporations for taxable years that end after July 1, 1988, and before December 31, 1988, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1986, with the following exceptions:
- (1) Changes to the federal Internal Revenue Code made by the Revenue Act of 1987 (P.L. 100-203) apply for Wisconsin purposes at the same time as for federal purposes.
  - (2) Section 1366(f), IRC, relating to the pass-through of items to shareholders is modified by substituting the built-in gains tax under s. 71.016, Wis. Stats., for the taxes under sections 1374 and 1375, IRC.
- c. For tax-option corporations for taxable years that begin after December 31, 1987, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1987, except that section 1366(f), IRC, relating to the pass-through of items to shareholders, is modified by substituting the built-in gains tax under s. 71.016, Wis. Stats., for the taxes under sections 1374 and 1375, IRC.
2. Tax-Option (S) Corporation Net Income or Loss Computed Under Rules for Individuals (1987 Act 399, repeal s. 71.02(1)(bg)25, amend s. 71.02(1)(intro.), repeal and recreate s. 71.02(1)(d), and create ss. 71.02(1)(bh), 71.05(2tm), and nonstatutory provision, 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 items of income, loss, and deduction to the tax-option corporation's treatment.)

Clarification is made that net income or loss of a tax-option (S) corporation means net income or loss computed under s. 71.02(1)(bh), except that:

- a. Section 1363(a) of the Internal Revenue Code does not apply (S corporation is not subject to taxes).
- b. The items of income, including tax-exempt income, loss, deduction, or credit, the separate treatment of which could affect the lia-

bility of tax of any shareholder, referred to in section 1366(a)(1)(A) of the Internal Revenue Code, must be included.

- c. The deduction for expenses for the production of income under section 212 of the Internal Revenue Code and itemized deductions for individuals under section 703(a)(2)(E) of the Internal Revenue Code will be allowed.
- d. An addition or subtraction, as appropriate, must be made for the net amount of state and federal differences, including differences arising from the different basis of assets disposed of in a transaction in which gain or loss is recognized for Wisconsin purposes, different depreciation methods or difference in basis of depreciable assets, different elections, or transitional adjustments due to differences in the statutes for taxable years 1986 and 1987 pertaining to the computation of net income of a tax-option corporation.
- e. An addition must be made for the amount of manufacturer's sales tax credit under s. 71.043 used by the corporation in the current year.
- f. An addition must be made for the amount of interest, less related expenses, excluded by reason of section 103 of the Internal Revenue Code, relating to interest received on state and municipal obligations and on volunteer fire department and mass transit obligations, or any other federal law.

Section 71.05(2tm), Wis. Stats., clarifies that a tax-option (S) corporation may compute depreciation or amortization under either the federal Internal Revenue Code as amended to December 31, 1986, as it applies to taxable year 1987, or the Internal Revenue Code in effect for the taxable year for which the return is filed, except that property that was placed in service prior to January 1, 1987, must continue to be depreciated under the method allowable by Wisconsin for the year in which it was placed in service.

The nonstatutory provision clarifies that as a result of the federalization of Wisconsin net income, transitional adjustments may be required in order to avoid the double inclusion, or omission, of any item of income, loss, or deduction. If the total amount of such transitional adjustments is \$25,000 or less, the entire adjustment is to be made during the 1987 taxable year. If the total is greater than \$25,000, the adjustment is to be amortized ratably over 5 years, starting in 1987.

3. Imposition of Additional Tax on Tax-Option (S) Corporations (1987 Act 399, amend s. 71.016, effective for taxable year 1987 and thereafter.)

A Wisconsin tax is imposed on every tax-option (S) corporation, except those under section 1374(c)(1) of the Internal Revenue Code, that has a recognized built-in gain as defined in section 1374(d)(2) of the Internal Revenue Code. This amendment clarifies that the built-in gain on which the additional tax is imposed is not limited to capital gain.

4. Provide for Adjustments Preventing the Double Inclusion or Omission of Income for Federal S Corporations Electing or Not Electing Tax-Option Corporation Status (1987 Act 399, create s. 71.042(7), 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 items of income, loss, and deduction to the corporation's treatment.)

A federal S corporation that elects not to be a tax-option corporation under s. 71.042(4)(a), Wis. Stats., and a federal S corporation that elects to become a tax-option corporation must adjust its income, under rules promulgated by the department, for the taxable year for which the election is first effective to avoid the omission or double inclusion of any item of income, loss, or deduction.

#### D. HOMESTEAD CREDIT

1. "Gross Rent" Definition Changed (1987 Act 399, amend s. 71.09(7)(a)2, effective for claims filed in 1989 based on rent for calendar year 1988 and thereafter.)

"Gross rent" means rent paid solely for the right to occupy a homestead, but does not include any charges for food, medical and personal services furnished by the landlord as a part of the rental agreement, and shared living expenses.

Personal services include laundry, transportation, counseling, grooming, recreational, and therapeutic services. Shared living expenses include, but are not limited to, food, supplies, and utility payments, unless utility payments are included in the gross rent paid to the landlord. "Gross rent" is the gross rent paid by the claimant to the landlord.

Gross rent is no longer divided by the number of adults residing in the homestead and not related to the claimant as husband and wife.

2. Nonsubstantive Change to "Property Taxes Accrued" Definition (1987 Act 378, amend s. 71.09(7)(a)7, effective January 1, 1989.)

The requirement that a warrant for collection is required upon delivery of the tax roll to the local treasurer in determining when property taxes are levied is repealed.

#### E. FARMLAND PRESERVATION CREDIT

1. "Claimant" Defined for Partners of Publicly Traded Partnership (1987 Act 399, amend s. 71.09(11)(a)1.c, effective May 17, 1988.)

For partnerships, except publicly traded partnerships treated as corporations under s. 71.02(1)(af), Wis. Stats., a "claimant" means each individual partner. Prior law did not provide the exception for publicly traded partnerships. This change will allow a partnership which is treated as a corporation under s. 71.02(1)(af), Wis. Stats., to file a farmland preservation credit claim.

2. Definition of "Farmland" Includes Farmland Enrolled in Conservation Reserve Program (1987 Act 399, amend s. 71.09(11)(a)3, effective for claims filed for taxable year 1988 and thereafter.)

If at least 35 acres of farmland is enrolled, during all or part of the year, in the conservation reserve program under 16 USC §§ 3831-3836, the farmland is eligible for farmland preservation credit without regard to gross farm profits produced, provided all other qualifications are met.

3. Definition of "Gross Farm Profits" Includes Payments from Federal Dairy Termination Program (1987 Act 399, amend s. 71.09(11)(a)3m, effective for claims filed for taxable year 1988 and thereafter.)

Gross farm profits, used in determining whether farmland qualifies for credit, includes payments from the federal dairy termination program under 7 USC § 1446(d).

4. Definition of Household Income No Longer Includes Certain Income of Dependents (1987 Act 399, amend s. 71.09(11)(a)5, effective for claims filed for taxable year 1988 and thereafter.)

Household income includes all income of the claimant and the claimant's spouse, plus the farm income, including farm wages earned on the farm to which the claim relates, of all minor dependents. In prior years, household income included all income of minor dependents.

5. Nonsubstantive Change to "Property Taxes Accrued" Definition (1987 Act 378, amend s. 71.09 (11)(a)7, effective January 1, 1989.)

The requirement that a warrant for collection is required upon delivery of the tax roll to the local treasurer in determining when property taxes are levied is repealed.

6. "Property Taxes Accrued" When Farmland Is Sold During the Year (1987 Act 399, amend s. 71.09(11)(a)7, effective for claims filed for taxable year 1988 and thereafter.)

"Property taxes accrued" for the seller of farmland in the year of sale is the property taxes, reduced by the state tax credit under s. 79.10, Stats., prorated to the seller in the closing agreement pertaining to the sale of the farmland, except that if the seller does not reimburse the buyer for any part of those property taxes, "property taxes accrued" for the seller is zero.

"Property taxes accrued" for the buyer of farmland in the year of sale is the property taxes levied on the farmland, reduced by the state tax credit under s. 79.10, Wis. Stats., less the property taxes prorated to the seller in the closing agreement pertaining to the sale of farmland, except that if the seller does not reimburse the buyer for any part of those property taxes, "property taxes accrued" for the buyer is the property taxes levied on the farmland reduced by the state tax credit under s. 79.10, Wis. Stats.

Both the buyer and seller must submit a copy of the closing agreement pertaining to the sale of farmland with their farmland preservation claims.

7. 10% Minimum Credit Allowed if Farmland Is Subject to Farmland Preservation Agreement or Transition Area Agreement (1987 Act 399, amend s. 71.09(11)(bm), effective for claims filed for taxable year 1988 and thereafter.)

If farmland is subject to a farmland preservation agreement or transition area agreement under subch. II of ch. 91 of the Wisconsin Statutes at the close of the year for which the credit is claimed, the minimum amount of farmland preservation credit available is 10% of the property taxes accrued. No limitation will apply with respect to such claimant's household income. Previously, the 10% minimum credit was allowed only for farmland subject to an exclusive agricultural use zoning ordinance.

8. Certification That Property Taxes of Prior Year Have Been Paid Is Required (1987 Act 399, amend s. 71.09(11)(h)(intro.), effective for claims filed for taxable year 1988 and thereafter.)

A claimant must certify that all taxes owed by the claimant on the property for which the claim is made for the year before the year for which the claim is made have been paid before a farmland preservation credit is allowed. For example, if you wish to file a 1988 farmland preservation claim, to qualify, your 1987 taxes on that farmland must be paid.

#### F. SALES/USE TAXES

1. Exempt Certain Sales of Business Assets as Occasional Sales - 10 Day Period for Permit Cancellation (1987 Act 399, amend s. 77.51(9)(a) and create s. 77.51(9)(am), effective May 17, 1988.)

A sale is exempt from Wisconsin sales and use taxes as an occasional sale if all three of the following conditions are met:

- a. The sale is of personal property (other than inventory held for sale) previously used by the seller to conduct its trade or business at a location.
- b. The sale occurs after the seller ceased operating the business at that location.
- c. The seller delivers its seller's permit to the Department of Revenue for cancellation within ten days after the last sale of personal property (other than inventory held for sale) at that location.

A sale meeting the above three conditions is exempt from Wisconsin sales and use taxes even though the seller holds a seller's permit for one or more other locations.

2. Occasional Sales by Nonprofit Organizations (1987 Act 399, repeal s. 77.51(9)(c), amend s. 77.52(7) and create s. 77.54(7m), effective January 1, 1989.)

This provision changes the standards for determining the occasional sale exemption on sales by nonprofit organizations. Under the new standards, sales of tangible personal property and services, including admissions or tickets to an event, conducted by a nonprofit organization are exempt occasional sales if:

- a. There is no professional entertainment,
- b. The organization is not engaged in a trade or business and,
- c. The organization is not otherwise required to have a seller's permit.

Under the statute an organization is deemed to be engaged in a trade or business if its sales of tangible personal property or services (not including sales of tickets to events), or its events occur on more than 20 days during the year. However, if an organization's receipts do not exceed \$15,000 for the year, it is not considered to be engaged in a trade or business even if its sales and/or events exceed 20 days. A nonprofit organization whose gross receipts have become taxable because it has exceeded the above standards must obtain a seller's permit and pay taxes on all taxable receipts received after it is required to obtain that permit.

If an organization later becomes eligible for the occasional sale exemption except for its possession of a seller's permit, it may surrender that permit.

3. Change Nexus Standards for Foreign Publishers (1987 Act 399, amend s. 77.51(13g) (intro.) and create s. 77.51(13h), effective January 1, 1990.)

If a foreign corporation is a publisher, the purchase from a printer of a printing service or of tangible personal property printed in Wisconsin for the publisher and the storage of printed material or raw material for any length of time in Wisconsin in or on property owned by a person other than the publisher does not create nexus within Wisconsin, even though the printed material is resold or delivered in Wisconsin.

Therefore, a foreign corporation that is a publisher is not required to collect Wisconsin use tax on its sale or delivery of printed material in Wisconsin if only the above activities occur in Wisconsin.

"Raw material" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

4. Exempt Intra-LATA Access Charges (1987 Act 399, amend s. 77.51(13)(p) and 77.51(14)(m), effective May 17, 1988.)

The definition of "retailer" and "sale" are modified to exclude intra-LATA access charges by a telephone company to an interexchange carrier. Thus, intra-LATA access charges by a telephone company to an interexchange carrier are not subject to Wisconsin sales and use taxes.

5. Clarify That Wisconsin Sales and Use Taxes Apply to Recreational Rights Sold in Connection with Time-Share Property (1987 Act 399, amend 77.52(2)(a)2, effective May 17, 1988.)

The statutes are amended to clarify that in connection with the sale or use of time-share property, Wisconsin sales and use taxes apply to the sale, furnishing, or use of recreational facilities on a periodic basis and to other recreational rights, including but not limited to membership rights, vacation services and club memberships.

6. Exempt Certain Nonresidents' Boats From Use Tax (1987 Act 268, amend s. 77.53(17m), effective June 1, 1988.)

There is no Wisconsin use tax on a boat berthed in Wisconsin which is owned by a nonresident if the boat was:

- a. Purchased in a contiguous state (Illinois, Iowa, Michigan, Minnesota).
- b. Purchased by a person domiciled in a contiguous state.
- c. Purchased in an exempt occasional sale under the laws of the state in which the purchase was made.
- d. Berthed in Wisconsin's boundary waters adjacent to the state of the domicile of the purchaser.

7. Exempt Certain Nonresidents' Aircraft From Use Tax (1987 Act 399, create s. 77.53(17r), effective May 17, 1988.)

There is no Wisconsin use tax on aircraft registered in Wisconsin when:

- a. It is purchased in another state.
- b. Its owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
- c. The owner or lessee is a corporation, and that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or other tangible personal property, except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.



- d. The owner or lessee is a partnership and all of the corporate partners fulfill the requirements in c. above and none of the general partners or limited partners who has management or control responsibilities is domiciled in Wisconsin and the partnership has no other tangible personal property and no real property, except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.
- e. The owner or lessee is an individual, and the owner or lessee is not domiciled in Wisconsin.
- f. The owner or lessee is an estate, trust, or cooperative, and that estate, that trust and its grantor or that cooperative does not have real property or other tangible personal property, except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.
- g. The Department of Revenue has not determined that the owner, if the owner is a corporation, trust, or partnership, was formed to qualify for the exemption from Wisconsin use tax.

8. Nonexempt Soda Water Beverages Cross-Reference Changed (1987 Act 399, amend s. 77.54(20)(b)4, effective May 17, 1988.)

The definition of soda water beverages has been changed from s. 97.34(8) to s. 97.29, Wis. Stats., due to changes in Ch. 97. Soda water beverages are defined as all beverages commonly known as soft drinks or soda water whether carbonated, uncarbonated, sweetened, or flavored.

9. Waste Treatment Facilities Exemption Clarified (1987 Act 399, amend s. 77.54(26), effective May 17, 1988.)

The gross receipts from the sales of and storage, use, or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that would be exempt under s. 70.11(21)(a), Wis. Stats., if the property were taxable under Chapter 70 of the Wisconsin Statutes, is exempt from sales and use tax.

10. Exempt Equipment for Treatment of Diabetes and Supplies Used to Determine Blood Sugar Level (1987 Act 399, amend s. 77.54(28), effective March 1, 1989.)

Apparatus or equipment for the treatment of diabetes and supplies used to determine blood sugar level are exempt from Wisconsin sales and use taxes.

11. Exempt Heavy Logging Equipment (1987 Act 399, create s. 77.54(39), effective April 1, 1989.)

The following are exempt from Wisconsin sales and use taxes: off-highway heavy mechanical equipment such as feller bunchers, slashers, delimiters, chippers, hydraulic loaders, loaders, skidder-forwarders,

skidders, timber wagons and tractors used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the logging business. "Heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

12. Change Procedure for Remitting Sales/Use Tax for Sales of Motor Vehicles, etc. (1987 Act 141, amend s. 77.785(2), effective May 1, 1988.)

Dealers of boats, all-terrain vehicles, trailers, semi-trailers, aircraft, motor vehicles, mobile homes not exceeding 45 feet in length, and snowmobiles must collect the county use taxes on sales of such items which will be customarily kept in a county that has adopted a county sales and use tax ordinance. The dealer will remit those taxes to the Department of Revenue along with the state sales and use taxes. Prior to this law change, dealers remitted the county use taxes on sales of such items to the state agency that registers or titles that property at the time of registration or titling.

13. Requirement for Proper Proceedings in Sales Tax Officer Liability Cases Removed (1987 Act 399, amend s. 77.60(9), effective May 17, 1988.)

Proper proceedings against a corporation are not necessary before pursuing a responsible officer or employe of the corporation if it can be shown that the corporation is unable to pay its sales and use tax liability.

14. Refund Sales Tax to Consumer Upon Return of Motor Vehicle to Manufacturer Under "Lemon Law" (1987 Act 323, create s. 218.015(2)(f), effective April 28, 1988.)

The law governing repair, replacement, and refund under a new motor vehicle warranty, commonly called the "lemon law," allows a consumer to return a motor vehicle to its manufacturer for a refund of all or a portion of the purchase price if the motor vehicle has certain conditions or defects which remain after a reasonable attempt to repair the motor vehicle. The "lemon law" allows a consumer to recover the sales tax from the manufacturer for a contract to purchase entered into on or after April 22, 1986.

Under this new provision, the department will refund sales tax directly to certain customers, based on the amount of the refund of the purchase price of a new motor vehicle actually received by the consumer, if all of the following apply:

- a. The consumer did not receive a refund of the sales tax from the manufacturer.
- b. The contract to purchase the motor vehicle when new, was entered into on or before April 21, 1986, and the motor vehicle was bought new on or after November 3, 1983.
- c. The consumer applies for a refund with the Department of Revenue and provides evidence to substantiate the claim.