



# Wisconsin TAX BULLETIN

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Number 120

June 2000

## New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This issue of the *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, sales/use, withholding, and excise tax provisions. These provisions are contained in 1999 Acts 44, 54, 65, 89, 122, 163, 167, 189, 194, and 198.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

Wisconsin Tax Bulletin

*Published quarterly by*

Wisconsin Department of Revenue  
Income Sales and Excise  
Tax Division  
PO Box 8933  
Madison WI 53708-8933

*Subscriptions available from*

Wisconsin Department of  
Administration  
Document Sales  
PO Box 7840  
Madison WI 53707-7840

*Annual cost \$7.00*

## In This Issue

	Effective Date	Page
<b>A. Individual and Fiduciary Income Taxes</b>		
1. Internal Revenue Code Reference Updated for 2000 for Individuals, Estates, and Trusts	Taxable years beginning on or after January 1, 2000.	3
2. Federal Laws Enacted During 1999 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning after December 31, 1996, and before January 1, 2000, at the same time as for federal tax purposes.	3
3. Renter's and Homeowner's School Property Tax Credit Restored	Taxable years beginning on or after January 1, 2000.	3
4. Exemption for Sales Tax Rebate	April 26, 2000.	3
5. College Tuition Prepayment Program (EdVest Wisconsin) Amended	Taxable years beginning on or after January 1, 2001.	4
6. Subtraction Created for College Savings Program	Taxable years beginning on or after January 1, 2001.	4
7. Subtraction for Tuition Expense Revised	Taxable years beginning on or after January 1, 2001.	5
8. Exemption for Interest Income From Local Cultural Arts District Bonds	Taxable years beginning on or after January 1, 2000.	5

	Effective Date	Page
9. Exemption for Interest Income From Local Professional Football Stadium District Bonds	Taxable years beginning on or after January 1, 2000.	5
10. Donations to Local Professional Football Stadium District	Taxable years beginning on or after January 1, 2001.	5
<b>B. Corporation Franchise or Income Taxes</b>		
1. Internal Revenue Code References Updated for 2000 for Corporations, Tax Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Mortgage Investment Conduits, Real Estate Investment Trusts, and Financial Asset Securitization Investment Trusts	Taxable years beginning on or after January 1, 2000.	6
2. Federal Laws Enacted During 1999 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning after December 31, 1996, and before January 1, 2000, at the same time as for federal tax purposes.	6
3. Income of Local Cultural Arts District Exempt	Taxable years beginning on or after January 1, 2000.	6
4. Exemption for Interest Income From Local Cultural Arts District Bonds	Taxable years beginning on or after January 1, 2000.	7
5. Income of Local Professional Football Stadium District Exempt	Taxable years beginning on or after January 1, 2000.	7
6. Exemption for Interest Income From Local Professional Football Stadium District Bonds	Taxable years beginning on or after January 1, 2000.	7
<b>C. Sales and Use Taxes</b>		
1. Exempt Sales to Local Cultural Arts District	June 1, 2000.	7
2. Exempt Sales of One-Time License or Right to Purchase Admissions to Professional Football Games	July 1, 2000.	7
3. Allow Local Professional Football Stadium District to Impose Sales and Use Taxes	May 27, 2000.	7
<b>D. Withholding Tax</b>		
1. Withholding Required From Payments Made to Purchase Assignment of a Lottery Prize	June 2, 2000.	8
<b>E. Excise Tax</b>		
1. Small Brewers May Hold Licenses for Restaurants	May 27, 2000.	8
2. Tobacco Settlement Agreement - Department Must Promulgate Rules	May 23, 2000.	8
<b>F. Other</b>		
1. Delinquent Tax Compromise Payment Schedule Permitted	June 2, 2000.	9
2. Confidentiality Provisions Modified	May 9, 2000.	9

## A. Individual and Fiduciary Income Taxes

### 1. Internal Revenue Code Reference Updated for 2000 for Individuals, Estates, and Trusts (1999 Act 194, amend sec. 71.01(6)(n) and (7r), repeal sec. 71.01(6)(f), and create sec. 71.01(6)(o), effective for taxable years beginning on or after January 1, 2000.)

For taxable years that begin on or after January 1, 2000, “Internal Revenue Code” for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 1999, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- Section 1311 of federal Public Law 104-188 relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation’s accumulated earnings and profits does not apply for Wisconsin.
- Section 13113 of federal Public Law 103-66 relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years does not apply for Wisconsin.
- For property placed in service in taxable years beginning on or after January 1, 2000, individuals and fiduciaries may compute depreciation or amortization under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1999, at the taxpayer’s option.

### 2. Federal Laws Enacted During 1999 Apply Simultaneously for Wisconsin Purposes (1999 Act 194, amend sec. 71.01(6)(L), (m), and (n), effective for taxable years beginning after December 31, 1996, and before January 1, 2000, at the same time as for federal tax purposes.)

The following federal laws enacted during 1999 apply for Wisconsin income tax purposes at the same time as for federal purposes:

- The Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106-36), enacted June 25, 1999.
- The Tax Relief Extension Act of 1999 (Public Law 106-170), enacted December 17, 1999.

For example, Public Law 106-170 extended the exclusion for up to \$5,250 of benefits received from an employer’s educational assistance plan to apply for courses beginning on or after June 1, 2000. This provision first affected certain 1999 returns filed on a fiscal-year basis. This extension of educational assistance plan benefits also applies for Wisconsin purposes at the same time as for federal purposes.

### 3. Renter’s and Homeowner’s School Property Tax Credit Restored (1999 Act 198, amend sec. 71.07(9)(b)1 and 4, as affected by 1999 Act 10, and create sec. 71.07(9)(b)5, effective for taxable years beginning on or after January 1, 2000.)

The renter’s and homeowner’s school property tax credit is restored for taxable years beginning on or after January 1, 2000. (The credit was not available for taxable years beginning in 1999.)

The credit is equal to 12% of the first \$2,500 of property taxes or rent constituting property taxes paid during the taxable year or, for a married person filing a separate return, 12% of the first \$1,250 of property taxes or rent constituting property taxes.

The maximum credit is \$300 (\$150 if married filing a separate return).

### 4. Exemption for Sales Tax Rebate (1999 Act 54, create sec. 71.05(1)(d), effective April 26, 2000.)

The Wisconsin sales tax rebate is exempt from Wisconsin income tax. A subtraction from federal adjusted gross income may be claimed when computing Wisconsin taxable income for the amount of sales tax rebate that is included in federal adjusted gross income.

**(Note:** Although it is not expected that the sales tax rebate will be includable in federal adjusted gross income, if the Internal Revenue Service were to decide that the rebate must be included

in federal adjusted gross income, this subtraction is available so that the rebate will not be taxable for Wisconsin.)

- 5. College Tuition Prepayment Program (Ed-Vest Wisconsin) Amended** (1999 Act 44, amend sec. 71.05(6)(b)23, as affected by 1999 Act 9, and create sec. 71.05(6)(b)33, effective for taxable years beginning on or after January 1, 2001.)

Under prior law, to the extent included in federal adjusted gross income, a subtraction from federal adjusted gross income when computing Wisconsin taxable income was provided for any increase in value of a tuition unit purchased under a tuition contract under the College Tuition Prepayment Program (renamed the College Tuition and Expenses Program by Act 44).

Act 44 provides that amounts paid into the College Tuition and Expenses Program may also be subtracted from federal adjusted gross income when computing Wisconsin taxable income. The subtraction may not be more than \$3,000 per beneficiary each year. The beneficiary of the account must be either the claimant or the claimant's child who is claimed as a dependent.

For a claimant who is a nonresident or part-year resident of Wisconsin, the amount that may be subtracted for amounts paid into the College Tuition and Expenses Program is limited by a fraction. The numerator of the fraction is the claimant's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by Wisconsin, and the denominator is the claimant's total wages, salary, tips, unearned income and net earnings from a trade or business. For married persons filing separately, "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse. For married persons filing jointly, "wages, salary, tips, unearned income and net earnings from a trade or business" means the total wages, salary, tips, unearned income and net earnings from a trade or business of both spouses.

The subtraction for any claimant (full-year resident, part-year resident, or nonresident) may not be more than the claimant's aggregate wages,

salary, tips, unearned income and net earnings from a trade or business that are taxable by Wisconsin.

Act 44 also provides that the subtraction for the increase in value of a tuition unit may not be claimed by any individual who receives a refund under the College Tuition and Expenses Program due to a termination of the contract.

- 6. Subtraction Created for College Savings Program** (1999 Act 44, create sec. 71.05(6)(b)31 and 32., effective for taxable years beginning on or after January 1, 2001.)

Act 44 creates a College Savings Program and provides a subtraction from federal adjusted gross income when computing Wisconsin taxable income for the amount paid into a College Savings Program account. The subtraction may not be more than \$3,000 per beneficiary each year. The beneficiary of the account must be either the claimant or the claimant's child who is claimed as a dependent.

For a claimant who is a nonresident or part-year resident of Wisconsin, the amount that may be subtracted for amounts paid into a College Savings Program account is limited by a fraction. The numerator of the fraction is the claimant's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by Wisconsin, and the denominator is the claimant's total wages, salary, tips, unearned income and net earnings from a trade or business. For married persons filing separately, "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse. For married persons filing jointly, "wages, salary, tips, unearned income and net earnings from a trade or business" means the total wages, salary, tips, unearned income and net earnings from a trade or business of both spouses.

The subtraction for any claimant (full-year resident, part-year resident, or nonresident) may not be more than the claimant's aggregate wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by Wisconsin.

Act 44 also provides that to the extent included in federal adjusted gross income, a subtraction from federal adjusted gross income when computing Wisconsin taxable income is allowed for any increase in the value of a College Savings Program account, except that the subtraction may not be claimed by an individual who has made a nonqualified withdrawal.

**7. Subtraction for Tuition Expense Revised** (1999 Act 44, create sec. 71.05(6)(b)28.h, effective for taxable years beginning on or after January 1, 2001.)

A subtraction for an amount paid for tuition expenses may not be claimed if the source of the tuition payment is an amount withdrawn from the College Tuition and Expenses Program (see Item 5 ) or a College Savings Program account (see Item 6) and a subtraction relating to the amount withdrawn was previously claimed.

**8. Exemption for Interest Income From Local Cultural Arts District Bonds** (1999 Act 65, create sec. 71.05(1)(c)6, effective for taxable years beginning on or after January 1, 2000.)

Interest income from bonds and notes issued by a local cultural arts district created under subchapter V of chapter 229 of the Wisconsin Statutes is exempt from Wisconsin income tax.

**9. Exemption for Interest Income From Local Professional Football Stadium District Bonds** (1999 Act 167, create sec. 71.05(1)(c)5, effective for taxable years beginning on or after January 1, 2000.)

Interest income from bonds and notes issued by a local professional football stadium district created under subchapter IV of chapter 229 of the Wisconsin Statutes is exempt from Wisconsin income tax.

**10. Donations to Local Professional Football Stadium District** (1999 Act 167, create sec. 71.10(5e), effective for taxable years beginning on or after January 1, 2001.)

Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due

that individual as a football donation. "Football donation" means a designation the net proceeds of which shall be used for maintenance and operating costs of a football stadium under sec. 229.821(6), Wis. Stats.

If the individual owes any tax, the individual shall remit in full the tax due and the amount designated on the return as a football donation when the individual files a tax return. If an individual who owes taxes fails to remit an amount equal to or in excess of the total actual tax due (after any error correction) and the amount designated on the return as a football donation:

- (a) The department will reduce the amount designated to reflect the amount remitted in excess of the actual tax due (after any error correction).
- (b) If the amount remitted with the return does not exceed the tax due (after any error correction), the designation is void.

If the individual still has a refund after applying the refund to any delinquency owing the department and to any offset (pursuant to secs. 71.75(9) and 71.80(3), Wis. Stats.), the department will deduct the amount designated on the return as a football donation from the amount of the refund. If an individual is owed a refund that does not equal or exceed the amount designated on the return as a football donation (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the football donation to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the football donation, the designation is void.

Amounts designated for football donations are not subject to refund unless the taxpayer submits information to the satisfaction of the department within 18 months after the date on which taxes are due or the date on which the return is filed, whichever is later, that the amount designated is clearly in error.

A place must be provided on the individual income tax return for the football donation. The place on the return must be highlighted by a symbol chosen by the department that relates to a football stadium.

## B. Corporation Franchise or Income Taxes

### 1. Internal Revenue Code References Updated for 2000 for Corporations, Tax Option (S) Corporations, Insurance Companies, Non-profit Organizations, Regulated Investment Companies, Real Estate Mortgage Investment Conduits, Real Estate Investment Trusts, and Financial Asset Securitization Investment Trusts (1999 Act 194, repeal secs. 71.22(4)(f) and (4m)(d), 71.26(2)(b)6, 71.34(1g)(f), and 71.42(2)(e), amend secs. 71.22(4)(n) and (4m)(L), 71.26(2)(b)14 and (3)(y), 71.34(1g)(n), 71.365(1m), 71.42(2)(m), and 71.45(2)(a)13, and create secs. 71.22(4)(o) and (4m)(m), 71.26(2)(b)15, 71.34(1g)(o), and 71.42(2)(n), effective for taxable years beginning on or after January 1, 2000.)

For taxable years that begin on or after January 1, 2000, “Internal Revenue Code” for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), real estate investment trusts (REITs), and financial asset securitization investment trusts (FASITs) means the federal Internal Revenue Code as amended to December 31, 1999, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

(a) For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 2000, depreciation or amortization may be computed under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1999, at the taxpayer’s option.

(b) For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.

(c) For tax-option (S) corporations, section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation’s accumulated earnings and profits, is excluded.

(d) For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.

(e) For insurance companies, IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses, is excluded.

(f) For RICs, REMICs, REITs, and FASITs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.

### 2. Federal Laws Enacted During 1999 Apply Simultaneously for Wisconsin Purposes (1999 Act 194, amend secs. 71.22(4)(L), (m), and (n), 71.22(4m)(j), (k), and (L), 71.26(2)(b)12,13, and 14, 71.34(1g)(L), (m), and (n), and 71.42(2)(k), (L), and (m), effective for taxable years beginning after December 31, 1996, and before January 1, 2000, at the same time as for federal tax purposes.)

The changes made to the Internal Revenue Code by the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106-36) and the Tax Relief Extension Act of 1999 (Public Law 106-170) apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes.

- 3. Income of Local Cultural Arts District Exempt** (1999 Act 65, amend sec. 71.26(1)(bm), effective for taxable years beginning on or after January 1, 2000.)

The income of a local cultural arts district created under subchapter V of chapter 229 of the Wisconsin Statutes is exempt from Wisconsin franchise and income taxation

- 4. Exemption for Interest Income From Local Cultural Arts District Bonds** (1999 Act 65, amend secs. 71.26(1m)(g), 71.36(1m), and 71.45(1t)(g), effective for taxable years beginning on or after January 1, 2000.)

Interest income received on bonds issued by a local cultural arts district created under subchapter V of chapter 229 of the Wisconsin Statutes is exempt from Wisconsin income (but not franchise) tax.

- 5. Income of Local Professional Football Stadium District Exempt** (1999 Act 167, amend sec. 71.26(1)(bm), effective for taxable years beginning on or after January 1, 2000.)

The income of a local professional football stadium district created under subchapter IV of chapter 229 of the Wisconsin Statutes is exempt from Wisconsin franchise and income taxation.

- 6. Exemption for Interest Income From Local Professional Football Stadium District Bonds** (1999 Act 167, amend secs. 71.26(1m)(g), 71.36(1m), and 71.45(1t)(g), effective for taxable years beginning on or after January 1, 2000.)

Interest income received on bonds issued by a local professional football stadium district under subchapter IV of chapter 229 of the Wisconsin Statutes is exempt from Wisconsin income (but not franchise) tax.

## C. Sales and Use Taxes

- 1. Exempt Sales to Local Cultural Arts District** (1999 Act 65, create sec. 77.54(9a)(h), effective June 1, 2000.)

A sales and use tax exemption is provided for the gross receipts from sales to, and the storage by, use by, or other consumption of tangible per-

sonal property and taxable services by a local cultural arts district created under subchapter V of chapter 229 of the Wisconsin Statutes.

- 2. Exempt Sales of One-Time License or Right to Purchase Admissions to Professional Football Games** (1999 Act 167, create sec. 77.54(45), effective July 1, 2000.)

A sales and use tax exemption is created for sales of a one-time license or similar right to purchase admissions to professional football games at a football stadium, as defined in sec. 229.821(6), Wis. Stats., with the following conditions:

- The license or right to purchase must be granted by a municipality, a local professional football stadium district, or a professional football team or related party, as defined in sec. 229.821(12), Wis. Stats.
- The person who purchases the license or right must be entitled, at the time of license or right transfer, to purchase admission to at least three professional football games in Wisconsin during one football season.

The exemption expires for sales of licenses or rights after December 31, 2003.

- 3. Allow Local Professional Football Stadium District to Impose Sales and Use Taxes** (1999 Act 167, renumber sec. 77.707 to 77.707(1), amend secs. 77.705(title), 77.71, and 77.76(3m) and (4), and create secs. 77.706, 77.707(2), and 77.76(3p), effective May 27, 2000.)

A local professional football stadium district (District) may adopt a resolution to impose a 0.5% sales and use tax (football stadium tax) on sales of tangible personal property or taxable services, and the storage, use, or consumption of tangible personal property or taxable services, in the District's jurisdiction.

The District's jurisdiction is any county with a population at the date of the District's creation of more than 150,000 that includes the principal site of a stadium that is home to a professional football team, that is a member of a league of professional football teams that have home stadiums in at least 10 states and a collective average attendance for all league members of at

least 40,000 persons per game over the 5 years immediately preceding the year in which the District is created, and that is approved by that league for use as a home stadium for that professional football team.

The imposition of the tax becomes effective on the first day of the month that begins at least 30 days after the certification of the approval of the resolution by the electors in the District's jurisdiction under sec. 229.824(15), Wis. Stats. For example, if a District adopts a resolution to impose the football stadium tax in Brown County and county residents vote at a referendum held on September 12, 2000, to approve the resolution, the football stadium tax will be effective on November 1, 2000.

The types of tangible personal property and services that are subject to the 5% state sales and use tax are also subject to the 0.5% football stadium sales and use tax. The football stadium tax will not be imposed on any types of property or services that are not subject to the 5% state tax. If property or services are exempt from the 5% state tax, they are also exempt from the 0.5% football stadium tax.

The Department of Revenue (DOR) is responsible for administering the District's tax. DOR has the authority to conduct audits, make assessments, issue refunds, and impose interest and penalties. DOR will distribute to the district 98.5% of the football stadium taxes reported, increased or decreased for refunds and other adjustments.

#### D. Withholding Tax

##### 1. Withholding Required From Payments Made to Purchase Assignment of a Lottery Prize (1999 Act 194, create sec. 71.67(5m), effective June 2, 2000.)

A person that purchases an assignment of a lottery prize shall withhold from the amount of any payment made to purchase the assignment the amount that is determined by multiplying the amount of the payment by the highest tax rate applicable to single individuals under sec. 71.06, Wis. Stats. (under current law, the highest rate is 6.75%). The deposit and reporting requirements prescribed by sec. 71.67(5)(b), (c), and (d), Wis.

Stats. (1997-98), with respect to amounts withheld from pari-mutuel wager winnings also apply to amounts withheld from payments made to purchase an assignment of a lottery prize.

#### E. Excise Tax

##### 1. Small Brewers May Hold Licenses for Restaurants (1999 Act 163, renumber and amend sec. 125.31(1), amend secs. 125.28(2)(b)1.b and c and 125.31(3)(b), and create secs. 125.02(1m) and 125.31(1)(a)1 and 3, effective May 27, 2000.)

Small brewers may hold Class "B" licenses authorizing beer sales for up to four restaurants, in addition to the two licenses permitted for the brewery premises and for one other property owned by the brewery or a subsidiary or affiliate corporation or limited liability company. For each restaurant, the sale of alcohol beverages must account for less than 50% of its gross receipts, it must purchase the beer of the small brewery from an unrelated wholesaler, and it must also sell beer manufactured by other brewers. A "small brewer" is defined as one that produces less than 4,000 barrels (124,000 gallons) of beer annually.

##### 2. Tobacco Settlement Agreement – Department Must Promulgate Rules. (1999 Act 122, create sec. 895.10(4) and a nonstatutory provision, effective May 23, 2000.)

Act 122 enacts model legislation that affects tobacco product manufacturers that did not originally join in the "master settlement agreement" of November 23, 1998. That agreement resulted from lawsuits brought against the major U.S. tobacco product manufacturers. A tobacco product manufacturer that sells cigarettes in Wisconsin is given the choice of joining in the master settlement agreement or placing money into an escrow fund each year, based on the number of cigarettes sold in the previous year. The number of cigarettes sold is measured by the excise taxes collected by Wisconsin.

The department is required to promulgate administrative rules as necessary to ascertain the amount of Wisconsin excise tax paid each year on the cigarettes of each tobacco product manufacturer that elects to place money into an



escrow fund. The department may adopt an emergency rule without providing evidence that an emergency exists, as is normally required for an emergency rule. The department is also required to submit a proposed permanent rule to the Legislative Council by September 1, 2000.

## F. Other

### 1. **Delinquent Tax Compromise Payment Schedule Permitted** (1999 Act 189, amend sec. 71.92(3), effective June 2, 2000.)

A taxpayer who is unable to pay delinquent income or franchise taxes, costs, penalties, and interest may petition the department to compromise the amount due. The department may enter an order for a reduced amount, and the reduced amount must be paid within ten days of the date the order is entered if paid in a lump sum, or in accordance with a payment schedule that is setup by the department. Upon full payment of the compromised amount, the department shall credit off the unpaid amount but may later order the payment in full if, within three years of the

final compromised payment, it ascertains that the taxpayer is able to make full payment.

Under prior law, the compromised amount was required to be paid in full within ten days of the date the compromise order was entered. There was no provision to permit a payment schedule.

### 2. **Confidentiality Provisions Modified** (1999 Act 89, create sec. 71.78(4)(q) and amend sec. 71.78(5), effective May 9, 2000.)

Employees of the Wisconsin Department of Corrections who are involved in the administration of the sex offender registry under sec. 301.45, Wis. Stats., are granted limited access to information from and copies of income, franchise, withholding, fiduciary, partnership, limited liability company, estate, fuel, beverage, cigarette, and tobacco products tax returns, dry cleaning fee returns, and tax credit claims. Such access must be for the purpose of verifying information provided by a person required to register as a sex offender.