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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 tax, corporation franchise or income tax, sales and use tax, state rental vehicle fee, dry cleaning fee, excise tax, and other provisions. These provisions are contained in 2005 Act 141 and 2007 Acts 1, 11, 19, and 20.

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

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code References Updated for 2007 for Individuals, Estates, and Trusts (2007 Act 20, repeal secs. 71.01(6)(L) and (m) and 71.765, amend sec. 71.01(6)(r), and create sec. 71.01(6)(t) and (7r)(c), effective for taxable years beginning on or after January 1, 2007.)

For taxable years that begin on or after January 1, 2007, “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, 2006, with the following exceptions:

- Section 13113 of 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.
- 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.
- Sections 1, 3, 4, and 5 of Public Law 106-519, relating to the allowance of an exclusion for extraterritorial income, and section 101 of Public Law 108-357, relating to the repeal of the extraterritorial income exclusion.
- Section 162 of Public Law 106-554 and section 308 of Public Law 108-311, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Section 165 of Public Law 106-554 and section 306 of Public Law 108-311, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date.
- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.
- Section 431 of Public Law 107-16, relating to the deduction for higher education expenses.
- Section 101 of Public Law 107-147, section 201 of Public Law 108-27, and section 403(a) of Public Law 108-311, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.
- Section 201 of Public Law 108-27, relating to the 50% bonus depreciation allowance.
- Section 202 of Public Law 108-27, relating to increased section 179 expensing for small business, and section 201 of Public Law 108-357, relating to the extension of the termination date.
- Section 1201 of Public Law 108-173, relating to the creation of health savings accounts.
- Section 316 of Public Law 108-311, relating to accelerated depreciation for business property on Indian reservations.
- Section 211 of Public Law 108-357, relating to the recovery period of certain leasehold improvements and certain restaurant property.
- Section 242 of Public Law 108-357, relating to the income forecast method of depreciation.
- Section 244 of Public Law 108-357, relating to special rules for certain film and television productions.
- Section 336 of Public Law 108-357, relating to the depreciation allowance for aircraft.
- Section 337 of Public Law 108-357, relating to the modification of placed in service rule for bonus depreciation.
- Section 422 of Public Law 108-357, relating to incentives to reinvest foreign earnings in the United States.

- Section 847 of Public Law 108-357, relating to the tax treatment of certain leasing arrangements.
- Section 909 of Public Law 108-357, relating to the sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy.
- Section 910 of Public Law 108-357, relating to the expansion of the limitation on depreciation of certain passenger automobiles.
- Section 1305 of Public Law 109-58, relating to dispositions of transmission property to implement FERC restructuring policy.
- Section 1308 of Public Law 109-58, relating to electric transmission property treated as 15-year property.
- Section 1309 of Public Law 109-58, relating to expansion of amortization for certain atmospheric pollution control facilities.
- Section 1310 of Public Law 109-58, relating to special rules for nuclear decommissioning costs.
- Section 1323 of Public Law 109-58, relating to expensing for equipment used in refining of liquid fuels.
- Section 1324 of Public Law 109-58, relating to the pass through to owners of the deduction for capital costs incurred by small refiner cooperatives in complying with EPA sulfur regulations.
- Section 1325 of Public Law 109-58, relating to natural gas distribution lines treated as 15-year property.
- Section 1326 of Public Law 109-58, relating to natural gas gathering lines treated as 7-year property.
- Section 1328 of Public Law 109-58, relating to the determination of the small refiner exception to the oil depletion deduction.
- Section 1329 of Public Law 109-58, relating to amortization of geological and geophysical expenditures.
- Section 1351 of Public Law 109-58, relating to the expansion of research credit.
- Section 11146 of Public Law 109-59, relating to the tax treatment of state ownership of railroad real estate investment trust.
- Section 101 of Public Law 109-135, relating to tax benefits for the Gulf Opportunity Zone.
- Section 105 of Public Law 109-135, relating to the extension of bonus depreciation placed in service date for taxpayers affected by Hurricanes Katrina, Rita, and Wilma.
- Section 402(e) of Public Law 109-135, relating to a technical correction to sec. 1309 of the Energy Policy Act of 2005.
- Sections 403 (e), (j), and (q) of Public Law 109-135, relating to technical corrections to secs. 244, 336, and 422 of the American Jobs Creation Act of 2004.
- Section 405 of Public Law 109-135, relating to a technical correction to sec. 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003.
- Section 101 of Public Law 109-222, relating to the extension of increased sec. 179 expensing to taxable years beginning before 2010. (**Note:** For Wisconsin purposes, the increased sec. 179 expensing does apply to property used in farming by a person actively engaged in farming if the property is placed in service in taxable years beginning on or after January 1, 2008, and before 2010. For purposes of this exception, “actively engaged in farming” has the meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section 464(e)(1) of the Internal Revenue Code.)
- Section 207 of Public Law 109-222, relating to the election to amortize musical works and copyrights over a 5-year period.

- Section 209 of Public Law 109-222, relating to the treatment of below market loans to qualified continuing care facilities.
- Section 503 of Public Law 109-222, relating to the extension of the period for amortizing geological and geophysical expenditures for certain major integrated oil companies.
- Section 512 of Public Law 109-222, relating to the elimination of income limits on conversions of traditional IRAs to Roth IRAs and year to include in income.
- Section 513 of Public Law 109-222, relating to the repeal of foreign sales corporation/extraterritorial income exclusion binding-contract relief.
- Section 811 of Public Law 109-280, relating to numerous pension and IRA provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001. These provisions were set to expire in 2011 but were made permanent by Public Law 109-280.
- Section 844 of Public Law 109-280, relating to the treatment of annuity and life insurance contracts with a long-term care insurance feature.
- Public Law 109-432, Tax Relief and Health Care Act of 2006.

2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes (2007 Act 20, amend secs. 71.01(6)(n), (o), (p), (q), and (r) and create sec. 71.01(6)(s) and nonstatutory provision, effective for taxable years beginning before January 1, 2007.)

Certain changes to the Internal Revenue Code made by the following federal laws enacted in 2005 and 2006 apply for Wisconsin purposes at the same time as for federal purposes:

- Tax Treatment of Disaster Mitigation Payments (Public Law 109-7, enacted April 15, 2005).
- Energy Tax Incentives Act of 2005, excluding section 1305, relating to dispositions of transmission property, section 1308, relating to the treatment of electric transmission

property as 15-year property, section 1309, relating to the expansion of amortization for certain atmospheric pollution control facilities, section 1310, relating to modifications to special rules for nuclear decommissioning costs, section 1323, relating to expensing for equipment used in refining of liquid fuels, section 1324, relating to the pass through to owners of deduction for capital costs incurred by small refiner cooperatives in complying with EPA sulfur regulations, section 1325, relating to treating natural gas distribution lines as 15-year property, section 1326, relating to treating natural gas gathering lines as 7-year property, section 1328, relating to the small refiner exception to oil depletion deduction, section 1329, relating to amortization of geological and geophysical expenditures, section 1348, relating to the sunset of the deduction for clean-fuel vehicles and certain refueling property, and section 1351, relating to the expansion of the research credit (Public Law 109-58, enacted August 8, 2005).

- Safe, Accountable, Flexible, Efficient Transportation Equity Act, excluding section 11146, relating to the tax treatment of state ownership of railroad real estate investment trust (Public Law 109-59, enacted August 10, 2005).
- Katrina Emergency Tax Relief Act of 2005, excluding section 301, relating to the temporary suspension of limitations for charitable contributions from August 28, 2005 through December 31, 2005 (Public Law 109-73, enacted September 23, 2005).
- Gulf Opportunity Zone Act of 2005, excluding section 101, relating to tax benefits for the Gulf Opportunity Zone, section 105, relating to the extension of bonus depreciation placed in service date for taxpayers affected by Hurricanes Katrina, Rita, and Wilma, section 201(a) as it relates to sec. 1400S(a), relating to suspension of limitations on charitable contributions paid August 28, 2005 through December 31, 2005, section 402(e), relating to a technical correction to sec. 1309 of the Energy Policy Act of 2005, section 403(e), (j), and (q), relating to technical corrections to secs. 244, 336, and 422 of the American Jobs Creation Act of 2004, section

405, relating to a technical correction to sec. 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 109-135, enacted December 21, 2005).

- One-Year Extension for Provisions Requiring Parity in the Application of Certain Limits to Mental Health Benefits (Public Law 109-151, enacted December 30, 2005).
- Tax Increase Prevention and Reconciliation Act of 2005, excluding section 207, relating to the election to amortize musical works and copyrights over a 5-year period, section 209, relating to the treatment of below market loans to qualified continuing care facilities, section 503, relating to the extension from 2 to 5 years of the period for amortizing geological and geophysical expenditures for certain major integrated oil companies, and section 513, relating to the repeal of foreign sales corporation/extraterritorial income exclusion binding-contract relief (Public Law 109-222, enacted May 17, 2006).
- Heroes Earned Retirement Opportunities Act (Public Law 109-227, enacted May 29, 2006).
- Pension Protection Act of 2006, excluding section 844, relating to the treatment of annuity and life insurance contracts with a long-term care insurance feature (Public Law 109-280, enacted August 17, 2006).

3. Disclosure of Reportable Transactions Required (2007 Act 20, create sec. 71.81, various effective dates.)

See Item B3.

4. Tax Avoidance Transactions Voluntary Compliance Program (2007 Act 20, create sec. 71.805, effective January 1, 2008 through May 31, 2008.)

See Item B4.

5. Exemptions to Withholding for Nonresident Members of Pass-Through Entities (2007 Act 20, amend secs. 71.775(3)(a)2., (4)(b)2., and (4)(d) and (f), and create sec. 71.775(3)(a)3., ef-

fective retroactively for taxable years beginning on or after January 1, 2006.)

See Item B5.

6. Tuition Subtraction Revised (2007 Act 20, amend sec. 71.05(6)(b)28.(intro.), a. through f. and h. and create sec. 71.05(6)(b)28.am., various effective dates.)

For taxable years beginning on or after January 1, 2007, the Wisconsin subtraction for tuition expenses is expanded to include the cost of mandatory student fees.

For taxable years beginning before January 1, 2009, the maximum subtraction for tuition and mandatory student fees is equal to not more than twice the average amount charged by the Board of Regents of the University of Wisconsin System at 4-year institutions for resident undergraduate academic fees for the most recent fall semester, as determined by the Board of Regents by September 1 of that semester.

For taxable years beginning on or after January 1, 2009, the maximum subtraction is equal to the amount paid for tuition and mandatory student fees, but not more than the greater of \$6,000 per student or twice the average amount charged by the Board of Regents as explained above.

For taxable years beginning on or after January 1, 2007, the subtraction for tuition and mandatory student fees may not be claimed if the source of the payment is an amount withdrawn from a Wisconsin college savings account or college tuition and expenses program (EdVest or Tomorrow's Scholar) and the owner of the account has claimed a subtraction for contributions to such account or program.

7. Situs of Income for Nonresidents Revised to Include Covenant Not to Compete (2007 Act 20, amend secs. 71.02(1) and 71.04(1)(a), effective for taxable years beginning on or after January 1, 2007.)

Income derived by a nonresident individual from a covenant not to compete is taxable by Wisconsin to the extent that the covenant was based on a Wisconsin-based activity.

- 8. ATV Incentive Payments** (2007 Act 20, renumber sec. 71.45(12) to 71.45(1)(intro.) and amend as renumbered, amend sec. 71.43(1) and (2), and create secs. 71.05(6)(b)44., 71.26(1)(g), and 71.45(1)(b), effective for taxable years beginning on or after January 1, 2007.)

To the extent included in federal adjusted gross income, a subtraction is allowed for the amount of any incentive payment received by an individual under sec. 23.33(5r), Wis. Stats., for permitting public all-terrain vehicle corridors on their land.

- 9. Dairy Manufacturing Facility Investment Credit Created** (2007 Act 20, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.10(4i), and 77.92(4) and create sec. 71.07(3p), effective for taxable years beginning after December 1, 2006, and before January 1, 2015.)

See Item B7.

- 10. Enterprise Zone Jobs Credit Revised** (2007 Act 20, repeal sec. 71.07(3w)(bm)3., consolidate sec. 71.07(3w)(bm)(intro.) and 4. and renumber to 71.07(3w)(bm) and amend as renumbered, amend sec. 71.07(3w)(a)6., (b)1.a. and b. and 2., 3., and 4. and (d), and create sec. 71.07(3w)(a)5m., effective for taxable years beginning on or after July 1, 2007.)

See Item B8.

- 11. Early Stage Seed Investment Credit Revised** (2007 Act 20, renumber sec. 71.07(5b)(d) to 71.07(5b)(d)1., amend secs. 71.05(6)(a)15., 71.07(5b)(c)1., 77.92(4), and 560.205(3)(d), and create sec. 71.07(5b)(d)2., various effective dates.)

See Item B9.

- 12. Development Zones Credit Revised** (2007 Act 20, amend sec. 71.07(2dx)(a)5. and (b)2., 3., 4., and 5., effective October 27, 2007.)

See Item B10.

- 13. Angel Investment Credit Revised** (2007 Act 20, amend secs. 71.05(6)(a)15., 71.07(5d)(c)1. and 2., and 560.205(3)(d) and create secs. 71.07(5d)(d)4. and 73.03(63), various effective dates.)

Effective for taxable years beginning on or after January 1, 2007:

The Wisconsin adjusted basis of any investment for which the angel investment credit is claimed shall be reduced by the amount of the credit that is offset against Wisconsin income taxes.

The computed angel investment credit is no longer included in the income of the claimant.

Effective for calendar years beginning after December 31, 2007:

The Department of Commerce, in consultation with the Department of Revenue, shall promulgate rules to:

- Provide that no person may receive a credit unless the person's investment is kept with a certified fund manager for no less than three years, and
- Provide that the aggregate amount of tax credits that may be claimed for investments in certified businesses is \$5,500,000 per calendar year.

Effective October 27, 2007:

The maximum amount of a claimant's investment that may be used as the basis for a credit is increased from \$500,000 to \$2,000,000 for each investment made directly in a certified business. The maximum amount of angel investment credit that may be claimed by all claimants is increased from \$30,000,000 to \$47,500,000.

The department has the power and authority to, in consultation with the Department of Commerce, carry forward to subsequent taxable years unclaimed credit amounts of the angel investment credit. Annually, no later than July 1, the Department of Commerce shall submit to the Department of Revenue its recommendations for the carry forward of credit amounts.

- 14. Medical Care Insurance Subtraction Expanded** (2007 Act 20, amend sec. 71.07(5)(a)15. and create sec. 71.05(6)(b)39., 40., 41., and 42., various effective dates.)

For taxable years beginning after December 31, 2007, and before January 1, 2009, an individual

who is employed, and whose employer pays a portion of the cost of the individual's medical care insurance, may be able to claim a subtraction for a portion of the amount paid by the individual for medical care insurance.

“Medical care insurance” means a medical care insurance policy that covers the individual, his or her spouse, and the individual's dependents and provides surgical, medical, hospital, major medical, or other health service coverage. It includes payments made for medical care benefits under a self-insured plan, but does not include hospital indemnity policies or policies with ancillary benefits such as accident benefits or benefits for loss of income resulting from a total or partial inability to work because of illness, sickness, or injury.

The amount of the subtraction is calculated as follows:

- (a) Multiply the amount paid by the individual for medical care insurance by 10%.
- (b) From the amount calculated in (a), subtract the amounts deducted from gross income for medical care insurance in the calculation of federal adjusted gross income.
- (c) A nonresident or part-year resident of Wisconsin must multiply the amount calculated in (a) or (b) by a fraction, the numerator of which is the individual's wages, salary, tips, unearned income, and net earnings from a trade or business taxable by Wisconsin, and the denominator of which is the individual'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, it means the total wages, salary, tips, unearned income, and net earnings from a trade or business of both spouses.
- (d) Reduce the amount calculated in (a), (b), or (c) to the individual's aggregate wages, salary, tips, unearned income, and net earnings from a trade or business taxable by Wisconsin.

The percentages that may be used in Step (a) for taxable years beginning after December 1, 2008, are as follows:

- Taxable years beginning in 2009 – 25%
- Taxable years beginning in 2010 – 45%
- Taxable years beginning in 2011 and thereafter – 100%

The amount of medical care insurance claimed as a subtraction cannot be used in the computation of the Wisconsin itemized deduction credit.

15. Addition Modification Created for Unlawful Discrimination Claims (2007 Act 20, create sec. 71.05(6)(a)23., effective for taxable years beginning on or after January 1, 2008.)

When determining Wisconsin adjusted gross income, nonresidents and part-year residents of Wisconsin must add to federal adjusted gross income any amount deducted on the federal return for attorney fees or court costs involving an unlawful discrimination claim if the judgment or settlement resulting from the claim is not taxable by Wisconsin.

16. Film Production Company Investment Credit Revised (2007 Act 20, amend sec. 71.07(5h)(a)4. and (c)2. and 3., effective October 27, 2007.)

See Item B11.

17. Addition Modification Created for Domestic Production Activities Deduction (2007 Act 20, create sec. 71.05(6)(a)21. and 22., effective for taxable years beginning on or after January 1, 2008.)

For nonresidents and part-year residents of Wisconsin, the amount of the federal domestic production activities deduction must be added to federal adjusted gross income when determining Wisconsin adjusted gross income if the domestic production activities income is not attributable to a trade or business that is taxable by Wisconsin.

If any portion of the domestic production activities deduction was attributable to a trade or business that is taxable by Wisconsin, the amount that must be added to federal adjusted

gross income is the amount deducted for federal income tax purposes and in excess of the domestic production activities deduction multiplied by a fraction, the numerator of which is the individual's net earnings from the trade or business that is taxable by this state and the denominator of which is the individual's total net earnings from the trade or business to which the deduction applies.

18. Ethanol and Biodiesel Fuel Pump Credit

(2007 Act 20, amend secs. 71.05(6)(a)15. and 77.92(4) and create secs. 71.07(5j) and 71.10(4)(gc), effective for taxable years beginning after December 31, 2007, and before January 1, 2018.)

See Item B12.

19. Exempt Certain Retirement Income

(2007 Act 20, amend secs. 71.05(1)(am) and (an), 71.05(6)(b)4., and 71.83(1)(a)6., and create sec. 71.05(1)(ae), effective for taxable years beginning on or after January 1, 2009.)

Up to \$5,000 of payments or distributions received each year by an individual from a qualified retirement plan under the Internal Revenue Code or from an individual retirement account established under 26 USC 408 is exempt if all of the following apply:

- The individual is at least 65 years of age before the close of the taxable year to which the claim relates.
- If the individual is single or files as head of household, his or her federal adjusted gross income in the year to which the claim relates is less than \$15,000.
- If the individual is married and files a joint return, the couple's federal adjusted gross income in the year to which the claim relates is less than \$30,000.
- If the individual is married and files a separate return, the sum of both spouses' federal adjusted gross income in the year to which the claim relates is less than \$30,000.

Retirement payments exempt from Wisconsin income tax are not subject to penalties on retirement plans.

20. Subtraction Provided for Child and Dependent Care Expenses

(2007 Act 20, create sec. 71.05(6)(b)43., various effective dates.)

Persons who claim the federal credit for child and dependent care expenses may claim a subtraction when computing Wisconsin adjusted gross income for the amount of employment related expenses claimed when computing the federal credit up to the following amounts:

- For taxable years beginning in 2009 – up to \$750 if the claimant has one qualified individual and up to \$1,500 if the claimant has more than one qualified individual.
- For taxable years beginning in 2010 – up to \$1,500 if the claimant has one qualified individual and up to \$3,000 if the claimant has more than one qualified individual.
- For taxable years beginning in 2011 – up to \$2,250 if the claimant has one qualified individual and up to \$4,500 if the claimant has more than one qualified individual.
- For taxable years beginning in 2012 and thereafter – up to \$3,000 if the claimant has one qualified individual and up to \$6,000 if the claimant has more than one qualified individual.

An individual who is a nonresident or part-year resident of Wisconsin who claims the subtraction shall multiply the amount calculated by a fraction, the numerator of which is the individual's wages, salary, tips, unearned income, and net earnings from a trade or business that are taxable by Wisconsin, and the denominator of which is the individual'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.

In order to claim the subtraction, married couples must file a joint return. There is an exception for certain married individuals living apart. The subtraction may be claimed by an individual who is married and files a separate return if such individual (1) maintains as his/her home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, (2) furnishes over half of the cost of maintaining such household during the taxable year, and (3) during the last six months of such taxable year such individual's spouse is not a member of such household.

21. Interest on Bonds Issued for Certain Wisconsin Health and Educational Facilities (2007 Act 20, create sec. 71.05(1)(c)8., effective for taxable years beginning on or after January 1, 2009.)

Interest received on bonds or notes issued on or after October 27, 2007, by the Wisconsin Health and Educational Facilities Authority to fund the acquisition of information technology hardware or software is exempt from Wisconsin income tax. The exemption applies for taxable years beginning on or after January 1, 2009.

22. Veterans and Surviving Spouses Property Tax Credit Revised (2007 Act 20, amend sec. 71.07(6e)(a)2.a., b. and c., 3.(intro.), b. and d. and create sec. 71.07(6e)(a)3e., effective for taxable years beginning on or after January 1, 2009.)

The definitions of an "eligible unremarried surviving spouse" and an "eligible veteran" are expanded to include an individual or the surviving spouse of an individual who had been a resident of Wisconsin for any consecutive 5-year period after entry into active duty.

To qualify for the credit, a veteran must have either a service-connected disability rating of 100 percent under 38 USC 1114 or 1134 or a 100 percent disability rating based on individual unemployability.

"Individual unemployability" means a condition under which a veteran has a service-connected disability rating of either 60 percent under 38 USC 1114 or 1134 or two or more service-connected disability conditions where one condition has at least a 40 percent scheduler rating and

the combined scheduler rating for all conditions is at least 70 percent, and has an administrative adjustment added to his or her service-connected disability, due to individual unemployability, such that the federal Department of Veterans Affairs rates the veteran 100 percent disabled.

The requirement that the veteran be at least 65 years of age (or was at least 65 years of age at the time of his or her death) is eliminated.

23. Community Rehabilitation Program Credit Created (2007 Act 20, amend secs. 71.05(6)(a)15. and 77.92(4) and create secs. 71.07(5k) and 71.10(4)(es), effective for taxable years beginning after July 1, 2009.)

See Item B15.

24. Electronic Medical Records Credit (2007 Act 20, amend secs. 71.05(6)(a)15. and 77.92(4) and create secs. 71.07(5i), 71.10(4)(gxx), and 560.204, effective for taxable years beginning after December 31, 2009.)

See Item B16.

25. Biodiesel Fuel Production Credit (2007 Act 20, amend secs. 71.05(6)(a)15. and 77.92(4) and create secs. 71.07(3h) and 71.10(4)(cn), effective for taxable years beginning on or after January 1, 2010, and before January 1, 2013.)

See Item B17.

26. Symbol Requirements Revised (2007 Act 20, amend sec. 71.10(5)(g) and (5e)(g), effective October 27, 2007.)

Only forms printed by the Department of Revenue are required to include symbols that relate to the designations for endangered resources and local professional football stadium district donations.

27. Terms Related to Mobile Homes and Parking Permit Fees Revised (2007 Act 11, amend sec. 71.07(6e)(a)5. and (9)(a)3. and 4., effective January 1, 2008.)

For purposes of the school property tax credit, the term "manufactured home" is inserted in the statutes where only the term "mobile home" is used.

For purposes of the veterans and surviving spouses property tax credit and the school property tax credit, the term “parking,” wherever it appears in the phrase “parking permit fees,” is replaced with the term “municipal.”

B. Corporation Franchise or Income Taxes

- 1. Internal Revenue Code References Updated for 2007 for Corporations, Tax-Option (S) Corporations, Insurance Companies, and Nonprofit Organizations** (2007 Act 20, repeal secs. 71.22(4)(L) and (m), 71.22(4m)(j) and (k), 71.34(1g)(L) and (m), 71.42(2)(k) and (L), 71.738(1d) and (2d), and 71.765, renumber secs. 71.22(5m) to 71.22(5m)(a) and 71.34(1m) to 71.34(1m)(a), amend secs. 71.22 (4)(r) and (4m)(p), 71.26(3)(s), 71.34(1g)(r), and 71.42(2)(q), and create secs. 71.22(4)(t), (4m)(r), and (5m)(b), 71.34(1g)(t) and (1m)(b), and 71.42(2)(s), effective for taxable years beginning on or after January 1, 2007.)

For taxable years that begin on or after January 1, 2007, “Internal Revenue Code” for corporations, tax-option (S) corporations, insurance companies, and nonprofit organizations means the federal Internal Revenue Code as amended to December 31, 2006, with the exceptions listed in Item A1.

In addition, the Internal Revenue Code is modified as follows:

- For property placed in service in taxable years beginning on or after January 1, 2001, depreciation or amortization must be computed under the federal Internal Revenue Code as amended to December 31, 2000.
- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- 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.
- For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to

an additional deduction for insurers required to discount unpaid losses.

- 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2007 Act 20, amend secs. 71.22(4)(n), (o), (p), (q), and (r), 71.22(4m)(L), (m), (n), (o), and (p), 71.34(1g)(n), (o), (p), (q), and (r), and 71.42(2)(m), (n), (o), (p), and (q), and create secs. 71.22(4)(s), 71.22(4m)(q), 71.34(1g)(s), 71.42(2)(r), and nonstatutory provision, effective for taxable years beginning before January 1, 2007.)

Certain changes to the Internal Revenue Code made by federal laws enacted in 2005 and 2006 apply for Wisconsin purposes at the same time as for federal purposes. See Item A2 for a list of these law changes.

- 3. Disclosure of Reportable Transactions Required** (2007 Act 20, create sec. 71.81, various effective dates.) **Note:** For further instructions on how to comply with this provision, see the “News” section of the Department of Revenue’s web page at www.revenue.wi.gov. The next issue of the *Wisconsin Tax Bulletin* will also have further details.

Wisconsin has adopted special disclosure requirements for transactions the Internal Revenue Service has designated as “reportable transactions” and “listed transactions,” requirements for “material advisors,” and penalties for tax shelter promotion.

Disclosures are required for certain transactions entered into on or after January 1, 2001, or prior to January 1, 2001 which reduced the taxpayer’s tax liability for taxable years beginning on or after January 1, 2001. Details of the new provisions are as follows:

Definitions

“Reportable transaction” means any transaction, plan, or arrangement, including a listed transaction, for which a taxpayer is required to submit information to the department because the taxpayer is required to disclose the transaction, plan, or arrangement for federal income tax purposes for the taxable year in which the transaction occurred, as provided under U.S. Department of Treasury regulations.

“Listed transaction” means any reportable transaction that is the same as, or substantially similar to, a transaction, plan, or arrangement specifically identified by the U.S. Secretary of the Treasury as a listed transaction for purposes of section 6011 of the Internal Revenue Code and that is specifically identified by the U.S. Secretary of the Treasury as a listed transaction on or after the date the transaction occurred.

“Material advisor” means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction and who, directly or indirectly, derives gross income from providing such aid, assistance, or advice in an amount that exceeds the threshold amount. If the tax benefits are provided primarily to an individual, the “threshold amount” is \$50,000 in the case of a reportable transaction that is **not** a listed transaction and \$10,000 in the case of a listed transaction. If the tax benefits are provided primarily to an entity and not an individual, the “threshold amount” is \$250,000 in the case of a reportable transaction that is **not** a listed transaction and \$25,000 in the case of a listed transaction.

“Tax shelter” means any entity, plan, or arrangement, if avoiding or evading federal income tax or Wisconsin income or franchise tax is a significant purpose of the entity, plan, or arrangement.

Disclosures Required of Taxpayer

For each taxable year in which a taxpayer has participated in a reportable transaction, the taxpayer shall file with the department a copy of any form required by the Internal Revenue Service for disclosing the reportable transaction for federal income tax purposes no later than 60 days after the date for which the taxpayer is required to file the form for federal income tax purposes, except that, if the taxpayer has filed a form with the Internal Revenue Service on or before October 27, 2007, the taxpayer shall file a copy of the form with the department no later than May 31, 2008. (**Note:** For taxable years beginning in 2007, the applicable federal form is Form 8886.)

This requirement applies to any reportable transaction entered into on or after January 1, 2001, or entered into prior to January 1, 2001 which reduced the taxpayer’s tax liability for taxable years beginning on or after January 1, 2001, for any taxable year for which the transaction remains undisclosed and for which the statute of limitations on assessment, including extensions, has not expired as of December 26, 2007.

The department may require that forms filed with the department under this subsection be filed separately from the Wisconsin income or franchise tax return.

Penalty for Failure to Disclose

The taxpayer’s penalty for failure to disclose, and the years for which it applies, depends on whether the reportable transaction is also a listed transaction:

- If the undisclosed reportable transaction is **not** a listed transaction, the penalty is the lesser of \$15,000 or 10 percent of the tax benefit obtained from the reportable transaction. This provision is effective for reportable transactions entered into after October 27, 2007.
- If the undisclosed reportable transaction is a listed transaction, the penalty is \$30,000. This provision is effective for listed transactions entered into on or after January 1, 2001, or entered into prior to January 1, 2001, that reduced the taxpayer’s tax liability for taxable years beginning on or after January 1, 2001, including transactions that were not listed transactions when entered into, but became listed transactions before October 27, 2007.

The Secretary of Revenue may waive or abate the taxpayer’s penalty for failure to disclose a reportable transaction that is **not** a listed transaction, if the waiver or abatement promotes compliance and effective tax administration. Notwithstanding any other law or rule, a determination by the Secretary of Revenue under this paragraph may not be reviewed in any judicial proceeding.

Penalties for Reportable Transaction Understatement

If a taxpayer has a “reportable transaction understatement,” defined below, the penalty depends on whether the reportable transaction to which the understatement relates was disclosed:

- If the transaction was disclosed, 20 percent of the reportable transaction understatement.
- If the transaction was not disclosed, 30 percent of the reportable transaction understatement.

A taxpayer who discloses reportable transactions for prior periods in an amended return filed after May 31, 2008 may be subject to an additional understatement penalty. The additional penalty depends on whether the taxpayer was contacted by the Internal Revenue Service or the department regarding the transaction:

- If the taxpayer has not been contacted by the Internal Revenue Service or the department regarding the reportable transaction, there is a penalty of 50 percent of the interest assessed under sec. 71.82, Wis. Stats., on the reportable transaction understatement.
- If the Internal Revenue Service or the department contact the taxpayer regarding the reportable transaction before the taxpayer files the amended return, there is a penalty equal to the interest assessed under sec. 71.82, Wis. Stats., on the reportable transaction understatement.

A taxpayer has a “reportable transaction understatement” if the following calculation results in a positive number:

1. Multiply the taxpayer’s highest applicable Wisconsin income or franchise tax rate by the amount of any increase in Wisconsin taxable income that results from the difference between the proper tax treatment of a reportable transaction and the taxpayer’s treatment of the transaction as shown on the taxpayer’s tax return, including any amended return the taxpayer files before the date on which the department first contacts the taxpayer regarding an examination of the taxable year for which the amended return is

filed. The amount of any increase in Wisconsin taxable income for a taxable year includes any reduction in the amount of loss available for carryforward to the subsequent year.

2. Add the amount determined in 1. to the amount of any decrease in the aggregate amount of Wisconsin income or franchise tax credits that results from the difference between the proper tax treatment of a reportable transaction and the taxpayer’s treatment of the transaction as shown on the taxpayer’s tax return.

The reportable transaction understatement penalties apply to any reportable transaction understatement resulting from a reportable transaction, including a listed transaction, entered into on or after January 1, 2001, or entered into prior to January 1, 2001, that reduced the taxpayer’s tax liability for taxable years beginning on or after January 1, 2001, for any taxable year for which the statute of limitations on assessment, including extensions, has not expired as of October 27, 2007.

The Secretary of Revenue may waive or abate the penalties for a reportable transaction understatement if the taxpayer demonstrates to the department that the taxpayer had reasonable cause to act the way the taxpayer did, and in good faith, with regard to the tax treatment for which the taxpayer is subject to the penalty and all facts relevant to the tax treatment are adequately disclosed, except that, if the taxpayer does not fully disclose such facts, the taxpayer’s penalty may be waived or abated if the taxpayer demonstrates that the taxpayer reasonably believed that the tax treatment for which the taxpayer is subject to the penalty was more likely than not the proper treatment and substantial authority exists or existed for such treatment. Notwithstanding any other law or rule, a determination by the Secretary of Revenue under this paragraph may not be reviewed in any judicial proceeding.

Extended Statute of Limitations for Undisclosed Reportable Transactions

If a taxpayer fails to disclose a reportable transaction that is **not** a listed transaction, the statute of limitations with respect to that transaction

shall expire no later than 6 years after the date on which the return for the taxable year on which the reportable transaction occurred was filed.

If the taxpayer fails to disclose a listed transaction, the statute of limitations with respect to that transaction shall expire on the latest of the following dates:

- 6 years after the date on which the return for the taxable year in which the listed transaction occurred was filed.
- 12 months after the date on which the taxpayer discloses the listed transaction.
- 12 months after the date on which the taxpayer's material advisor provides, at the department's request, a list identifying each Wisconsin taxpayer for whom the person provided services as a material advisor with respect to the reportable transaction.
- 4 years after the date on which the department discovers a listed transaction that was a listed transaction on the date the transaction occurred for which the taxpayer did not make the disclosure required by this section and the taxpayer's material advisor did not provide the list required to be maintained by this section.

These statutes of limitations may be further extended by a written agreement between the taxpayer and the department.

These provisions apply to any reportable transaction, including a listed transaction, entered into on or after January 1, 2001, or entered into prior to January 1, 2001, that reduced the taxpayer's tax liability for taxable years beginning on or after January 1, 2001.

Requirements and Penalties Related to Material Advisors

Each material advisor required to disclose a reportable transaction under section 6111 of the Internal Revenue Code shall file a copy of the disclosure with the department no later than 60 days after the date for which the material advisor is required to file the disclosure with the Internal Revenue Service, except that, if a material advisor files the disclosure with the Internal Revenue

Service on or before October 27, 2007, the material advisor shall file a copy of the disclosure with the department no later than May 31, 2008.

If a material advisor fails to make this disclosure or files a disclosure containing false or incomplete information, the material advisor is subject to a penalty of:

- \$15,000 if the disclosure relates to a reportable transaction that is **not** a listed transaction.
- \$100,000 if the disclosure relates to a listed transaction.

Each material advisor shall also maintain a list identifying each Wisconsin taxpayer for whom the person provided services as a material advisor with respect to a reportable transaction. Any material advisor required to maintain a list under this paragraph shall provide the list to the department within 20 business days after the date on which the material advisor receives a request from the department for such list and shall retain the information contained in the list for 7 years or for the period determined by the department by rule. If 2 or more material advisors are required to maintain identical lists, the department may provide that only one of the material advisors maintain the list.

If a material advisor fails to provide this list to the department, the material advisor shall pay a penalty of \$10,000 for each day that the person does not provide the list, beginning with the day that is 21 business days after the date on which the person receives the department's request.

The Secretary of Revenue may waive or abate the penalty for failure to disclose a reportable transaction that is **not** a listed transaction if the waiver or abatement promotes compliance and effective tax administration, or, with regard to the penalty for failure to provide the taxpayer list, if the person demonstrates to the department that the person's failure to provide the list in a timely manner is due to reasonable cause. Notwithstanding any other law or rule, a determination by the Secretary of Revenue under this paragraph may not be reviewed in any judicial proceeding.

For reportable transactions that are **not** listed transactions, the requirements and penalties related to material advisors apply to transactions for which a material advisor provides services after October 27, 2007.

For listed transactions, these requirements apply to transactions for which a material advisor provides services, and were entered into, on or after January 1, 2001, or were entered into prior to January 1, 2001 and that reduced the taxpayer's tax liability for taxable years beginning on or after January 1, 2001, regardless of when the transactions became listed transactions.

Penalties for Tax Shelter Promotion

Any person who organizes or assists in organizing a tax shelter, or directly or indirectly participates in the sale of any interest in a tax shelter, and who makes or provides or causes another person to make or provide, in connection with such organization or sale, a statement that the person knows or has reason to know is false or fraudulent as to any material matter regarding the allowability of any tax deduction or credit, the excludability of any income, the manipulation of any allocation or apportionment rule, or the securing of any other tax benefit resulting from holding an interest in the entity or participating in the plan or arrangement, shall pay a penalty to the department, with respect to each sale or act of organization described under this paragraph, in an amount equal to 50 percent of the person's gross income derived from the sale or act.

For purposes of administering this chapter, a written communication to any person, director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person, regarding the promotion of, or advice with respect to, the person's direct or indirect participation in any tax shelter is not considered a confidential or privileged communication.

These provisions relating to tax shelter promotion are effective October 27, 2007.

- 4. Tax Avoidance Transactions Voluntary Compliance Program** (2007 Act 20, create sec. 71.805, effective January 1, 2008 through May 31, 2008.) **Note:** For further instructions on

how to participate in this program, see the "News" section of the Department of Revenue's web page at www.revenue.wi.gov. The next issue of the *Wisconsin Tax Bulletin* will also have further details.

A taxpayer who has participated in a "tax avoidance transaction" is eligible to receive a waiver of all penalties with respect to the tax avoidance transaction, if the taxpayer files an amended return during the period of January 1, 2008 through May 31, 2008. Details of this provision are as follows:

Definitions

"Tax avoidance transaction" means a transaction, plan, or arrangement devised for the principal purpose of avoiding federal or Wisconsin income or franchise tax. "Tax avoidance transaction" includes a listed transaction as provided under U.S. Department of Treasury regulations as of October 27, 2007, and may include a transaction, as determined by the department, that provides a tax benefit for Wisconsin income or franchise tax purposes without providing a similar benefit for federal income tax purposes.

"Taxpayer" means a person who is subject to Wisconsin income or franchise taxes and who has a tax liability attributable to using a tax avoidance transaction for any taxable year beginning before January 1, 2007.

Penalty Waiver or Abatement

If a taxpayer is eligible to participate in this program and so participates, the department shall waive or abate all penalties that are applicable to the underreporting or underpayment of Wisconsin income or franchise taxes attributable to using a tax avoidance transaction for any taxable year for which the taxpayer is eligible (**Note:** This includes the additional penalties relating to "reportable transactions," which were also enacted by 2007 Act 20). The department shall not seek criminal prosecution against the taxpayer with respect to using a tax avoidance transaction for any taxable year for which the taxpayer is eligible.

Taxpayer Eligibility

A taxpayer is eligible for the benefits of this program if, during the period beginning on January 1, 2008 and ending on May 31, 2008, the taxpayer does the following:

- Files an amended Wisconsin tax return for each taxable year for which the taxpayer has previously filed a Wisconsin tax return that uses a tax avoidance transaction to underreport the taxpayer's Wisconsin income or franchise tax liability, and such return reports the total Wisconsin net income and tax for the taxable year, computed without regard to any tax avoidance transaction and without regard to any other adjustment that is unrelated to any tax avoidance transaction.
- Pays, in full, for each taxable year for which an amended return is filed, the entire amount of Wisconsin income or franchise tax and interest due that is attributable to using a tax avoidance transaction, except that the Secretary of Revenue may enter into an agreement with the taxpayer to make payments in installments. A taxpayer who does not comply with an installment agreement is ineligible to receive the benefits of this program and the total amount of tax, interest, and penalties shall be immediately due and payable.

Limitations

A taxpayer who receives the benefits of this program may not file an appeal or a claim for credit or refund with respect to the tax avoidance transactions for the taxable years for which the taxpayer participated in this program, except to the extent that a timely filed appeal or claim for a refund results from an adjustment to the taxpayer's federal income tax liability regarding such transactions.

The department may not waive or abate a penalty as provided in this voluntary compliance program if the penalty relates to an amount of Wisconsin income and franchise tax that is attributable to a tax avoidance transaction and assessed and paid prior to January 1, 2008, or after May 31, 2008.

- 5. Exemptions to Withholding for Nonresident Members of Pass-Through Entities** (2007 Act 20, amend secs. 71.775(3)(a)2., (4)(b)2., and (4)(d) and (f) and 71.83(1)(a)1. and create sec. 71.775(3)(a)3., effective retroactively for taxable years beginning on or after January 1, 2006.)

Section 71.775, Wis. Stats., as enacted by 2005 Wisconsin Act 25, requires a pass-through entity, including a partnership, limited liability company (LLC) treated as a partnership, a tax-option (S) corporation, estate, or trust that is treated as a pass-through entity for federal income tax purposes, to pay a withholding tax on a nonresident member's share of income attributable to Wisconsin. A nonresident member includes a partner, LLC member, shareholder, or beneficiary and may be an individual, corporation, trust, or another pass-through entity.

For pass-through entities subject to the withholding tax for taxable years beginning on or after January 1, 2006, a nonresident member's share of income from the pass-through entity shall not be subject to withholding if any of the following apply:

1. The member is exempt from Wisconsin income taxation. The pass-through entity may rely on a written statement from the member claiming to be exempt from taxation, if the pass-through entity attaches a copy of the statement to its income or franchise tax return for the taxable year. The statement must specify the name, address, federal employer identification number, and reason for claiming an exemption.
2. The member's share of income from the pass-through entity is less than \$1,000.
3. The member files an affidavit with the department, in the form and manner prescribed by the department, whereby the nonresident member agrees to file a Wisconsin income or franchise tax return and be subject to the personal jurisdiction of the department, the Tax Appeals Commission, and the courts of Wisconsin for the purpose of determining and collecting Wisconsin income and franchise taxes, including estimated tax payments, together with any related interest and penalties.

Under prior law, only exemptions 1. and 2. were available. A pass-through entity uses Form PW-1 to pay the withholding. The affidavit form required to obtain the exemption in 3. above is Form PW-2.

If a pass-through entity fails to pay the withholding with respect to a nonresident member, and none of the exemptions above apply, the penalties and interest depend on whether the nonresident member pays the tax due on his, her, or its share of income from the pass-through entity:

- If the nonresident member fails to pay the tax due, the pass-through entity is liable for any tax, interest, and penalties otherwise assessable to the nonresident member on the income from the pass-through entity.
- If the nonresident member files a return and pays the tax due, the pass-through entity is not liable for the tax, but is subject to the penalty provisions of sec. 71.83(1)(a)1., Wis. Stats. Section 71.83(1)(a)1., Wis. Stats., provides that unless it is shown that the failure to file a pass-through entity withholding tax return is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on the return 5% of the amount of tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate.

6. Automatic Extensions of Time to File (2007 Act 20, amend secs. 71.24(7) and 71.44(3), effective October 27, 2007.)

For Wisconsin income and franchise tax returns of corporations and insurance companies, the department shall allow an automatic extension of 7 months or until the original due date of the corresponding federal return, whichever is later. Any extension of time granted by law or by the Internal Revenue Service for filing corresponding federal returns shall extend the time for filing for Wisconsin purposes to 30 days after the federal due date if the corporation reports the extension in the manner specified by the department on the return.

Under prior law, if a corporation or insurance company did not require a federal extension but needed additional time for Wisconsin, the corporation or insurance company was required to obtain a 30-day extension for Wisconsin purposes.

7. Dairy Manufacturing Facility Investment Credit Created (2007 Act 20, amend secs. 71.21(4), 71.26(2)(a), 71.30(3)(f), 71.34(1)(g), 71.45(2)(a)10., 71.49(1)(f) and 77.92(4) and create secs. 71.28(3p) and 71.47(3p), effective for taxable years beginning after December 31, 2006, and before January 1, 2015.)

The dairy manufacturing facility investment credit is a refundable credit equal to 10% of the amount the claimant paid in the taxable year for dairy manufacturing modernization or expansion related to the claimant's dairy manufacturing operation.

“Dairy manufacturing” means processing milk into dairy products or processing dairy products for sale commercially.

“Dairy manufacturing modernization or expansion” means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing, including the following, if used exclusively for dairy manufacturing and if acquired and placed in service in Wisconsin during taxable years that begin after December 31, 2006, and before January 1, 2015:

- a. Building construction, including storage and warehouse facilities.
- b. Building additions.
- c. Upgrades to utilities, including water, electric, heat, and waste facilities.
- d. Milk intake and storage equipment.
- e. Processing and manufacturing equipment, including pipes, motors, pumps, valves, pasteurizers, homogenizers, vats, evaporators, dryers, concentrators, and churns.
- f. Packaging and handling equipment, including sealing, bagging, boxing, labeling,

conveying, and product movement equipment.

- g. Warehouse equipment, including storage racks.
- h. Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment that uses waste to produce energy, fuel, or industrial products.
- i. Computer software and hardware used for managing the claimant's dairy manufacturing operation, including software and hardware related to logistics, inventory management, and production plant controls.

“Used exclusively” means used to the exclusion of all other uses except for use not exceeding 5% of total use.

No credit may be allowed for any amount that the claimant paid for expenses that the claimant also claimed as a deduction for trade or business expenses under sec. 162 of the Internal Revenue Code.

The aggregate amount of credits that a claimant may claim is \$200,000. The credit must be claimed within four years of the unextended due date of the return.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of expenses. The aggregate amount of credits that the entity may compute shall not exceed \$200,000. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

If two or more persons own and operate the dairy manufacturing operation, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and op-

erate the dairy manufacturing operation shall not exceed \$200,000.

The amount of the computed credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

For purposes of the recycling surcharge, the definition of “net business income,” with respect to a partnership, is expanded to include the dairy manufacturing facility investment credit.

- 8. Enterprise Zone Jobs Credit Revised** (2007 Act 20, repeal secs. 71.28(3w)(bm)3. and 71.47(3w)(bm)3., consolidate secs. 71.28(3w)(bm)(intro.) and 4. and renumber to 71.28(3w)(bm) and amend as renumbered and 71.47(3w)(bm)(intro.) and 4. and renumber to 71.47(3w)(bm) and amend as renumbered, amend secs. 71.28(3w)(a)6., (b)1.a. and b. and 2., 3., and 4., and (d) and 71.47(3w)(a)6., (b)1.a. and b., 2., 3., and 4., and (d), and create secs. 71.28(3w)(a)5m. and 71.47(3w)(a)5m., effective for taxable years beginning on or after July 1, 2007.)

The enterprise zone jobs credit based on payroll is calculated as follows:

- a. Determine the number of full-time employees whose annual wages are greater than \$30,000 and who the claimant employed in the enterprise zone in the taxable year, minus the number of full-time employees whose annual wages were greater than \$30,000 and who the claimant employed in the area that

comprises the enterprise zone in the base year.

- b. Determine the number of full-time employees whose annual wages are greater than \$30,000 and who the claimant employed in Wisconsin in the taxable year, minus the number of full-time employees whose annual wages were greater than \$30,000 and who the claimant employed in Wisconsin in the base year.
- c. Determine the claimant's average zone payroll by dividing total wages for full-time employees whose annual wages are greater than \$30,000 and who the claimant employed in the enterprise zone in the taxable year by the number of full-time employees whose annual wages are greater than \$30,000 and who the claimant employed in the enterprise zone in the taxable year.
- d. Subtract \$30,000 from the amount determined under c.
- e. Multiply the amount determined under d. by the lesser of a. or b.
- f. Multiply the amount determined under e. by 7%.

“Wages” means wages under sec. 3306(b) of the Internal Revenue Code, determined without regard to any dollar limitations.

“Zone payroll” means the amount of state payroll that is attributable to wages paid to full-time employees for services that are performed in an enterprise zone. “Zone payroll” does not include the amount of wages paid to any full-time employees that exceeds \$100,000.

Supplemental claims are equal to the amount the claimant paid in the taxable year to upgrade or improve the job-related skills of any of the claimant's full-time employees, to train any of the claimant's full-time employees on the use of job-related new technologies, or to provide job-related training to any full-time employee whose employment with the claimant represents the employee's first full-time job. This computation cannot include employees who do not work in an enterprise zone.

Claimants shall include with their returns a copy of their certification for tax benefits, and a copy of the verification of their expenses, from the Department of Commerce.

- 9. Early Stage Seed Investment Credit Revised** (2007 Act 20, renumber secs. 71.28(5b)(d) to 71.28(5b)(d)1. and 71.47(5b)(d) to 71.47(5b)(d)1., amend secs. 71.21(4), 71.26(2)(a), 71.28(5b)(c)1., 71.34(1)(g), 71.45(2)(a)10., 71.47(5b)(c)1., 77.92(4), and 560.205(3)(d), and create secs. 71.28(5b)(d)2., 71.47(5b)(d)2., and 73.03(63), various effective dates.)

Effective for taxable years beginning on or after January 1, 2007:

The Wisconsin adjusted basis of any investment for which the early stage seed investment credit is claimed shall be reduced by the amount of the credit that is offset against Wisconsin income taxes. The Wisconsin basis of a partner's interest in a partnership, a member's interest in a limited liability company, or stock in a tax-option corporation shall be adjusted to reflect adjustments.

The computed early stage seed investment credit is no longer included in the income of the claimant or of a partnership, limited liability company, or tax-option corporation or in the definition of “net business income” with respect to a partnership for purposes of the recycling surcharge.

Effective for calendar years beginning after December 31, 2007:

The Department of Commerce, in consultation with the Department of Revenue, shall promulgate rules to provide that:

- No person may receive a credit unless the person's investment is kept in a certified business for no less than three years, and
- The aggregate amount of tax credits under secs. 71.07(5b), 71.28(5b), and 71.47(5b), Wis. Stats., that may be claimed for investments paid to certified fund managers is increased to \$6,000,000 per calendar year.

Effective October 27, 2007:

The maximum amount of early stage seed investment credit that may be claimed by all claimants for all taxable years combined is increased from \$35,000,000 to \$52,500,000.

The department has the power and authority to, in consultation with the Department of Commerce, carry forward to subsequent taxable years unclaimed credit amounts of the early stage seed investment credits. Annually, no later than July 1, the Department of Commerce shall submit to the Department of Revenue its recommendations for the carryforward of credit amounts.

10. Development Zones Credit Revised (2007 Act 20, amend secs. 71.28(1dx)(a)5. and (b)2., 3., 4., and 5., and 71.47(1dx)(a)5. and (b)2., 3., 4., and 5., effective October 27, 2007.)

For purposes of the development zones credit, the definition of “member of a targeted group” is expanded to include a person who is employed in a real work, real pay project position, as created by this Act. Subsidies and reimbursements paid under the real work, real pay pilot project must be subtracted when determining the development zones credit as it relates to full-time jobs created or retained.

11. Film Production Company Investment Credit Revised (2007 Act 20, amend secs. 71.28(5h)(a)4. and (c)2. and 3. and 71.47(5h)(a)4. and (c)2. and 3., effective October 27, 2007.)

For purposes of the film production company investment credit, the definition of “previously owned property” means real property that the claimant or a related person owned during the 2 years prior to doing business in Wisconsin as a film production company and for which the claimant may not deduct a loss from the sale of the property to, or an exchange of the property with, the related person under sec. 267 of the Internal Revenue Code, except that sec. 267 of the Internal Revenue Code is modified so that if the claimant owns any part of the property, rather than 50% ownership, the claimant is subject to sec. 267 of the Internal Revenue Code.

The following expenditures are used in the computation of the credit:

- a. The purchase price of depreciable, tangible personal property, if such property is purchased after December 31, 2007, and is used for at least 50% of its use in the claimant’s business as a film production company.
- b. The amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, and the completed project is placed in service after December 31, 2007.
- c. The amount expended to acquire real property, if the property is not previously owned property and if the claimant acquires the property after December 31, 2007, and the completed project is placed in service after December 31, 2007.

12. Ethanol and Biodiesel Fuel Pump Credit (2007 Act 20, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(5j), 71.30(3)(ed), 71.47(5j), and 71.49(1)(ds), effective for taxable years beginning after December 31, 2007, and before January 1, 2018.)

The ethanol and biodiesel fuel pump credit is equal to 25% of the amount that the claimant paid in the taxable year to install or retrofit pumps located in Wisconsin that dispense motor vehicle fuel consisting of at least 85% ethanol or at least 20% biodiesel fuel.

The maximum amount of credit that may be claimed in a taxable year is an amount that is equal to \$5,000 for each service station for which the claimant has installed or retrofitted pumps.

“Biodiesel fuel” means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

“Motor vehicle fuel” means gasoline or diesel fuel.

The credit must be claimed within four years of the unextended due date of the return.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of amounts. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

The amount of the computed credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

If a computed credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward is claimed.

In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

For purposes of the recycling surcharge, the definition of "net business income," with respect to a partnership, is expanded to include the ethanol and biodiesel fuel pump credit.

- 13. Exemption for Veterans Service Organizations** (2007 Act 20, create sec. 71.26(1)(am), effective for taxable years beginning on or after January 1, 2008.)

For taxable years beginning on or after January 1, 2008, income of a veterans service organization chartered under federal law is exempt from Wisconsin income and franchise taxes.

- 14. Interest on Bonds Issued for Certain Wisconsin Health and Educational Facilities** (2007 Act 20, create secs. 71.26(1m)(i) and 71.45(1t)(i), effective for taxable years beginning on or after January 1, 2009.)

Interest received on bonds or notes issued on or after October 27, 2007 by the Wisconsin Health and Educational Facilities Authority to fund the acquisition of information technology hardware or software is exempt from Wisconsin income tax. The exemption applies for taxable years beginning on or after January 1, 2009.

- 15. Community Rehabilitation Program Credit Created** (2007 Act 20, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(5k), 71.30(3)(bn), 71.47(5k), and 71.49(1)(bn), effective for taxable years beginning after July 1, 2009.)

The community rehabilitation program credit is equal to 5% of the amount that the claimant paid in the taxable year to a community rehabilitation program to perform work for the claimant's business, pursuant to a contract.

The maximum amount of credit that may be claimed in a taxable year is \$25,000 for each community rehabilitation program for which the claimant enters into a contract to have the community rehabilitation program perform work for the claimant's business.

"Community rehabilitation program" means a nonprofit entity, county, municipality, or state or federal agency that directly provides, or facilitates the provision of, vocational rehabilitation services to individuals who have disabilities to maximize the employment opportunities, including career advancement, of such individuals.

"Vocational rehabilitation services" include education, training, employment, counseling, therapy, placement, and case management.

“Work” includes production, packaging, assembly, food service, custodial service, clerical service, and other commercial activities that improve employment opportunities for individuals who have disabilities.

No credit may be claimed unless the claimant submits with the claimant’s return a form, as prescribed by the department, that verifies that the claimant has entered into a contract with a community rehabilitation program and that the program has received payment from the claimant for work provided by the program.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of amounts. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

The amount of the computed credit must be included in the claimant’s income except that credits computed by a partnership and passed through to partners shall be added to the partnership’s income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation’s income.

If a computed credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward is claimed.

In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

The credit must be claimed within four years of the unextended due date of the return.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

For purposes of the recycling surcharge, the definition of “net business income,” with respect to a partnership, is expanded to include the community rehabilitation program credit.

16. Electronic Medical Records Credit (2007 Act 20, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(5i), 71.30(3)(epa), 71.47(5i), 71.49(1)(epa), and 560.204, effective for taxable years beginning after December 31, 2009.)

The electronic medical records credit is equal to 50% of the amount the claimant paid in the taxable year for information technology hardware or software that is used to maintain medical records in electronic form. The claimant must be a health care provider.

“Health care provider” means any of the following if certified, licensed, or defined under Wisconsin law: nurse, chiropractor, dentist, physician, physician assistant, perfusionist, respiratory care practitioner, physical therapist, podiatrist, dietitian, athletic trainer, occupational therapist or occupational therapist assistant, optometrist, pharmacist, acupuncturist, psychologist, social worker, marriage and family therapist, professional counselor, speech-language pathologist, audiologist, massage therapist or bodyworker, a partnership of specified providers, a corporation or limited liability company of specified providers that provides health care services, an operational cooperative sickness care plan that directly provides services through salaried employees in its own facility, a hospice, an inpatient health care facility, a community-based residential facility, or a rural medical center.

The Department of Commerce shall certify health care providers as eligible for the credit and determine the amount of credits to allocate to the health care provider. The total amount of electronic medical records credits allocated to health care providers in any year may not exceed

\$10,000,000. The Department of Commerce shall inform the Department of Revenue of every health care provider certified and the amount of credits allocated to each.

The credit must be claimed within four years of the unextended due date of the return.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of amounts. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

The amount of the computed credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

If a computed credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward is claimed.

In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

For purposes of the recycling surcharge, the definition of "net business income," with respect to a partnership, is expanded to include the electronic medical records credit.

17. Biodiesel Fuel Production Credit Created (2007 Act 20, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(3h), 71.30(3)(cn), 71.47(3h), and 71.49(1)(cn), effective for taxable years beginning on or after January 1, 2010 and before January 1, 2013.)

The biodiesel fuel production credit is available to claimants who produce at least 2,500,000 gallons of biodiesel fuel in Wisconsin in the taxable year. The credit is equal to the number of gallons of biodiesel fuel produced by the claimant in Wisconsin in the taxable year multiplied by ten cents. The maximum amount of credit that a claimant may claim in a taxable year is \$1,000,000.

"Biodiesel fuel" means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

"Claimant" means a person who is engaged in the business of producing biodiesel fuel in Wisconsin and who files a claim for the credit.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of amounts. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

The amount of the computed credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

If a computed credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward is claimed.

In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carryover of unused credits.

The credit must be claimed within four years of the unextended due date of the return.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

For purposes of the recycling surcharge, the definition of “net business income,” with respect to a partnership, is expanded to include the biodiesel fuel production credit.

18. Computations Order Revised (2007 Act 20, renumber sec. 71.30(3)(epp) to 71.30(3)(eps) and amend as renumbered and amend sec. 71.30(3)(f), effective October 27, 2007.)

The computations order under sec. 71.30, Wis. Stats., is revised to reflect that the portion of the film production services credit relating to production expenditures paid to produce an accredited production (sec. 71.28(5f)(b)2., Wis. Stats.) is a refundable credit.

C. Homestead Credit

1. Terms Related to Mobile Homes and Parking Fees Revised (2007 Act 11, amend sec. 71.52(2) and (7), effective January 1, 2008.)

The term “manufactured home” is inserted in the statutes where only the term “mobile home” is used.

The term “parking,” where it appears in the phrase “parking permit fees,” is replaced with the term “municipal.” The term “parking,” where it appears in the phrase “parking fees,” is replaced with “monthly municipal permit.”

D. Sales and Use Taxes

1. Exemption for Sales by a Home Exchange Service (2007 Act 20, create sec. 77.54(54), effective December 1, 2007.)

An exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of tangible personal property and taxable services that are sold by a home exchange service that receives moneys from the appropriation account under sec. 20.485(1)(g), Wis. Stats., and is operated by the Department of Veterans Affairs.

2. Exempt Sales of Biomass Used for Fuel Sold for Residential Use (2007 Act 20, create sec. 77.54(30)(a)1m., effective December 1, 2007.)

A sales and use tax exemption is created for the gross receipts from the sale of biomass, as defined in sec. 196.378(1)(ar), Wis. Stats., that is used for fuel sold for residential use. Section 196.378(1)(ar), Wis. Stats., provides:

“ ‘Biomass’ means a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as a resource or landfill gases. ‘Biomass’ does not include garbage, as defined in s. 289.01(9), or nonvegetation-based industrial, commercial or household waste, except that ‘biomass’ includes refuse-derived fuel used for a renewable facility that was in service before January 1, 1998.”

3. Exemption Created for Certain Catalogs and their Mailing Envelopes (2007 Act 20, amend secs. 77.52(2)(a)11. and 77.54(25), and create secs. 77.51(1j) and 77.54(25m), effective April 1, 2009.)

Effective April 1, 2009, an exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of catalogs, and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the

services of individual business firms. “Catalog” means a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

Section 77.54(25), Wis. Stats., which provides a sales and use tax exemption for certain printed material, is amended to state that this exemption will no longer apply to catalogs and the envelopes in which the catalogs are mailed. (Note: The exemption created in sec. 77.54(25m), Wis. Stats., as described in the preceding paragraph, will apply to certain catalogs and the envelopes in which they are mailed.)

Section 77.52(2)(a)11., Wis. Stats., which, in part, imposes tax on the printing or imprinting of tangible personal property, is amended to provide that the tax does not apply to the printing or imprinting of tangible personal property that results in printed material, catalogs, or envelopes that are exempt under sec. 77.54(25) or (25m), Wis. Stats.

4. Exemption Created for Certain Cemetery Companies and Corporations (2007 Act 20, create sec. 77.54(9a)(i), effective July 1, 2009.)

Effective July 1, 2009, an exemption is created for the gross receipts from sales to, and the storage by, use by, or other consumption of tangible personal property and taxable services by a cemetery company or corporation described under sec. 501(c)(13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

Section 501(c)(13) of the Internal Revenue Code provides for the exemption from federal income tax of cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

5. Exemption Related to Wind, Solar, and Gas from Anaerobic Digestion of Agricultural Waste (2007 Act 20, create sec. 77.54(56), effective July 1, 2009.)

Effective July 1, 2009, an exemption is provided for the gross receipts from the sale of and the storage, use, or other consumption of a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, except that the exemption under this subsection does not apply to an uninterruptible power source that is designed primarily for computers.

Effective July 1, 2009, an exemption is also provided for the gross receipts from the sale of and the storage, use, or other consumption of electricity or energy produced by a product described in the paragraph above, except for the sale of electricity or energy that is exempt from taxation under sec. 77.54(30), Wis. Stats.

6. Exemption for Motion Picture Film or Tape Revised (2007 Act 20, amend sec. 77.54(23m), effective October 27, 2007.)

The exemption for the gross receipts from the sale, lease, or rental of or the storage, use, or other consumption of motion picture film or tape and advertising materials related thereto, sold, leased, or rented to a motion picture theater or radio or television station, is amended to include motion pictures or radio or television programs for listening, viewing, or broadcast.

7. Exemption for Purchases of Clay Pigeons – Technical Correction (2007 Act 20, amend sec. 77.54(47)(b)2., effective July 1, 2007.)

With this technical correction, the sales and use tax exemption for sales of clay pigeons applies if (1) the clay pigeons are sold to a nonprofit gun club that charges for shooting at the facility, and (2) the charges for shooting at the facility qualify for the exemption provided in sec. 77.52(2)(a)2.b., Wis. Stats. (The exemption provided in sec. 77.52(2)(a)2.b., Wis. Stats., which was effective July 1, 2007, applies to the sale of certain admissions by a gun club if the gun club is a nonprofit organization and if the gun club

provides safety classes to at least 25 individuals in the calendar year.)

Note: The exemption for sales of clay pigeons is not limited to the sales described above. For additional information about the exemption for sales of clay pigeons, see *Wisconsin Tax Bulletin 144* (September 2005), page 16. For additional information about the exemption for sales of certain admissions by gun clubs, see *Wisconsin Tax Bulletin 148* (July 2006), page 14.

8. Sales and Use Tax on Intercompany Transfers (2007 Act 20, renumber sec. 77.51(17) to 77.51(17)(intro.) and amend as renumbered, amend secs. 77.51(4)(c)1., (12)(a), 77.982(2), 77.991(2), 77.9951(2) and 77.9972(2), and create secs. 77.51(13)(p), (14)(m) and (n), (17)(a) to (f), 77.52(1b) and (2n), and 77.53(1b), effective retroactively to January 1, 2006.)

These provisions reverse the March 8, 2007 decision of the Wisconsin Supreme Court in *Wisconsin Department of Revenue vs. River City Refuse Removal, Inc.* In this decision, the Wisconsin Supreme Court found that the intercompany transfers the taxpayer participated in do not fall within Wisconsin's use tax statute. See *Wisconsin Tax Bulletin 151* (April 2007), pages 21-22, for a summary of this decision.

The definition of “gross receipts” applicable for sales and use tax purposes is amended to include credits for which a person's books and records show that the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable. (Amendment to sec. 77.51(4)(c)1., Wis. Stats.)

The definition of “purchase” applicable for sales and use tax purposes is amended to include any transaction for which a person's books and records show the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable. (Amendment to sec. 77.51(12)(a), Wis. Stats.)

The definition of “retailer” applicable for sales and use tax purposes is amended to include all persons described in sec. 77.51(13), Wis. Stats., regardless of all of the following:

1. Whether the transaction is mercantile in nature.
2. Whether the seller sells smaller quantities from inventory.
3. Whether the seller makes or intends to make a profit on the sale.
4. Whether the seller or the buyer receives a benefit the seller or buyer bargained for.
5. The percentage of the seller's total sales that the sale represents.
6. Any activities other than those described in sec. 77.51(13)(a) to (o), Wis. Stats., in which the seller is engaged.

(Creation of sec. 77.51(13)(p), Wis. Stats.)

The definition of “ ‘sale’, ‘sale, lease or rental’, ‘retail sale’, ‘sale at retail’, or equivalent terms” applicable for sales and use tax purposes is amended to include a transaction for which a person's books and records show the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable. (Creation of sec. 77.51(14)(m), Wis. Stats.)

The definition of “ ‘sale’, ‘sale, lease or rental’, ‘retail sale’, ‘sale at retail’, or equivalent terms” applicable for sales and use tax purposes is amended to include all activities described in sec. 77.51(14), Wis. Stats., regardless of all of the following:

1. Whether the transaction is mercantile in nature.
2. Whether the seller sells smaller quantities from inventory.
3. Whether the seller makes or intends to make a profit on the sale.
4. Whether the seller or the buyer receives a benefit the seller or buyer bargained for.
5. The percentage of the seller's total sales that the sale represents.

6. Any activities other than those described in sec. 77.51(13)(a) to (o), Wis. Stats., in which the seller is engaged.

(Creation of sec. 77.51(14)(n), Wis. Stats.)

The definition of “seller” applicable for sales and use tax purposes is as provided in sec. 77.51(17), Wis. Stats., as renumbered to sec. 77.51(17)(intro.), Wis. Stats., and amended, regardless of all of the following:

1. Whether the transaction is mercantile in nature.
2. Whether the seller sells smaller quantities from inventory.
3. Whether the seller makes or intends to make a profit on the sale.
4. Whether the seller or the buyer receives a benefit the seller or buyer bargained for.
5. The percentage of the seller’s total sales that the sale represents.
6. Any activities other than those described in sec. 77.51(13)(a) to (o), Wis. Stats., in which the seller is engaged.

(Renumbering of sec. 77.51(17), Wis. Stats., to sec. 77.51(17)(intro.), Wis. Stats., and amendment as renumbered, and creation of sec. 77.51(17)(a) to (f), Wis. Stats.)

Provision created to state that all sales, leases, or rentals of tangible personal property at retail in Wisconsin are subject to the tax imposed under sec. 77.52(1), Wis. Stats., unless an exemption in Chapter 77, Subchapter III, Wis. Stats., applies. (Creation of sec. 77.52(1b), Wis. Stats.)

Provision created to state that the selling, performing, or furnishing of the services described under sec. 77.52(2)(a), Wis. Stats., at retail in Wisconsin is subject to the tax imposed under sec. 77.52(2), Wis. Stats., unless an exemption in Chapter 77, Subchapter III, Wis. Stats., applies. (Creation of sec. 77.52(2n), Wis. Stats.)

Provision created to state that the storage, use, or other consumption in Wisconsin of tangible personal property, and the use or other consumption in Wisconsin of a taxable service, purchased from any retailer is subject to the tax imposed in sec. 77.53, Wis. Stats., unless an exemption in Chapter 77, Subchapter III, Wis. Stats., applies. (Creation of sec. 77.53(1b), Wis. Stats.)

Sections 77.982(2), 77.991(2), 77.9951(2), and 77.9972(2), Wis. Stats. are amended to state that the provisions of newly-created secs. 77.52(1b) and 77.53(1b), Wis. Stats., as they apply to the taxes under Chapter 77, Subchapter III, Wis. Stats., apply to the local food and beverage tax, the local rental car tax, the state rental vehicle fee, and the regional transit authority fee.

- 9. Changes Relating to Mobile Homes and Manufactured Homes** (2007 Act 11, amend secs. 77.51(4)(b)6. and 7., (13)(am), and (15)(b)5. and 6., 77.52(2)(a)1., 77.53(17) and (18), 77.54(7)(b)(intro.), (31), and (36), 77.54(36), 77.61(1)(a) and (c), 77.71(4), 77.78, 77.785(2), and 77.995(2), effective January 1, 2008.)

Note: 2007 Act 11 relates to revisions in terminology that affect mobile homes, manufactured homes, modular homes, manufactured buildings, recreational vehicles, and mobile and manufactured home communities, and changes that apply to monthly fees collected by certain local governmental units. In addition to the statutory provisions listed above, which relate to sales and use taxes and to the state rental vehicle fee, 2007 Act 11 contains revisions to various other statutory provisions.

- a. **New manufactured homes** (amendment to sec. 77.51(4)(b)6. and (15)(b)5., Wis. Stats.)
- Terminology will change from “mobile home” to “manufactured home.”
 - 35% exemption will apply if structure is designed to be used as a dwelling and is certified by the federal Department of Housing and Urban Development (HUD) as complying with the standards under 42 USC 5401 to 5425. As provided in 42 USC sec. 5402(6), “manufactured home” means “a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the

plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.”

- Currently, to qualify for the 35% exemption, home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.
- b. **Used manufactured homes** (manufactured or assembled **on or after June 15, 1976**; amendment to sec. 77.54(31), Wis. Stats.)
- 100% exemption will apply if structure is designed to be used as a dwelling and is certified by HUD as complying with the standards under 42 USC 5401 to 5425. (See Part a., on page 30, for additional information.)
 - Currently, to qualify for the 100% exemption, home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.
 - Exemption does not apply to leases and rentals, under either current law or as amended. (Rental may qualify for exemption under sec. 77.54(36), Wis. Stats. See Part d., below.)
- c. **Used mobile homes** (manufactured or assembled **before June 15, 1976**; amendment to sec. 77.54(31), Wis. Stats.)
- 100% exemption will apply if structure meets the definition of “mobile home” in

sec. 101.91(10), Wis. Stats., which states, in part: “ ‘Mobile home’ means a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet. ...”

- Currently, to qualify for the 100% exemption, home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.
 - Exemption does not apply to leases and rentals, under either current law or as amended. (Rental may qualify for exemption under sec. 77.54(36), Wis. Stats. See Part d., below.)
- d. **Rentals of mobile and manufactured homes** (amendment to sec. 77.54(36), Wis. Stats.)
- *Mobile homes (manufactured or assembled before June 15, 1976)* - 100% exemption will apply if (1) the rental is for a continuous period of one month or more, and (2) the structure meets the definition of “mobile home” in sec. 101.91(10), Wis. Stats. (See Part c., above, for additional information.)
- To qualify for the 100% exemption under current law, the rental must be for a continuous period of one month or more and the home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.
- *Manufactured homes (manufactured or assembled on or after June 15, 1976)* - 100% exemption will apply if (1) the

rental is for a continuous period of one month or more, and (2) the structure is designed to be used as a dwelling and is certified by HUD as complying with the standards under 42 USC 5401 to 5425. (See Part a., on page 30, for additional information.)

To qualify for the 100% exemption under current law, the rental must be for a continuous period of one month or more and the home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

e. **State rental vehicle fee** (amendments to sec. 77.995(2), Wis. Stats.)

- Terminology will change from “mobile home” to “recreational vehicle.”
- In addition to the rental of Type 1 automobiles and other vehicles, the 5% state rental vehicle fee will apply to the rental (but not for rental and not for rental as a service or repair replacement vehicle) of recreational vehicles. “Recreational vehicle” is defined in sec. 340.01(48r), Wis. Stats., as amended by 2007 Act 11, as “a vehicle that is designed to be towed upon a highway by a motor vehicle, that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length.”
- Under current law, the 5% state rental vehicle fee applies to the rental (but not for rental and not for rental as a service or repair replacement vehicle) of mobile homes as defined in sec. 340.01(29), Wis. Stats., which states that “ ‘Mobile home’ means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction.”

f. **Manufactured buildings** (amendments to sec. 77.51(4)(b)7. and (15)(b)6., Wis. Stats.)

Terminology will change from “manufactured building” to “modular home,” for purposes of the reduction in “gross receipts” and “sales price” for sales of such items.

g. **Other related changes** (amendments to secs. 77.51(13)(am), 77.52(2)(a)1., 77.53(17), 77.53(18), 77.54(7)(b)(intro.), 77.61(1)(a) and (c), 77.71(4), 77.78, and 77.785(2), Wis. Stats.)

i. Terminology will change from “mobile home not exceeding 45 feet in length” to “recreational vehicle, as defined in s. 340.01(48r),” for the following purposes (see Part e., above, for definitions):

- The definition of “retailer” (sec. 77.51(13)(am), Wis. Stats.).
- The exemption from use tax for certain property purchased outside Wisconsin and brought into Wisconsin by a non-domiciliary for certain storage, use, or consumption in Wisconsin (sec. 77.53(17), Wis. Stats.).
- The occasional sale exemption for certain registered or titled property (sec. 77.54(7)(b)(intro.), Wis. Stats.).
- Administrative provisions relating to registration and titling (secs. 77.61(1)(a) and (c), Wis. Stats.) and relating to county taxes (secs. 77.71(4), 77.78, and 77.785(2), Wis. Stats.).

ii. “Manufactured homes” and “recreational vehicles” will be added to the types of accommodations that are subject to the sales and use tax if lodging is furnished under sec. 77.52(2)(a)1., Wis. Stats. (See definition of “manufactured home” in Part a., on page 30, and definition of “recreational vehicle” in Part e., on page 32.)

iii. “Manufactured homes” and “recreational vehicles” for personal use will be added to the property that will qualify for a use tax exemption if purchased by a non-

domiciliary of Wisconsin outside Wisconsin 90 days or more before bringing the property into Wisconsin in connection with a change of domicile to Wisconsin (sec. 77.53(18), Wis. Stats.).

10. Industrial Waste Treatment Facilities (2007 Act 19, renumber sec. 70.11(21)(a) to 70.11(21)(am) and amend as renumbered, amend secs. 74.35(2m) and (5)(d), 76.025(1), 76.81, 77.54(26), and 79.04(1)(a) and (2)(a), and create sec. 70.11(21)(ab). The treatment of secs. 70.11(21)(a) and (ab) and 74.35(2m) and (5)(d) first applies retroactively to the property tax assessments as of January 1, 2007. The treatment of sec. 77.54(26) is effective October 1, 2007.)

The Act updates a property tax exemption and a sales and use tax exemption relating to waste treatment facilities and pollution abatement equipment. Under prior law, written in 1953, the property tax exemption applied to all property purchased or constructed as a waste treatment facility used for the treatment of industrial waste or air contaminants if certain requirements were met. The Department of Revenue historically implemented this exemption, through administrative rule, to include only property used exclusively and directly in the treatment of waste that had no value.

The sales and use tax exemption applies for tangible personal property that becomes a component part of an industrial waste treatment facility that is exempt under the property tax statute.

In 2004, the property tax exemption provided for waste treatment facilities was expanded by the Tax Appeals Commission in its ruling in *The Newark Group, Inc. v. The Wisconsin Department of Revenue*. The Act restores the Department of Revenue's interpretation of the property tax exemption in use before the *Newark* decision.

Section 70.11(21)(a), as renumbered 70.11(21)(am) and amended by 2007 Act 19, provides a property tax exemption for all property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of

surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under chapter 76, if the property is approved by the Department of Revenue. The Department of Natural Resources and Department of Health and Family Services shall make recommendations upon request to the Department of Revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to sec. 70.11(21), 1973 stats.

The sales and use tax exemption provision, sec. 77.54(26), Wis. Stats., was amended to reference sec. 70.11(21), Wis. Stats., rather than sec. 70.11(21)(a), Wis. Stats.

"Air contaminants" has the meaning given in sec. 285.01(1), Wis. Stats.

"Industrial waste" means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd. 3.b., and that would otherwise be considered superfluous, discarded, or fugitive material. "Industrial waste" does not include other wastes, as defined in sec. 281.01(7).

"Used exclusively" means to the exclusion of all other uses except any of the following:

- a. For other use not exceeding 5% of total use.
- b. To produce heat or steam for a manufacturing process, if the fuel consists of either 95% or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50% or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

Nonstatutory provisions:

1. *Property Tax Exemption*. Notwithstanding any other provision of Chapter 70, Wis. Stats., property tax assessments under sec. 70.11(21), Wis. Stats. as affected by 2007 Act 19, as of January 1, 2007, supersede any other property tax assessments under

sec. 70.11(21), Wis. Stats. (2005), for property tax assessments as of January 1, 2007, that are made prior to the effective date of this subsection. Notwithstanding secs. 70.47(7) and 70.995(8), Wis. Stats., an objection to a property tax assessment under sec. 70.11(21), Wis. Stats., as affected by 2007 Act 19, for property tax assessments as of January 1, 2007, may be filed no later than 60 days after the effective date of this subsection or no later than the time allowed under sections 70.47(7) and 70.995(8), Wis. Stats., whichever is later.

2. *Sales and Use Tax Exemption.* Section 77.54(26), Wis. Stats., as affected by 2007 Act 19, does not apply to tangible personal property purchased in fulfillment of a contract to construct, repair, or improve a waste treatment facility, if the contract is entered into, or a formal bid is made, prior to the effective date of this subsection and the tangible personal property is affixed to and made a structural part of the waste treatment facility.

11. Exemption for the Collection of Certain Low-Income Assistance Fees (2005 Wis. Act 141 amend sec. 77.54(44), effective July 1, 2007.)

The phrase “public benefits fees” was replaced with “low-income assistance fees,” in the exemption for such fees that are charged under sec. 16.957(4)(a) or (5)(a).

E. State Rental Vehicle Fee

1. **Changes Relating to Mobile Homes and Manufactured Homes** (2007 Act 11, amend sec. 77.995(2), effective January 1, 2008.)

See Item D9, Part e., page 32.

F. Dry Cleaning Fee

1. **Increase in Dry Cleaning Fee** (2007 Act 20, amend sec. 77.9961(1m), first applies to the quarterly payment that is due April 25, 2008.)

The dry cleaning fee that applies to every person operating a dry cleaning facility is increased from 1.8% to 2.8% of the gross receipts from the previous three months from dry cleaning apparel

and household fabrics, but not from formal wear the facility rents to the general public.

G. Excise Tax

1. **Severability of Alcohol Beverage Provisions** (2007 Act 20, create sec. 125.015, effective October 27, 2007.)

If any provision or clause of Chapter 125, Wis. Stats., or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of Chapter 125, Wis. Stats., that can be given effect without the invalid provision or application, and to this end the provisions of Chapter 125, Wis. Stats., are severable.

2. **Authorization of a Caterer Issued a Class “B” Fermented Malt Beverage License Expanded** (2007 Act 20, create secs. 125.02(3r) and 125.26(2u), effective October 27, 2007.)

“Caterer” means any person holding a restaurant permit under sec. 254.64, Wis. Stats., who is in the business of preparing food and transporting it for consumption on premises where gatherings, meetings, or events are held, if the sale of food at each gathering, meeting, or event accounts for greater than 50 percent of the gross receipts of all of the food and beverages served at the gathering, meeting, or event.

A Class “B” license issued to a caterer authorizes the caterer to provide fermented malt beverages, including their retail sale, at any location at the National Railroad Museum in Green Bay during special events held there. This provision applies even though the National Railroad Museum is not part of the caterer’s licensed premises and even if the National Railroad Museum is not located within the municipality that issued the caterer’s Class “B” license.

A caterer that provides fermented malt beverages under this provision is subject to the general restrictions and requirements under sec. 125.32(2), Wis. Stats., as if the fermented malt beverages were provided on the caterer’s Class “B” licensed premises.

This provision does not authorize the National Railroad Museum to sell fermented malt beverage

ages at retail or to procure or stock fermented malt beverages for purposes of retail sale.

This provision does not apply if, at any time, the National Railroad Museum holds a Class “B” license.

3. Authorization of a Caterer Issued a “Class B” Intoxicating Liquor License Expanded (2007 Act 20, create secs. 125.02(3r) and 125.51(3)(bu), effective October 27, 2007.)

See Item G2 for the definition of “caterer.”

A “Class B” license issued to a caterer authorizes the caterer to provide intoxicating liquor, including its retail sale, at any location at the National Railroad Museum in Green Bay during special events held there. This provision applies even though the National Railroad Museum is not part of the caterer’s licensed premises and even if the National Railroad Museum is not located within the municipality that issued the caterer’s “Class B” license.

A caterer that provides intoxicating liquor under this provision is subject to the general restrictions and requirements under sec. 125.68(2), Wis. Stats., as if the intoxicating liquor were provided on the caterer’s “Class B” licensed premises.

This provision does not authorize the National Railroad Museum to sell intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of retail sale.

This provision does not apply if, at any time, the National Railroad Museum holds a “Class B” license.

4. Authorization of the Department of Transportation to Disclose Information Relating to the Revocation or Suspension of a Person’s Operating Privilege Expanded (2007 Act 20, amend secs. 125.07(4)(cm) and 125.085(3)(bp), effective October 27, 2007.)

When a court revokes or suspends a person’s operating privilege under sec. 125.07(4)(bs) or (c), Wis. Stats., or suspends a person’s operating privilege under sec. 125.085(3)(bd), Wis. Stats., the Department of Transportation may disclose information concerning or relating to the revoca-

tion or suspension to a driver licensing agency of another jurisdiction. A driver licensing agency entitled to receive information under this provision may not disclose the information to any other person or agency.

5. Provisions for the Issuance of Brewpub Permits and the Regulation of Brewpubs (2007 Act 20, amend secs. 125.04(9), 125.10(4), 125.33(title), (1), (2)(intro.), (a), (d), (j), (k), (L)2., 3., and 4., (n)2., and (p)1., (2s), (6), (7)(a)1.a. and b., (b), (c), and (d), (7m), (8), (9), (10)(a)1. to 4., (b), and (c)1. and 3., and (11), 125.34(title), (1)(a) and (c), (2)(a), (bg), and (bm), (3)(a)1. and 2., (4)(a), and (5), and create secs. 125.02(2h), (2p), and (2t), 125.295, and 125.69(1)(d), effective November 25, 2007.)

“Brewpub” means a permittee under sec. 125.295, Wis. Stats.

“Brewpub group” means a brewpub, including all premises for which the brewpub holds a permit issued under sec. 125.295, Wis. Stats., together with all of the following:

- All brewpubs that share membership with the brewpub in a controlled group of brewpubs, as determined under 26 USC 5051 (a) (2) (B).
- All brewpubs considered with the brewpub as one taxpayer under 27 CFR 25.111b (b).
- All franchisees, as defined in sec. 553.03(5), Wis. Stats., of the brewpub.
- All franchisees, as defined in sec. 553.03(5), Wis. Stats., of the brewpub’s franchisor, as defined in sec. 553.03(6), Wis. Stats.
- The franchisor, as defined in sec. 553.03(6), Wis. Stats., of the brewpub.

“Brewpub premises” means any premises covered by a permit issued under sec. 125.295, Wis. Stats.

An applicant is eligible for a brewpub permit only if all of the following apply:

- The applicant’s brewpub group manufactures a total of not more than 10,000 barrels of fermented malt beverages in a calendar year.

- The applicant’s entire process for manufacturing fermented malt beverages occurs on the brewpub premises. If the applicant holds more than one brewpub permit, the applicant is not required to manufacture fermented malt beverages on each brewpub premises.
- The applicant operates a restaurant on the brewpub premises, for which a restaurant permit is issued under sec. 254.64, Wis. Stats.
- The applicant holds a Class “B” license for the restaurant on the brewpub premises and, on these premises, offers for sale, in addition to fermented malt beverages manufactured by the applicant, fermented malt beverages manufactured by a brewer other than the applicant and its brewpub group.
- The applicant holds a valid business tax registration certificate issued under sec. 73.03(50), Wis. Stats.
- Neither the applicant nor the applicant’s brewpub group holds, or has a direct or indirect ownership interest in a premises operating under, any of the following:
 1. A Class “A” license issued under sec. 125.25, Wis. Stats.
 2. Except for the restaurant on the brewpub premises, a Class “B” license issued under sec. 125.26, Wis. Stats.
 3. A wholesaler’s license issued under sec. 125.28, Wis. Stats.
 4. A brewer’s permit issued under sec. 125.29, Wis. Stats.
 5. Except for the restaurant on the brewpub premises, a “Class B” license or permit or “Class C” license issued under sec. 125.51, Wis. Stats.
 6. An alcohol beverage warehouse permit issued under sec. 125.19, Wis. Stats.

If an applicant has no current operations, the applicant may certify that it has applied for or will apply for a Class “B” license or restaurant permit or will comply with any other requirement

above, prior to or upon commencing operations as a brewpub. If a Class “B” license or restaurant permit is not subsequently issued to the applicant, or if the applicant otherwise fails to comply with any requirement above, the department may revoke under sec. 125.12(5), Wis. Stats., the brewpub permit issued.

If an applicant holds any license or permit prohibited under the above requirements, the applicant may certify that it will surrender any such license or permit upon issuance of a brewpub permit. If the department issues a brewpub permit and the applicant fails to surrender the prohibited license or permit, the department may revoke under sec. 125.12(5), Wis. Stats., the brewpub permit issued. An applicant is not required to surrender an existing Class “B” license for the restaurant on the brewpub premises.

The department shall issue brewpub permits to eligible applicants authorizing all of the following:

- The manufacture of fermented malt beverages on the brewpub premises if the entire manufacturing process occurs on the brewpub premises and not more than 10,000 barrels of fermented malt beverages are manufactured in a calendar year by the permittee’s brewpub group.
- The bottling on brewpub premises of fermented malt beverages that have been manufactured on the brewpub premises.
- The packaging in refillable containers exceeding 24 ounces in volume, at the request of a customer and on brewpub premises, of fermented malt beverages that have been manufactured on the brewpub premises.
- The possession and storage of any fermented malt beverages on brewpub premises.
- The transportation of fermented malt beverages that have been manufactured on the brewpub premises between the brewpub premises and any other brewpub premises or Class “B” premises of the brewpub group.
- Subject to the distribution restrictions of secs. 125.34(3) and (4), Wis. Stats., the sale at wholesale, shipment, transportation, and

delivery, in original unopened packages or containers, to wholesalers, from the brewpub premises, of fermented malt beverages that have been manufactured on the brewpub premises or on other brewpub premises of the brewpub.

- The sale at wholesale, shipment, transportation, and delivery, in original unopened packages or containers, to retailers, from the brewpub premises, of fermented malt beverages that have been manufactured on the brewpub premises or on other brewpub premises of the brewpub. Not including fermented malt beverages provided by a brewpub to any retail premises for which the brewpub group holds a retail license, a brewpub's brewpub group may not sell, ship, transport, or deliver more than a total of 1,000 barrels of fermented malt beverages to retailers in any calendar year. Deliveries and shipments of fermented malt beverages by a brewpub shall be made to retailers only at their retail premises. Any retailer receiving such a delivery or shipment is subject to the prohibition under sec. 125.34(5), Wis. Stats., against further transporting the delivery or shipment to any other retail premises.
- The sale of alcohol beverages at retail on the brewpub premises in accordance with the terms of the retail license(s) held for the restaurant on the brewpub premises.
- The ownership, maintenance, and operation of places for the sale of fermented malt beverages at the State Fair Park or on any county fairgrounds located in Wisconsin if the fermented malt beverages have been manufactured by the brewpub.

No brewpub group may hold more than 6 brewpub permits.

A brewpub may not hold any Class "B" license other than one issued for the restaurant on the brewpub premises. Each Class "B" license shall be issued for the brewpub's restaurant in the same name as the brewpub permittee. A brewpub may own the furniture, fixtures, fittings, furnishings, and equipment on the Class "B" premises and shall pay any license fee or tax required for the operation of the premises.

A brewpub may also hold "Class B" licenses and "Class C" licenses, but only for restaurants on brewpub premises.

The fee established by the department for a brewpub permit shall not exceed the fee established for a brewer permit under sec. 125.29, Wis. Stats.

The department shall promulgate rules and prescribe forms to ensure strict compliance with the requirements pertaining to brewpub permits.

Brewpubs are required to have a separate permit or license covering each location or premises, except a licensed public warehouse, from which deliveries and sales of alcohol beverages are made or at which alcohol beverages are stored.

A municipality may not prohibit a brewpub permittee or employees of a brewpub permittee from being present on the brewpub premises during hours when the premises are not open for business if those persons are performing job-related activities.

The restrictions on dealings between brewers, wholesalers, and retailers under sec. 125.33, Wis. Stats., and the distribution restrictions on wholesalers, brewers, and out-of-state shippers under sec. 125.34, Wis. Stats., are modified to include brewpubs.

6. Definition of "Brewer" and "Wholesaler" Modified (2007 Act 20, amend sec. 125.02(2) and (21), effective November 25, 2007.)

The definition of "brewer" and "wholesaler" are modified to specify that neither term includes a brewpub.

7. General Requirements for the Sale of Fermented Malt Beverages Modified (2007 Act 20, amend sec. 125.32(5) and (7)(a), effective November 25, 2007.)

Under prior law, Class "B" licensees or permittees selling or offering for sale draught fermented malt beverages were required to display a sign on or near each tap or faucet disclosing the brand drawn from the tap or faucet and the name of its brewer. In addition, each container of fermented malt beverages sold, offered, or exposed for sale, kept in possession

with intent to sell, or served on any licensed premises was required to bear a label or other identification with the name and address of the brewer.

These requirements have been modified to include fermented malt beverages manufactured by brewpubs.

8. Exception to the Prohibition of Underage Persons Possessing Alcohol Beverages Expanded (2007 Act 20, amend sec. 125.07(4)(bm)1., effective November 25, 2007.)

An underage person may possess alcohol beverages in the course of employment during his or her working hours if employed by a brewpub.

9. Restrictions on Class “A” Licenses Modified (2007 Act 20, create sec. 125.25(2)(b)5., effective November 25, 2007.)

A Class “A” license may not be issued to a person holding a brewpub permit or to a person who has a direct or indirect ownership interest in a premises operating under a brewpub permit.

10. Restrictions on Class “B” Licenses Modified (2007 Act 20, amend sec. 125.26(2)(b)1., effective November 25, 2007.)

Except for the restaurant on brewpub premises, Class “B” licenses may not be issued to brewpubs.

11. Restrictions on Wholesalers’ Licenses Modified (2007 Act 20, amend sec. 125.28(2)(b)2. and create sec. 125.28(2)(b)1.e., effective November 25, 2007.)

A wholesalers’ license may not be issued to a person holding a brewpub permit or a person who has a direct or indirect ownership interest in a premises operating under a brewpub permit.

12. Restrictions on Brewers Permits Modified (2007 Act 20, repeal sec. 125.31(1)(a)1.(intro.) and 3., renumber sec. 125.31(1)(a)1.a. to e. to 125.02(2d)(a) to (e), amend sec. 125.31(1)(a)2. and 4. and create sec. 125.29(5) and (6), effective November 25, 2007.)

No person holding a brewpub permit may register as a brewer.

No person issued a brewer permit after November 25, 2007, may hold a restaurant permit issued under sec. 254.64, Wis. Stats.

A brewer may maintain and operate one place on brewery premises, and another place, for the sale of fermented malt beverages for which a Class “B” license is required for each place. Under prior law, the place not on brewery premises was required to be owned by the brewer or a subsidiary or affiliate corporation or limited liability company.

Under prior law, a “small brewer” could possess a Class “B” license for not more than 4 restaurants in each of which the sale of alcohol beverages accounted for less than 50% of the restaurant’s gross receipts and in which was offered for sale fermented malt beverages manufactured by a brewer other than the small brewer who possessed the Class “B” license. This provision has been eliminated.

13. Restrictions on Wholesale Premises Located on Brewery Premises Modified (2007 Act 20, renumber sec. 125.31(1)(a)1.a. to e. to 125.02(2d)(a) to (e), amend sec. 125.34(2)(bg) and (bm), and create sec. 125.02(2d)(intro.), effective November 25, 2007.)

“Brewer group” means a brewer, including all premises for which the brewer holds a brewers permit, together with all of the following:

- All brewers that share membership with the brewer in a controlled group of brewers, as determined under 26 USC 5051 (a) (2) (B).
- All brewers considered with the brewer as one taxpayer under 27 CFR 25.111b (b).
- All franchisees, as defined in sec. 553.03(5), Wis. Stats., of the brewer.
- All franchisees, as defined in sec. 553.03(5), Wis. Stats., of the brewer’s franchisor, as defined in sec. 553.03(6), Wis. Stats.
- The franchisor, as defined in sec. 553.03(6), Wis. Stats., of the brewer.

A brewer may be issued a wholesaler’s license for wholesale premises located on brewery premises. If the brewer, together with its brewer

group, manufactures more than 50,000 barrels of fermented malt beverages in a calendar year in any location it may not sell or ship more than 1,000 barrels of fermented malt beverages in any calendar year to retailers from these wholesale premises. Fermented malt beverages provided by a brewer to any retail premises for which the brewer holds the retail license are not included in the 1,000 barrel limitation.

14. Alcohol Beverage Tax Provisions Modified (2007 Act 20, amend secs. 139.01(1) and (2), 139.04(2), 139.05(2) and (7)(a) and (b), 139.08(4), 139.09, and 139.11(2) and (3) and create sec. 139.01(2c) and (2e), effective November 25, 2007.)

The definition of “bottler” and “brewer” are modified to specify that neither term includes a brewpub.

“Brewpub” means a permittee under sec. 125.295, Wis. Stats.

“Brewpub premises” means any premises covered by a permit issued under sec. 125.295, Wis. Stats.

The alcohol beverage tax provisions of Chapter 139, Wis. Stats., are modified to include brewpubs. These provisions include, but are not limited to:

- Fermented malt beverages furnished without charge by a brewpub to workmen employed in the brewpub for consumption on the brewpub premises are not subject to the fermented malt beverages tax.
- Requirements for brewpubs to file fermented malt beverage tax returns and pay the tax.
- Authorization for the inspection of brewpub premises and the examination of the books, papers, and records of brewpubs to determine whether Chapter 125 and secs. 139.01 to 139.25, Wis. Stats., are being complied with.
- Requirement that every brewpub liable for the alcohol beverage tax hold a valid business tax registration certificate issued under sec. 73.03(50), Wis. Stats.

- Requirements for brewpubs to keep complete and accurate records and file monthly reports.

15. Presumptions from Possession of Fermented Malt Beverages (2007 Act 20, amend sec. 139.18(1), effective November 25, 2007.)

The possession of any fermented malt beverages on any licensed premises, other than upon the premises of a brewer, brewpub, or bottler shall be deemed prima facie evidence that such products are kept with intent to sell and that such products are subject to tax.

Prior law did not provide an exception for the possession of fermented malt beverages upon the premises of a brewpub.

16. Confiscation of Fermented Malt Beverages (2007 Act 20, amend sec. 139.22, effective November 25, 2007.)

If a duly authorized employee of the Department of Revenue or the Department of Justice or any sheriff, police officer, marshal, or constable, within his or her respective jurisdiction, discovers any fermented malt beverages upon any premises other than the premises of a brewer, brewpub, or bottler upon which tax has not been paid or which was possessed, kept, stored, manufactured, sold, or transported in violation of secs. 139.01 to 139.25 and Chapter 125, Wis. Stats., the employee or officer may immediately seize the fermented malt beverages.

Prior law did not provide an exception for fermented malt beverages discovered upon the premises of a brewpub.

17. Cigarette Tax Increased (2007 Act 20, amend sec. 139.31(1)(a) and (b), effective January 1, 2008.)

On cigarettes weighing not more than 3 pounds per thousand, the rate of tax is increased from 38.5 mills to 88.5 mills on each cigarette.

On cigarettes weighing more than 3 pounds per thousand, the rate of tax is increased from 77 mills to 177 mills on each cigarette (from \$0.77 to \$1.77 per pack of cigarettes).

18. Due Date of Inventory Tax on Cigarettes Modified (2007 Act 20, amend sec. 139.315(1), effective January 1, 2008.)

Any person liable for the inventory tax on cigarettes shall, by the 30th day after the effective date of the increase to the cigarette tax, file a return and pay the tax due.

Under prior law, the due date was the 15th day after the effective date of the increase to the cigarette tax.

19. Manufacturers', Bonded Direct Marketers', and Distributors' Discount on Cigarette Tax Stamps Reduced (2007 Act 20, amend sec. 139.32(5), effective January 1, 2008.)

Manufacturers, bonded direct marketers, and distributors who are authorized by the Department of Revenue to purchase tax stamps shall receive a discount of 0.7 percent of the tax paid on stamp purchases. Prior law provided for a discount of 1.6 percent.

20. Tobacco Products Excise Tax and Use Tax Provisions Modified (2007 Act 20, amend secs. 139.75(12), 139.76(1), and 139.78(1) and create sec. 139.75(5d), effective January 1, 2008.)

The definition of "tobacco products" is expanded to include moist snuff.

"Moist snuff" means any finely cut, ground, or powdered smokeless tobacco that is intended to be placed or dipped in the mouth.

The excise tax and use tax rate on tobacco products, not including moist snuff, is increased from 25 to 50 percent. The excise tax rate on products, not including moist snuff, imported from another country is also increased from 25 to 50 percent. The excise tax or use tax imposed on cigars may not exceed an amount equal to 50 cents for each cigar.

The excise tax and use tax rate on moist snuff is \$1.31 per ounce, and at a proportionate rate for any other quantity or fractional part thereof, of the moist snuff's net weight, as listed by the manufacturer. The weight-based tax imposed under this section does apply to moist snuff that is in the inventory of a distributor on January 1, 2008, and for which the excise tax levied under

sec. 139.76(1), Wis. Stats. (2005-2006), has been paid.

H. Other

1. Internet Listing of Delinquent Taxpayers (2007 Act 20, amend sec. 73.03(62), effective January 1, 2008.)

The amount that delinquent taxes must exceed in order to be eligible for posting on the Internet is reduced from \$25,000 to \$5,000.

The department is authorized to distribute to Internet search engines the information it has posted to the Internet concerning persons owing delinquent taxes. The department shall send updates to the search engines each time the Internet site is updated.

2. Setoffs for Tribal Obligations (2007 Act 20, create sec. 73.03(52n), effective October 27, 2007.)

The department is authorized to enter into agreements with federally recognized tribes located in Wisconsin that provide for offsetting state tax refunds against tribal obligations and to charge a fee up to \$25 per transaction to the debtor for the administrative costs of such setoffs. The administrative costs collected shall be credited to the appropriation under sec. 20.566(1)(h), Wis. Stats.

Setoffs for other state agencies, municipalities, counties, and the Internal Revenue Service shall occur before setoffs for tribal obligations.

Any legal proceeding to contest a setoff for a tribal obligation shall be brought against the tribe under the process established by the tribe.

3. Disclosure of Net Tax (2007 Act 20, amend sec. 71.78(2), effective October 27, 2007.)

When making available information setting forth the delinquent taxes owed by an individual or corporation, the information shall include interest, penalties, fees, and costs, which are unpaid for more than 90 days after all appeal rights have expired, except that such information may not be provided for any person who has reached an agreement with the Department of Revenue, or the Department of Justice, under sec. 71.92, Wis.

Stats., and is in compliance with that agreement, regarding the payment of delinquent taxes, or the name of any person who is protected by a stay that is in effect under the Federal Bankruptcy Code.

4. Electronic Filing of Information Returns and Wage Statements (2007 Act 20, amend sec. 71.80(20), effective October 27, 2007.)

If the Internal Revenue Service requires a person to file information returns or wage statements electronically for federal income tax purposes, the person shall also file the comparable state information returns or wage statements electronically with the Department of Revenue for income or franchise tax purposes.

5. Deposit of Amounts Pending Final Determination of Liability (2007 Act 20, amend secs. 71.74(14), 71.90(2), and 77.59(7), effective October 27, 2007.)

Amounts collected under secs. 71.74(14), 71.90(2), and 77.59(7), Wis. Stats., are deposited with and refunded by the Department of Revenue. Under prior law, these amounts were deposited with and refunded by the Secretary of Administration.

6. References to Ethics Board and Elections Board Changed (2007 Act 1, amend secs. 71.10(3)(b), 73.0301(1)(d)13. and (e), and 125.05(1)(b)10., effective the later of September 1, 2007, or the 31st day beginning after the date on which the government accountability board has given final approval to the hiring of individuals to initially fill the positions of legal counsel to the board, administrator of the ethics and accountability division of the board, and administrator of the elections division of the board.)

References to the “elections board” and to the “ethics board” are changed to the “government accountability board.”

7. References to Department of Health and Family Services and Department of Workforce Development Changed (2007 Act 20, amend secs. 71.93(1)(a)2. and 4., 73.03(50)(c) and (50m), 73.0301(1)(d)2. and (2)(c)1.am. and 2., and 77.61(5)(b)11., effective July 1, 2008.)

A reference to the “department of health and family services” and references to the “department of workforce development” are changed to the “department of children and families.”

8. Definition of “Licensing Department” Expanded (2007 Act 20, amend sec. 73.0301(1)(e) as affected by 2007 Wisconsin Act 1, effective July 1, 2008.)

The definition of “licensing department” is expanded to include the Department of Children and Families.

9. Reference to Revisor of Statutes Changed (2007 Act 20, amend sec. 73.01(4)(e)2., effective December 31, 2007.)

A reference to the “revisor of statutes” is changed to the “legislative reference bureau.”

10. Reference to Family Care Districts Changed (2007 Act 20, amend sec. 71.26(1)(b), effective October 27, 2007.)

A reference to “family care districts” is changed to “long-term care districts.”

11. Reference to Recycling Fund Changed (2007 Act 20, amend sec. 77.97, effective October 27, 2007.)

A reference to the “recycling fund” is changed to the “recycling and renewable energy fund.”