Wisconsin TAX BULLETIN

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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 tax provisions of 2009 Acts 89, 165, 205, 265, 267, 269, 276, 288, 294, 295, 330, 332, 344, 359, 395, and 401.

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

Wisconsin Tax Bulletin

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In This Issue

A. Individual Income Taxes

1. **Election Campaign Fund Designation Amount Increased** (2009 Act 89, amend sec. 71.10(3)(a), effective for taxable years beginning on or after January 1, 2011; 2009 Act 216 changed the effective date to taxable years beginning on or after January 1, 2010.)

   Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate $3 ($1 under prior law) for the Wisconsin election campaign fund and the democracy trust fund for the use of eligible candidates. If the individuals filing a joint return have a tax liability or are entitled to a tax refund, each individual may make a designation of $3.

2. **Angel Investment Credit Revised** (2009 Act 265, create sec. 71.07(5d)(c)4., effective May 25, 2010.)

   Under prior law, the angel investment credit is based on a bona fide angel investment made directly in a qualified new business venture. In order to be certified by the Department of Commerce as a qualified new business venture, one of the requirements is that the business must have its headquarters in Wisconsin.

   Under the provision in Act 265, a claimant may claim the credit for an investment that was made in a business that was located outside Wisconsin if the investment was made no more than 60 days before the business relocated to Wisconsin and the business was certified as a qualified new business venture no later than 180 days after relocating to Wisconsin.

B. Corporation Franchise or Income Taxes - Term Related to Cooperative Associations Revised

(2009 Act 165, amend secs. 71.26(1)(a) and 71.45(1)(a) and (5), effective March 30, 2010.)

For corporation franchise and income tax purposes, the term "cooperative sickness care association" is replaced with the term "cooperative health care association."

C. Individual and Fiduciary Income Taxes and Corporation Franchise or Income Taxes

1. **Interest from Conduit Revenue Bonds Exempt** (2009 Act 205, renumber sec. 71.36(1m) to 71.36(1m)(a) and amend as renumbered, amend secs. 32.02(1) and 66.0303(1), and create secs. 66.0304, 71.05(1)(c)10., 71.26(1m)(k), 71.36(1m)(b)2., and 71.45(1t)(k), effective for taxable years beginning on or after January 1, 2010.)

   Interest income from conduit revenue bonds issued by a commission created under sec. 66.0304, Wis. Stats., is exempt from Wisconsin income tax if any of the following applies:

   - The bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in Wisconsin, and the Wisconsin Housing and Economic Development Authority has the authority to issue its bonds or notes for the project being funded.

   - The bonds or notes are used by a health facility, as defined in sec. 231.01(5), Wis. Stats., to fund the acquisition of information technology hardware or software, in Wisconsin, and the Wisconsin Health and Educational Facilities Authority has the authority to issue its bonds or notes for the project being funded.

   - The bonds or notes are issued to fund a redevelopment project in Wisconsin or a housing project in Wisconsin, and the authority exists for bonds or notes to be issued by an entity described under sec. 66.1201, 66.1333, or 66.1335, Wis. Stats.

   "Commission" means an entity created by two or more political subdivisions, who contract with each other under sec. 66.0301(2) or 66.0303(2), Wis. Stats., for the purpose of issuing conduit revenue bonds. The commission shall send notification to the Department of Revenue, on a form prescribed by the department, whenever a bond is issued. The commission shall disclose to any person who purchases a tax-exempt bond that the interest received on such bond is exempt from state taxation, as provided in secs. 71.05(1)(c)10., 71.26(1m)(k), 71.36(1m), and 71.45(1t)(k), Wis. Stats.

2. **Jobs Tax Credit Allocation** (2009 Act 265, amend secs. 71.07(3q)(c)3., 71.28(3q)(c)3., 71.47(3q)(c)3., and 560.205(3)(d), effective May 25, 2010.)

   The Department of Commerce may reallocate unused angel investment credits to a person eligible for the jobs tax credit. The maximum amount of jobs tax credits that may be awarded for the period beginning on January 1, 2010, and ending on June 20, 2013 is $14,500,000, not including the reallocated angel investment credits.

3. **Postsecondary Education Credit Created** (2009 Act 265, amend secs. 71.05(6)(a)15., 71.21(4), 71.26(2)(a)4., 71.34(1k)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.07(5r), 71.10(4)(cd), 71.28(5r), 71.30(3)(cd), 71.47(5r), and 71.49(1)(cd), effective for taxable years beginning on or after January 1, 2010.)

   Definitions

   "Claimant" means a sole proprietor, a partner, a member of a limited liability company, a shareholder of a tax-option corporation, or a corporation.

   "Course of instruction" means a series of classroom or correspondence courses having a unified purpose which lead to a diploma or degree or to an occupational or vocational objective.

   "Family member" means a spouse or an individual related by blood, marriage, or adoption within the 3rd degree of kinship (children, grandchildren, great grandchildren, parents, brothers, sisters, nephews, nieces, grandparents, uncles, and aunts).

"Managing employee" means an individual who wholly or partially exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the claimant's business.

"Paid or incurred" includes any amount paid by the claimant to reimburse an individual for the tuition that the individual paid or incurred.

"Qualified postsecondary institution" means all of the following:

- A University of Wisconsin System institution, a technical college system institution, or a regionally accredited 4-year nonprofit college or university having its regional headquarters and principal place of business in Wisconsin.

- A school approved by the Educational Approval Board if the delivery of education occurs in Wisconsin.

Filing Claims

A claimant may claim as a credit against income or franchise tax an amount equal to the following:

- Twenty-five percent of the tuition that the claimant paid or incurred for an individual to participate in an education program of a qualified postsecondary institution, if the individual was enrolled in a course of instruction and eligible for a grant from the Federal Pell Grant Program.

- Thirty percent of the tuition that the claimant paid or incurred for an individual to participate in an education program of a qualified postsecondary institution, if the individual was enrolled in a course of instruction that relates to a projected worker shortage in Wisconsin, as determined by the local workforce development boards, and if the individual was eligible for a grant from the Federal Pell Grant Program.

The credit shall be claimed for the taxable year in which the individual graduates from a course of instruction in an amount equal to the total amount the claimant paid or incurred for all taxable years in which the claimant paid or incurred such amounts related to that individual.

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 taxable 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 credit is claimed.

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

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

Limitations

No credit may be allowed unless the claimant certifies to the Department of Revenue that the claimant will not be reimbursed for any amount of tuition for which the credit is claimed.

The credit may not be claimed for any tuition amounts that the individual excluded under sec. 71.05(6)(b)28., Wis. Stats., (Wisconsin subtraction for tuition paid) or under sec. 127 of the Internal Revenue Code (exclusion from income for up to $5,250 of educational assistance provided by an employer under an educational assistance program).

A claimant may not claim the credit for any tuition amounts that the claimant paid or incurred for a family member of the claimant or for a family member of a managing employee unless all of the following apply:

- The family member was employed an average of at least 20 hours per week as an employee of the claimant, or the claimant's business, during the one-year period prior to commencing participation in the education program in connection with which the claimant claims a credit.

- The family member is enrolled in a course of instruction that is substantially related to the claimant's business.

A claimant may not claim the credit for any tuition amounts that the claimant paid or incurred for an individual who is not a resident of Wisconsin.

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 tuition. 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.

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

Administration

The department 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 postsecondary education credit.

4. **Additional Enterprise Zone Jobs Credit Created** (2009 Act 267, amend secs. 71.07(3w)(bm)1., 2., and 3., 71.28(3w)(bm)1., 2., and 3., and 71.47(3w)(bm)1., 2., and 3. and create secs. 71.07(3w)(bm)4., 71.28(3w)(bm)4., 71.47(3w)(bm)4., and 560.799(5)(e), effective for taxable years beginning on or after December 31, 2009.)

   An additional enterprise zone jobs credit is created. The credit is equal to one percent of the amount that the claimant paid in the taxable year to purchase tangible personal property, items, property, or goods under sec. 77.52(1)(b),(c), or (d), Wis. Stats., or services from Wisconsin vendors, as determined by the Department of Commerce. A claimant may not claim this credit and the enterprise zone jobs credit that is based on capital expenditures for the same expenditures.

5. **Woody Biomass Harvesting and Processing Credit Created** (2009 Act 269, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.10(4)(i), 71.21(4), 71.26(2)(a)4., 71.30(3)(f), 71.34(1k)(g), 71.45(2)(a)10., 71.49(1)(f), and 77.92(4) and create secs. 71.07(3rm), 71.28(3rm), 71.47(3rm), and 560.209, effective for taxable years beginning after December 31, 2009, and before January 1, 2016.)

   The woody biomass harvesting and processing credit is equal to ten percent of the amount the claimant paid in the taxable year for equipment that is used primarily to harvest or process woody biomass that is used as fuel or as a component of fuel.

"Used primarily" means used to the exclusion of all other uses except for use not exceeding 25 percent of total use.

"Woody biomass" means trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land.

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

The aggregate amount of credits that a claimant may claim is $100,000.

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 $100,000. 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 a woody biomass harvesting or processing operation, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of credits claimed by all persons who own and operate the operation shall not exceed $100,000.

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

If the allowable amount of credit exceeds the tax otherwise due, the amount of the credit not used to offset the tax due shall be certified to the Department of Administration for payment.

The department 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 woody biomass harvesting and processing credit.

The Department of Commerce shall implement a program to certify taxpayers as eligible for the woody biomass harvesting and processing credit. The Department of Commerce shall determine the amount of credits to allocate to the taxpayer. The total amount of woody biomass harvesting and processing credits allocated to taxpayers in any fiscal year may not exceed $900,000. The Department of Commerce shall inform the Department of Revenue of every certified taxpayer and the amount of credits allocated to each.

The Department of Commerce, in consultation with the Department of Revenue, shall promulgate rules to administer the program.

6. **Dairy and Livestock Farm Investment Credit Revised** (2009 Act 294, repeal secs. 71.07(3n)(a)6.c., 71.28(3n)(a)6.c., and 71.47(3n)(a)6.c. and amend secs. 71.07(3n)(a)2.(intro.) and 6.b., (b)1.,(d), and (e)1.and 2., 71.28(3n)(a)2.(intro.) and 6.b, (b)1., (d), and (e)1. and 2., and 71.47(3n)(a)2.(intro.) and 6.b., (b)1., (d), and (e)1. and 2., various effective dates.)

   Under prior law, the dairy investment credit applied for the construction, the improvement, or the acquisition of buildings or facilities, or the acquisition of equipment, for dairy animal housing, confinement, animal feeding, milk production, or waste management, if used exclusively related to dairy animals and if acquired and placed in service in Wisconsin during taxable years that began after December 31, 2003, and before January 1, 2010. Act 294 extends the effective date by two years by replacing the January 1, 2010, date with January 1, 2012.

   The aggregate amount of dairy and livestock farm investment credit that a claimant may claim or that a partnership, limited liability company, or tax-option corporation may compute is increased from $50,000 to $75,000. No more than $50,000 of this amount may be based on costs incurred prior to May 27, 2010.

7. **Food Processing Plant and Food Warehouse Investment Credit Created** (2009 Act 295, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.10(4)(i), 71.21(4), 71.26(2)(a)4., 71.30(3)(f), 71.34(1k)(g), 71.45(2)(a)10., 71.49(1)(f), and 77.92(4) and create secs. 71.07(3rm), 71.28(3rm), 71.47(3rm), and 560.2056, effective for taxable years beginning after December 31, 2009, and before January 1, 2017.)

   The food processing plant and food warehouse investment credit is equal to ten percent of the amount the claimant paid in the taxable year for food processing or food warehousing modernization or expansion related to the operation of the claimant's food processing plant or food warehouse.

   "Food processing plant" means any place where food processing is conducted, except it does not include (1) dairy plants licensed under sec. 97.20, Wis. Stats., (2) meat establishments licensed under sec. 97.42, Wis. Stats., (3) retail food establishments, or (4) any restaurant or other establishment holding a permit under sec. 254.64, Wis. Stats.

   "Food warehouse" means a warehouse used for the storage of food, and includes a cold-storage warehouse, frozen-food warehouse and frozen-food locker plant. It does not include: (1) a warehouse used solely for the storage of grain or other raw agricultural commodities, (2) a retail food establishment, restaurant or other retail facility at which food is stored on a temporary basis incidental to retail preparation or sale, (3) a warehouse located in a dairy plant, a food processing plant, or a meat establishment, and used primarily for the storage of food ingredients or food products manufactured or processed at the licensed establishment, (4) a warehouse operated by a milk distributor and used primarily for the storage and distribution of milk and fluid milk products, and (5) a facility owned or operated by a consumer and used by that consumer to store food for the consumer's use.

   "Food processing plant or food warehouse modernization or expansion" means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for food processing or food warehousing, including the following, if used exclusively for food processing or food warehousing and if acquired and placed in service in Wisconsin during taxable years that begin after December 31, 2009, and before January 1, 2017:

   - Food intake, handling, storage, and warehouse facilities.
   - Building additions.
   - Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities.
   - Installing energy savings equipment or equipment that converts waste to energy.
   - Food or raw material intake and storage equipment.

- Processing and manufacturing equipment, including vats, cookers, freezers, pipes, motors, pumps, and valves.

- Packaging and handling equipment, including cleaning, sealing, bagging, boxing, labeling, conveying, and product movement equipment.

- Warehouse equipment, including storage racks and loading and unloading equipment.

- Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment to produce energy, fuel, or industrial products.

- Computer software or hardware for managing the claimant's food processing or food warehousing operation, including software and hardware related to logistics, inventory management, production plant controls, and temperature monitoring controls.

"Used exclusively" means used to the exclusion of all other uses except for use not exceeding five percent 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 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 food processing plant or food warehouse, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of credits claimed by all persons who own and operate the 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, limited liability company, or tax-option corporation and passed through to partners, members, or shareholders, shall be added to the partnership's, limited liability company's, or tax-option corporation's income.

If the allowable amount of credit exceeds the tax otherwise due, the amount of the credit not used to offset the tax due shall be certified to the Department of Administration for payment.

The department 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 food processing plant and food warehouse investment credit.

The Department of Commerce shall implement a program to certify taxpayers as eligible for the food processing plant and food warehouse investment credit. The Department of Commerce shall determine the amount of credits to allocate to the taxpayer. The Department of Commerce shall inform the Department of Revenue of every certified taxpayer and the amount of credits allocated to each.

The Department of Commerce, in consultation with the Department of Revenue, shall promulgate rules to administer the program.

A copy of the Department of Commerce credit certification and allocation must be attached to the Wisconsin return.

8. **Water Consumption Credit Created** (2009 Act 332, amend secs. 71.05(6)(a)15., 71.21(4), 71.26(2)(a)4., 71.34(1k)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.07(5rm), 71.10(4)(ce), 71.28(5rm), 71.30(3)(ce), 71.47(5rm), and 71.49(1)(ce), effective for taxable years beginning on or after January 1, 2010, and before January 1, 2020.)

The water consumption credit is available to an industrial customer of a municipal water utility that is located in a federal renewal community zone in Wisconsin, and whose average annual water consumption from that utility for a 24-month period exceeds 1,000,000 Ccf. "Ccf" means 100 cubic feet.

The amount of credit is determined as follows:

1. Subtract the claimant's 2009 water usage costs from the claimant's water usage costs for the taxable year.

2. If the amount determined in 1. above is a positive number, multiply that amount by 0.50.

The maximum amount that a claimant may claim in a taxable year is $300,000.

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 taxable 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 credit is claimed.

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

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 the water usage costs. 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.

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

The department 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 water consumption credit.

9. **Income from the Sales of Certain Insurance Policies** (2009 Act 344, amend secs. 71.05(1)(f), 71.26(3)(ag), 71.45(2)(a)14., and 73.0301(1)(d)12., effective November 1, 2010.)

   The statutes relating to a viatical settlement are amended to provide a subtraction for "income received by the original policyholder or original certificate holder who has a catastrophic or life-threatening illness or condition from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a life settlement contract, as defined in sec. 632.69(1)(k)." A "catastrophic or life-threatening illness or condition" includes AIDS and HIV infection.

   In addition, all references to sec. 632.68(1)(d) and (2) or (4), Wis. Stats., are changed to 632.69(1)(k) and (2). Section 632.69(1)(k) and (2), Wis. Stats., were created by this Act.

10. **Ethanol and Biodiesel Fuel Pump Credit Revised** (2009 Act 401, amend secs. 71.07(5j)(b), 71.28(5j)(b), and 71.47(5j)(b) and create secs. 71.07(5j)(a)2d. and 2m. and (c)3., 71.28(5j)(a)2d. and 2m. and (c)3., and 71.47(5j)2d. and 2m. and (c)3., various effective dates.)

    For taxable years beginning on or after January 1, 2010, and before January 1, 2018, the ethanol and biodiesel fuel pump credit is revised. The credit is an amount that is equal to 25 percent of the amount that the claimant paid in the taxable year to install or retrofit pumps located in Wisconsin that dispense motor vehicle fuel marketed as gasoline and 85 percent ethanol or a higher percentage of ethanol or motor vehicle fuel marketed as diesel fuel and 20 percent biodiesel fuel or that mix fuels from separate storage tanks and allow the end user to choose the percentage of gasoline replacement renewable fuel or diesel replacement renewable fuel in the motor vehicle fuel dispensed.

    "Diesel replacement renewable fuel" includes biodiesel and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the Department of Commerce designates by rule as a diesel replacement renewable fuel.

    "Gasoline replacement renewable fuel" includes ethanol and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the Department of Commerce designates by rule as a gasoline replacement renewable fuel.

    For systems installed on or after June 2, 2010, the Department of Commerce shall establish standards to adequately prevent, in the distribution of conventional fuel to an end user, the inadvertent distribution of fuel containing a higher percentage of renewable fuel than the maximum percentage established by the federal Environmental Protection Agency for use in conventionally-fueled engines.

D. Sales and Use Taxes

1. **Create Definition of "Advertising and Promotional Direct Mail"** (2009 Act 330, create sec. 77.51(1ag), effective May 27, 2010.)

   "Advertising and promotional direct mail" is defined to mean direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

2. **Create Definition of "Other Direct Mail"** (2009 Act 330, create sec. 77.51(9r), effective May 27, 2010.)

   "Other direct mail" is defined to mean any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. "Other direct mail" includes all of the following:

1. Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, account statements, and payroll advices.

2. Any legally required mailings, including privacy notices, tax reports, and stockholder reports.

3. Other nonpromotional direct mail, including newsletters and informational pieces, that is delivered to existing or former shareholders, customers, employees, or agents.

"Other direct mail" does not include printed materials that result from developing billing information or providing any data processing service that is more than incidental, as defined in sec. 77.51 (5), Stats., to producing the other direct mail.

3. **Amend Definition of "Prepared Food" to Make Technical Correction** (2009 Act 330, amend sec. 77.51(10m)(a)3.a., effective May 27, 2010.)

The definition of "prepared food" is amended to provide that a retailer is considered to have provided utensils if the utensils are available to the purchaser and the retailer's sales of prepared food under sec. 77.51(10m)(a)1., 2., and 4., Stats., and food for which plates, bowls, glasses, or cups are necessary to receive the food are more than 75 percent of the retailer's total sales of all food and food ingredients, as determined under sec. 77.51(10m)(c), Stats. Previously, the language in sec. 77.51(10m)(a)3.a., Stats., was inconsistent with the language contained in sec. 77.51(10m)(c), Stats.

4. **Amend Definition of "Product" so That It Applies to Definition of "Advertising and Promotional Direct Mail"** (2009 Act 330, amend sec. 77.51(11d), effective May 27, 2010.)

The definition of "product" is amended so that it applies to the use of the term "product" as it is used in the definition of "advertising and promotional direct mail," contained in sec. 77.51(1ag), Stats., as created by this Act.

5. **Clarify That Prepaid Calling Services Are Subject to Tax** (2009 Act 330, amend sec. 77.52(2)(a)5.am., effective May 27, 2010.)

This clarifies that prepaid calling services are subject to tax.

6. **Provide Explanation of "Good Faith"** (2009 Act 330, renumber secs. 77.52(14)(am) to 77.52(14)(am)1. and 77.53(11)(b) to 77.53(11)(b)1. and create secs. 77.52(14)(am)2. and 77.53(11)(b)2., effective May 27, 2010.)

If a seller does not obtain an exemption certificate as required by sec. 77.52(14)(a) or 77.53(11)(a), Stats., the seller is allowed 120 days after they are notified by the state to substantiate the exemption to either provide proof of the exemption by other means or to obtain, in good faith, a fully completed exemption certificate from the purchaser.

An exemption certificate received by a seller is received in good faith if the exemption certificate claims an exemption for which all of the following apply:

1. The exemption was authorized by law on the date of the transaction in the jurisdiction where the transaction is sourced.

2. The exemption could be applicable to the property, item, good, or service being purchased.

3. The exemption being claimed is reasonable for the purchaser's type of business.

7. **Explain When Seller is Liable For Tax Even If Seller Obtains Exemption Certificate** (2009 Act 330, create secs. 77.51(14)(am)3. and 77.53(11)(b)3., effective May 27, 2010.)

   A seller that obtains the information as described in either sec. 77.52(14)(am)2. or 77.53(11)(b)2., Stats., as created by this Act, is relieved of liability for the tax unless it is discovered through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. In order to enforce this provision, the state must establish that the seller had knowledge, or had reason to know, at the time the information was provided that the information was materially false.

8. **Amend Sourcing Provisions Relating to "Advertising and Promotional Direct Mail"** (2009 Act 330, renumber sec. 77.522(1)(c) to 77.522(1)(c)1. and amend as renumbered and create sec. 77.522(1)(c)3., effective May 27, 2010.)

   The sale of advertising and promotional direct mail, including a sale characterized under the laws of Wisconsin as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of advertising and promotional direct mail, is sourced to the location from which the advertising and promotional direct mail is shipped, if the purchaser does not provide to the seller a direct pay permit, an exemption certificate claiming direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients and pay or remit, as appropriate, to the department the tax imposed under sec. 77.53, Stats., on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit the tax on any transaction to which the direct pay permit or exemption certificate applies. If the purchaser provides delivery information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients, the seller shall source the sale to those jurisdictions and collect and remit the tax according to the delivery information provided by the purchaser and, in the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on the sale of advertising and promotional direct mail for which the seller has sourced the sale and collected tax pursuant to the delivery information provided by the purchaser. If a transaction is a bundled transaction that includes advertising and promotional direct mail, this provision only applies if the primary purpose of the transaction is the sales of products or services that meet the definition of advertising and promotional direct mail.

   Exception: If "advertising and promotional direct mail" and "other direct mail" are included in a single mailing, the sale of that mailing is sourced the same as a sale of "other direct mail."

9. **Create Sourcing Provisions Relating to "Other Direct Mail"** (2009 Act 330, create sec. 77.522(1)(c)2. and 3., effective May 27, 2010.)

   The sale of other direct mail, including a sale characterized under the laws of Wisconsin as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of other direct mail, is sourced under sec. 77.522(1)(b)3., Stats., if the purchaser does not provide to the seller a direct pay permit or an exemption certificate claiming direct mail. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall pay or remit, as appropriate, to the department the tax imposed under sec. 77.53, Stats., on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit tax on any transaction to which the direct pay permit or exemption certificate claiming direct mail applies.

   If "advertising and promotional direct mail" and "other direct mail" are included in a single mailing, the sale of that mailing is sourced the same as a sale of "other direct mail."

10. **Sourcing Provisions Relating to Transactions That Include the Development of Billing Information and the Providing of Data Processing Services** (2009 Act 330, create sec. 77.522(1)(c)4., effective May 27, 2010.)

    Transactions that include the development of billing information or the provision of a data processing service that is more than incidental to producing direct mail are not direct mail and are sourced under sec. 77.522(1)(b), Stats., but transactions that include incidental data processing services are direct mail and are sourced under sec. 77.522(1)(c), Stats. "Incidental" has the meaning given in sec. 77.51(5), Stats.

11. **Additional Language Added to Make Statutes Consistent With Changes Made in 2009 Wis. Acts 2 and 28** (2009 Act 330, amend sec. 77.54(18), effective May 27, 2010.)

    The phrase "items, property, or goods under s. 77.52(1)(b), (c), or (d), Stats.", was added throughout subchs. III and V of ch. 77, Stats., by 2009 Wis. Acts 2 and 28, due to the changing of the definition of "tangible personal property" by 2009 Wis. Act 2 and the imposition of sales and use tax on digital goods. However, through an oversight, this language was not added in the appropriate context to this section and is being added now to make it consistent with the rest of the affected statutes.

12. **Provide That Certain Sellers That Register Through the Streamlined Sales Tax Governing Board's Central Registration System and Who Anticipate Making No Taxable Sales in Wisconsin Are Not Required to File Certain Sales and Use Tax Returns** (2009 Act 330, amend sec. 77.58(3)(a) and create sec. 77.58(2)(d), effective May 27, 2010.)

    A seller, except a seller who use a certified service provider, who registers through the Streamlined Sales Tax Governing Board's Central Registration System and indicates at the time of registration that it anticipates making no sales into Wisconsin is not required to file a return in Wisconsin until such time as it makes a taxable sale that is sourced to Wisconsin under sec. 77.522, Stats. Once a seller to which this provision applies makes a taxable sale that is sourced to Wisconsin under sec. 77.522, Stats., that seller is required to file a return that is due by the last day of the month following the last day of the calendar quarter in which the sale occurred and shall continue to file returns by the last day of the month following the last day of each calendar quarter thereafter, unless the seller is notified in writing by the Department of Revenue of a different filing frequency.

13. **Requires Persons Who File Sales and Use Tax Returns to File Those Returns in the Manner and Form Prescribed by the Department of Revenue** (2009 Act 330, amend sec. 77.58(4), effective May 27, 2010.)

    A person required to file a sales and use tax return shall deliver the return together with the remittance of the amount of tax due to the Department of Revenue or such other place as the Department of Revenue designates in the manner and form prescribed by the Department of Revenue.

14. **Require That a Bad Debt Can Only Be Claimed On a Transaction That the Seller Has Previously Reported as Taxable and For Which the Seller Has Previously Paid the Tax** (2009 Act 330, amend sec. 77.585(1)(a) and (d), effective May 27, 2010.)

    The definition of a "bad debt" is the portion of the sales price or purchase price that a seller has previously reported as a taxable sale under subch. III of ch. 77, Stats., and for which the seller has paid the tax and that the seller may claim as a deduction under sec. 166 of the Internal Revenue Code. A "bad debt" does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Stats., that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

A seller may obtain a refund of the tax reported for any bad debt deducted under sec. 77.585(1)(b), Stats., that exceeds the amount of the seller's taxable sales as provided in sec. 77.59(4), Stats., except that the period for making the claim begins on the date on which the return on which the bad debt could be claimed would have been required to be submitted to the Department of Revenue under sec. 77.58, Stats.

15. **Require the Department of Revenue to Provide at Least 30 Days Notice to Certain Sellers That Are Not Required to Register and Obtain a Permit Before Issuing an Estimated Assessment** (2009 Act 330, renumber sec. 77.59(9) to sec. 77.59(9)(a) and amend as renumbered and create sec. 77.59(9)(b), effective May 27, 2010.)

    If a seller is not required to register and obtain a permit under sec. 77.52 (7) or 77.53 (9), Stats., but has registered and obtained a permit under sec. 77.52 (7) or 77.53 (9), Stats., and has failed to timely file a return that is due, the Department of Revenue shall notify the seller of the failure to file and provide the seller at least 30 days to file the return prior to making the estimate described in sec. 77.59(9)(a), Stats., except that if the seller has a history of not filing returns, or filing returns late, the Department of Revenue may make the estimate under sec. 77.59(9)(a), Stats., without providing such notice.

16. **Imposition of Local Exposition District Food and Beverage Tax** (2009 Act 330, repeal and recreate sec. 77.98, effective October 1, 2009.)

    The local exposition district food and beverage tax may be imposed on the retail sale, except sales for resale, within the district's jurisdiction under sec. 229.43, Stats., of all of the following:

    1. Alcoholic beverages, as defined in sec. 77.51(1b), Stats., if the alcoholic beverages are for consumption on the seller's premises.

    2. Candy, as defined in sec. 77.51(1fm), Stats.

    3. Prepared food, as defined in sec. 77.51(10m), Stats.

    4. Soft drinks, as defined in sec. 77.51(17w), Stats.

    The items described above are not subject to tax if they qualify for an exemption from the sales tax under sec. 77.54 (1), (4), (7) (a), (7m), (9), (9a), (20n) (b) or (c), or (20r), Stats.

    The term "premises" as used in sec. 77.98(1)(a), Stats., shall be broadly construed and shall include the lobby, aisles, and auditorium of a theater or the seating, aisles, and parking area of an arena, a rink, or a stadium, or the parking area of a drive−in or an outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served.

17. **Add Cross-References to Local Food and Beverage Tax, Local Rental Car Tax, State Rental Vehicle Fee, and Southeastern Regional Transit Authority Fee for Additional Provisions Contained in Subch. III of Ch. 77, Stats.** (2009 Act 330, amend secs. 77.982(2), 77.991(2), 77.9951(2), and 77.9972(2), effective May 27, 2010.)

    Additional cross-references to certain provisions contained in subch. III of ch. 77, Stats., relating to bundled transactions, sourcing transactions, and the ability of the Department of Revenue to provide by rule that the amount of tax collected from the consumer or user be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale, have been added to the local food and beverage tax contained in subch. VIII of ch. 77, Stats.

Additional cross-references to certain provisions contained in subch. III of ch. 77 Stats., relating to sourcing transactions and the ability of the Department of Revenue to provide by rule that the amount of tax collected from the consumer or user be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale, have been added to the local rental car tax contained in subch. IX of ch. 77, Stats., the state rental vehicle fee contained in subch. XI of ch. 77, Stats., and the southeastern regional transit authority fee contained in subch. XIII of ch. 77, Stats.

E. Excise Taxes

1. **Consumption of Alcohol in Public Places** (2009 Act 395, amend sec. 125.09(1), effective June 2, 2010.)

The owner, lessee, or person in charge of a campus of a private college may, without a retail license or permit, allow consumption of alcohol beverages on campus premises at the place and time an event sponsored by the private college is being held.

"Private college" means a private, regionally accredited, 4-year, nonprofit college or university that is incorporated in Wisconsin or that has its regional headquarters and principal place of business in Wisconsin or a tribally controlled college in Wisconsin.

2. **Personal Renewable Fuel Production Exemption** (2009 Act 401, amend sec. 73.03(50)(intro.) and create secs. 73.0303, 78.005(13j), 78.01(2n), 78.07(5), and 168.12(2), effective September 1, 2010.)

The first 1,000 gallons of renewable fuel produced or converted from another purpose each year by an individual and used by that individual in his or her personal motor vehicle is exempt from the motor vehicle fuel tax, provided the individual does not sell any such renewable fuel during that year.

“Renewable fuel” means fuel, including biodiesel fuel, that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel used in motor vehicle fuel.

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

The Department of Revenue may not require a person to obtain a business tax registration certificate related to the production or use of renewable fuel that is exempt under this provision.

Renewable fuel that is exempt under this provision is not considered received by a supplier for purposes of the motor vehicle fuel tax.

The petroleum inspection fee is not imposed on a petroleum product that is a renewable fuel exempt under this provision.

F. Withholding Taxes - Definition of Employer Revised (2009 Act 288, amend sec. 71.63(3)(d), effective May 27, 2010.)

Under current law, any employer who willfully provides false information to the department, or who willfully and with intent to evade any requirement relating to withholding tax, misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee shall be fined $25,000 for each violation. This provision applies to an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects.

Act 288 expands the definition of employer to include a person engaged in the painting or drywall finishing of buildings or other structures.

G. Other

1. **Revisor's Corrections** (2009 Act 276, renumber secs. 71.25(9)(dj)1. and (dk)1. to 71.25(9)(dj) and (dk), 71.27(7)(b) to 71.24(7)(b), and 77.51(1j) and (11m) to 77.51(1fr) and (11b) and amend secs. 71.05(24)(a)4., 71.07(8r)(c)3., 71.255(1)(e) and (4)(b)2., 71.28(4)(ad)1., 2., and 3. and (am)1., 71.47(4)(ad)1., 2., and 3. and (am), 71.80(24), 77.51(3pm), 77.522(1)(a)2.c., 77.53(18), and 77.61(2)(b), various effective dates.)

   Various changes are made to the Wisconsin statutes to correct references, punctuation, and grammar and to renumber certain provisions. The changes are generally effective May 26, 2010, except the renumbering of sec. 77.51(11m) is effective July 5, 2010.

2. **Minnesota/Wisconsin Study Required** (2009 Act 359, creates nonstatutory provision, effective May 28, 2010.)

   The Department of Revenue, in conjunction with the Minnesota Department of Revenue, is required to conduct a study to determine at least all of the following:

   1. The number of residents of each state who earn income from personal services in the other state.

   2. The total amount of income earned in each state by the taxpayers described in 1. above.

   3. The amount of tax revenue that would be foregone by each state if an income tax reciprocity arrangement were resumed between the two states under which the taxpayers were required to pay income taxes on such income only in their state of residence.

   The study shall be conducted as soon as practicable, using information obtained from each state's 2010 income tax returns and from any other source the department determines is necessary. No later than December 31, 2011, the department shall submit a report containing the results of the study to the legislature, the joint committee on finance, the governor, and the governor and legislature of Minnesota.