

Tax 2, 3, 10, 11
CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN)
DEPARTMENT OF REVENUE)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Dennis J. Conta, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on January 20, 1978.

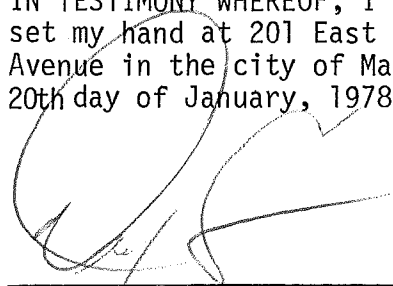
These rules relate to the following:

- 1) Property located outside Wisconsin--depreciation and sale (income tax).
- 2) Tax sheltered annuities (income tax).
- 3) Sale of constant basis assets acquired prior to becoming a Wisconsin resident (income tax).
- 4) Disaster area losses (income tax).
- 5) Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974 (income tax).
- 6) Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975 (income tax).
- 7) Retirement plan distributions (income tax).
- 8) Deductibility of income taxes (inheritance tax).
- 9) Farming, agriculture, horticulture and floriculture (sales and use tax).
- 10) Sale of a business or business assets (sales and use tax).
- 11) Meals, food, food products and beverages (sales and use tax).

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

DEPARTMENT OF REVENUE
JAN 26 1978
4:30

IN TESTIMONY WHEREOF, I have hereunto set my hand at 201 East Washington Avenue in the city of Madison, this 20th day of January, 1978.



Dennis J. Conta

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

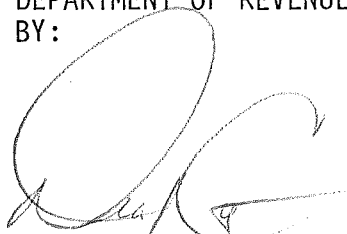
Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a), 72.05 and 227.014(2), Wis. Stats., the Department hereby adopts the following 11 rules as shown on the attached copy.

- 1) Section Tax 2.30, "Property located outside Wisconsin--depreciation and sale".
- 2) Section Tax 2.94, "Tax sheltered annuities".
- 3) Section Tax 2.97, "Sale of constant basis assets acquired prior to becoming a Wisconsin resident".
- 4) Section Tax 2.98, "Disaster area losses".
- 5) Section Tax 2.99, "Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974".
- 6) Section Tax 2.991, "Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975".
- 7) Section Tax 3.085, "Retirement plan distributions".
- 8) Section Tax 10.12, "Deductibility of income taxes".
- 9) Section Tax 11.12, "Farming, agriculture, horticulture and floriculture".
- 10) Section Tax 11.13, "Sale of a business or business assets".
- 11) Section Tax 11.87, "Meals, food, food products and beverages".

The rules contained herein shall take effect on March 1, 1978.

Dated this 20th day of January, 1978.

DEPARTMENT OF REVENUE
BY:



Dennis J. Conta
Secretary of Revenue

PROPERTY LOCATED OUTSIDE WISCONSIN--DEPRECIATION AND SALE

Section Tax 2.30 of the Wis. Adm. Code is adopted to read:

Tax 2.30 Property located outside Wisconsin--depreciation and sale. (Section 71.07(1), Wis. Stats.) (1) DEFINITIONS. In this rule, "internal revenue code" means the internal revenue code in effect for the taxable year specified by section 71.02(2)(b), Wis. Stats., and "federal adjusted basis" means those amounts determined under such code. For example, for the taxable year 1976 "internal revenue code" means the federal internal revenue code in effect on December 31, 1975.

(2) GENERAL. (a) Prior to tax year 1975, income or loss derived from real property or tangible personal property followed the situs of the property from which derived.

(b) In 1975, section 71.07(1), Wis. Stats., was amended, effective with the 1975 tax year, to read in part:

"All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust. Income or loss of nonresident individuals and nonresident estates and trusts from business, not requiring apportionment under sub. (2), (3) or (5), shall follow the situs of the business from which derived. Income or loss of nonresident individuals and nonresident estates and trusts derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived."

(3) TREATMENT IN 1975 AND SUBSEQUENT YEARS FOR RESIDENT INDIVIDUALS, ESTATES AND TRUSTS. For tax year 1975 and thereafter, income or loss from property and business located outside Wisconsin, received by resident individuals, estates and trusts, is taxable. The basis for depreciation and for determining gain or loss on disposition of property located outside Wisconsin for Wisconsin income tax purposes for such taxpayers is as follows: (a) Property acquired while a resident. For property located outside Wisconsin, acquired while taxpayer was a resident of Wisconsin: 1. Depreciation. The basis of such property for depreciation shall be the same as the basis determined under the internal revenue code.

2. Sale. The basis used in determining gain or loss upon the sale or other disposition of such property shall be the same as the basis determined under the internal revenue code.

(b) Property acquired before becoming a resident. For property located outside Wisconsin, acquired before taxpayer became a resident of Wisconsin: 1. Depreciation. The basis of such property for depreciation shall be the same as the basis determined under the internal revenue code.

2. Sale. Under the principles established by the Wisconsin Supreme Court in Falk v. Rosa (1930), 201 Wis. 292, and Siesel v. Wisconsin Tax Commission (1935), 217 Wis. 661, limitations exist on the amount of gain or loss which is includable in Wisconsin taxable income upon the sale or other disposition of such property. The amount of gain or loss for Wisconsin tax purposes is limited to the lesser of the difference between: a. The selling price and federal adjusted basis at the time of sale; or

b. The selling price and the fair market value of the property on the date Wisconsin residence was established, such fair market value being reduced by depreciation allowed or allowable during the period of Wisconsin residence; except that if

c. The difference by one computation (a or b above) represents a gain and the difference by the other computation represents a loss, then no gain or loss is reportable for Wisconsin purposes. When this situation occurs, a schedule shall be attached to the Wisconsin income tax return, Form 1, showing both computations.

3. Modification. When the Wisconsin gain or loss is determined under subd. 2 b or c, the amount of such gain or loss will differ from that reported on an individual's federal income tax return. Such difference shall be treated as an "other" modification and reported in Part II on page 2 of Wisconsin Form 1. (See the note at the end of this rule for example computations of the Wisconsin gain or loss.)

(c) Installment sales of property located outside Wisconsin.

1. Sale prior to January 1, 1975. The gain (or loss) on a sale prior to January 1, 1975 of property located outside Wisconsin by residents and nonresidents is not taxable for Wisconsin purposes. If a taxpayer elected for federal purposes to report the gain on such a pre-1975 sale on the installment method (as provided in section 453 of the internal revenue code), in some instances a portion of the gain could be included in federal adjusted gross income on the taxpayer's 1975 and subsequent years' federal income tax return. Any such installment gain shall be excluded from Wisconsin income by entering the amount of the installment gain as an "other" subtraction modification in Part II on page 2 of the Wisconsin Form 1.

2. Sale while a nonresident. The gain (or loss) on a sale of property located outside Wisconsin occurring while a taxpayer was a nonresident of this state is not taxable for Wisconsin purposes regardless of whether the sale occurred before or after 1975. Any such gain (to the extent included in federal adjusted gross income), regardless of whether or not reported on the installment method, shall be excluded from Wisconsin income by entering the amount of such gain as an "other" subtraction modification in Part II on page 2 of Wisconsin Form 1.

NOTE: Examples of the computation of Wisconsin gain or loss on out-of-state property acquired before becoming a Wisconsin resident and sold while a resident of Wisconsin, as described in sub. (3)(b) follow:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
<u>Original Cost</u>	<u>Fair Market Value At Time Wisc. Residency Estab.</u>	<u>Federal Adjusted Basis At Time Residency Estab.</u>	<u>Depreciation Allowed Or Allowable While A Wisconsin Resident</u>	<u>Federal Adjusted Basis At Time Of Sale</u>	<u>Selling Price</u>	<u>Federal Gain or Loss</u>	<u>Wisconsin Gain or Loss</u>
\$ 10,000	\$ 15,000	\$ 5,000	\$ 700	\$ 4,300	\$ 20,000	\$ 15,700	\$ 5,700 ^a
10,000	4,000	5,000	700	4,300	20,000	15,700	15,700 ^b
10,000	25,000	5,000	700	4,300	20,000	15,700	-0- ^c
10,000	4,000	5,000	700	4,300	1,000	(3,300)	(2,300) ^d
10,000	15,000	5,000	700	4,300	4,000	(300)	(300) ^e
10,000	4,000	5,000	700	4,300	3,500	(800)	-0- ^f

^a \$20,000 (col.6) less 14,300 (col.2 less col.4) = \$5,700 gain.

^b \$20,000 (col.6) less 4,300 (col.5) = \$15,700 gain.

^c \$20,000 (col.6) less 4,300 (col.5) = \$15,700 gain; \$20,000 (col.6) less 24,300 (col.2 less col.4) = \$4,300 loss; therefore, no gain or loss is reportable for Wisconsin purposes.

^d \$1,000 (col.6) less 3,300 (col.2 less col.4) = \$2,300 loss.

^e \$4,000 (col.6) less 4,300 (col.5) = \$300 loss.

^f \$3,500 (col.6) less 4,300 (col.5) = \$800 loss; \$3,500 (col.6) less 3,300 (col.2 less col.4) = \$200 gain; therefore, no gain or loss is reportable for Wisconsin purposes.

TAX SHELTERED ANNUITIES

Section Tax 2.94 of the Wis. Adm. Code is adopted to read:

Tax 2.94 Tax sheltered annuities. (Section 71.03(2)(d), Wis. Stats.) (1) GENERAL. (a) For many years members of the state teachers' retirement system have had the privilege of paying in voluntary additional deposits, to provide additional retirement income to supplement normal retirement benefits. In January of 1964 it became possible for such members to pay in additional deposits under a new program known as the Tax Sheltered Annuity Plan.

(b) When a tax sheltered annuity is purchased for an employe by a public school system or by an exempt educational, charitable or religious organization, the deposit used to acquire this annuity may be excluded from the employe's gross income in the year of payment under section 403(b) of the internal revenue code. Accordingly, since January 1, 1965, when Wisconsin adopted the internal revenue code as the basis for computing Wisconsin taxable income, these payments also have been excluded from employes' taxable income for Wisconsin income tax purposes. Prior to that date, such payments were taxable for Wisconsin income tax purposes.

(c) All benefits paid under tax sheltered annuity contracts, including withdrawals, death benefits or annuities, are included in federal taxable income when received. The Wisconsin treatment is described in subs. (2) and (3).

(2) SECTION 71.03(2)(d) EXEMPTION. Normal retirement benefits received from systems enumerated in section 71.03(2)(d), Wis. Stats., are exempt as provided by that section. However, benefits received from tax sheltered annuity deposits administered by such systems do not qualify for the exclusion from Wisconsin taxable income provided by that statute. Tax sheltered annuity benefits shall be treated the same for Wisconsin income tax purposes as for federal income tax purposes; that is, they shall be included in gross income.

(3) STATE TEACHERS RETIREMENT SYSTEM ANNUITY BENEFITS. (a) Tax sheltered annuity benefits received by retired teachers on and after January 1, 1974 shall be included in income. No subtraction modification from federal adjusted gross income shall be allowed, except as provided in par. (c).

(b) Tax sheltered annuity benefits received on or before December 31, 1973 shall be considered nontaxable. A subtraction modification under section 71.05(1)(b)4, Wis. Stats., shall be permitted for such benefits as were included in federal gross income.

(c) If a school system purchased a tax sheltered annuity for an employe prior to January 1, 1965, and the employe paid a Wisconsin income tax on the tax sheltered annuity deposit which was used to pay the 1964 annuity premium, a subtraction modification under section 71.05(1)(b)4, Wis. Stats., shall be allowed for the tax sheltered annuity benefits received on or after January 1, 1974 which are included in federal income and upon which the employe previously paid a Wisconsin income tax.

The allowable subtraction modification is the amount of deposit on which the Wisconsin tax was previously paid less that portion, if any, of the tax sheltered annuity benefits excludable from Wisconsin income because of receipt prior to January 1, 1974, as illustrated in the following examples which assume that the taxpayer files its tax return on a calendar year basis:

Example 1: An employe made a deposit of \$200 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. When the employe retires after January 1, 1974, a subtraction modification under section 71.05(1)(b)4 is permitted for the first \$200 of tax sheltered annuity benefits received. All subsequent benefits are taxable with no subtraction modification allowed.

Example 2: An employe made a deposit of \$300 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and \$120 of such benefits received were not included in Wisconsin taxable income. A subtraction modification under section 71.05(1)(b)4 is permitted for the next \$180 (\$300 - \$120) received after January 1, 1974. All subsequent benefits are taxable with no subtraction modification allowed.

Example 3: An employe made a deposit of \$160 for the purchase of a tax sheltered annuity in 1964, and this amount was included in Wisconsin taxable income. The employe retired prior to December 31, 1973, and treated \$200 of such benefits as nontaxable for Wisconsin income tax purposes. All such benefits received after January 1, 1974 are taxable with no subtraction modification allowed.

SALE OF CONSTANT BASIS ASSETS ACQUIRED PRIOR
TO BECOMING A RESIDENT

Section Tax 2.97 of the Wis. Adm. Code is adopted to read:

Tax 2.97. Sale of constant basis assets acquired prior to becoming a Wisconsin resident. (Sections 71.05(1)(a)3, (b)3 and (j); (2)(a)5 and (b); and (4), Wis. Stats.) (1) GENERAL. (a) The Wisconsin income of a Wisconsin resident who sells a constant basis asset, which was acquired prior to becoming a resident, shall be adjusted in the year of sale for any difference between the federal adjusted basis and the Wisconsin adjusted basis of such asset. If this difference in basis results in the federal loss being greater than the Wisconsin loss, adjustments to Wisconsin income may be required in the year of sale and in any subsequent years in which a capital loss may be carried forward.

(b) "Constant basis assets" (section 71.05(2)(a)5, Wis. Stats.) are assets (other than inventories) which are not subject to depreciation, depletion or amortization, and for which the computation of taxable income is not affected until the asset is sold or otherwise disposed of. Examples include vacant land, stocks and bonds.

(2) LIMITATION OF GAIN OR LOSS ON SALE OF CONSTANT BASIS ASSETS. In Falk v. Wisconsin Tax Commission (1930), 201 Wis. 292 and Siesel v. Wisconsin Tax Commission (1935), 217 Wis. 661, the Wisconsin Supreme Court set limitations on the amount of gain or loss includable in Wisconsin taxable income upon the sale or other disposition of a constant basis asset. The amount of gain or loss for Wisconsin purposes shall be limited to the lesser of:

(a) The selling price less federal adjusted basis of the constant basis asset at the time of sale; or

(b) The selling price less the fair market value of the constant basis asset on the date Wisconsin residence was established.

(c) As an exception, if one computation ((a) or (b) above) represents a gain and the other computation represents a loss, then no gain or loss shall be reportable for Wisconsin purposes. (See Note (2) at the end of this rule.)

(3) MODIFICATION REQUIRED. (a) When the Wisconsin gain or loss is determined under computation (2)(b) or is zero because of the exception in (2)(c), the amount of such gain or loss will differ from that reported on the individual's federal income tax return. Such difference shall be reported as an addition or subtraction modification, as appropriate, in Part II, page 2 of Form 1. A statement shall be attached to Form 1 showing how the modification was determined.

(b) Listed below are explanations of how to compute the amount of the modification. In the explanations, "X" means the selling price less the fair market value on the date Wisconsin residence was established.

1. If the federal gain exceeds the "X" gain, a subtraction modification is required in the year of sale for the difference between the federal gain and the "X" gain. (See example c of Note (2) at the end of this rule.)

2. If the federal gain is less than the "X" gain, no modification is required. (See example d.)

3. If the federal loss is less than the "X" loss, no modification is required. (See example e.)

4. If there is a federal gain but an "X" loss, a subtraction modification is required in the year of sale for the amount of the federal gain. (See example a.)

5. If there is a federal loss but an "X" gain, an addition modification is required in the year of sale for that part of the federal loss deducted in the year of sale. If any part of the remaining federal loss is carried over and deducted in a subsequent year, an addition modification is required in any such year for the amount of the capital loss carryover which is deducted (See example b.)

6. If the federal loss is larger than the "X" loss, an addition or subtraction modification, as appropriate, is required to account for such difference. The taxable year in which this adjustment will be made is dependent upon the facts regarding each specific transaction. (See examples f, g and h.)

(4) **INSTALLMENT SALES.** When the gain on the sale of a constant basis asset is reported on the installment method (internal revenue code section 453) and the Wisconsin gain is less than the federal gain, a subtraction modification is required in each year in which payments of principal are received on the sale. The amount of the subtraction modification which shall be entered on Part II, page 2 of Form 1, is computed using the equation: (principal payments received during the year divided by contract price) multiplied by (federal gain less Wisconsin gain) equals (subtraction modification). (See Note (1) below).

NOTE: (1) An example of the computation of the modification described in sub. (4) is as follows:

Capital stock purchased in 1970 having a federal adjusted basis of \$15,000 is sold by Mr. A for \$25,000 in 1975. The fair market value of the stock was \$19,000 at the time Mr. A became a resident of Wisconsin in 1972. The sale is reported on the installment method. There is a difference of \$4,000 between the federal gain of \$10,000 (\$25,000 less \$15,000) and the Wisconsin gain of \$6,000 (\$25,000 less \$19,000). Principal payments of \$5,000 are received in 1975 and in each of the subsequent 4 years. The required subtraction modification in 1975 (and each of the subsequent 4 years) is computed as follows:

$$\frac{\$5,000 \text{ (principal payments)}}{\$25,000 \text{ (contract price)}} \times \$4,000 \text{ (federal gain = } \$800 \text{ (subtraction modification in 1975 and in each of the subsequent 4 years) less Wisconsin gain)}$$

(2) Examples of the computation of Wisconsin gain or loss on constant basis assets acquired before becoming a Wisconsin resident and sold while a resident of Wisconsin in 1975 follow: (Dollar amounts in parentheses represent a loss in a transaction.)

Examples of the computation of Wisconsin gain or loss on constant basis assets acquired before becoming a Wisconsin resident and sold while a resident of Wisconsin in 1975.

(Dollar amounts in parentheses represent a loss in a transaction.)

(1) Federal Adjusted Basis	(2) Fair Market Value at Time Wisconsin Residence Established	(3) Selling Price	(4) 1975 Federal Gain or Loss (col. 3 less col. 1)	(5) Difference Between Fair Market Value and Selling Price (col. 3 less col. 2)	(6) 1975 Wisconsin Gain or Loss
a \$ 10,000	\$ 25,000	\$ 20,000	\$ 10,000	(\$ 5,000)	\$ -0-
b 10,000	200	1,000	(9,000)	800	-0-
c 10,000	16,000	20,000	10,000	4,000	4,000
d 10,000	8,000	20,000	10,000	12,000	10,000
e 10,000	15,000	4,000	(6,000)	(11,000)	(6,000)
f 10,000	4,000	3,500	(6,500)	(500)	(500)
g 10,000	5,000	1,000	(9,000)	(4,000)	(4,000)
h 10,000	9,400	8,200	(1,800)	(1,200)	(1,200)

a & b Since one computation (columns 4 or 5) results in a gain and the other computation (columns 4 or 5) results in a loss, there is no Wisconsin gain or loss for these two examples.

a A subtraction modification of \$10,000 in 1975 is required, which is the difference between the federal gain (\$10,000) and the Wisconsin gain (0).

b An addition modification in 1975 is required for that portion of the \$9,000 federal loss which is deducted on the 1975 federal return. If any part of the \$9,000 loss is deducted as a capital loss carryover for federal purposes in a subsequent year, an addition modification is required in such year for that part of the loss deducted on the federal return in such year. For example, if only \$1,000 is deducted on the 1975 federal return as a loss, an addition modification of \$1,000 is required on the 1975 Wisconsin return. If the remaining \$8,000 is deducted over the next 8 years at \$1,000 per year on the federal returns, an addition modification of \$1,000 is required on each of the Wisconsin returns for these 8 years.

c,d,e,f,g & h In these six examples, the Wisconsin gain or loss is the lesser gain or loss of columns 4 and 5. In examples f, g and h, it should be assumed that the loss is a net long-term capital loss and that no other capital assets were disposed of during the year.

c A subtraction modification of \$6,000 in 1975 is required, which is the difference between the federal gain (\$10,000) and column 5 (\$4,000).

d A modification is not required because the federal gain (\$10,000) is less than the column 5 gain (\$12,000).

e A modification is not required because the federal loss (\$6,000) is less than the column 5 loss (\$11,000).

f An addition modification in 1975 is required for the difference between that part of the \$6,500 federal loss deducted on the 1975 federal return, and the Wisconsin loss of \$500. An addition modification will also be required in subsequent years for that portion of the capital loss carryover deducted on the federal return each year. For example, if \$1,000 of the \$6,500 loss is deducted on the federal return in 1975, a \$500 addition modification is required in 1975, which is the difference between the amount deducted for federal purposes (\$1,000) and the Wisconsin loss (\$500). As the remaining portion of the loss is deducted in the carryover years, an addition modification will be required in each such year to remove such loss from Wisconsin taxable income.

- g No modification is required in 1975 because the federal adjusted gross income figure used as the starting point for determining Wisconsin taxable income would already reflect the maximum amount of capital loss currently deductible (\$1,000). When, in subsequent years, the aggregate total of the \$9,000 capital loss deducted on the federal return exceeds the total Wisconsin loss allowable (\$4,000), an addition modification will be required to remove such excess loss from Wisconsin taxable income. For example, if \$1,000 of loss is deducted in each of the succeeding carryover years, an addition modification would be required in 1979 (the fourth carryover year) as the total Wisconsin loss allowable of \$4,000 would have been deducted in the years 1975 through 1978.
- h A subtraction modification in 1975 of \$100 would be required to bring the Wisconsin capital loss deduction for that year up to the maximum amount allowable of \$1,000 (this subtraction modification is provided by s. 71.05(1)(j), Wis. Stats.). This would be necessary because only one-half of the \$1,800 net long-term loss would be deductible on the 1975 federal return. In 1976 a subtraction modification for the remaining \$200 (\$1,200 less the \$1,000 deducted in 1975) of loss allowable for Wisconsin purposes would be required.

DISASTER AREA LOSSES

Section Tax 2.98 of the Wis. Adm. Code is adopted to read:

Tax 2.98 Disaster area losses. (Section 71.02(2)(b), Wis. Stats.) (1) GENERAL. (a) Hurricanes, fires, storms, floods, and other similar casualties may cause persons to suffer losses from damage to property used for personal or business purposes for which insurance coverage is nominal or nonexistent. Losses sustained from casualties of this kind may be deductible on a federal and a Wisconsin income tax return.

(b) If a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, section 165(h) of the internal revenue code gives taxpayers the election to deduct the loss on the return for the current tax year or on the return for the immediately preceding tax year.

(2) FEDERAL TAX TREATMENT OF DISASTER LOSSES. (a) Federal law. 1. Internal revenue code section 165(a) provides for a deduction for certain kinds of casualty losses.

2. Internal revenue code section 165(h) provides for a deduction of certain disaster losses and reads:

"Disaster losses.--Notwithstanding the provisions of subsection (a), any loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 may, at the election of the taxpayer, be deducted for the taxable year immediately preceding the taxable year in which the disaster occurred. Such deduction shall not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claims the loss. If an election is made under this subsection, the casualty resulting in the loss will be deemed to have occurred in the taxable year for which the deduction is claimed."

(b) What is a casualty loss. A casualty is the complete or partial destruction or loss of property resulting from an event that is identifiable; damaging to property; and sudden, unexpected and unusual. 1. A casualty loss includes damage from a hurricane, tornado, flood, storm, shipwreck, fire or accident and damage to trees and shrubs. If ornamental trees and shrubs on residential property are damaged or destroyed by a casualty, there may be a deductible casualty loss. A deductible loss occurs when there has been a decrease in the total value of the real estate. However, a different principle applies in cases of such damages to similar property used for business purposes. (Internal revenue service publication 547 explains the loss computation and lists additional items which may qualify as casualty losses.)

2. Losses not deductible as casualties include: a. The loss of trees, shrubs and other plants on property used for residential purposes, as the result of disease, or fungus spread by beetles, insects, worms or other similar cause.

b. Costs involved in the care of personal injuries and the cost of temporary lights, fuel, moving or rental of temporary quarters.

c. Loss of future profits, for example, from ice storm damage to standing timber that reduces the rate of growth or the quality of future timber. The damage must actually result in property (ex., existing timber) being rendered unfit for use to qualify as a casualty.

(c) Amount of deductible casualty loss. 1. In general, the amount of loss is the decrease in fair market value of property resulting from the casualty, limited to the adjusted basis of the property, and reduced by any insurance or other compensation received or expected to be received. If the adjusted basis of the property is zero, there is no deductible loss.

2. Different principles apply to a casualty loss deduction on property used for personal purposes and property used for business purposes:

a. A casualty loss on property used solely for personal purposes is deductible only to the extent that the loss exceeds \$100 for each casualty.

b. A casualty on property used solely for business purposes or property held for the production of income is deductible in full without the \$100 reduction.

(d) When a loss is deductible. Casualty losses are generally deductible only in the tax year in which the casualty occurred even though the damaged property may not be repaired or replaced until the succeeding year. However, if a taxpayer sustains a casualty loss from a disaster in an area subsequently determined by the president of the United States to warrant federal assistance, internal revenue code section 165(h) gives the taxpayer the election of claiming a loss on the return for the tax year in which the loss occurred or the preceding tax year.

(e) Making the election to claim the loss in the preceding taxable year. 1. The election generally shall be made on or before the later of the due date (exclusive of extensions) for filing the income tax return for the tax year in which the disaster actually occurred, or the due date (with regard to extensions) of the return for the preceding tax year. For example, in the absence of any extensions of time to file, a calendar year individual taxpayer has until April 15, 1977, to amend a 1975 tax return to claim a disaster loss which took place during 1976.

2. The taxpayer's election shall be in writing, signed by the taxpayer and shall be made on a return, an amended return or a claim for refund. It shall specify the date or dates of the disaster and the city, town or village, county, and state where the damaged or destroyed property was located. In making the election, the taxpayer shall compute the amount of the loss under the usual rules for casualty losses as if it occurred in the year preceding that of the disaster.

3. The election becomes irrevocable 90 days after it is made.

4. If the taxpayer does not make the election on the tax return for the preceding year, the loss is deductible on the return for the year in which the disaster occurred.

(3) WISCONSIN TAX TREATMENT OF DISASTER LOSSES. (a) Individuals. 1. The Wisconsin income tax law for individuals is the same as the federal tax law (internal revenue code section 165(h)) regarding disaster losses. Therefore, the federal provisions explained in sub. (2) also apply to individuals for Wisconsin income tax purposes.

2. If an individual desires to make the election after having filed a Wisconsin income tax return for the preceding taxable year, the casualty loss may be claimed by filing an amended Wisconsin return for that year. To simplify the filing of an amended return, Wisconsin Form 1X may be used.

(b) Corporations. The Wisconsin corporation tax law (in Chapter 71, Wis. Stats.) is not referenced to the federal law in regard to disaster losses. Therefore, the election provisions for individuals in internal revenue code section 165(h) are not available to corporations for Wisconsin franchise/income tax purposes.

NOTE: (1) As an example of the above, on March 23, 1976, the president of the United States declared that 22 Wisconsin counties warranted assistance by the federal government under the Disaster Relief Act of 1974. This resulted from the damage during the severe rain and ice storm which occurred March 1 through 12, 1976 in the following 22 counties:

Calumet	Iowa	Rock
Columbia	Jefferson	Sauk
Crawford	LaFayette	Sheboygan
Dane	Manitowoc	Vernon
Dodge	Milwaukee	Walworth
Fond du Lac	Ozaukee	Washington
Grant	Richland	Waukesha
Green		

An individual who sustained a casualty loss from this disaster in any of these 22 counties (regardless of where that individual resided) could have elected to deduct the loss on the individual's 1975 Wisconsin income tax return. The election had to have been made on or before April 15, 1977 for calendar year taxpayers (assuming the due date for filing the 1975 Wisconsin return was not extended beyond April 15, 1977). If the election was not made, the loss was deductible on the taxpayer's 1976 return.

(2) This rule explains some federal provisions relating to disaster area losses and how the Wisconsin law for individuals conforms to the federal law. This rule does not explain all the details regarding casualty losses. However, Internal Revenue Service Publication 547, entitled "Tax Information on Disaster, Casualty Losses, and Thefts", may be helpful in understanding such details as how to deduct a casualty loss, what to do if the loss exceeds income, how to adjust the basis of property damaged or replaced, how to report the amount received from insurance or other sources and related casualty loss problems.

COMPUTING 1975 WISCONSIN NET TAXABLE INCOME WITH REFERENCE TO
THE INTERNAL REVENUE CODE IN EFFECT ON DECEMBER 31, 1974

Section Tax 2.99 of the Wis. Adm. Code is adopted to read:

Tax 2.99 Computing 1975 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1974. (Sections 71.02(2)(b) and 71.05(1)(b)6, Wis. Stats.) (1) LAW CHANGE FOR TAXABLE YEAR 1975. Chapter 39, Laws of 1975, amended section 71.02(2)(b), Wis. Stats., so that for purposes of determining Wisconsin income and deduction amounts for the taxable year 1975, an individual, partnership, estate or trust shall use the internal revenue code enacted as of December 31, 1974.

(2) EFFECT OF AMENDMENTS TO THE INTERNAL REVENUE CODE. (a) Amendments to the internal revenue code enacted on or before December 31, 1974. Amendments enacted on or before December 31, 1974 shall be considered a part of the internal revenue code in effect on December 31, 1974, and shall be recognized for Wisconsin income tax purposes, even though such amendments became operative after December 31, 1974. For example, the provisions of P.L. 93-406--the Employee Retirement Income Security Act of 1974 (Pension Reform Act)--enacted September 2, 1974, applies for Wisconsin purposes even though certain portions of the act did not become operative until after December 31, 1974.

(b) Amendments to the internal revenue code enacted after December 31, 1974. Amendments enacted after December 31, 1974 shall not be considered a part of the internal revenue code in effect on December 31, 1974, regardless of whether such amendments become operative before or after December 31, 1974. Such amendments shall not be recognized for Wisconsin income tax purposes.

(3) AMENDMENTS TO THE INTERNAL REVENUE CODE. Descriptions of some amendments to the internal revenue code enacted after December 31, 1974 and their treatment for Wisconsin purposes follows: (a) Amendments affecting federal adjusted gross income. 1. Deferred gain on sale of Personal residence. a. Federal: Additional time is allowed to purchase a new residence for purposes of deferring a gain on the sale of the old residence. If a new residence is purchased, the time period is 18 months rather than 12 months. If a new residence is constructed, the time period is 24 months rather than 18 months. (P.L. 94-12, enacted March 29, 1975.)

b. Wisconsin: The time period is still 12 months for purchase of a residence and 18 months for construction of a residence. If replacement of an old residence is not made within these periods, the gain on the sale of the old residence shall be included in Wisconsin taxable income.

2. Contributions to retirement plans. a. Federal: The internal revenue code provides that a cash basis employer or self-employed person may treat Keogh plan contributions made on or before the due date (or a later date if an extension of time for filing was obtained) of the person's 1975 federal income tax return as if they had been made on the last day of the 1975 taxable year. For example, Keogh plan

contributions may be made during the period January 1, 1976 through April 15, 1976 (due date of a 1975 calendar year return) and still be claimed as a deduction on a 1975 federal income tax return. This extended time period for making contributions to Keogh plans is provided by 2 separate federal laws: Keogh plans established after January 1, 1974, provided by Pension Reform Act (P.L. 93-406, enacted September 2, 1974); and Keogh plans existing as of January 1, 1974, provided by Tax Reduction Act of 1975 (P.L. 94-12, enacted March 29, 1975).

b. Wisconsin: As a result of the enactment of section 71.05(1)(b)6, Wis. Stats., in Chapter 224, Laws of 1975, the treatment of contributions to a Keogh plan for Wisconsin income tax purposes for 1975 is the same as the federal provisions explained above. Contributions made on or before the due date (or a later date if an extension of time for filing was obtained) of the taxpayer's 1975 Wisconsin income tax return may be treated as if they had been made on the last day of the 1975 taxable year.

3. Amortization of income rental housing and pollution control facilities. a. Federal: Expenditures to rehabilitate low and moderate income rental housing and for pollution control facilities which are made in 1975 may be amortized over 5 years. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: Such expenditures shall be depreciated over the useful life of the improvements for Wisconsin purposes. (However, special write-off provisions may be available for pollution control facilities under section 71.05(1)(h) or (i), Wis. Stats.)

4. Depletion of oil and gas wells. a. Federal: The percentage depletion allowance for certain oil and gas wells was either no longer available or has been altered. (P.L. 94-12, enacted March 29, 1975.)

b. Wisconsin: This depletion allowance shall be retained at 1974 levels for Wisconsin purposes.

5. Depreciation - ADR. a. Federal: Taxpayers electing to use the Asset Depreciation Range System (ADR) for depreciating business assets acquired in 1975 may exclude real estate assets from that system. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: For Wisconsin purposes, when the ADR System is elected, it shall be applied to all assets acquired during 1975 with no exclusions permitted.

(b) Amendments affecting itemized deductions, standard deduction and low-income allowance. 1. Political contributions. a. Federal: The limitation on the amount of political contributions which were deductible was increased to \$100 for single persons and \$200 for married couples. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: The limit shall be \$50 for single persons and \$100 for married couples.

2. Newsletter funds. a. Federal: Additional political contributions qualified as being deductible. Candidacy requirements were relaxed and contributions to elected officials or candidates newsletter funds were considered deductible. (P.L. 93-625, enacted January 3, 1975.)

b. Wisconsin: Contributions to newsletter funds and unannounced candidates shall not be deductible.

3. Child care. a. Federal: For taxable years beginning after March 29, 1975, the income limitation applicable to child-dependent care was increased to \$35,000. (P.L. 94-12, enacted March 29, 1975.)

b. Wisconsin: The income limitation shall remain at \$18,000.

4. Sales tax. a. Federal: The internal revenue service published state sales tax tables for 1975. These tables may be used to determine the amount of sales tax to be claimed as an itemized deduction on a 1975 federal income tax return. (These tables did not result from enactment of new federal law.)

b. Wisconsin: The 1975 state sales tax tables published by the internal revenue service shall also be used to determine the sales tax to be claimed as an itemized deduction for Wisconsin purposes in 1975. However, the amount of the sales tax deduction shall be based on federal adjusted gross income as computed under the internal revenue code in effect on December 31, 1974.

5. Standard deduction and low-income allowance. a. Federal: The standard deduction and low-income allowance were increased for federal tax purposes.

b. Wisconsin: The standard deduction shall remain at 15% of Wisconsin adjusted gross income, not to exceed \$2,000 for an unmarried individual or \$2,000 in the aggregate for a husband and wife. The low-income allowance shall remain at \$1,300 for an unmarried individual or \$1,300 in the aggregate for a husband and wife.

(4) REPORTING DIFFERENCES RESULTING FROM AMENDMENTS ENACTED AFTER DECEMBER 31, 1974. (a) Individuals. 1. In computing taxable income for federal purposes for 1975, an individual shall consider amendments to the internal revenue code enacted after December 31, 1974. The federal income tax return attached to the Wisconsin income tax return, Form 1, may reflect such amendments. However, since Wisconsin does not recognize amendments to the internal revenue code enacted after December 31, 1974, there may be differences between the amounts of "federal adjusted gross income" and "itemized deductions" as shown on the federal income tax return and such amounts as determined for Wisconsin purposes.

2. Wisconsin Schedule I shall be used to report differences resulting from amendments to the internal revenue code enacted after December 31, 1974.

3. The amount of an individual's standard deduction or low-income allowance will also be different for federal than for Wisconsin purposes. However, such differences shall not be reported on Schedule I. The amount of standard deduction or low-income allowance permitted for Wisconsin shall be entered on line 6 of the Wisconsin income tax return, Form 1 or Form 1A.

(b) Partnerships, estates and trusts. The federal returns required to be attached to the Wisconsin Form 2 (estates and trusts) and Form 3 (partnerships) may reflect amendments enacted to the internal revenue

code after December 31, 1974. Therefore, differences may exist between the amounts of certain income and deduction items as shown for federal purposes and those reportable for Wisconsin purposes. The differences resulting from amendments enacted after December 31, 1974 shall be identified on the Wisconsin Form 2 or Form 3. If the differences affect the amount of distributable income reportable by a partner or beneficiary for Wisconsin purposes, the partner or beneficiary shall report such differences on Wisconsin Schedule I.

NOTE: For the years 1965 through 1974, Wisconsin's income tax law was "federalized" as it pertained to individuals, partnerships, estates and trusts. Federal definitions of income and deductions as determined under the internal revenue code for a current taxable year were used in computing Wisconsin taxable income.

Copies of Schedule I may be obtained from any department of revenue office or by writing to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

COMPUTING 1976 WISCONSIN NET TAXABLE INCOME WITH REFERENCE
TO THE INTERNAL REVENUE CODE IN EFFECT ON DECEMBER 31, 1975

Section Tax 2.991 Computing 1976 Wisconsin net taxable income with reference to the internal revenue code in effect on December 31, 1975. (Section 71.02(2)(b), Wis. Stats.) (1) LAW CHANGE FOR TAXABLE YEAR 1976. Chapter 224, Laws of 1975, amended section 71.02(2)(b), Wis. Stats., so that for purposes of determining Wisconsin income and deduction amounts for the taxable year 1976, an individual, partnership, estate or trust shall use the internal revenue code enacted as of December 31, 1975.

(2) EFFECTS OF NEW LAW FOR TAXABLE YEAR 1976. (a) Amendments to the internal revenue code enacted on or before December 31, 1975. Amendments enacted on or before December 31, 1975 shall be considered a part of the internal revenue code in effect on December 31, 1975, and therefore recognized for Wisconsin income tax purposes for the taxable year 1976, even though such amendments may not become operative until after December 31, 1975.

(b) Amendments to the internal revenue code enacted after December 31, 1975. Amendments enacted after December 31, 1975 shall not be considered a part of the internal revenue code in effect on December 31, 1975, regardless of whether such amendments become operative before or after December 31, 1975. Such amendments will not be recognized for Wisconsin income tax purposes for the taxable year 1976.

(3) REPORTING DIFFERENCES RESULTING FROM AMENDMENTS TO THE INTERNAL REVENUE CODE ENACTED AFTER DECEMBER 31, 1975. (a) Individuals. 1. In computing taxable income for federal purposes for 1976, an individual must consider amendments to the internal revenue code enacted after December 31, 1975 (e.g., the provisions of the federal "Tax Reform Act of 1976"). The federal income tax return attached to the Wisconsin income tax return, Form 1, may reflect such amendments. However, since Wisconsin does not recognize amendments to the internal revenue code enacted after December 31, 1975, there may be differences between the amounts of "federal adjusted gross income" and "itemized deductions" shown on the federal income tax return and such amounts reportable for Wisconsin purposes.

2. Wisconsin Schedule I shall be used to report differences resulting from amendments to the internal revenue code enacted after December 31, 1975.

3. The amount of an individual's standard deduction or low-income allowance will also be different for federal than for Wisconsin purposes. However, such differences shall not be reported on Schedule I. The amount of standard deduction or low-income allowance permitted for Wisconsin shall be entered on line 6 of the Wisconsin income tax return, Form 1 or Form 1A.

(b) Partnerships, Estates and Trusts. The federal returns required to be attached to the Wisconsin Form 2 (estates and trusts) and Form 3 (partnerships) may reflect amendments enacted to the internal revenue code after December 31, 1975. Therefore, differences may exist between the amounts of certain income and deduction items as shown for federal purposes and those reportable for Wisconsin purposes. The differences resulting from amendments enacted after December 31, 1975 shall be identified on the Wisconsin Form 2 or Form 3. If the differences affect the amount of distributable income reportable by a partner or beneficiary for Wisconsin purposes, the partner or beneficiary shall report such differences on Wisconsin Schedule I.

(4) INCOME AND DEDUCTION ITEMS WHICH DIFFER FOR WISCONSIN-FEDERAL PURPOSES FOR 1976. (a) A copy of the 1976 Wisconsin Schedule I and its instructions is set out following this rule and incorporated herein. The Schedule I instructions contain a detailed listing of changes to the internal revenue code enacted after December 31, 1975. The proper treatment of each item for Wisconsin purposes is also described.

(b) The differences probably affecting the greatest number of taxpayers involve the sick pay exclusion (see A.1., Schedule I instructions) and child care expenses (see B. 42, Schedule I instructions). Wisconsin Schedules 2440W (sick pay) and 2441W (child care) have been developed for use in computing the proper Wisconsin deductions for these items.

NOTE: For the years 1965 through 1974, Wisconsin's income tax law was "federalized" as it pertained to individuals, partnerships, estates and trusts. Federal definitions of income and deductions as determined under the internal revenue code for a current taxable year were used in computing Wisconsin taxable income.

For the taxable year 1975, the Wisconsin income tax law was amended (Chapter 39, Laws of 1975, amended section 71.02(2)(b)) to provide that the computation of income and deduction amounts for individuals, partnerships, estates and trusts shall be based on the internal revenue code enacted as of December 31, 1974, rather than the December 31, 1975 internal revenue code. (Rule Tax 2.99 explains how 1975 Wisconsin taxable income shall be computed under the December 31, 1974 Internal Revenue Code).

INSTRUCTIONS FOR COMPLETING WISCONSIN SCHEDULE I-1976

INTRODUCTION—The Wisconsin Statutes require that the computation of taxable income on the 1976 Wisconsin income tax return is to be based on the Internal Revenue Code enacted as of December 31, 1975. Changes to the Internal Revenue Code enacted after that date do not apply for Wisconsin income tax purposes. Thus, certain income and deduction items may be different for federal and Wisconsin purposes. Those differences must be adjusted on this schedule.

WHO MUST FILE—If the computation of a person's federal adjusted gross income or federal itemized deductions reflects any of the changes in federal income tax law which are listed below, this schedule must be completed and attached to the Wisconsin income tax return, Form 1. If a married couple is filing a joint federal return, only one Schedule I should be prepared and it should be based on the joint income and deduction amounts reported on the federal return.

PARTNERS and BENEFICIARIES OF ESTATES AND TRUSTS—The income and deduction items computed on the Wisconsin returns of partnerships, estates and trusts may also be affected by the differences between Wisconsin and federal law for 1976. As a result, the distributive share of these items which are reportable on the individual Wisconsin income tax returns of the respective partners and beneficiaries may differ for Wisconsin and federal income tax purposes. Such partners and beneficiaries should receive notification from the partnership, estate or trust of the amounts reportable for Wisconsin purposes. By comparing the amounts reportable for Wisconsin and federal purposes, the partner or beneficiary should determine the items which differ and make the appropriate adjustments on Schedule I.

Wisconsin residents who are members of partnerships or beneficiaries of estates or trusts which are not required to file Wisconsin returns may not receive notification from the partnership, estate or trust of the items reportable for Wisconsin purposes. Such residents should determine if any adjustments are required on Schedule I.

A list of the differences in Wisconsin-federal law which affect only the computation of income receivable from a partnership may be found in section C on page 4. Certain items in section A may also affect such income.

SPECIFIC INSTRUCTIONS

(Numbered to correspond with the line numbers on Schedule I)

INSTRUCTIONS FOR PART I

1. Enter your 1976 federal adjusted gross income as shown on line 15c of your federal return, Form 1040. If you are married and filing a joint federal return, this figure will be your joint federal income.
2. If the sick pay excludable from your Wisconsin income differs from the sick pay (disability income) excluded from federal income, enter on line 2a the excludable sick pay computed on Wisconsin Schedule 2440W. On line 2b, enter the sick pay (disability income) excluded from federal income on line 15b, Form 1040.
3. If you sold or otherwise disposed of certain property during 1976, the gain or loss reportable from such sale may differ for Wisconsin and federal purposes. (The provisions of federal law which may produce such differences are described in section A.) To properly report such gain or loss on your Wisconsin return, it may be necessary to remove all gain or loss included in your federal adjusted gross income. This is done by entering the appropriate figure on line 3a or 3b, or 4a or 4b. Then enter the revised gain or loss figure on line 3c or 4c, and attach to Form 1 a revised federal Schedule D or Form 4797 or 4798 marked "Revised to 12/31/75 IRC".
4. See the listing under ITEMS REQUIRING ADJUSTMENT for other items that require adjustment. Enter on lines 6a through 6h each of the items for which an adjustment is being made.

INSTRUCTIONS FOR PART II

8. Enter your 1976 federal itemized deductions from line 40 of federal Schedule A.
9. Persons incurring expenses for household and dependent care services (child care) which qualify as an itemized deduction on their Wisconsin return must complete Wisconsin Schedule 2441W. Enter on line 9 of Schedule I the allowable deduction as shown on line 16 of Wisconsin Schedule 2441W. CAUTION—persons claiming the standard deduction on their Wisconsin return cannot claim a deduction for these expenses.
10. See the listing (section B on page 4) under ITEMS REQUIRING ADJUSTMENT for details on adjustments that may be necessary to other deductions.

Whenever federal adjusted gross income has been increased or decreased in Part I of Schedule I, itemized deductions for medical expense, sales tax and contributions may also require adjustments. The deductible amount of those items is determined by using federal adjusted gross income, as computed under the 12/31/75 Internal Revenue Code.

ITEMS REQUIRING ADJUSTMENT

(All of the following changes in federal law were part of Public Law 94-455, enacted October 4, 1976, except for items 38 and 40 which were part of

Public Law 94-253, enacted March 31, 1976, and Public Law 94-267, enacted April 15, 1976, respectively.)

Listed below are brief explanations of differences between the Internal Revenue Code for 1975 and 1976. The "Federal" explanation indicates how an item is to be treated for federal income tax purposes under the December 31, 1976 Internal Revenue Code. The "Wisconsin" explanation indicates how the item is to be treated for Wisconsin purposes under the Internal Revenue Code enacted as of December 31, 1975.

If you need additional information regarding any of these items, contact any Wisconsin Department of Revenue office.

A. ITEMS AFFECTING THE COMPUTATION OF FEDERAL ADJUSTED GROSS INCOME*

1. Sick Pay Exclusion:

(a) Federal- The sick pay exclusion is no longer available to taxpayers who are only temporarily absent from work. A taxpayer must now be permanently and totally disabled to exclude any portion of income as sick pay. Also, any exclusion available must be reduced on a dollar-for-dollar basis by the amount of the taxpayer's adjusted gross income (as computed before the sick pay exclusion) in excess of \$15,000. Waiting periods are no longer imposed for purposes of determining the amount of a sick pay exclusion.

(b) Wisconsin- Taxpayers who are temporarily absent from work due to sickness or injury continue to be eligible for a sick pay exclusion and no reduction in the amount excludable is required when income exceeds \$15,000. Waiting periods continue to apply with respect to the amount of exclusion available during the first 30 calendar days of absence. (Wisconsin Schedule 2440W should be completed to determine the proper amount of sick pay excludable for Wisconsin purposes.)

2. Federal Employee Disability Pensions:

(a) Federal- Members of the armed forces, the National Oceanic and Atmospheric Administration, the Public Health Service or the Foreign Service, who first enter the service of such organization after September 24, 1975, may be limited as to the amount of disability income (received for non-combat injuries) which they may exclude from their taxable income.

(b) Wisconsin- All disability payments received by such individuals are excludable from income.

3. Rental of Vacation Homes:

(a) Federal- A limitation (14 days or 10% of the days rented, whichever is greater) is placed on the amount of personal use which may be made of rental vacation property without reducing rental expenses attributable to such property. Deductible expenses are limited to the amount of rent derived from the property whenever personal use exceeds the limitation. However, a minimum rental use provision is also created to provide that when a vacation home is rented out for fewer than 15 days in any taxable year, the rental income derived may be excluded from gross income and no rental expenses may be deducted.

(b) Wisconsin- Income derived from the rental of a vacation home must be reported regardless of the extent of rental activity. Losses incurred are subject to the provisions of Section 183 of the Internal Revenue Code, relating to activities not engaged in for profit.

4. Business Use of Personal Residence:

(a) Federal- The deduction of business expenses (e.g., office-in-home) attributable to a taxpayer's personal residence is generally restricted to cases where a portion of the home is used for business purposes on an exclusive and regular basis. Combined (business and personal) use or occasional use of a portion of the home will not meet the exclusive use test. In the case of employees, any business use of the home must also be for the convenience of their employer.

*Note: Items 4, 11, 30, 32, 33 and 36 may also affect the computation of federal itemized deductions in certain cases.

- An overall limitation (measured by the income produced by the business activity) is placed on the amount of business expenses which may be deducted.
- (b) Wisconsin- Expenses may be deducted for the partial use of residential property for business purposes, even though not attributable to a portion of the home used on an exclusive basis. Deductible amounts are not limited by the income generated by the business activity in the home.
- 5. Cancellation of Student Loans:**
- (a) Federal- The forgiveness of all or a portion of student loans funded by federal, state or local government programs will not produce taxable income when such forgiveness is contingent upon the recipient working for a specified period of time in a certain area or for a certain class of employer.
- (b) Wisconsin- Any portion of a student loan which is forgiven must be included in the recipient's income for the year in which it is forgiven.
- 6. Political Party Debts:**
- (a) Federal- Certain taxpayers using the accrual-basis method of accounting may now claim a business bad debt deduction for worthless debts owed by a political party or committee, if certain requirements are met.
- (b) Wisconsin- No deduction is allowable for a worthless debt owed by a political party or committee.
- 7. Crop Disaster Payments:**
- (a) Federal- Disaster payments received by cash-basis farmers under the authority of the Agricultural Act of 1949 for crop damage or destruction will be treated in the same manner as crop insurance proceeds. That is, an election may be made to delay including such payments in income until the year after receipt, provided that income from the crops involved would normally be reported in that year.
- (b) Wisconsin- A cash-basis farmer will be required to report such disaster payments as income in the year received.
- 8. Preservation of Historic Structures:**
- (a) Federal- Several tax incentives are provided to encourage the preservation and rehabilitation of historic structures listed in the National Register or certified by the Department of the Interior. Essentially, they consist of rapid write-off provisions for rehabilitation expenditures, and restrictions on deductions for demolition costs and depreciation of newly constructed buildings.
- (b) Wisconsin- Expenditures relating to historical structures will continue to be treated in the same manner as those for other types of property.
- 9. Qualified Stock Options:**
- (a) Federal- Qualified stock option rules for employee plans have been repealed as of May 20, 1976. This means most stock options granted after that date will produce income which must be reported by the recipient either in the current year or at the time the option is exercised. (However, options granted under plans adopted prior to May 20, 1976, will continue to receive special treatment if they are exercised before May 20, 1981.)
- (b) Wisconsin- Stock options granted under "qualified" plans will continue to receive special tax treatment. The recipient will not be required to report any income at the time the option is granted or when it is exercised. Rather, the recognition of income is postponed until the option or any stock acquired under it is sold.
- 10. Livestock Sold Because of Drought:**
- (a) Federal- Farmers who use the cash-basis method of accounting may elect to delay including the proceeds from drought caused sales of certain livestock in income until the following taxable year. This election is available only to farmers located in drought areas designated as eligible for federal assistance.
- (b) Wisconsin- A cash-basis farmer must report the proceeds from all livestock sales as income in the year received.
- 11. Construction Period Interest and Taxes:**
- (a) Federal- A limitation is placed on the amount of construction period interest and taxes which may be deducted in the year paid or accrued with respect to nonresidential real property, the construction of which began in 1976. A minimum of 50% of such expenses must be capitalized for amortization after the property is available for use or sale.
- (b) Wisconsin- Construction period interest and taxes on nonresidential property may either be deducted currently or capitalized, at the election of the taxpayer.
- 12. Gain From Condemnation of Real Property:**
- (a) Federal- Additional time is allowed to acquire replacement property for purposes of deferring the recognition of a gain from property which has been disposed of due to condemnation proceedings. The replacement period is now three years.
- (b) Wisconsin- The replacement period remains at two years. If qualifying replacement property is not acquired within that time, any gain resulting from the condemnation sale must be included in Wisconsin taxable income.
- 13. Recapture of Depreciation on Certain Real Property:**
- (a) Federal- All post-1975 accelerated depreciation (with the exception of that claimed on certain government subsidized housing) will be treated as ordinary income, rather than capital gain income at the time the property is sold.
- (b) Wisconsin- The portion of accelerated depreciation which will be treated as ordinary income will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.
- 14. Gain on Sales Between Related Parties:**
- (a) Federal- The provisions restricting capital gain treatment when a sale or exchange is between related individuals or between an individual and a controlled corporation have been broadened for transactions taking place after October 4, 1976.
- (b) Wisconsin- The definitions of "related parties" will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.
- 15. Outdoor Advertising Displays:**
- (a) Federal- Certain outdoor advertising displays involuntarily converted through condemnation may be regarded as real property rather than tangible personal property. This will allow taxpayers to acquire replacement real property and defer the recognition of a gain from the conversion.
- (b) Wisconsin- Such property will continue to be regarded as personal property and any gain realized from the involuntary conversion must be included in Wisconsin taxable income.
- 16. Mutual Funds Tax Exempt Interest:**
- (a) Federal- A distribution of state or local municipal bond interest received from certain mutual funds will retain its character as tax exempt income. Thus the recipient may exclude such amount from taxable income.
- (b) Wisconsin- Such interest will not retain its character as tax exempt income when distributed by a mutual fund, and must be included in income.
- 17. Exchange Fund Partnerships:**
- (a) Federal- Gain will be recognized when appreciated property is transferred, after February 17, 1976, to a partnership constituting an investment company and results in a diversification of investments.
- (b) Wisconsin- No gain will be recognized at the time of such transfer.
- 18. Armed Forces Health Professions Scholarships:**
- (a) Federal- Amounts received under the above scholarship program in 1976 may be excluded from taxable income.
- (b) Wisconsin- Such amounts must be included in income.
- 19. Income Earned in Foreign Country:**
- (a) Federal- The income exclusion permitted to certain U.S. citizens earning income in a foreign country has been reduced to \$15,000 annually.
- (b) Wisconsin- This exclusion will be determined under the Internal Revenue Code in effect on December 31, 1975.

20. Pollution Control Facilities:

- (a) Federal- The cost of certain pollution control facilities may be amortized over a 5-year period.
- (b) Wisconsin- Such expenditures must be depreciated over the useful life of the facility. (However, it should be noted that special write-off provisions may be available for such facilities under s. 71.05 (1) (h) or (l) of the Wisconsin Statutes.)

21. Owner-Employee Retirement Plan Contributions:

- (a) Federal- Contributions by an owner-employee to a Keogh type retirement plan which is a level-premium annuity contract may be made without regard to the 25% of earned income limitation.
- (b) Wisconsin- Such retirement plan contributions will continue to be subject to the 25% of earned income limitation.

22. Minimum \$750 Contribution to Retirement Plans of Self-Employed Individuals:

- (a) Federal- Self-employed individuals having an adjusted gross income of less than \$15,000 may make contributions of up to \$750 to a Keogh type retirement plan without regard to the 25% of earned income limitation.
- (b) Wisconsin- Such retirement plan contributions will continue to be subject to the 25% of earned income limitation.

23. Individual Retirement Accounts:

- (a) Federal- Members of the Armed Forces Reserves, the National Guard and volunteer fire-fighters may qualify for an Individual Retirement Account deduction regardless of the fact that they participate in a military or government retirement plan.
- (b) Wisconsin- Such individuals will not be allowed to deduct contributions made to an Individual Retirement Account.

24. Tax Sheltered Annuities:

- (a) Federal- Amounts contributed by certain tax exempt employers to provide annuities for employees may now be invested in regulated investment companies which issue either redeemable or non-redeemable shares (i.e., open-end or closed-end mutual funds) without the employee having to recognize income currently.
- (b) Wisconsin- Such contributions must be invested in regulated investment companies which issue redeemable shares in order to be excludable from an employee's income.

25. Sports Franchises:

- (a) Federal- New methods are prescribed for allocating a portion of the purchase price of a sports franchise to depreciable player contracts. Also, the depreciation recapture provisions relating to sales of player contracts have been altered.
- (b) Wisconsin- Allocation of purchase price and depreciation recapture amounts will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.

26. Production Costs of Films, Books, Records, Etc.:

- (a) Federal- Amounts attributable to the production of a film, book, record or similar property must be capitalized and deducted over the period that such property will produce substantially all of its income.
- (b) Wisconsin- All or a portion of such expenses may be deducted in the year paid or accrued.

27. Low-Income Housing Rehabilitation Expenditures:

- (a) Federal- Certain expenditures incurred to rehabilitate low-income rental housing may be amortized over a 5-year period.
- (b) Wisconsin- Such expenditures must be depreciated over the useful life of the improvements made.

28. Recapture of Intangible Drilling Costs:

- (a) Federal- Previously deducted intangible drilling expenses will be treated as ordinary income upon sale of oil and gas properties, to the extent such deductions exceed amounts which would be allowed if the expenses were capitalized and amortized over the useful life of the well.
- (b) Wisconsin- Amounts previously deducted for such expenditures are not subject to the recapture provisions.

29. Option Closing Transactions:

- (a) Federal- The writer of certain securities options will realize short-term capital gain or loss from closing transactions involving options granted after September 1, 1976.
- (b) Wisconsin- Gain or loss on such transactions will continue to be treated as ordinary rather than capital gain income.

30. Nonresident Aliens:

- (a) Federal- A nonresident alien married to a U.S. citizen may elect to be taxed as a citizen. As a result, such individual will be subject to tax on his or her entire worldwide income, but also will be allowed to claim the standard deduction, low-income allowance or itemized deductions available to U.S. citizens.
- (b) Wisconsin- Such individual will continue to be treated as a nonresident alien. Generally, only income from U.S. sources will be includable in income and only amounts attributable to U.S. business activities, charities or properties are allowable as deductions.

31. Farmers' Excess Deduction Account:

- (a) Federal- No further additions to excess deduction accounts have to be made for losses sustained after the tax year 1975.
- (b) Wisconsin- Farm losses deducted against non-farm income must continue to be accumulated in excess deduction accounts. Thus, gains from the sale of farm property will continue to be subject to farm loss recapture provisions.

32. Prepaid Interest:

- (a) Federal- Taxpayers using the cash-basis method of reporting may only deduct prepaid interest expense in the tax year in which the interest represents a charge for the use of the funds borrowed. In other words, the interest expense must be prorated over the term of the loan and deducted accordingly.
- (b) Wisconsin- Cash-basis taxpayers may deduct prepaid interest expenses in the year paid, if such advance payment is for a period not extending more than 12 months beyond the end of the current taxable year and the deduction will not materially distort income.

33. Investment Interest:

- (a) Federal- The amount of interest on investment indebtedness which is deductible in any one taxable year is limited to \$10,000, plus the taxpayer's net investment income. Investment interest which is not deductible for any taxable year can be carried over without limitation to future years.
- (b) Wisconsin- The limitation regarding deductible investment interest applicable for taxable year 1975 will be retained for Wisconsin purposes. Generally, the limitation is \$25,000, plus net investment income and long-term capital gain income, plus one-half of any interest exceeding these amounts. Investment interest which is not deductible in the current year can be carried over to future years, but may be subject to further limitation in the carry-over year as provided by the Internal Revenue Code in effect on December 31, 1975.

34. Losses Limited to Amounts "At Risk":

- (a) Federal- Operating losses attributable to certain types of business activities may be deducted only to the extent of investment which is "at risk". The specific activities are: (1) Holding, producing or distributing motion picture films or video tapes; (2) Farming (but not farming operations involving trees other than fruit or nut trees); (3) Equipment leasing; or (4) Exploring for or exploiting of oil and gas resources.
- (b) Wisconsin- The amount of operating loss which may be deducted with respect to the above activities will not be subject to the "at risk" limitation.

35. Income From Controlled Foreign Corporations:

- (a) Federal- Certain investments made by controlled foreign corporations will no longer result in U.S. shareholders having to include amounts of undistributed corporate earnings and profit in their income. The specific investments involved are those in (1) stock or debts of an unrelated

domestic corporation and (2) movable oil and gas drilling rigs for use on the U.S. continental shelf.

- (b) Wisconsin- Shareholders of controlled foreign corporations which invest in the above types of U.S. property may be required to report undistributed earnings and profits of such corporations as income.

36. Bad Debt Deductions:

- (a) Federal- Losses arising from the guaranty of a loan (other than a loan to a corporation) may not be deducted unless the guarantee agreement was entered into for profit or as part of the guarantor's trade or business. Losses attributable to trade or business activities are deductible as ordinary losses. Those attributable to transactions entered into for profit must be deducted as short-term capital losses.
- (b) Wisconsin- Losses incurred as the result of guaranteeing loans of other individuals will continue to be deductible, even though the guarantee may not have been related to the guarantor's trade or business or entered into for the purpose of realizing a profit. Those losses which are related to the guarantor's trade or business are deductible as ordinary losses. Others must be deducted as short-term capital losses. However, an exception exists where although the guarantee is not related to the guarantor's business, the loan proceeds were used for business reasons by the actual borrower. In this instance the loss may be deducted as an ordinary loss.

37. International Boycotts and Bribes of Foreign Officials:

- (a) Federal- U.S. shareholders of a controlled foreign corporation must report as income a pro-rata share of the corporation's nondistributed income attributable to boycott activities and any illegal payments that have been made to foreign officials.
- (b) Wisconsin- No income will result from either of the above activities.

38. ConRail Securities Exchange:

- (a) Federal- Tax-free treatment has been extended to the exchange of stocks and securities held in eleven insolvent eastern U.S. railroads for others upon the formation of ConRail (Consolidated Rail Corporation).
- (b) Wisconsin- This automatic tax-free treatment for such exchanges will not apply. The proper treatment for these exchanges must be determined on the basis of the provisions of the Internal Revenue Code in effect on December 31, 1975.

39. Depletion-Oil and Gas Wells:

- (a) Federal- The exemption permitting small producers to claim percentage depletion on certain oil and gas properties has been modified.
- (b) Wisconsin- The qualifications to be met for purposes of claiming percentage depletion will continue to be determined under the Internal Revenue Code in effect on December 31, 1975.

40. Tax-Free Rollovers of Retirement Plan Proceeds:

- (a) Federal- Tax-free rollover provisions have been made available to employees who receive distributions from retirement plans which have been discontinued by their employers. When such amounts are properly reinvested into a new retirement plan, the recognition of any gain is postponed.
- (b) Wisconsin- Such distributions must be included in Wisconsin income for the year in which received.

41. Foreign Trust Income:

- (a) Federal- Income produced by assets transferred to a foreign trust may be taxed directly to the person (grantor) making such transfer.
- (b) Wisconsin- Such income will not be taxable to the grantor.

B. ITEMS AFFECTING THE COMPUTATION OF FEDERAL ITEMIZED DEDUCTIONS

42. Child Care Expenses:

- (a) Federal- Child care expenses are no longer allowable as an itemized deduction. Rather, a portion of such expenses is allowed as a credit which is applied directly to the taxpayer's federal income tax liability. In addition, certain eligibility requirements have been changed and the adjusted gross income limitation has been removed.
- (b) Wisconsin- An itemized deduction will continue to be allowed for employment related child care expenses. However, 1975 eligibility requirements will apply and the amount of any deduction will be reduced when adjusted gross income exceeds \$35,000. (Wisconsin Schedule 2441W should be completed to determine the amount of child care expenses allowable as an itemized deduction.)

43. Contributions of U.S. Government Publications:

- (a) Federal- A deduction for a contribution of U.S. Government publications to charity after October 4, 1976 will be allowed only for the amount paid for such publications.
- (b) Wisconsin- Deductions for contributions of such items may continue to be based on their fair market value.

44. Foreign Tax Paid:

- (a) Federal- An itemized deduction for foreign taxes may not include any amount of tax which is allocable to income excludable from federal adjusted gross income.
- (b) Wisconsin- The full amount of foreign taxes paid will be allowable as an itemized deduction.

45. Contributions of Partial Interests in Real Property:

- (a) Federal- A deduction is allowed for a contribution, exclusively for conservation purposes, of a partial interest in an historic land area or structure.
- (b) Wisconsin- Such contributions will not be deductible.

C. ITEMS AFFECTING THE COMPUTATION OF PARTNERSHIP INCOME

46. Farming Syndicates:

- (a) Federal- Generally, farming syndicates (partnerships) which were either established during 1976 or had a membership change during 1976 are required to deduct expenses for feed, seed, fertilizer and other farm supplies when such items are used or consumed (not when paid for); and to capitalize the costs of poultry and preproductive orchard, vineyard or citrus grove expenses.
- (b) Wisconsin- Subject to certain limitations, such expenses may be deducted in the year paid or accrued for Wisconsin purposes.

47. Additional First-Year Depreciation:

- (a) Federal- The total amount of first-year depreciation that a partnership may pass through to all partners is limited to \$2,000.
- (b) Wisconsin- Partnerships may pass through up to \$4,000 of additional first-year depreciation to each partner.

48. Retroactive Allocations:

- (a) Federal- Income or losses are allocable to partners only for the portion of a year in which a partner is a member of the partnership.
- (b) Wisconsin- Retroactive allocations of income or loss continue to be subject to the provisions of the Internal Revenue Code in effect on December 31, 1975.

49. Special Allocations:

- (a) Federal- Special allocations of income, loss, deduction or credit items among partners are restricted.
- (b) Wisconsin- Special allocations may be allowed if their purpose is not to avoid or evade income tax.

SCHEDULE I

WISCONSIN
DEPARTMENT
OF REVENUE

-7-

ADJUSTMENTS TO CONVERT 1976 FEDERAL
ADJUSTED GROSS INCOME AND ITEMIZED
DEDUCTIONS TO THE AMOUNTS ALLOWABLE
UNDER THE INTERNAL REVENUE CODE ENACTED
AS OF DECEMBER 31, 1975.

1976

Attach to Wisconsin Form 1

Name, address and social security number as shown on your return

PART I - FEDERAL ADJUSTED GROSS INCOME

(Read instructions before completing Schedule I)

1. Enter your 1976 federal adjusted gross income from line 15c, Form 1040
2. Adjustment for sick pay
 - a. Excludable sick pay from Wisconsin Schedule 2440W
 - b. Sick pay excluded from federal income on line 15b, Form 1040
 - c. Subtotal (combine lines 1, 2a and 2b)
3. Supplemental schedule of gains or losses (federal Form 4797)
 - a. Enter any loss claimed on line 9(b)(2), Form 4797
 - b. Enter any gain reported on line 9(b)(2), Form 4797
 - c. Enter revised gain or loss from line 9(b)(2), Form 4797
(attach revised Form 4797)
 - d. Subtotal (combine lines 3a, 3b, and 3c-indicate a loss by parenthesis)
4. Capital gains and losses (federal Schedule D and Form 4798)
 - a. Enter any loss claimed on line 30a, federal Form 1040
 - b. Enter any gain reported on line 30a, federal Form 1040
 - c. Enter revised capital gain or loss from line 30a, Form 1040 (attach revised
Schedule D, Form 4798 and any accompanying schedules)
 - d. Subtotal (combine lines 4a, 4b and 4c-indicate a loss by parenthesis)
5. Subtotal (combine lines 2c, 3d and 4d)

6. Other adjustments:

Description	Amount per 1976 federal return	Amount determined under 12/31/75 IRC	Difference
a. _____	_____	_____	_____
b. _____	_____	_____	_____
c. _____	_____	_____	_____
d. _____	_____	_____	_____
e. _____	_____	_____	_____
f. _____	_____	_____	_____
g. _____	_____	_____	_____
h. _____	_____	_____	_____
i. Total Difference (combine the "Difference" column for lines 6a through 6h)	_____	_____	_____

7. Federal adjusted gross income as computed under the 12/31/75 Internal Revenue Code (combine lines 5 and 6i). Enter here and on line 1 of Wisconsin Form 1. (If the above figures are from a joint federal return and both spouses have income, first enter this total on line 39, column A, Part I on page 2 of Form 1. Complete columns A, B and C of Part I. Carry forward the amounts from line 39, columns B and C to line 1 of Form 1.)

(Complete reverse side of form)

PART II - ITEMIZED DEDUCTIONS

- This part must be completed whenever adjustments have been made in Part I and deductions are itemized.

- Even though Part I is not used, it will be necessary to complete this part if an adjustment is required for such items as investment interest limitation, child care (household and dependent care) expenses, and office in the home expenses.

8. Enter your 1976 federal itemized deductions from line 40, federal Schedule A

9. Child care (household and dependent care) expenses—enter allowable deduction from line 16, Wisconsin Schedule 2441W

10. Other adjustments:

<u>Description</u>	<u>Amount per 1976 federal return</u>	<u>Amount determined under 12/31/75 IRC</u>	<u>Difference</u>
a. Medical expense	_____	_____	_____
b. Contributions	_____	_____	_____
c. Sales tax	_____	_____	_____
d. Interest expense	_____	_____	_____
e. Other (specify) _____	_____	_____	_____
f. _____	_____	_____	_____
g. _____	_____	_____	_____
h. _____	_____	_____	_____
i. _____	_____	_____	_____
j. Total Difference (combine the "Difference" column for lines 10a through 10i)	_____	_____	_____

11. Itemized deductions as computed under the 12/31/75 Internal Revenue Code (combine lines 8, 9 and 10j). Enter here and on line 6 of Wisconsin Form 1.

INCOME TAXATION OF RETIREMENT PLAN DISTRIBUTIONS

Section Tax 3.085 of the Wis. Adm. Code is adopted to read:

Tax 3.085 Retirement plan distributions. (Section 71.07(1), Wis. Stats.) (1) NONRESIDENTS. Employe annuity, pension, profit-sharing or stock bonus plan distributions (including self-employed retirement plan distributions) received by a person while a nonresident of Wisconsin shall be exempt from the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed in Wisconsin.

(2) RESIDENTS. Employe annuity, pension, profit-sharing or stock bonus plan distributions (including self-employed retirement plan distributions) received by a person while a resident of Wisconsin shall be subject to the Wisconsin income tax, regardless of whether any of these distributions may be attributable to personal services performed outside of Wisconsin.

INHERITANCE TAX DEDUCTION FOR UNPAID STATE INCOME TAXES

Section Tax 10.12 of the Wis. Adm. Code is adopted to read:

Tax 10.12 Deductibility of income taxes. (Section 72.14(1)(a), Wis. Stats.) (1) TAXES OF DECEDENT. Any Wisconsin income taxes, together with interest and penalties thereon, attributable to taxable income of any period prior to decedent's date of death and due from a decedent but unpaid on decedent's date of death shall be deductible from the decedent's estate for inheritance tax purposes as a debt.

(2) TAXES OF FIDUCIARY. Any Wisconsin income taxes, together with interest and penalties thereon, attributable to the taxable income of the decedent's estate and due but unpaid shall not be deductible from the decedent's estate for inheritance tax purposes as a debt.

INHERITANCE TAX DEDUCTION FOR UNPAID STATE INCOME TAXES

Section Tax 10.12 of the Wis. Adm. Code is adopted to read:

Tax 10.12 Deductibility of income taxes. (Section 72.14(1)(a), Wis. Stats.) (1) TAXES OF DECEDENT. Any Wisconsin income taxes, together with interest and penalties thereon, attributable to taxable income of any period prior to decedent's date of death and due from a decedent but unpaid on decedent's date of death shall be deductible from the decedent's estate for inheritance tax purposes as a debt.

(2) TAXES OF FIDUCIARY. Any Wisconsin income taxes, together with interest and penalties thereon, attributable to the taxable income of the decedent's estate and due but unpaid shall not be deductible from the decedent's estate for inheritance tax purposes as a debt.

FARMING, AGRICULTURE, HORTICULTURE AND FLORICULTURE

Section Tax 11.12 of the Wis. Adm. Code is adopted to read:

Tax 11.12 Farming, agriculture, horticulture and floriculture.
(Sections 77.52(2)(a)10 and 77.54(3), (3m) and (27), Wis. Stats.)

(1) STATUTES. Sections 77.54(3) and (3m), Wis. Stats., provide exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture and floriculture as a business enterprise. Persons who contract with farmers to do agreed upon jobs are not engaged in farming as a business enterprise.

(2) DEFINITIONS. (a) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chapters 29 and 94, Wis. Stats., "farming" includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses for sale; and raising sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; operating sporting or recreational facilities (e.g., riding stables or shooting preserves); operating stockyards, slaughterhouses or feed lots where livestock is held for a short period of time; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

(b) "Horticulture" means the business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial nurseries and orchards. "Nurseries" do not include businesses which hold stock for purposes other than propagation or growth. Horticulture does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(c) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants or shrubs, including such operations as greenhouses.

(d) "Dairy farming" means the business of feeding and raising cattle and other milk producing animals, but does not include operations such as pasteurizing, homogenizing or making butter, cheese or ice cream.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. The standard "Farmer's Exemption Certificate" (Form S-206) provides for continuous use under certain conditions. The certificate shall be used only for categories of items listed on it. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4) STATUTORY EXEMPTIONS. (a) Section 77.54(3). Section 77.54(3), Wis. Stats., exempts: "The gross receipts from the sales of and the storage, use or other consumption of tractors and machines,

including accessories, attachments, fuel and parts therefor, used directly in farming, including dairy farming, agriculture, horticulture or floriculture, but excluding automobiles, trucks, and other motor vehicles for highway use, when engaged in by the purchaser or user as a business enterprise, but the purchaser of property exempt under this subsection shall be liable for use tax under s. 77.57 at the time any more than nominal other use, including job contracting other than the performance of farm services by one farmer for another with machinery customarily used by the performing farmer in his own farming operation, is made of such property." (Emphasis added.)

1. "Directly". Items used "directly" in farming include a plow and a combine. Items of "indirect" or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, fuel oil for the home, lawn and garden tractors.

2. Accessories, attachments and parts. Included within the exemption are accessories, attachments, parts and fuel for tractors and machines used directly in agriculture. "Accessories" and "attachments" include devices designed to be mounted on a machine or to be pushed or pulled by a machine. Examples include farm wagons and portable pipes attached to mobile irrigation pumps. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor cabs, oil filters and slow-moving-vehicle signs. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids (e.g., antifreeze or lubricants) nor milk filters which must be replaced every time a machine is used. These are "supplies" rather than "parts" and are not exempt. The exemption for fuel for farm machines does not apply to purchases of electricity.

3. Machines. "Machines" include auxiliary power generators, bale loaders, balers, barn cleaners, barn elevators, chain saws for orchard use (not for use in lumbering, pulping or cutting firewood), choppers, conveyors, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, and loaders, electric clippers and hoof trimmers, electric dehorner, electric fence charges (not fencing or insulators), electric foggers, feed elevators and augers, fork lifts, grain dryers and grinders, harrows, harvesting combines, hay wagons, manure spreaders, milk coolers, milking machines (including piping, pipeline washer and compressor), mowers, planters, plows, powered feeders (not including platforms or troughs constructed from ordinary building materials), powered posthole diggers, pumps and associated portable piping for irrigation, rock pickers, rotary hoes, silo unloaders, space heaters (not for residential use and not realty improvements), sprayers, stalk shredders and windrowers.

4. Realty improvements. a. Certain machines in addition to those in subd. 3 qualify for the exemption if purchased by farmers directly from retailers, even though they are used to make realty improvements. Machines included are automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), automatic water softeners (e.g., for milkhouses), barn fans and blowers and other ventilating units, unit heaters and other heating units, water heaters serving production areas, and water pumps serving production areas.

3. Feed. a. "Feed" includes processed vegetable and animal products and essential minerals required for the normal nutritional needs of livestock, poultry and domestic fur bearing animals and other materials which are required for the normal nutritional needs of animals in some domestic environments, such as vitamins A, B-complex, D and E. Essential minerals include phosphorous, calcium, sodium, chlorine, iodine, iron, copper, sulfur, potassium, magnesium and zinc. Common feed additives containing these substances include cod liver oil, salt (granular or block), ground limestone, fish oil, fish meal, oyster shells and bone meal.

b. "Feed" includes medicated feed or drug carriers purchased for use as an ingredient of medicated feed, the primary purpose of which is the prevention of diseases in livestock or poultry. "Feed" does not include a mixture labeled and sold for specific treatment or cure of a disease. Medicines (including antibiotics) which are administered to animals or poultry directly or as an additive to drinking water are taxable.

4. Fertilizers and soil conditioners. a. "Fertilizer" means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used primarily for its plant food content to improve the soil's agricultural qualities. "Fertilizer" and "soil conditions" include fertilizer and insecticide combinations, agricultural minerals, carbon dioxide for application to land, urea, sewage sludge, liquid spray mixtures of minerals and plant nutrients, lime, compost, manure, peat moss and soy bean straw.

b. "Fertilizer" and "soil conditioners" do not include fill dirt, top soil, wood chips, wood shavings, litter and hormone growth stimulants. (The difference between fertilizers and hormone growth stimulants is that fertilizers nourish plants whereas hormone growth stimulants act upon the cellular structure.)

5. Sprays, pesticides and fungicides. "Sprays", "pesticides" and "fungicides" include disinfectant sprays, fly sprays and preparations used to destroy insects, mites, nematodes, slugs or other invertebrate animals injurious to plants and animals; chemicals used for crop disease, pest and weed control, including insecticides, rodenticides and pesticides used to sanitize and clean dairy equipment. Products used to sanitize dairy equipment are exempt, if registered with the department of agriculture under section 94.68, Wis. Stats., as a pesticide or fungicide.

6. Containers for fruits, vegetables, grain and animal wastes. a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains or animal wastes. The phrase does not include feed carts designed to hold various green and dry feeds.

b. A complete corn crib or grain bin may be purchased "knocked-down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install such a bin permanently into real estate is a consumer of the bin, not its seller. Such a contractor, dealer or installer, not being a farmer, may not furnish a Farmer's Exemption Certificate on the bin's

b. However, a person (such as a plumbing contractor) who contracts with a farmer to provide and install such a machine permanently into real estate is a consumer of the machine, not a seller. Such a contractor, not being a farmer, may not furnish a Farmer's Exemption Certificate on the person's purchase of the machine. Being the consumer, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department.

5. Motor vehicles. Specifically excluded from the statutory exemption are "motor vehicles for highway use". "For highway use" means licensed for that use or designed primarily for that use even though not licensed. Examples include motor trucks, automobiles, station wagons, self-propelled feed mills, buses and motorcycles. Sales of parts, supplies and repairs for these vehicles, nurse tanks and trailers designed primarily for highway use are also taxable.

6. Other non-exempt sales. The exemption does not apply to:

a. Tools used in construction or for making repairs to real estate or farm machinery, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

b. Building materials used to repair or improve real estate such as cement, drain tile fencing, light fixtures, lumber, nails, stanchions and underground and fixed in place water supply systems.

c. Applicators for insecticides (non-powered), cattle chutes, farrowing crates, feed carts, fire extinguishers, flood gates, gravity flow feeders (non-powered), saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations (oilers), snowmobiles, stationary salt and mineral feeders.

7. Use tax. A person who buys without tax by claiming the farming exemption owes the use tax at the time the person uses the item purchased more than nominally for a nonexempt purpose.

(b) Section 77.54(3m). Section 77.54(3m), Wis. Stats., exempts: "The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise." (Emphasis added.)

1. Seeds for planting. "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and vegetable seeds; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

2. Plants. "Plants" include herbs, shrubs or young trees, slips or saplings planted or ready to plant.

purchase. Being the consumer, not a seller, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department. A farmer who wishes to utilize the farmer's exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. The exemption for animal waste containers became effective July 31, 1975. As a result, farmers may purchase animal waste containers without tax or the component parts thereof, by issuing their supplier a properly completed "single purchase" Farmer's Exemption Certificate.

d. Silos are not included in the exemption. The purchaser of materials used in building a silo must pay the sales tax to the purchaser's supplier. A silo unloader may be purchased by a farmer as an exempt machine.

e. Milk cans are not covered by the farmer's exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

7. Livestock and poultry. "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals (such as those purchased for breeding).

8. Farm work stock. "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase does not include dogs, riding horses, racing horses or laboratory animals. The food for animals which are not farm work stock is taxable (e.g., dog and cat food).

9. Semen. Effective July 22, 1971 semen used for artificial insemination of livestock is exempt.

(5) SERVICES FURNISHED TO FARMERS. (a) The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under sections 77.54(3) and (3m), Wis. Stats., are also exempt from the sales and use tax under s. 77.52(2)(a)10, Wis. Stats.. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses shod, but not when having riding horses shod.

(b) Breeding fees, and charges for artificial insemination of animals and veterinarians' services are not taxable.

(c) The exemptions under section 77.54(3), Wis. Stats., do not apply to farmers' purchases of other services which are taxable under section 77.52(2)(a), Wis. Stats., (e.g., telephone, electricity, laundry, dry cleaning and photographic services).

(6) SERVICES PROVIDED BY FARMERS. (a) Nontaxable services. The following services performed by farmers are not subject to the sales tax:

1. Custom work. The performance of custom farm services by one farmer for another farmer, such as harvesting hay or grain.
2. Training animals. The training of horses, dogs or other animals.

(b) Taxable services. The following services performed by farmers are taxable:

1. Boarding animals. The boarding of dogs, cats, riding horses, ponies or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed Resale Certificate.
2. Grooming animals. The grooming of recreational animals.

NOTE: The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969 unless otherwise noted in the rule.

SALE OF A BUSINESS OR BUSINESS ASSETS

Section Tax 11.13 of the Wis. Adm. Code is adopted to read:

Tax 11.13 Sale of a business or business assets. (Sections 77.51(10)(a) and (b) and 77.54(7), Wis. Stats.) (1) GENERAL. The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax. (a) The tax applies if the business assets are sold as: 1. A disposition of surplus assets of a continuing business.

2. A single transaction or series of transactions at the time of termination of a business.

3. Piecemeal sales, whether part of a continuing business or upon termination.

(b) The tax does not apply to merchandise inventory purchased for resale in the regular course of the purchaser's business.

(2) EFFECT OF HOLDING A SELLER'S PERMIT. Pursuant to section 77.51(10)(a), Wis. Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sale exemption. A person may qualify for the occasional sale exemption if that person delivers the seller's permit to the department for cancellation prior to the disposition. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

(3) DELIVERY OF SELLER'S PERMIT. A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

(a) Retailers may personally deliver their seller's permits to a representative of the department's Income, Sales, Inheritance and Excise Tax Division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(b) The seller's permit may be mailed to the department (P.O. Box 8902, Madison 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the permit, the retailer may use certified mail, return receipt requested.

(c) If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual seller's permit.

(4) CANCELLATION OF SELLER'S PERMIT. (a) Although a seller's permit may be deemed to have been delivered and canceled on a postmark date under sub. (3), cancellation shall not be effective prior to the postmark date.

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

(c) The fact that a business ceases operations and no longer conducts its day to day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. Section 77.52(12), Wis. Stats., requires a permittee to ". . . forthwith surrender his permit . . ." when ceasing to operate as a seller. If the permittee does not surrender the permit at that time, the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

(5) THE "ACTIVITY" REQUIRING A PERMIT. Under section 77.51(10)(b), Wis. Stats., the transfer of substantially all the property held or used by a person in the course of an "activity" for which a seller's permit is required shall be an occasional sale if, after such transfer, the property's real or ultimate ownership is substantially similar to that which existed before the transfer. The "activity" contemplated in this statute relates solely to the distinction between an activity for which a seller's permit would be required and an activity for which a permit would not be required. Since permits issued by the department are general in nature and can be used to sell any kind of tangible personal property or taxable services, "activity" for which a permit would be required under the statute means the sum total of all of a person's operations which require the holding of a seller's permit. For example, assume that a person who holds a seller's permit operates a tavern and restaurant and disposes of the entire restaurant operation. That person cannot meet the exemption requirements of s. 77.51(10)(b) because the person must continue to hold a seller's permit to operate the tavern. The tavern and restaurant (and any other operation engaged in by the person which produces receipts subject to the sales tax) are all part of the activity requiring the holding of a seller's permit.

NOTE: The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969, except for subsections (2), (3) and (4). The procedure described in subsections (2), (3) and (4) are effective May 4, 1976 and reflect the Wisconsin Supreme Court's decision in Three Lions Supper Club, Ltd. v. Dept. of Revenue (May 4, 1976), 72 Wis. 2d. 546.

MEALS, FOOD, FOOD PRODUCTS AND BEVERAGES

Section Tax 11.87 of the Wis. Adm. Code is adopted to read:

Tax 11.87 Meals, food, food products and beverages. (Sections 77.51(4)(b) and (f), (11)(c)2, (12)(c)1 and 77.54(20), Wis. Stats.)
(1) DEFINITIONS. In this rule: (a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

(b) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) TAXABLE SALES. (a) General. Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs and similar businesses, organizations or establishments.

(b) Sales by generally exempt seller. Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. For example, when a supermarket sells chickens roasted on a rotisserie, the roasted chickens are taxable food because heated food (or heated beverages) are taxable. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

(c) Food components of meals. Food items which comprise or are components of a meal (for example, a basket of chicken with cole slaw and french fries) shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

(d) Caterers. Meals, food, food products and beverages sold by caterers shall be taxable. 1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute the sale of taxable food. Any rental charges made by a caterer for items such as tableware, tablecloths or other tangible personal property, whether or not separately stated on the bill, shall be includable in the consideration paid and shall be taxable.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale only if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers (such as dishes, silverware, plastic eating utensils, straws, napkins, tablecloths, punch fountains, coffee silver service and glassware) which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing food or beverages to their customers, or used in conjunction with providing catering service. However, the following items may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for such use: tents, public address systems, portable dance floors, portable bars, chairs and tables.

(e) Vending machine sales. A vending machine operator has a "premise" as defined in section 77.54(20)(c)6, Wis. Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) Cover and minimum charges. Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for such service, the entire amount shall be taxable.

(g) Tips. 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe, shall be exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer.

2. On and after May 5, 1976, a flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller is a part of the selling price of such meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

3. However, prior to May 5, 1976, a flat percentage service charge added to customer's bill by a private club was not taxable if:

a. The charge was imposed under the club's bylaws;

b. The total amount collected was paid directly to food service employes; and

c. The amount was not part of employes' wages that brought them up to the legal minimum wage.

(h) Huber law meals. Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) Meals to employes. Sales of meals to employes by an employer for a specific charge shall be taxable. 1. A specific charge shall be deemed made for meals if any one of the following conditions shall be met: a. The employe shall pay cash for meals consumed.

b. An actual, specific charge for meals shall be deducted from an employe's wages.

c. An employe shall receive meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.

d. An employe shall have the option to receive cash for meals not consumed.

2. In the absence of any of the following foregoing conditions, a specific charge shall not be deemed made when: a. A value shall be assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA (social security) or union contract purposes.

b. An employe who shall not consume available meals shall have no recourse against the employer for additional cash wages.

(j) Transportation companies. The sale of meals and liquor by transportation companies (e.g., airlines or railways) to a customer while operating in or over Wisconsin for a specific charge shall be taxable. Such meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage shall not be separately stated to the customer, the tax shall apply to purchases of such meals and beverages by transportation companies.

(k) Organizations and their members. 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for such items, the place of business shall be considered selling directly to the members and not to the organization. The sales shall, therefore, be subject to the tax, even if the organization shall collect from the members and pay the seller, and retain a portion of the collections for its own purposes. In such situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. However, when an exempt religious, charitable or educational organization shall pay for food and beverages out of its own funds, and shall provide such items to members or others without charge, the sale of such items by a retailer to the organization shall not be subject to the tax. If such exempt organizations hold a Certificate of Exempt Status issued by the department, they shall give the retailer their certificate number to claim the exemption.

(3) EXEMPT SALES. The following sales shall be exempt:
(a) Health care facilities. Meals, food, food products, or beverages sold by hospitals, sanitoriums, nursing homes or day care centers registered under chapter 48, Wis. Stats. ("Hospital" is defined in section 50.33(1), Wis. Stats. "Nursing Home" is defined in section 146.30, Wis. Stats. "Sanitorium" means an institution for the recuperation and treatment of victims of physical or mental disorders.) However, if an affiliated organization sells such items, the exemption shall not apply. For example, if the ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at such coffee shop are taxable.

(b) "Meals on wheels". Effective on and after October 4, 1973, meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(c) Dormitory contracts. Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education, effective for the fall semester of 1973.

(d) Groceries. Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of pre-packaged ice cream, ice milk, sherbet or yogurt (pint, quart, gallon or larger sizes), whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of ice cream, ice milk, sherbet or yogurt, or cones, sundaes, sodas, shakes and frozen chocolate bars made from these products shall be taxable.

(4) SPECIAL SITUATIONS. (a) Specialty items. A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food. For example, a restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) Fund-raising events. When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.