

## Chapter Tax 14

### HOMESTEAD CREDIT

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**Note:** Chapter Tax 14 as it existed on February 28, 1990 was repealed and a new chapter Tax 14 was created effective March 1, 1990.

**Tax 14.01 Administrative provisions. (1) PURPOSE.** This section describes the Wisconsin homestead credit, defines terms and sets forth administrative provisions applicable to all sections of this chapter.

**(2) DEFINITIONS.** In this chapter and in ss. 71.51 to 71.55, Stats.:

(a) "County relief" means assistance provided by a county under s. 59.53 (21), Stats., to an eligible dependent person. County relief is a separate program in itself, funded by a block grant program under subch. II of ch. 49, Stats. It does not include other assistance programs, such as social security, supplemental security income, state supplemental payments, federal food stamps, Title XX benefits, community options program payments, aid to families with dependent children, Wisconsin works payments or foster care.

(b) "Domicile" has the same meaning for Wisconsin homestead credit purposes as for Wisconsin individual income tax purposes. A claimant's domicile is the true, fixed and permanent home where the claimant intends to remain permanently and indefinitely and to which, whenever absent, the claimant intends to return. It is often referred to as a "legal residence." A claimant may be physically present or residing in one locality and maintain a domicile in another but may have only one domicile at any time.

(c) "Domiciled" means maintained a domicile.

(d) "Dwelling" means the principal dwelling of a qualified household.

(e) "Household" means a claimant and an individual related to the claimant as husband or wife residing in the same homestead as the claimant.

**(3) WISCONSIN HOMESTEAD CREDIT.** (a) Sections 71.51 to 71.55, Stats., provide credit in the form of an income tax credit or a refund to qualifying persons who own or rent their Wisconsin homestead. A claimant may claim Wisconsin property taxes accrued or rent constituting property taxes accrued or both on the claimant's homestead or, in certain cases as described in s. Tax 14.04 (3) (e), Wisconsin property taxes accrued on the claimant's former homestead, as a basis for calculating a credit against Wisconsin income tax otherwise due. If the credit exceeds the claimant's Wisconsin income tax otherwise due or if no income tax is due, the amount not offset against Wisconsin income tax and not applied against any liability under s. 71.55 (1), Stats., is paid to the claimant.

(b) Under s. 71.54 (3), Stats., if an approved homestead credit claim by a qualified claimant is more than zero but less than \$10, the amount of credit paid or credited shall be \$10.

(c) Wisconsin homestead credit claims shall be calculated on a calendar year basis.

**(4) HOW TO FILE.** (a) A homestead credit claim shall be filed on schedule H, titled "Wisconsin Homestead Credit Claim," and filed with the department at the location described in the instructions to schedule H.

(b) If a person or the person's spouse files a Wisconsin income tax return and claims a homestead credit on the return, the claim-

ant shall attach schedule H to the income tax return. If the claimant has previously filed the income tax return or is filing an income tax return separately from the schedule H, the preferred procedure for filing a homestead credit claim is to file a duplicate copy of the income tax return with schedule H and to write the words "Duplicate" on the top of the first page of the tax return copy and "Income Tax Return Separately Filed" on the top of schedule H.

(c) If neither the claimant nor the claimant's spouse is required to file a Wisconsin income tax return for the year to which the claim relates, the claimant may file schedule H without attaching it to a return.

**(5) TIME WITHIN WHICH ORIGINAL AND AMENDED CLAIMS SHALL BE FILED.** (a) Under s. 71.53 (2) (a), Stats., an original homestead credit claim shall be filed with the department in conformity with the filing requirements of s. 71.03 (6), (6m) and (7), Stats., or the department shall disallow the claim. The deadline for filing a claim is as follows:

1. A claim filed for a taxable year for which an income tax return is also filed shall be filed on a calendar year basis as provided in sub. (3) (c), within 4 years, 3 1/2 months of the end of the calendar year to which the claim relates.

2. Under s. 71.03 (6m), Stats., a claim filed by a person who is not required to file an income tax return shall be filed on a calendar year basis. The claim shall be filed within 4 years, 3 1/2 months of the end of the calendar year to which the claim relates.

**Example:** A 1998 homestead credit claim filed for the calendar year ending December 31, 1998, must be filed by April 15, 2003.

(b) A claimant who files a timely original claim may subsequently file an amended claim with the department. Under s. 71.75 (2), Stats., an amended claim shall be filed within 4 years of the deadline for filing the original claim or the department shall disallow the claim.

**Example:** Claimant A, who filed a 1994 homestead credit claim on May 1, 1996, wishes to file an amended 1994 claim. The amended claim may be filed any time on or before April 15, 2003, since the deadline for filing the original 1994 claim was April 15, 1999.

**(6) PROOF OF CLAIM.** Under s. 71.55 (7), Stats., for the purpose of determining the correct amount of homestead credit of a claimant, the claimant shall supply to the department all of the following information that is applicable:

(a) All information requested on the form.

(b) Proper verification of property taxes accrued as provided in s. Tax 14.04 (4), if the claimant claims property taxes accrued.

(c) Proper verification of rent constituting property taxes accrued as provided in s. Tax 14.05 (4), if the claimant claims rent constituting property taxes accrued.

(d) The signature of the claimant. If a claimant is unable to sign a claim, the claimant may make an "X" or other mark with the assistance of another person who signs the claim as a witness to the validity of the signature. A legally authorized representative such as a guardian or attorney-in-fact may sign a homestead credit claim in lieu of a living claimant, but a homestead credit claim filed on behalf of a person who is deceased at the time of filing shall be denied as provided in s. Tax 14.02 (11).

**(7) INCORRECT CLAIMS.** (a) The department may give notice of an incorrect homestead credit amount. The department may correct incorrect claims by adjusting the credit claimed, by assess-

ment as income taxes are assessed or by refund, as appropriate. Under ss. 71.74 (8) (a) and 71.77 (2), Stats., unless the adjustment period is extended by a specific statutory provision, the notice shall be given by the later of 4 years from the unextended due date of the corresponding original income tax return or 4 years from the date a late-filed income tax return is filed. The statutory provisions under which the adjustment period may be extended include the following:

1. The "intent to defeat or evade" provision under s. 71.77 (3), Stats.
2. The "extension agreement" provision under s. 71.77 (5), Stats.
3. The "six-year" provision under s. 71.77 (7) (a), Stats.
4. The "federal change" provisions under s. 71.77 (7) (b), Stats.

(b) Under s. 71.75 (7), Stats., the department shall act on a claim for homestead credit within one year after it receives the claim, or the credit shall be allowed even if incorrect, unless the claimant has agreed in writing to an extension of the one-year time period. Within the one-year period, prior to allowing the credit, the claimed credit may be reduced. However, under s. 71.74 (8) (a), Stats., if the date of acting on an amended claim is later than the last date for adjusting an original claim as provided in par. (a), the credit may not be reduced to an amount less than the credit allowed on the original claim, and after allowing the credit on the amended claim no further reduction of the credit may be made.

**Example:** Claimant A timely files a 1995 claim for homestead credit and receives a homestead credit of \$500. On November 1, 2001, Claimant A files an amended 1995 claim for homestead credit claiming a revised 1995 credit of \$700. Upon review of the file, the department determines that Claimant A's correct homestead credit for 1995 is \$300 rather than the \$500 allowed on the original claim or the \$700 claimed on the amended claim.

Since the amended 1995 homestead credit claim will be acted on after April 15, 2000, the last date for adjusting an original 1995 claim, the department must act on the amended claim by November 1, 2002. Prior to that date the department may notify Claimant A that no additional credit is allowable for 1995. However, the \$200 of excessive credit allowed on the original claim, the difference between the \$500 allowed and the correct credit of \$300, may not be recovered by the department.

**(8) INTEREST ON INCORRECT CLAIMS.** (a) *Excessive claims.* Under s. 71.82 (1) (c), Stats., excessive homestead credit amounts, not the result of negligence or fraudulent intent, that have been paid or credited shall be subject to interest at 12% per year from the deadline for filing the claim. Assessments to collect excessive homestead credit amounts payable before the deadline for filing the claim may not include interest charges.

(b) *Understated claims.* Under s. 71.55 (4), Stats., the department may not pay interest on any homestead credit, including any additional credit, refund or payment allowed as the result of the review of a homestead credit claim or an amended claim.

**Note:** Blank forms for filing a homestead credit claim, rent certificates and instructions for claiming the credit may be obtained at any department office throughout the state or by writing to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903.

**Note:** Section Tax 14.01 interprets ss. 71.03 (6m), 71.51 to 71.55, 71.74 (8) (a), 71.75 (2) and (7), 71.77 (2) and 71.82 (1) (c), Stats.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; am. (3) (a), Register, January, 1991, No. 421, eff. 2-1-91; am. (1), (2) (intro.), (3) (a), (4), (5) (b), (6) and (8), renum. (2) (a) to (d) to be (2) (b), (c) (d) and (a), and am. (a) and (b), renum. (5) (a) to be (5) (a) (intro.) and am., renum. (7) to be (7) (a) (intro.) and am., cr. (5) (a) 1., 2., (7) (a) 1. to 4. and (b), Register, July, 2000, No. 535, eff. 8-1-00.

**Tax 14.02 Qualification for credit. (1) PURPOSE.** This section clarifies the requirements to qualify for the Wisconsin homestead credit.

**(2) TWO MEMBERS OF A HOUSEHOLD MEETING QUALIFICATIONS.** (a) Under s. 71.53 (1) (c), Stats., only one member of a household existing at the end of a calendar year may claim a homestead credit for that year. Thus, if a husband and wife reside in one homestead at the end of a calendar year and both qualify for the homestead credit, only one of them may claim the credit.

(b) Section 71.52 (1), Stats., provides: ". . . *When 2 individuals of a household are able to meet the qualifications for a claimant,*

*they may determine between them as to who the claimant is. If they are unable to agree, the matter shall be referred to the secretary of revenue and the secretary's decision is final.*"

**Note:** Requests for a determination under par. (b) should be addressed to Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.

**(3) MORE THAN ONE HOUSEHOLD IN A HOMESTEAD.** Under s. 71.53 (1) (c), Stats., one claimant from each household may claim a homestead credit whether the household is the sole occupant of a homestead or whether several households share the homestead.

**(4) HOUSEHOLD OCCUPYING MORE THAN ONE HOMESTEAD IN A YEAR.** Section 71.52 (7), Stats., provides ". . . *If a household owns and occupies 2 or more homesteads in the same calendar year, property taxes accrued is the sum of the prorated property taxes accrued attributable to the household for each of such homesteads. If the household owns and occupies the homestead for part of the calendar year and rents a homestead for part of the calendar year, it may include both the proration of taxes on the homestead owned and rent constituting property taxes accrued with respect to the months the homestead is rented in computing the amount of the claim . . .*" Thus, if a household owns and occupies a homestead in Wisconsin for a portion of the year and then establishes a homestead in a rented dwelling in Wisconsin for the remainder of the calendar year, property taxes accrued shall be the prorated portion of property taxes attributable to the months the household resided in the owned homestead and rent constituting property taxes accrued shall be 25% of the gross rent paid for the remainder of the year, or 20% if heat was included in the cost of the rent.

**Example:** A household owns and occupies a homestead in Wisconsin from January 1 to April 30, and then establishes a homestead in a rented dwelling in Wisconsin with no heat furnished for the remainder of the calendar year. The annual property taxes accrued on the owned homestead equaled \$1,800 and gross rent paid for the last 8 months of the year totaled \$2,800.

The property taxes and rent allowable for homestead credit purposes equals \$1,300, consisting of four-twelfths of the \$1,800 of property taxes accrued, or \$600, plus 25% of the gross rent of \$2,800, or \$700 of rent constituting property taxes accrued.

**(5) HOUSEHOLD OCCUPYING MORE THAN ONE DWELLING AT THE SAME TIME.** Under s. 71.52 (2), Stats., "gross rent" is rental paid for the right of occupancy of a homestead, and under s. 71.52 (7), Stats., "property taxes accrued" are property taxes levied on the homestead of a household. Since a homestead is the principal dwelling of a household, if a household pays gross rent or property taxes accrued on 2 dwellings occupied concurrently by the household, a claimant may claim only the rent or property taxes pertaining to the principal dwelling.

**Examples:** Examples of 2 dwellings occupied concurrently include:

- 1) A claimant maintains a permanent homestead and lives part of the year at a summer cottage which he or she owns.
- 2) A claimant moves from one apartment to another and pays rent for both apartments for a two-month period.

**(6) TEMPORARY ABSENCE FROM HOMESTEAD.** A claimant who is temporarily absent from a homestead and who does not establish a homestead elsewhere is considered to reside in the homestead for the period of the temporary absence.

**Examples:** 1) A person is in the hospital at the end of the calendar year and it is expected that the absence is temporary. The person is considered to reside in the homestead from which the person is temporarily absent.

2) A person seasonally employed away from the homestead is treated similarly as in example 1.

**(7) DOMICILE OF ARMED FORCES MEMBER.** A member of the United States armed forces stationed outside Wisconsin who retains a Wisconsin domicile and maintains a Wisconsin homestead shall be eligible for a homestead credit if otherwise qualified, even though the member does not occupy the homestead during the year to which the claim relates or at the time of filing the claim. The absence from the Wisconsin homestead is considered to be a temporary absence.

**(8) CITIZENS OF OTHER COUNTRIES.** Under s. 71.52 (1), Stats., a citizen of a country other than the United States is not eligible for a homestead credit unless the person is a resident alien for federal tax purposes who does not intend to return to his or her homeland.

**Example:** A citizen of another country is in the United States for educational purposes and is required to leave the United States when the educational program is completed. This person is not eligible for a homestead credit.

**(9) PERSON CLAIMING A FARMLAND PRESERVATION CREDIT.** Under s. 71.58 (1) (b), Stats., a person is not eligible for a homestead credit if the person qualifies for and claims a farmland preservation credit for the same year to which a homestead credit claim relates. However, if a person who has claimed a farmland preservation credit withdraws the claim, the person is no longer ineligible to receive a homestead credit because of the filing of a farmland preservation credit claim. Withdrawal of the farmland preservation credit claim shall be in writing. A homestead credit claim filed after the withdrawal of a farmland preservation credit claim shall be filed by the normal deadline for filing a homestead credit claim or the department shall disallow the claim.

**Example:** A 1997 homestead credit claim filed after the withdrawal of a 1997 farmland preservation credit claim must be filed on or before April 15, 2002.

**Note:** A written withdrawal of a farmland preservation credit claim should be mailed to Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.

**(10) PERSON CLAIMED AS A DEPENDENT.** Under s. 71.53 (2) (d), Stats., a person does not qualify for a homestead credit if the person is claimed as a dependent for federal income tax purposes during the year to which the claim relates, unless the person claiming a homestead credit is 62 years of age or older as of December 31 of the claim year. However, a person is not disqualified if any of the following apply:

(a) The person is improperly claimed as a dependent on a federal income tax return.

(b) The person qualifies to be claimed as a dependent on a federal income tax return but is not claimed.

(c) The person is properly claimed as a dependent on a federal income tax return but on a later amended federal income tax return is not claimed.

**(11) DECEASED CLAIMANT.** Under s. 71.53 (1) (b), Stats., a person must be alive at the time a homestead credit claim is filed. A claim completed and signed but not filed until after a person's death shall be denied.

**Note:** The qualification for a homestead credit of a person who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

**Note:** Section Tax 14.02 interprets ss. 71.52 (1), (2) and (7), 71.53 (1) (b) and (c) and (2) (d) and 71.58 (1) (b), Stats.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; r. (2) (c) and am. (5), (9), (10) and (11), Register, July, 2000, No. 535, eff. 8-1-00.

**Tax 14.03 Household income and income. (1) PURPOSE.** This section clarifies the meaning of "household income" and "income" includable in household income as the terms apply to homestead credit claims.

**(2) DEFINITIONS.** In this section:

(a) "Household income" has the meaning specified in s. 71.52 (5), Stats.

(b) "Income" has the meaning specified in s. 71.52 (6), Stats.

**(3) DEDUCTION FOR DEPENDENTS.** (a) Under s. 71.52 (5), Stats., a deduction of \$250 is allowed for each of the claimant's dependents, as defined in s. 152 of the internal revenue code, who have the same principal abode as the claimant for more than 6 months during the calendar year to which a claim for homestead credit relates. A claimant may multiply the number of dependents with the same principal abode for more than 6 months by \$250 and subtract the result from the total of the income items to arrive at household income.

**Example:** A claimant and the claimant's spouse claim 3 dependents on their 1997 federal income tax return, and all 3 dependents have the same principal abode as the claimant for the entire year. Household income items include Wisconsin adjusted gross income of \$10,500, depreciation of \$1,500 and unemployment insurance of \$500.

Total household income is \$11,750, consisting of the total of the income items listed, \$12,500, minus the dependent deduction of \$750, which is \$250 times 3 dependents.

(b) A dependent is considered to have the same principal abode as the claimant during temporary absences from the claimant's

homestead for reasons such as school attendance, illness, vacations, business commitments or military service.

(c) In the following situations, a dependent who does not have the same principal abode as the claimant for more than 6 months during the calendar year to which a claim for homestead credit relates is nonetheless considered to have the same principal abode for more than 6 months if during that year:

1. The dependent is born or dies, and the dependent has the same principal abode as the claimant during the entire time the dependent is alive during that year.

2. The dependent is adopted by the claimant, is placed with the claimant for adoption or becomes the stepchild of the claimant, and the dependent has the same principal abode as the claimant from that time to the end of that calendar year.

**(4) ITEMS INCLUDABLE IN INCOME.** Under s. 71.52 (6), Stats., income includes the sum of:

(a) "Wisconsin adjusted gross income" as defined in s. 71.01 (13), Stats., for the calendar year to which a claim for homestead credit relates.

(b) The following amounts to the extent not included in Wisconsin adjusted gross income:

1. Maintenance payments, not including foster care maintenance and supplemental payments excludable under s. 131 of the internal revenue code.

2. Court-ordered support payments, including support for dependents under ch. 49, Stats.

3. Cash public assistance and county relief, including the following:

a. Aid to families with dependent children, or "AFDC."

b. Wisconsin works, or "W-2" payments.

c. Non-legally responsible relative, or "NLRR" AFDC payments or kinship care payments under s. 48.57, Stats. These are payments received as a relative other than a parent, for caring for a dependent child in the claimant's homestead.

d. Cash benefits paid by counties under s. 59.53 (21), Stats.

e. Reimbursement from a governmental agency for amounts originally paid for by the recipient, not including cash reimbursements for home energy assistance or for services under Title XX of the federal social security act and community options program, or "COP" payments under s. 46.27, Stats.

f. Adoption assistance payments under Title IV-E of the federal social security act or from another state, or payments by the Wisconsin department of health and family services under s. 48.975, Stats., to adoptive parents of children having special needs as described in s. HFS 50.03 (1) (b).

g. Veterans administration payments for reimbursement of services purchased by the recipient.

h. Federal housing and urban development, or "H.U.D." payments for housing.

i. Disaster relief grants under the federal disaster relief act of 1974.

4. The gross amount of a pension or annuity, including:

a. Railroad retirement benefits.

b. Veterans' disability pensions.

c. Any amounts withheld by the payor.

d. Nontaxable recoveries of cost.

e. Disability income exclusions from taxable income.

**Example:** *Gross amount of a pension.* A claimant was entitled to a pension of \$8,000 during the year but received only \$5,600 after \$2,400 was withheld by the payor for payment of health insurance premiums for the claimant. Of the \$8,000 pension, \$2,000 was a return of the claimant's contribution.

The gross pension of \$8,000 must be included in income.

5. Except as provided in subd. 3. e., all payments received for the benefit of a claimant or a member of the claimant's household under the federal social security act, including:

a. All federal social security retirement, disability or survivorship benefits.



- b. Lump sum death benefits.
- c. Medicare premiums deducted from social security benefits received by all members of a household.
- d. Supplemental security income, or "SSI" benefits received by persons over 65 years of age, or blind or disabled.
- e. Supplemental security income – exceptional needs, or "SSI-E" payments under s. 49.77 (3s), Stats.
- 6. Compensation and other cash benefits received from the United States for past or present service in the armed forces.
- 7. Payments made to surviving widows, widowers or parents of veterans by the United States, but not including insurance proceeds received by beneficiaries of National Service Life Insurance.
- 8. Proceeds from a personal endowment insurance policy or annuity contract purchased by the recipient.
- 9. The gross amount of "loss of time" insurance proceeds.
- 10. Nontaxable interest received from the federal government or any of its instrumentalities, or from state or municipal bonds.
- 11. Scholarship and fellowship gifts or income and other educational grants, not including student loans.
- 12. Unemployment insurance, including railroad unemployment compensation.
- 13. Workers' compensation.
- 14. Capital gains not included in Wisconsin adjusted gross income, but not including a nonrecognized gain from an involuntary conversion under s. 1033 of the internal revenue code.
- 15. A gain on the sale of a personal residence excluded under s. 121 of the internal revenue code. A gain on the sale of a personal residence which would be reportable under the installment sale method if taxable may be reported either in full in the year of sale or each year as payments are received.
- 16. Dividends not included in Wisconsin adjusted gross income.
- 17. Income of a nonresident or part-year resident married to a full-year resident of Wisconsin.
- 18. A housing allowance provided to a member of the clergy.
- 19. The amount by which a resident manager's rent is reduced.
- 20. Income of a Native American which is nontaxable under ch. 71, Stats.
- 21. Income from sources outside of Wisconsin which is nontaxable under ch. 71, Stats.
- 22. Nontaxable deferred compensation.
- 23. The following items deducted in determining Wisconsin adjusted gross income, including items deducted in arriving at partnership and tax-option "S" corporation income or losses reported as a part of Wisconsin adjusted gross income:
  - a. Intangible drilling costs.
  - b. Depletion allowances.
  - c. Depreciation, including that portion of the standard mileage rate which is determined under the internal revenue code to be depreciation.
  - d. Expenses deducted under s. 179 of the internal revenue code, regarding the election to expense certain depreciable business assets.
  - e. Amortization.
  - f. Contributions to individual retirement accounts under s. 219 of the internal revenue code, including contributions to individual retirement arrangements, or "IRA's," and simplified employe pension plans, or "SEP's."
  - g. Contributions to Keogh plans.
  - h. Net operating loss carryforwards.
  - i. Capital loss carryforwards.
- (c) The following items deducted in determining Wisconsin adjusted gross income, including items deducted in arriving at

partnership, limited liability company and tax-option "S" corporation income or losses reported as a part of Wisconsin adjusted gross income:

- 1. Intangible drilling costs.
- 2. Depletion allowances.
- 3. Depreciation, including that portion of the standard mileage rate which is determined under the internal revenue code to be depreciation.
- 4. Expenses deducted under s. 179 of the internal revenue code, regarding the election to expense certain depreciable business assets.
- 5. Amortization.
- 6. Contributions to individual retirement accounts under s. 219 of the internal revenue code, including contributions to individual retirement arrangements, or "IRAs," savings incentive match plans for employes, or "SIMPLEs" and simplified employe pension plans, or "SEPs."
- 7. Contributions to Keogh plans.
- 8. Net operating loss carryforwards.
- 9. Capital loss carryforwards.

**(5) EXCLUSIONS FROM INCOME.** (a) Under s. 71.52 (6), Stats., income does not include the following:

- 1. Amounts described in sub. (4) (b) 1., 3.e., 7., 11. and 14. as not being includable.
- 2. Gifts from natural persons, including voluntary support payments.
- 3. Relief in kind by a governmental agency, including surplus food, food stamps and payments directly to a supplier of goods or services, such as medical care, food, clothing and residential energy.
- 4. The nontaxable portions of lump sum insurance proceeds received:
  - a. For a recipient's disability or loss of limb.
  - b. By a beneficiary of a decedent's life insurance policy.
  - c. From the surrender of any portion of an insurance policy that does not constitute a personal endowment insurance policy or an annuity contract purchased by the recipient.
- 5. Wisconsin homestead credit amounts received.
- 6. Social security or SSI payments received on behalf of a claimant's children or the children of the claimant's household.
- 7. Pension, annuity or other retirement plan payments rolled over from one retirement plan to another.
- 8. Tax-free exchanges of insurance contracts under s. 1035 of the internal revenue code.
- 9. Crime victim compensation payments under ch. 949, Stats.
- 10. Payments under the Wisconsin petroleum cleanup fund act.
- 11. "Foster grandparents program" payments under the federal domestic volunteer service act of 1973.
- 12. Community spouse income allowance payments under the Wisconsin spousal impoverishment program, except the portion of the payments includable under Wisconsin marital property law.

**Note:** The determination of household income under Wisconsin marital property law is described in s. Tax 14.06 (3) (c) 2.

(b) Amounts added to Wisconsin adjusted gross income under s. 71.52 (6), Stats., on a previous year's homestead credit claim and subsequently repaid may be subtracted from income for the year during which they are repaid.

(c) Scholarship and fellowship gifts or income included in Wisconsin adjusted gross income, which were included in income under s. 71.52 (6), Stats., on a previous year's homestead credit claim may be subtracted from income for the current year.

**(6) MARITAL PROPERTY AGREEMENTS.** Under s. 71.52 (6), Stats., a marital property agreement or unilateral statement under ch. 766, Stats., has no effect in computing income for a person

whose homestead is not the same as the homestead of that person's spouse.

**(7) INCOME WHILE TEMPORARILY ABSENT FROM HOMESTEAD.** Income received while temporarily absent from a homestead shall be included in income.

**Example:** The net income from rental of a homestead during a planned temporary absence or earnings from seasonal employment away from the homestead is includable in income.

**Note:** Household income of a claimant who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

**Note:** Section Tax 14.03 interprets s. 71.52 (5) and (6), Stats.

**Note:** Section 71.01 (6), Stats., was revised by 1997 Wis. Act 37, to include provisions of P.L. 105-34, relating to the exclusion of a gain from the sale of a personal residence, effective for sales after May 6, 1997, the same time as for federal purposes. Under the statutes in effect immediately prior to the enactment of 1997 Wis. Act 37, certain gains from the sale of a personal residence could be deferred under s. 1034 of the internal revenue code, and those gains were excludable from income under s. 71.52 (6), Stats. In addition, a gain on the sale of a personal residence excluded under s. 121 of the internal revenue code, which was the once-in-a-lifetime exclusion for a qualifying sale by a person age 55 or older, was includable in income under s. 71.52 (6), Stats.

**Note:** Section 71.52 (6), Stats., was amended by 1997 Wis. Act 27, effective for 1998 homestead credit claims filed in calendar year 1999 and thereafter. Under the statutes in effect immediately prior to the enactment of 1997 Wis. Act 27, scholarship and fellowship amounts described in sub. (5) (c) could not be excluded from income.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; renum. (3) to (6) to be (4) to (7) and am. (5) (a) 1., cr. (3), Register, August, 1990, No. 416, eff. 9-1-90; am. (3) (a), (4) (b) 10., 15., 23. d. and f. Register, June, 1993, No. 450, eff. 7-1-93; cr. (2) (intro.) and (4) (b) 5. e., r. and recr. (4) (b) 3. and (5), am. (3) (a), (b) and (c) 2. and (4) (b) (intro.), 2., 5. (intro.) and a., 7., 11., 12., 14., 15. and 20., renum. (4) (b) 23. (intro.) and a. to i. to be (4) (c) (intro.) and 1. to 9. and am. (4) (c) (intro.) and 6., Register, July, 2000, No. 535, eff. 8-1-00.

**Tax 14.04 Property taxes accrued. (1) PURPOSE.** This section clarifies the meaning of "property taxes accrued" as the term applies to homestead credit claims.

**(2) DEFINITION.** Under s. 71.52 (7), Stats., "property taxes accrued" means real or personal property taxes or monthly parking permit fees under s. 66.0435 (3) (c), Stats., exclusive of special assessments, delinquent interest and charges for service, levied under ch. 70, Stats., on a homestead owned by a claimant or a member of the claimant's household, less the tax credit, if any, afforded in respect of the property by s. 79.10, Stats. With respect to sub. (3) (e), "property taxes accrued" means the property taxes accrued levied on the former homestead owned by the claimant.

**(3) QUALIFYING PROPERTY TAXES.** (a) Property taxes shall be levied on a homestead or former homestead to qualify as "property taxes accrued." Property taxes are levied when the tax roll is delivered to the local treasurer for collection, usually on or near December 15 of each year.

(b) The property taxes accrued on a homestead or former homestead for the year to which a claim relates need not be paid prior to filing a homestead credit claim. The fact that the property taxes accrued on the homestead or former homestead are delinquent for years prior to the year to which a claim relates does not disqualify the claimant.

(c) "Property taxes accrued" includes personal property taxes assessed on a homestead or former homestead that is constructed on leased land or assessed on a mobile home owned by the claimant or a member of the claimant's household. "Property taxes accrued" also includes mobile home parking permit fees assessed under s. 66.0435 (3) (c), Stats., for a mobile home owned by the claimant or a member of the claimant's household.

(d) Under s. 71.52 (3), Stats., a buyer of a homestead or former homestead in possession under a land contract shall be entitled to claim the property taxes accrued on the homestead or former homestead.

(e) Under s. 71.54 (2) (c) 2., Stats., if a claimant has moved from a homestead owned by the claimant to housing that is exempt from taxation under ch. 70, Stats., other than housing for which payments in lieu of taxes are made under s. 66.1201 (22), Stats., and other than a correctional or detention facility, a claim or claims may be allowed based on the property taxes accrued on that

former homestead, provided the claimant has attempted to sell the former homestead. The property taxes accrued on the former homestead may be claimed for the period of time ending on the earliest date any of the events in subds. 1. to 4. occurs. If the earliest date any of those events occurs is in the calendar year following the year in which the claimant moves to the tax-exempt housing, the property taxes accrued shall be prorated from the date of the move to December 31 on a claim for the calendar year in which the move occurs, and from January 1 to the earliest date any of the events in subds. 1. to 4. occurs on a claim for the succeeding calendar year. The events after which the property taxes accrued on the former homestead may no longer be claimed are as follows:

1. The claimant ceases to own the former homestead.
2. The claimant begins to rent out or lease out the former homestead.
3. The claimant ceases to reside in the tax-exempt housing.
4. Twelve months of time elapses from the date of moving to the tax-exempt housing.

**Example:** A claimant moves on July 1, 1997, from the homestead she owns to an apartment that is exempt from property taxes. She has listed her former homestead for sale with a realtor. While continuing to reside in the apartment, she sells the former homestead; the date on the closing agreement is May 31, 1998. The property taxes accrued on the former homestead are \$2,400 for 1997 and the prorated property taxes on the closing agreement are \$1,000.

The claimant may file a 1997 homestead credit claim, based on the 1997 property taxes accrued of \$2,400 for the entire year. She may also file a 1998 claim, based on the property taxes accrued of \$1,000, prorated from January 1, 1998, to the date of the sale.

**(4) VERIFICATION OF PROPERTY TAXES ACCRUED.** (a) Except as provided in pars. (b) and (c), a claimant who claims property taxes accrued shall submit with the homestead credit claim a copy of the property tax bill, or if not available, a substitute for the property tax bill containing equivalent information to that appearing on the original property tax bill.

(b) If a claimant sells a homestead during the year to which a claim for homestead credit relates, proper verification of property taxes accrued shall be a copy of one of the following documents:

1. The closing agreement from the sale of the homestead.
2. The property tax bill for the year prior to the year to which the claim relates.
3. The property tax bill for the year to which the claim relates.

(c) If a claimant's homestead is a mobile home owned by the claimant or a member of the claimant's household, on which parking permit fees are assessed under s. 66.0435 (3) (c), Stats., proper verification of property taxes accrued shall be a copy of the parking permit fee statement issued by an authorized representative of the municipality in which the mobile home was located, or if the claimant paid rent for the land on which the mobile home was located and also paid parking permit fees to a landlord, a statement of the parking permit fees paid to the landlord, signed by the landlord, such as a form I-017, "Rent Certificate."

**(5) EFFECT OF RELIEF AND OTHER PUBLIC ASSISTANCE.** (a) Under s. 71.54 (2) (a), Stats., property taxes accrued shall be reduced by one-twelfth for each month or portion of a month for which the claimant received either \$400 or more of county relief under s. 59.53 (21), Stats., or any amount of aid to families with dependent children, or "AFDC" under s. 49.19, Stats., Wisconsin works payments for community service jobs or transitional placements under s. 49.147 (4) or (5), Stats., or Wisconsin works payments as a caretaker of a newborn child under s. 49.148 (1m), Stats. However, property taxes accrued need not be reduced if the assistance consists solely of foster care payments under s. 49.19 (10) (a), Stats., non-legally responsible relative, or "NLRR" AFDC payments or kinship care payments.

(b) County relief and other cash public assistance payments that are repaid by the claimant in the same calendar year in which they are received are not considered payments for purposes of computing the one-twelfth reduction of property taxes accrued as required by par. (a).

**(6) MARITAL PROPERTY AGREEMENTS.** Under s. 71.52 (7), Stats., a marital property agreement or unilateral statement under ch. 766, Stats., has no effect in computing property taxes accrued for a person whose homestead is not the same as the homestead of that person's spouse.

**(7) OWNERSHIP OF HOMESTEAD BY ONE PERSON OR ONE HOUSEHOLD.** An otherwise qualified person who owns and resides in a Wisconsin homestead may claim a homestead credit based upon property taxes accrued on the homestead, even if another person pays the property taxes.

**(8) OWNERSHIP OF HOMESTEAD BY MORE THAN ONE PERSON.** (a) Except as provided in par. (c), under s. 71.52 (7), Stats., if a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common or is owned as marital property or survivorship marital property and one or more of the co-owners is not a member of the claimant's household, property taxes accrued is that part of the property taxes accrued levied on the homestead, reduced by the tax credit under s. 79.10, Stats., that reflects the ownership percentage of the claimant and the claimant's household.

(b) Except as provided in par. (c), if a qualified claimant residing in a co-owned homestead pays the property taxes accrued for a co-owner not residing in the homestead and not claiming property taxes accrued under s. 71.54 (2) (c) 2., Stats., and sub. (3) (e), the claimant may claim a homestead credit based upon both the claimant's proportionate share of "property taxes accrued" as described in par. (a) and "gross rent" for the property taxes accrued paid on behalf of each absent owner, as provided in s. Tax 14.05 (3) (c). On the other hand, if a qualified claimant residing in a co-owned homestead pays the property taxes accrued for a co-owner who also resides in the homestead but is not a member of the payor's household, or who is claiming property taxes accrued under s. 71.54 (2) (c) 2., Stats., and sub. (3) (e), each co-owner may file a claim based upon that portion of the property taxes accrued that reflects the ownership percentage of each claimant and his or her household.

**Examples:** 1) A, B and C each own a one-third interest in a dwelling. A and B are married to each other and live in the dwelling; C lives elsewhere. A and B both qualify for homestead credit and pay all of the property taxes accrued, which are \$1,800.

Either A or B may claim a homestead credit based upon "property taxes accrued" of \$1,200, their two-thirds share, plus "gross rent" of \$600, since they pay C's one-third share of the property taxes.

If C had also occupied the homestead, A and B could have claimed only \$1,200 of "property taxes accrued" and no "gross rent," even though they paid the entire \$1,800. In addition, C could have filed a claim if otherwise qualified, based upon "property taxes accrued" of \$600.

2) A mother and son each own a one-half interest in a dwelling occupied solely by the mother, who qualifies for homestead credit. The son pays all of the property taxes accrued on the dwelling.

The mother may claim a homestead credit based upon one-half of the property taxes accrued.

3) A brother and sister both qualify for homestead credit and own 75% and 25% interests, respectively, in a homestead they both occupy. The brother pays all of the property taxes accrued on the homestead.

Each may claim a homestead credit based upon the portion of property taxes accrued reflecting their ownership percentage.

(c) Under s. 71.52 (7), Stats., if a claimant has inherited a partial ownership interest in a homestead, is entitled to possession of the property and is required by the terms of the will that transferred the ownership to pay all of the property taxes on the homestead, the claimant may claim a homestead credit based upon the entire amount of property taxes accrued on the homestead.

**(9) SALE OR PURCHASE OF HOMESTEAD.** (a) Under s. 71.52 (7), Stats., if a claimant sells or purchases a homestead during the year to which a claim for homestead credit relates, the property taxes accrued shall be prorated for the time the seller or buyer both owned and occupied the homestead during the year. The seller may use the closing agreement, the property tax bill for the year prior to the year to which the claim relates or the property tax bill for the year to which the claim relates as the basis for computing allowable property taxes accrued. The purchaser may use only the property tax bill for the year to which the claim relates as the basis for computing allowable property taxes accrued.

(b) Except as provided under s. 71.54 (2) (c) 2., Stats., and sub. (3) (e), if a seller moved from the homestead or established a homestead elsewhere before the closing date shown on a closing agreement and the property taxes are prorated on the agreement to the closing date, the property taxes shall be further prorated for homestead credit purposes to consider in the year of sale only the property taxes for the period the seller maintained a homestead on the property.

**Example:** Ownership of a homestead is transferred on June 30. The prorated property taxes for 6 months on the closing agreement are \$1,200. The seller moves from that homestead to a new homestead on May 31.

The portion of prorated property taxes allowable to the seller is \$1,000, which is the property taxes from January 1 to May 31, rather than the \$1,200 shown on the closing agreement.

**(10) PROPERTY TAXES ACCRUED ON LAND.** (a) *Not part of a farm.* Under s. 71.52 (3) and (7), Stats., if a homestead is not part of a farm, property taxes accrued for land are limited to the property taxes on up to one acre of land which surrounds the homestead dwelling and is reasonably necessary to the use of the dwelling as a home. A parcel of land separated from the homestead parcel by such things as a street, river or utility right-of-way shall be considered to be a part of the homestead parcel.

(b) *Part of a farm.* Under s. 71.52 (7), Stats., if a homestead is part of a farm, property taxes accrued on up to 120 acres of land which surrounds the homestead dwelling may be claimed. Property taxes accrued for parcels of land which do not surround the homestead parcel shall be allowed if the nonsurrounding parcels are necessary to the use of the homestead parcel as a home.

**Example:** A farmer owns 3 parcels of land, 60, 40, and 20 acres in size. The homestead is located on the 60 acre parcel. The 60 and 20 acre parcels have a common border. The 40 acre parcel is separated from the others by a neighboring farm. In this situation, qualifying land includes both the 60 acre homestead parcel and the 20 acre parcel adjacent to the homestead parcel. The 40 acre parcel does not qualify since it is not adjacent to the homestead parcel and is not necessary to the use of the homestead as a home. However, if the 3 parcels and the neighboring farm were so situated that a driveway must cross the 40 acre parcel, as well as a portion of the neighboring farm, to reach the homestead or if a substantial portion of farm buildings necessary to the operation of the farm were on the 40 acre parcel, then that parcel would qualify since it would be necessary to the use of the homestead as a farm home. If the 3 parcels were situated so that the 60 acre parcel bordered on the 20 acre parcel which in turn bordered on the 40 acre parcel, the taxes on all 3 parcels would qualify, since they form one contiguous unit.

**(11) MULTIPURPOSE AND MULTIDWELLING BUILDINGS.** Under s. 71.52 (7), Stats., property taxes accrued on a homestead that is part of a multipurpose or multidwelling building are the property taxes accrued on the portion occupied as a principal residence, based upon a percentage of the total property taxes accrued on the multipurpose or multidwelling building and the same percentage of the property taxes accrued on the land surrounding it which otherwise qualifies as described in sub. (10). Property used partly as a homestead and partly for any business purpose, other than farming, for which a deduction is allowed or allowable for income tax purposes is multipurpose property. Property used partly as a homestead and partly as living quarters rented to others is multidwelling property. A building divided into 2 units, one of which is the homestead of a claimant and the other of which is the living quarters of a person who does not pay rent is multidwelling property, even though there is no business or rental use.

**Examples:** 1) A claimant was a homeowner who as a salesperson used one room of the 8-room house exclusively for business activities. Property taxes accrued for the year were \$1,600.

The claimant may claim only seven-eighths of the property taxes accrued, or \$1,400, in the computation of allowable homestead credit, since the other one-eighth, or \$200, constitutes business taxes.

2) Assume the same facts as in example 1, except that the room was not used exclusively for business. No deductions would be allowable for income tax purposes and the full \$1,600 of property taxes accrued could therefore be claimed in the computation of allowable homestead credit.

3) A claimant owned a duplex, lived in one of the 2 equal-sized units and rented out the other unit. Property taxes accrued for the year were \$2,400.

Only \$1,200, representing the property taxes accrued on the claimant's principal dwelling, may be claimed in the computation of allowable homestead credit.

4) Assume the same facts as in example 3, except that the claimant lived in one unit and the claimant's son or daughter lived in the other unit but was not required to pay rent. The claimant nevertheless may claim only \$1,200 of the property taxes accrued.

**(12) PROPERTY SUBJECT TO A LIFE ESTATE.** Property taxes assessed on property subject to a life estate may only be claimed



as “property taxes accrued” for purposes of homestead credit by a person in possession of the life estate interest. The life estate must be in writing and incorporated in the warranty deed or other legal documentation.

**Example:** A widow and her son reside in the same homestead. Prior to the year of the claim, the widow transferred the property to her son by quit-claim deed but retained a life estate in the property. She pays the property taxes, but the property tax bill comes in her son’s name.

If otherwise qualified, the widow may file a claim for homestead credit based upon the entire amount of property taxes accrued. The son may not claim homestead credit based upon any portion of the property taxes accrued on the homestead even though he resides in the property and is otherwise qualified.

**Note:** The computation of property taxes accrued of a claimant who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

**Note:** Section Tax 14.04 interprets ss. 71.52 (3) and (7) and 71.54 (2) (a) and (c) 2., Stats.

**Note:** Section 71.54 (2) (a) (intro.), Stats., was amended by 1995 Wis. Act 27, effective July 28, 1995, to reference “relief from any county under s. 59.07 (154),” Stats. (s. 59.07 (154), Stats., was renumbered s. 59.53 (21), Stats., by 1995 Wis. Act 201, effective September 1, 1996). Section 71.54 (2) (a) (intro.), Stats., was again amended, by 1995 Wis. Act 289, effective July 1, 1996, to provide for a one-twelfth reduction of property taxes accrued for months a claimant received Wisconsin works under s. 49.147 (4) or (5), Stats. Prior to the enactment of 1995 Wis. Acts 27 and 289, the county relief reference was to “general relief from any municipality or county,” and there was no reference to Wisconsin works because that program did not exist.

**Note:** Section 71.54 (2) (a) (intro.), Stats., was amended by 1999 Wis. Act 9, effective for 2000 homestead credit claims filed in calendar year 2001 and thereafter, to require a one-twelfth reduction of property taxes accrued for months a claimant received Wisconsin works payments as a caretaker of a newborn child under s. 49.148 (1m), Stats. Under the statutes in effect immediately prior to the enactment of 1999 Wis. Act 9, the reduction was not required for receipt of those payments.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; am. (2), (3) (a) to (d), (8) (b) and (9) (b), cr. (3) (e), Register, January, 1991, No. 421, eff. 2-1-91; am. (2), (3) (b), (c), (4) (a), (b) 1., 2. and (c), (8) (a), (b), (9) (a), (b) (10) (a) and (11), r. and recr. (5) and cr. (8) (c), Register, July, 2000, No. 535, eff. 8-1-00; **corrections in (2), (3) (c) and (e) and (4) (c) were made under s. 13.93 (2m) (b) 7., Stats.**

**Tax 14.05 Gross rent and rent constituting property taxes accrued. (1) PURPOSE.** This section clarifies the terms “gross rent” and “rent constituting property taxes accrued” as the terms apply to homestead credit claims.

**(2) DEFINITIONS.** (a) “Gross rent” has the meaning specified in s. 71.52 (2), Stats. Gross rent includes payments by a claimant to the landlord for items normally associated with the occupancy of a homestead, such as a garage or parking space, appliances, furniture or utilities. However, payments for food, medical services or other personal services are expressly excluded under s. 71.52 (2), Stats. In situations where charges for food and services are subtracted from amounts paid to a landlord, gross rent is commonly referred to as “rent paid for occupancy.”

(b) “Rent constituting property taxes accrued” has the meaning specified in s. 71.52 (8), Stats.

**(3) RENT PAYMENTS.** (a) Gross rent may be claimed only for the year to which the claim relates, but it may have been paid at any time before the claim is filed.

(b) Property taxes accrued on a claimant’s homestead not owned by the claimant or a member of the claimant’s household, which are paid by the claimant on behalf of an owner who does not reside in the homestead and who does not claim property taxes accrued under s. 71.54 (2) (c) 2., Stats., shall be considered gross rent.

(c) Personal property taxes or mobile home parking permit fees assessed under s. 66.0435 (3) (c), Stats., paid by a claimant for a rented mobile home shall be considered gross rent. In addition, rental paid to a landlord for a mobile home or for land on which a mobile home is located shall be considered gross rent.

**(4) VERIFICATION OF RENT CONSTITUTING PROPERTY TAXES ACCRUED.** (a) Except as provided in pars. (e) and (f), if a claimant claims rent constituting property taxes accrued the claimant and the landlord shall complete form I-017, “Rent Certificate,” and the claimant shall submit it with schedule H. The department is not precluded from requesting additional documentation to verify rent paid in cases it deems appropriate.

(b) If a claimant pays rent for more than one homestead during a year, a separate rent certificate shall be completed for each

homestead for which the claimant wishes to claim a homestead credit, and the claimant shall submit all rent certificates together with a single schedule H.

(c) A landlord shall determine the reasonable value of food, medical services and other personal services such as laundry, transportation, counseling, grooming, recreational and therapeutic services provided to a claimant in addition to occupancy rights and subtract those amounts from total rent indicated on the rent certificate, to determine rent paid for occupancy. The landlord shall also indicate whether heat was included or not included in the rent by checking the appropriate box on the rent certificate.

(d) Under s. 71.55 (2), Stats., a landlord is prohibited from charging a fee for completing the rent certificate.

(e) If a claimant is unable to obtain a rent certificate from a landlord, proper rent receipts, money order receipts, cancelled checks or cancelled share drafts substantiating amounts paid shall be acceptable evidence of gross rent paid. The claimant shall also include a rent certificate on which all lines except the signature line have been filled in, or a statement providing the same information as that requested on the rent certificate. The statement or rent certificate shall indicate whether heat was included in the rent, and whether food or services as described in par. (c) were provided and if so the estimated value of the food and services provided. The statement or top portion of the rent certificate should be marked with a comment such as “*Landlord Refuses to Sign.*”

(f) Proper verification of rent constituting property taxes accrued for a claimant who pays property taxes on the homestead on behalf of an owner other than the claimant shall be a copy of the property tax bill and a statement from the claimant, indicating that he or she paid the property taxes on behalf of an owner who did not reside in the homestead.

**(5) EFFECT OF RELIEF AND OTHER PUBLIC ASSISTANCE.** (a) Under s. 71.54 (2) (a), Stats., rent constituting property taxes accrued shall be reduced by one-twelfth for each month or portion of a month for which the claimant received either \$400 or more of county relief under s. 59.53 (21), Stats., or any amount of aid to families with dependent children, or “AFDC” under s. 49.19, Stats., Wisconsin works payments for community service jobs or transitional placements under s. 49.147 (4) or (5), Stats., or Wisconsin works payments as a caretaker of a newborn child under s. 49.148 (1m), Stats. However, rent constituting property taxes accrued need not be reduced if the assistance consists solely of foster care payments under s. 49.19 (10) (a), Stats., non-legally responsible relative, or “NLRR” AFDC payments or kinship care payments.

(b) County relief and other cash public assistance payments that are repaid by the claimant in the same calendar year in which they are received are not considered payments for purposes of computing the one-twelfth reduction of rent constituting property taxes accrued as required by par. (a).

**(6) MARITAL PROPERTY AGREEMENTS.** Under s. 71.52 (8), Stats., a marital property agreement or unilateral statement under ch. 766, Stats., has no effect in computing rent constituting property taxes accrued for a person whose homestead is not the same as the homestead of that person’s spouse.

**(7) NON-ARM’S LENGTH RENTAL.** Under s. 71.55 (8), Stats., if a homestead is rented under circumstances deemed by the department to be not at arm’s length, it may determine rent constituting property taxes accrued as at arm’s length. The department may make this determination when the amount claimed is in excess of fair rental value. However, since under s. 71.52 (2), Stats., “gross rent” is limited to rental actually paid, the department may not increase the rent constituting property taxes accrued to arm’s length rental if the rent paid was at less than fair rental value.

**Example:** A claimant files a claim with a rent certificate showing rent paid for occupancy of \$7,200, or \$600 per month. Investigation by the Department of Revenue discloses the rent is too high for the locality and dwelling involved, and the landlord is financially dependent on others for support and is related to the claimant. The department determines that the fair rental value of the claimant’s homestead for the

year of the claim was \$300 per month, or \$3,600 for the year. No utilities, food or services were furnished by the landlord.

Allowable rent constituting property taxes accrued is \$900, which is 25% of \$3,600.

**(8) EXEMPT HOUSING.** (a) Under s. 71.53 (2) (e), Stats., no claim for homestead credit may be allowed if a claimant resided for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70, Stats., other than housing for which payments in lieu of taxes are made under s. 66.1201 (22), Stats., except as provided under s. 71.54 (2) (c) 2., Stats. Under s. 71.54 (2) (c) 2., Stats., if a claimant moves to tax-exempt housing, a claim for homestead credit may be allowed based upon property taxes accrued on the claimant's former homestead under certain conditions. Those conditions are explained in s. Tax 14.04 (3) (e).

(b) Under ss. 71.53 (2) (e) and 71.54 (2) (c) 1., Stats., if a claimant resided for part of the calendar year to which a claim for homestead credit relates, in a homestead which was either subject to taxation under ch. 70, Stats., or exempt from taxation under ch. 70, Stats., but for which payments in lieu of taxes were made under s. 66.1201 (22), Stats., the property taxes accrued or rent constituting property taxes accrued or both for that homestead are allowed for that portion of the year.

**Example:** A claimant files a claim with a rent certificate showing rent paid for occupancy of \$7,200, or \$600 per month. Investigation by the Department of Revenue discloses the rent is too high for the locality and dwelling involved, and the landlord is financially dependent on others for support and is related to the claimant. The department determines that the fair rental value of the claimant's homestead for the year of the claim was \$300 per month, or \$3,600 for the year. No utilities, food or services were furnished by the landlord.

Allowable rent constituting property taxes accrued is \$900, which is 25% of \$3,600.

(c) Payments in lieu of taxes made under s. 66.1201 (22), Stats., as provided in pars. (a) and (b), are made by most facilities licensed with the state of Wisconsin as "housing authorities." Rent paid to those housing authorities may be used to determine gross rent and rent constituting property taxes accrued. However, other types of exempted housing which make payments in lieu of taxes do not make the payments under s. 66.1201 (22), Stats., and therefore rent paid to those types of exempted housing may not be used to determine gross rent and rent constituting property taxes accrued.

(d) Types of tax-exempt housing other than housing authorities include:

1. Federal low-income housing under the housing and urban development, or "H.U.D." program.
2. Student dormitories owned by nonprofit educational institutions.
3. Housing units of religious organizations.
4. Charitable, nonprofit nursing homes.

**(9) JOINT OCCUPANTS OF RENTAL UNITS.** (a) Persons sharing living expenses for a rented homestead who are otherwise eligible for the homestead credit and who are not members of the same household, shall each be entitled to claim a portion of the rent paid for occupancy of the homestead. However, the total claims of the joint occupants for rent paid for occupancy may not exceed 100% of the rent paid to the landlord for occupancy, as shown on the rent certificate. The amount of rent paid for occupancy shall be the ratio which the contribution of the claimant or claimant's household to the cost of shared living expenses, such as rent, food, utilities and supplies, bears to the total cost of the shared living expenses.

**Example:** X, Y, and Z are 3 unrelated joint occupants of a rental unit who share expenses as follows:

| Living Expenses       | X       | Y       | Z       | Total   |
|-----------------------|---------|---------|---------|---------|
| Rent for occupancy    | \$5,400 | \$ —    | \$ —    | \$5,400 |
| Food                  | —       | 1,350   | 1,350   | 2,700   |
| Utilities             | —       | 900     | —       | 900     |
| Total living expenses | \$5,400 | \$2,250 | \$1,350 | \$9,000 |
| % of total            | 60%     | 25%     | 15%     | 100%    |

Since X paid 60% of the shared living expenses, X's share of rent paid for occupancy is 60% of \$5,400, or \$3,240. Likewise, rent paid for occupancy for Y is 25% of \$5,400, or \$1,350, and for Z it is 15% of \$5,400, or \$810. Total rent paid for occupancy for all 3 claimants is \$5,400, as shown on the rent for occupancy line.

(b) If a claimant described in par. (a) is entitled to more or less rent paid for occupancy than is shown on the rent certificate completed by the landlord for the claimant, the claimant shall in addition to the certificate attach a statement to the homestead credit claim showing the computation of claimed rent paid for occupancy and identifying the other occupants of the homestead with whom rent and living expenses were shared during the year to which the claim relates by giving the name, current address at the time of filing the claim, if known, and social security number, if known.

**(10) RENT PAID FOR LAND.** Under s. 71.52 (2), Stats., the portion of s. 71.52 (7), Stats., pertaining to property taxes accrued on land as described in s. Tax 14.04 (10) also applies to gross rent paid for land.

**(11) MULTIPURPOSE AND MULTIDWELLING BUILDINGS.** Under s. 71.52 (2), Stats., the portion of s. 71.52 (7), Stats., pertaining to property taxes accrued on multipurpose and multidwelling buildings as described in s. Tax 14.04 (11) also applies to gross rent paid for a multipurpose or multidwelling building of which the homestead is a part.

**(12) SHARECROPPERS.** "Rent constituting property taxes accrued" of a person sharing the costs or proceeds or both from the operations of a farm with the owner of the farm property in consideration for use of the homestead, land, machinery or equipment equals 25% of the owner's share of the net proceeds applicable to occupancy of the homestead, or 20% if heat is included in the cost of the rent.

**Example:** A sharecropper resides on and operates a 120 acre dairy farm. The landlord and the sharecropper share equally the gross receipts from crop sales, \$10,000, the gross milk receipts, \$40,000, and the cost of seed and feed, \$20,000. The landlord furnishes the land, buildings and machinery, for which annual allowable depreciation is \$6,000. The landlord pays for the heat. In this situation, rent constituting property taxes accrued for the sharecropper equals 20% of the owner's share of the proceeds less the value of the nonoccupancy items furnished by the landlord, as follows:

|  |           |           |
|--|-----------|-----------|
| Landlord's share of crop receipts                                    | \$ 5,000  |           |
| Landlord's share of milk receipts                                    | 20,000    | \$ 25,000 |
| Less nonoccupancy items furnished by landlord:                       |           |           |
| Landlord's share of seed and feed                                    | \$ 10,000 |           |
| Depreciation of buildings (not including the dwelling) and machinery | 6,000     | 16,000    |
| Gross rent   |           | \$ 9,000  |
|  |           | x20%      |
| Rent constituting property taxes accrued                             |           | \$ 1,800  |

**(13) LOW-INCOME HOUSING.** (a) Indirect payments of rent, such as a subsidy payment from a governmental agency for low-income housing, are not includable in determining gross rent.

(b) A landlord may receive both payments from a claimant and subsidy payments from a governmental agency for rental of the claimant's homestead. If the allocation of the subsidy payments to food, medical services or other personal services as described in s. 71.52 (2), Stats., furnished by the landlord is not specified under the terms of an agreement with the governmental agency, the portion of the rent paid for occupancy eligible for the homestead credit shall be the total rent paid for occupancy multiplied by a fraction, the numerator of which is the amount paid by the claimant and the denominator of which is the total amount paid including governmental subsidies.

**Example:** A total of \$5,400 is paid to a claimant's landlord for the year on behalf of the claimant, \$1,800 by the claimant and \$3,600 by a governmental agency. The value of food provided in \$600 and no services are provided.

Qualifying rent paid for occupancy is \$1,600, computed as follows: \$4,800 ÷ [\$1,800 ÷ \$5,400]. The \$4,800 is the total amount paid, \$5,400, less the \$600 for food. The \$1,800 is the amount the claimant paid and the \$5,400 is the total amount paid.



(c) If an agreement with the agency paying the subsidy specifies how the subsidy is to be applied, the agreement shall be controlling in the determination of the claimant's rent paid for occupancy.

**(14) NURSING HOMES AND LONG-TERM CARE FACILITIES.** (a) Any one of the following methods may be used by residents of nursing homes or long-term care facilities to determine rent paid for occupancy:

1. A standard rate of \$100 per week but not more than the actual rent paid.

2. The percentage of building occupancy expenses method. Under this method, the ratio that a nursing home's or a long-term care facility's building occupancy expenses for a year bears to gross income received in that year, both directly from residents and indirectly from governmental aid, is determined. This ratio is applied to a resident's total direct payments for a year for which a homestead credit claim is filed, yielding the portion of the payments constituting rent paid for occupancy. This ratio shall be determined from the most recent income and expense data available at the time a rent certificate is prepared, preferably using data from the same year for which the homestead credit is claimed. The building occupancy expenses claimed shall be limited to the expenses attributable to real estate and furnishings only, such as property taxes, interest, lease or rent expenses, depreciation, upkeep and repairs and utilities.

**Example:** The following formula may be used to compute a resident's rent paid for occupancy; the worksheet is filled in as an example of how to compute the percentage:

|   |                     |
|---|---------------------|
| 1. Building occupancy expenses—real estate and furnishings only |                     |
| a. Property taxes   | \$ 30,000           |
| b. Interest   | 70,000              |
| c. Lease or rent expenses                                       | 10,000              |
| d. Depreciation   | 60,000              |
| e. Upkeep and repairs   | 10,000              |
| f. Utilities  | <u>20,000</u>       |
| g. Total building occupancy expenses                            | \$ <u>200,000</u>   |
| 2. Gross income, including indirect payments                    | \$ <u>1,600,000</u> |
| 3. Line 1.g divided by line 2 equals the percentage rate        | <u>12.5%</u>        |

The percentage rate determined above is to be multiplied by the total rent collected as entered on the rent certificate prepared for a resident filing a homestead credit claim, and the amount so determined is to be entered on the rent certificate as rent paid for occupancy. Assuming a resident's total direct payments for the year were \$36,000, rent paid for occupancy would be \$4,500, which is 12.5% of \$36,000.

3. Any other appropriate method, subject to prior approval by the department.

(b) 1. Under s. 71.53 (2) (f), Stats., a resident living in a nursing home and receiving medical assistance under s. 49.45, Stats., at the time of filing a homestead credit claim is not eligible for the homestead credit.

2. A person living in a nursing home who received medical assistance under s. 49.45, Stats., during the year to which the claim relates but is not receiving the medical assistance at the time of filing a homestead credit claim may claim the homestead credit if otherwise eligible. In this situation, amounts paid by medical assistance are not includable in determining rent paid for occupancy.

(c) If a fixed charge is made upon admission to a nursing home or long-term care facility entitling a person to occupancy for the balance of the person's life and additional monthly charges are solely for current maintenance and services, only the initial charge for occupancy shall be "gross rent." The terms of the agreement between the occupant and the nursing home or long-term care facility shall establish the year or years in which the rent paid for occupancy shall be deemed to be paid. If the rent paid is refundable in part should the occupant leave the home or if the rental pay-

ment is held in a trust by the home for the occupant, the initial payment will not be deemed to be paid entirely in one year but shall be prorated.

**Note:** The computation of rent constituting property taxes accrued of a claimant who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

**Note:** Section Tax 14.05 interprets ss. 71.52 (2) and (8), 71.53 (2) (e) and (f), 71.54 (2) (a) and (c) and 71.55 (2) and (8), Stats.

**Note:** Section 71.54 (2) (a) (intro.), Stats., was amended by 1995 Wis. Act 27, effective July 28, 1995, to reference "relief from any county under s. 59.07 (154)," Stats. (s. 59.07 (154), Stats., was renumbered s. 59.53 (21), Stats., by 1995 Wis. Act 201, effective September 1, 1996). Section 71.54 (2) (a) (intro.), Stats., was again amended, by 1995 Wis. Act 289, effective July 1, 1996, to provide for a one-twelfth reduction of rent constituting property taxes accrued for months a claimant received Wisconsin works under s. 49.147 (4) or (5), Stats. Prior to the enactment of 1995 Wis. Acts 27 and 289, the county relief reference was to "general relief from any municipality or county," and there was no reference to Wisconsin works because that program did not exist.

**Note:** Section 71.54 (2) (a) (intro.), Stats., was amended by 1999 Wis. Act 9, effective for 2000 homestead credit claims filed in calendar year 2001 and thereafter, to require a one-twelfth reduction of rent constituting property taxes accrued for months a claimant received Wisconsin works payments as a caretaker of a newborn child under s. 49.148 (1m), Stats. Under the statutes in effect immediately prior to the enactment of 1999 Wis. Act 9, the reduction was not required for receipt of those payments.

**Note:** The standard rate of \$100 per week for rent paid for occupancy by residents of nursing homes or long-term care facilities became effective with rent paid for calendar year 2000. For rent paid for calendar years 1999 and prior, the standard rate was \$40 per week.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; am. (3) (c) and (8) (a), renum. (8) (b) and (c) to be (8) (c) and (d) and am. (c), cr. (8) (b), Register, January, 1991, No. 421, eff. 2-1-91; r. and recr. (2) and (5), r. (3) (b) and (13) (a) 1. to 3., renum. (3) (c) and (d) to be (3) (b) and (c), (13) (a) (intro.) and (b) to be (13) (b) and (c), (14) (b) to be (14) (b) 1., am. (3) (b), (4) (a) to (c), (e), (7), (8) (a) to (d) (intro.), 1. to 3., (9) (a), (12), (13) (a), (b), (14) (a) 1. and 2., cr. (13) (a) and (14) (b) 2., Register, July, 2000, No. 535, eff. 8-1-00; **corrections in (3) (c), (8) (a), (b) and (c) were made under s. 13.93 (2m) (b) 7., Stats.**

**Tax 14.06 Marriage, separation or divorce during a claim year. (1) PURPOSE.** This section describes the qualifications for a homestead credit and the computation of household income, property taxes accrued and rent constituting property taxes accrued of a claimant who becomes married or divorced during the year to which a homestead credit claim relates or whose spouse occupies a separate dwelling for any part of a claim year.

(2) MARRIAGE DURING A CLAIM YEAR. (a) A new household is established when a marriage occurs during a claim year and the spouses reside together after the marriage. Under s. 71.53 (1) (c), Stats., either the husband or the wife may claim a homestead credit for the year of the marriage but not both.

(b) Under s. 71.52 (5), Stats., when a marriage occurs during a claim year and the spouses reside together after the marriage, household income shall include the claimant's income for the portion of the calendar year prior to the marriage and the total income of the household for the remainder of the year after the marriage.

(c) Under s. 71.52 (7) and (8), Stats., the spouse filing a claim may claim property taxes accrued or rent constituting property taxes accrued for the homestead of the claimant for the portion of the year prior to a marriage plus the total of those amounts for the common homestead after the marriage.

**Example:** X marries Y on September 1, and they decide that X is to be the claimant. Prior to the marriage, X pays gross rent of \$250 per month and Y pays gross rent of \$350 per month. They pay gross rent of \$500 per month for their jointly occupied apartment after the marriage. Heat is not included at any of the dwellings. X's income is \$4,000 prior to the marriage, and X's services and property generate marital property income of \$2,000 after the marriage. Y's income is \$10,000 prior to the marriage, and Y's services and property generate marital property income of \$5,000 after the marriage. There are no dependents.

In this situation, household income reportable by X is \$11,000, consisting of X's \$4,000 of income prior to the marriage plus the \$7,000 income of both X and Y after the marriage. Rent constituting property taxes accrued which may be claimed by X is \$1,000, which is 25% of the sum of X's rent of \$250 per month for 8 months, or \$2,000, and 4 months rent at \$500 per month after the marriage, or \$2,000, totaling \$4,000 for the year. Since Y is not the claimant, Y's rent of \$350 per month and income of \$10,000 for the 8 months prior to the marriage are not considered in computing the homestead credit.

(3) SEPARATION OR DIVORCE DURING A CLAIM YEAR. (a) If a husband and wife occupy separate homesteads for all or part of a claim year and continue to occupy separate homesteads on December 31 of that year, or if a husband and wife become divorced during a claim year and do not remarry each other by

December 31 of that year, each may claim a homestead credit for that year if otherwise qualified, since 2 households exist at the end of the year. When one spouse has permanently moved into a nursing home and the other spouse remains at home, the husband and wife are considered to occupy separate dwellings at the end of the year.

(b) If a husband and wife occupy separate homesteads for part of a claim year but occupy the same homestead on December 31 of that year, only one of the spouses may claim a homestead credit for that year, since only one household exists at the end of the year.

(c) In the event a husband and wife occupy separate dwellings or become divorced during a claim year, household income is determined under s. 71.52 (5), Stats., under Wisconsin income tax law and under marital property law as provided in ch. 766, Stats., except that marital property law does not apply if one of the spouses is not domiciled in Wisconsin during the period of time they occupy separate dwellings. Household income shall be determined as follows:

1. For the period of time the claimant and the claimant's spouse occupy a common homestead as members of the same household, household income shall include all income of both spouses, even if the "innocent spouse" provisions as provided in s. 71.10 (6) (b) and (6m), Stats., are in effect for income tax purposes. If the claimant cannot exactly determine the income of the claimant's spouse during the portion of the year they occupy a common homestead, the claimant may make a reasonable estimate of the income and shall clearly indicate it as an estimate on the homestead credit claim.

2. For the period of time the claimant and the claimant's spouse occupy separate dwellings prior to the issuance of a divorce decree, household income shall include all of the claimant's income and none of the spouse's income, if the spouse is not domiciled in Wisconsin during that time. If the claimant's spouse remains a Wisconsin domiciliary during the period of time the claimant and the claimant's spouse occupy separate dwellings prior to the issuance of a divorce decree, household income shall include all non-marital property income of the claimant and the claimant's portion of marital property income as provided by marital property law, ch. 766, Stats., and by the "innocent spouse" provisions in s. 71.10 (6) (b) and (6m), Stats. Under marital property law and the "innocent spouse" provisions, the extent to which marital property income during the period of time the spouses occupy separate dwellings is includable in household income depends on whether the claimant and the claimant's spouse notify each other of the amount and nature of marital property income generated by each, as follows:

a. If both spouses notify each other,  $1/2$  of all marital property income of both spouses is includable.

b. If the claimant notifies the spouse but the spouse does not notify the claimant,  $1/2$  of the marital property income generated by the claimant's services and property and none of the marital property income generated by the spouse's services and property is includable.

c. If the claimant does not notify the spouse but the spouse notifies the claimant, all of the marital property income generated by the claimant's services and property and  $1/2$  of the marital property income generated by the spouse's services and property is includable.

d. If neither spouse notifies the other, all of the marital property income generated by the claimant's services and property and none of the marital property income generated by the spouse's services and property is includable.

3. For the portion of the year after a divorce, household income shall include all income of the claimant only.

(d) In order to be valid, the notification referred to in par. (c) must be made by the spouse whose services or property produced the marital property income, prior to the due date of the Wisconsin

income tax return, or if the allowable time for filing the Wisconsin income tax return has been extended, the extended due date.

(e) In the event a husband and wife occupy separate dwellings during all or part of a claim year or become divorced during a claim year, each spouse may claim the total amount of property taxes accrued or rent constituting property taxes accrued on the common Wisconsin homestead for the portion of the year they maintain that homestead plus their own amounts for the portion of the calendar year the spouses occupy separate dwellings or are not married to each other. However, as provided in par. (b), only one of the spouses may claim a homestead credit if they are not divorced or do not occupy separate dwellings on December 31 of that year.

**Examples: 1) SEPARATION AT THE END OF A CLAIM YEAR.** A husband and wife reside in their jointly owned homestead from January 1 to July 31, when the wife moves permanently to a Wisconsin nursing home that is not exempt from property taxes. The husband pays the heat and all the property taxes of \$1,200 for the year. Rent paid by the wife for occupancy at the nursing home for the period August 1 through December 31 is \$1,000, and the nursing home pays the heat. There are no dependents. Each spouse notifies the other of the marital property income generated by their respective services and properties. Income consists of both non-marital property income and marital property income, as follows:

| Income                         | Husband  | Wife     |
|--------------------------------|----------|----------|
| N-M.P.* January 1 – July 31    | \$ 4,000 | \$ 2,400 |
| M.P.** January 1 – July 31     | 1,000    | 600      |
| N-M.P.* August 1 – December 31 | 3,200    | 1,600    |
| M.P.** August 1 – December 31  | 800      | 400      |
| Total Income                   | \$ 9,000 | \$ 5,000 |

\* N-M.P. = non-marital property income

\*\*M.P. = marital property income – in husband's column, income generated by his services and property; in wife's column, income generated by her services and property

Both husband and wife are otherwise qualified for the homestead credit. Household income, property taxes accrued, and rent constituting property taxes accrued applicable to each claimant for the year are computed as follows:

| Household Income   | Husband's Claim | Wife's Claim |
|--|-----------------|--------------|
| (H) N-M.P. January 1 – July 31*  | \$ 4,000        | \$ 4,000     |
| (H) M.P. January 1 – July 31*  | 1,000           | 1,000        |
| (W) N-M.P. January 1 – July 31*  | 2,400           | 2,400        |
| (W) M.P. January 1 – July 31*  | 600             | 600          |
| (H) N-M.P. August 1 – December 31  | 3,200           | 0            |
| (H) M.P. August 1 – December 31  | 400             | 400          |
| (W) N-M.P. August 1 – December 31  | 0               | 1,600        |
| (W) M.P. August 1 – December 31  | 200             | 200          |
| Total Household Income   | \$ 11,800       | \$ 10,200    |
| Property Taxes Accrued   |                 |              |
| (H) January 1 – July 31*<br>( $1/2 \times \$1,200 \times 1/2$ )  | \$ 350          | \$ 350       |
| (W) January 1 – July 31*<br>( $1/2 \times \$1,200 \times 1/2$ )  | 350             | 350          |
| (H) August 1 – December 31<br>( $5/12 \times \$1,200 \times 1/2$ )   | 250             | —            |
| (W) August 1 – December 31   | (see below)     | —            |
| Total Taxes  | \$ 950          | \$ 700       |
| Rent Constituting Property Taxes Accrued   |                 |              |
| (H) 25% of wife's share of property taxes paid by husband for the period August 1 through December 31<br>( $5/12 \times \$1,200 \times 1/2$ ) $\times$ 25%** | \$ 62.50        | \$ —         |
| (W) 20% of rent paid for occupancy only (20% $\times$ \$1,000)   | —               | 200          |
| Total Allowable Taxes and Rent   | \$ 1,012.50     | \$ 900       |

\* The income and taxes for the time the claimants are members of the same household are reportable on both claims.

\*\*The husband may claim as rent constituting property taxes accrued 25% of the wife's share of property taxes he pays for the period of time she does not reside in the jointly owned home.

2) SEPARATION DURING A CLAIM YEAR BUT NOT ON DECEMBER 31. X and Y are married and live together through April 30. Y moves to another homestead in Wisconsin on May 1 but moves back to X's homestead on November 1 of the same year. Gross rent for the homestead X resides in is \$300 per month all year, and gross rent for Y's homestead for May through October is \$200 per month. Heat is not included at either

dwelling. The income X's services and property generate is \$1,000 per month for all 12 months, and the income Y's services and property generate is \$500 per month for all 12 months. All income is marital property income, and X and Y both notify each other of the marital property income generated by their respective services and properties. There are no dependents. In this situation, since X and Y are one household at the end of the year, only one may file a claim for homestead credit; household income and rent constituting property taxes accrued for each spouse are computed as follows:

| Household Income  | If X Is Claimant | If Y Is Claimant |
|---|------------------|------------------|
| (X) January 1 – April 30*                                     | \$ 4,000         | \$ 4,000         |
| (Y) January 1 – April 30*                                     | 2,000            | 2,000            |
| (X) May 1 – October 31  | 3,000            | 3,000            |
| (Y) May 1 – October 31  | 1,500            | 1,500            |
| (X) November 1 – December 31*                                 | 2,000            | 2,000            |
| (Y) November 1 – December 31*                                 | 1,000            | 1,000            |
| <b>Total Household Income</b>                                 | <b>\$ 13,500</b> | <b>\$ 13,500</b> |
| <b>Rent Constituting Property Taxes Accrued (25% of Rent)</b> |                  |                  |
| January 1 – April 30*   | \$ 300           | \$ 300           |
| May 1 – October 31  | 450              | 300              |
| November 1 – December 31*                                     | 150              | 150              |
| <b>Total Rent Constituting Property Taxes Accrued</b>         | <b>\$ 900</b>    | <b>\$ 750</b>    |

\* The income and rent for the time the spouses are members of the same household are reportable on either claim.

**3) DIVORCE DURING A CLAIM YEAR.** X and Z are married, live together through May 31, and pay gross rent of \$400 per month to that date. On June 1 they both move to separate Wisconsin homesteads, and thereafter X pays gross rent of \$300 per month and Z pays gross rent of \$400 per month. Heat is not included at any of the dwellings. On November 30, X and Z are divorced. The income X's services and property generate is \$4,000 through May 31 and \$5,000 from June 1 to November 30, and X's income is \$1,000 in December. The income Z's services and property generate is \$2,000 through May 31 and \$3,000 from June 1 to November 30, and Z's income is \$2,000 in December. All income of both spouses through November 30 is marital property income. Each spouse notifies the other of the marital property income generated by their respective services and properties. There are no dependents. In this situation, household income and rent constituting property taxes accrued for each claimant are computed as follows:

| Household Income  | X's Claim        | Z's Claim        |
|---|------------------|------------------|
| (X) January 1 – May 31*                                       | \$ 4,000         | \$ 4,000         |
| (Z) January 1 – May 31*                                       | 2,000            | 2,000            |
| (X) June 1 – November 30                                      | 2,500            | 2,500            |
| (Z) June 1 – November 30                                      | 1,500            | 1,500            |
| (X) December 1 – December 31                                  | 1,000            | —                |
| (Z) December 1 – December 31                                  | —                | 2,000            |
| <b>Total Household Income</b>                                 | <b>\$ 11,000</b> | <b>\$ 12,000</b> |
| <b>Rent Constituting Property Taxes Accrued (25% of Rent)</b> |                  |                  |
| (X) & (Z) January 1 – May 31*                                 | \$ 500           | \$ 500           |
| (X) June 1 – December 31                                      | 525              | —                |
| (Z) June 1 – December 31                                      | —                | 700              |
| <b>Total Rent Constituting Property Taxes Accrued</b>         | <b>\$ 1,025</b>  | <b>\$ 1,200</b>  |

\* The income and rent for the time the claimants are members of the same household are reportable on both claims.

**(4) DIVORCE AND REMARRIAGE DURING A CLAIM YEAR.** (a) If during a claim year a person occupies a separate dwelling from his or her spouse, is subsequently divorced, and is remarried to a different spouse and resides with the spouse after the marriage, a new household is established by the person and the new spouse. Under s. 71.53 (1) (c), Stats., either of the new spouses may claim a homestead credit for the year of the marriage but not both.

(b) In the event that during a claim year a claimant occupies a separate dwelling from one spouse, is divorced from that spouse, and is remarried to a new spouse, household income with respect to the claimant and the former spouse for the portion of the claim year prior to the claimant's remarriage shall be determined as described in sub. (3) (c) and (d). For the portion of the claim year the claimant occupies a common homestead with the new spouse

after the remarriage, household income shall include all income of both the claimant and the new spouse.

(c) In the event a claimant occupies a separate dwelling from his or her former spouse, is divorced, and is remarried during a claim year, the claimant may claim the total amount of property taxes accrued or rent constituting property taxes accrued on each common homestead for the portion of the year the claimant occupies a common homestead with a spouse, plus the claimant's share of property taxes accrued or rent constituting property taxes accrued for the portion of the calendar year the claimant occupies a separate dwelling from his or her spouse or is not married.

**Example:** X and Z are married and living together, even though a divorce action is pending. X and Z both move to separate Wisconsin homesteads on March 31 and a divorce is granted on April 30. On November 1 of the same year, X marries Y and they share the same homestead for the rest of the year. Z does not remarry during the year. Each individual or couple pays rent for the entire year, and heat is not included at any dwelling. There are no dependents. X and Z notify each other of the marital property income generated by their respective services and properties for January 1 to April 30. Notification between X and Y is immaterial because they do not occupy separate dwellings as husband and wife during the year. Income for each individual and gross rent paid for the year are as follows:

| Income                   | X               | Y               | Z               |
|--------------------------|-----------------|-----------------|-----------------|
| January 1 – March 31     | \$ 2,000*       | \$ 1,500        | \$ 1,000*       |
| April 1 – April 30       | 1,000*          | 200             | 400*            |
| May 1 – October 31       | 6,000           | 4,000           | 3,000           |
| November 1 – December 31 | 2,000*          | 500*            | 2,000           |
|                          | <b>\$11,000</b> | <b>\$ 6,200</b> | <b>\$ 6,400</b> |

\* In this example, all income of each spouse while married to each other is marital property income, and the income listed in each column is the income generated by that person's services and property.

| Gross Rent Paid          | X     | Y     | Z     | X+Z   | X+Y |
|--------------------------|-------|-------|-------|-------|-----|
| January 1 – March 31     | \$—   | \$600 | \$—   | \$900 | \$— |
| April 1 – October 31     | 1,800 | 1,400 | 1,400 | —     | —   |
| November 1 – December 31 | —     | —     | 400   | —     | 500 |

Since X and Y are one household at the end of the year, only one of them may file a claim for homestead credit. Z is also entitled to file a homestead credit claim for the year. Household income and rent constituting property taxes accrued are computed as follows:

| Household Income  | If X Is Claimant | If Y Is Claimant | Z's Claim      |
|---|------------------|------------------|----------------|
| January 1 – March 31  | (X)* \$2,000     | (Y) \$1,500      | (Z)* \$1,000   |
| January 1 – March 31  | (Z)* 1,000       | —                | (X)* 2,000     |
| April 1 – April 30  | (X) 500          | (Y) 200          | (Z) 200        |
| April 1 – April 30  | (Z) 200          | —                | (X) 500        |
| May 1 – October 31  | (X) 6,000        | (Y) 4,000        | (Z) 3,000      |
| November 1 – December 31                                      | (X)* 2,000       | (Y)* 500         | (Z) 2,000      |
| November 1 – December 31                                      | (Y)* 500         | (X)* 2,000       | —              |
| <b>Total Household Income</b>                                 | <b>\$12,200</b>  | <b>\$8,200</b>   | <b>\$8,700</b> |
| <b>Rent Constituting Property Taxes accrued (25% of Rent)</b> |                  |                  |                |
| January 1 – March 31  | (X+Z)* \$225     | (Y) \$150        | (X+Z)* \$225   |
| April 1 – October 31  | (X) 450          | (Y) 350          | (Z) 350        |
| November 1 – December 31                                      | (X+Y)* 125       | (X+Y)* 125       | (Z) 100        |
| <b>Total Rent Constituting Property Taxes Accrued</b>         | <b>\$800</b>     | <b>\$625</b>     | <b>\$675</b>   |

\* The income and rent for the time the claimants are members of the same household are reportable on each claim filed.

**Note:** In each of the examples in subs. (2), (3), and (4), the spouses notify each other of the amount and nature of the marital property income generated by their respective services and properties. While it is more common for notification not to occur, each example assumes notification for purposes of illustrating the household income computation, which is far more complex under notification than under non-notification situations. In non-notification situations, the claimant merely includes all of the income generated by his or her services and property and none of the income generated by the spouse's services and property while they occupy separate dwellings.

**Note:** Throughout s. Tax 14.06, it has been assumed that a dissolved marriage was dissolved by a decree of divorce. Under s. 766.01 (7), Stats., the dissolution of a marriage may also be by annulment or decree of invalidity, or by entry of a decree of legal



separation or separate maintenance. The computation of household income, property taxes accrued and rent constituting property taxes accrued is the same under any of these types of dissolutions.

**Note:** Section Tax 14.06 interprets ss. 71.52 (5), (7) and (8) and 71.53 (1) (c), Stats.

**History:** Cr. Register, February, 1990, No. 410, eff. 3-1-90; am. (1) and (3) (c) (intro.), Register, July, 2000, No. 535, eff. 8-1-00.