

1987 Assembly Bill 643

Date of enactment: **November 19, 1987**
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1987 Wisconsin Act 92

AN ACT to amend 20.566 (1) (hq), 71.016, 71.02 (1) (bg) 5, 71.02 (2) (km) 6, 71.042 (1), 71.042 (2), 71.042 (4) (a) and (b), 71.042 (5) (d), 71.05 (1) (a) 28, 71.05 (1) (b) (intro.), 71.05 (1) (b) 13, 71.09 (6r) (a) 5, 71.09 (7) (a) 6, 71.09 (7) (gro) 2 and (grp) 2, 71.10 (2) (a) 5. a, 71.10 (3m) (a), 71.11 (8) (b), 71.60 (1) (a) 1, 71.65 (1) (L), 72.18 (intro.) and 77.61 (5) (b) (intro.) and (c); to repeal and recreate 71.02 (1) (bg) 17 and 71.02 (1) (g); and to create 20.835 (2) (b), 71.042 (6), 71.05 (1) (a) 31, 71.05 (1) (f) 5, 71.09 (6r) (a) 6, 71.09 (6r) (a) 8 and 71.09 (12cr) of the statutes, relating to: technical and minor policy changes in regard to income, franchise, sales, use and inheritance taxes, to correcting a cross-reference and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.566 (1) (hq) of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

20.566 (1) (hq) *Delinquent tax collection fees.* All moneys received from fees collected under s. 73.03 ~~(32)~~ (33) and from the reimbursement by delinquent taxpayers of costs incurred by the department of revenue under ch. 814, to pay costs incurred by the department of revenue under ch. 814.

SECTION 2. 20.835 (2) (b) of the statutes is created to read:

20.835 (2) (b) *Claim of right credit.* A sum sufficient to make the payments under s. 71.09 (12cr).

SECTION 3. 71.016 of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

71.016 Additional tax on tax-option corporations. In addition to the other taxes imposed under this chapter, there is imposed on every tax-option corporation, except those under section 1374 (c) (1) of the internal revenue code, that has a recognized built-in capital gain, as defined in section 1374 (d) (2) of the internal revenue code, during a recognition period, as defined in section 1374 (d) (3) of the internal revenue

~~code, and that had not made a tax-option corporation election before January 1, 1987~~, a tax computed under section 1374 of the internal revenue code except that the rate is that under s. 71.09 (2n), the recognized built-in gain is computed using the Wisconsin basis of the assets and the Wisconsin apportionment percentage for the current taxable year, the taxable income is the Wisconsin taxable income and the credit and net operating losses are those under this chapter rather than the federal credits and net operating losses. The tax under this section does not apply if the return is filed pursuant to a federal S corporation election made before January 1, 1987, and the corporation has not elected to change its status under s. 71.042 (4) (a) for any intervening year.

SECTION 4. 71.02 (1) (bg) 5 of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

71.02 (1) (bg) 5. Section 162 (relating to trade or business expenses) is modified so that payments for wages, salaries, commissions and bonuses of employes and officers may be deducted only if the name, address and amount paid to each resident of this state to whom compensation of ~~\$500~~ \$600 or more has been paid during the taxable year is reported or if the

department of revenue is satisfied that failure to report has resulted in no revenue loss to this state and so that payments for rent may be deducted only if the amount paid, together with the names and addresses of the parties to whom rent has been paid, is reported as provided under s. 71.10 (1).

SECTION 5. 71.02 (1) (bg) 17 of the statutes, as created by 1987 Wisconsin Act 27, is repealed and recreated to read:

71.02 (1) (bg) 17. Sections 501 to 528 (relating to exempt organizations) are excluded and exemptions are limited to those allowed under s. 71.01 (3).

SECTION 6. 71.02 (1) (g) of the statutes, as affected by 1987 Wisconsin Act 27, is repealed and recreated to read:

71.02 (1) (g) "Tax-option corporation" means a corporation which is treated as an S corporation under subchapter S of the internal revenue code and has not elected out of tax-option corporation status under s. 71.042 (4) (a) for the current taxable year.

SECTION 7. 71.02 (2) (km) 6 of the statutes is amended to read:

71.02 (2) (km) 6. ~~In the case of a taxpayer with respect to whom a deduction under s. 71.09 (6p) is allowable to another person for taxable year 1977 or 1978, the percentage standard deduction shall be computed only with reference to so much of the taxpayer's adjusted gross income as is attributable to the taxpayer's earned income, as defined in section 911 (b) of the internal revenue code as of December 31, 1976, and the low income allowance shall not exceed the taxpayer's earned income for the taxable year. In the case of a taxpayer with respect to whom a deduction under s. 71.09 (6p) is allowable to another person for taxable year 1979 or thereafter, the Wisconsin standard deduction shall not exceed the taxpayer's earned income, as defined in section 911 (b) of the internal revenue code as of December 31, 1976, that is taxable under this chapter.~~

SECTION 8. 71.042 (1) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.042 (1) It is the intent of this section and other sections relating to the treatment of tax-option corporations and their shareholders to prevent the double inclusion or omission of any item of income, deduction or basis. It is the intent of sub. (2) that shareholders of tax-option corporations are to include in their Wisconsin adjusted gross income their proportionate share of the corporation's items of income, loss and deduction as provided in this section unless the corporation elects not to be a tax-option corporation under sub. (4) (a).

SECTION 9. 71.042 (2) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.042 (2) A tax-option corporation may deduct from its net income all amounts included in the Wisconsin adjusted gross income of its shareholders, the capital gain deduction under s. 71.05 (1) (b) 16 and all

amounts not taxable to nonresident shareholders under s. 71.07 (2) or (2m). For purposes of this subsection, interest on federal obligations is not included in shareholders' income. The proportionate share of the net loss of a tax-option corporation shall be attributed and made available to shareholders ~~but limited~~ on a Wisconsin basis but subject to the limitation and carry-over rules as prescribed by section 1366 (d) of the internal revenue code. Net operating losses of the corporation to the extent attributed or made available to a shareholder may not be used by the corporation for further tax benefit. ~~For purposes of reporting net income and attributing and limiting net loss under this subsection, items of income and loss of the tax-option corporation that would be capital gains or losses if attributed to an individual shall retain their character as net income or loss and business income or loss under s. 71.07 but shall be treated by the shareholders as capital gain or loss in computing their Wisconsin adjusted gross income.~~ For purposes of computing the Wisconsin adjusted gross income of shareholders, items of income and loss and deductions shall be reported by the shareholders and those items ~~other than,~~ including capital gains and losses, shall retain the character they would have if attributed to the corporation, including their character as business income. In computing the tax liability of a shareholder, no credit against gross tax that would be available to the tax-option corporation if it were a nontax-option corporation may be claimed, ~~and losses and deductions are limited as provided under section 1366 (d) (1) of the internal revenue code.~~

SECTION 10. 71.042 (4) (a) and (b) of the statutes, as created by 1987 Wisconsin Act 27, are amended to read:

71.042 (4) (a) If persons who hold more than 50% of the shares on the day on which ~~the~~ this election is made consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, not to be a tax-option corporation for that taxable year and for later taxable years until its status is again changed.

(b) ~~No~~ If persons who, on the day on which the election occurs, hold more than 50% of the shares of a corporation that has elected out under par. (a) consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to be a tax-option corporation for that taxable year, except that no corporation electing under par. (a) and no successor of such a corporation may be a tax-option corporation for any of the next 4 taxable years after the taxable year to which its election under par. (a) first applies.

SECTION 11. 71.042 (5) (d) of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

71.042 (5) (d) Any notice of determination by the department of any tax-option item may be contested

by a tax-option corporation under s. 71.12. A tax-option corporation shall timely notify all shareholders of any administrative or judicial proceeding about the determination of any tax-option item. Each shareholder may participate in any such proceeding and shall be bound by the final determination in that proceeding.

SECTION 12. 71.042 (6) of the statutes is created to read:

71.042 (6) For purposes of this chapter, the adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation shall be determined in the manner prescribed by the internal revenue code for a shareholder of an S corporation, except that the nature and amount of items affecting that basis shall be determined under this chapter. This subsection does not apply to 1978 and earlier taxable years of corporations which were S corporations for federal income tax purposes or to taxable years of corporations for which an election has been made under sub. (4).

SECTION 13. 71.05 (1) (a) 28 of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

71.05 (1) (a) 28. Expenses paid by a fiduciary that have been deducted under section 212 of the internal revenue code and also have been deducted or will be deducted under s. 72.14 (1) (c). The modification under this subdivision applies only to the extent of the fiduciary's nondistributable income.

SECTION 14. 71.05 (1) (a) 31 of the statutes is created to read:

71.05 (1) (a) 31. Any proportionate share of the earnings and profits of a corporation that is an S corporation for federal income tax purposes if those earnings and profits accumulated during a year for which the shareholders have elected under s. 71.042 (4) not to be a tax-option corporation, to the extent not included in federal adjusted gross income for the current year.

SECTION 15. 71.05 (1) (b) (intro.) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.05 (1) (b) (intro.) Subtract, to the extent included in federal taxable or adjusted gross income unless the modification is an item, other than a capital gain deduction under s. 71.042 (2) or interest on U.S. obligations, that is passed through to an individual from a tax-option corporation and would be included in that corporation's income if it were not a tax-option corporation:

SECTION 16. 71.05 (1) (b) 13 of the statutes, as created by 1987 Wisconsin Act 27, is amended to read:

71.05 (1) (b) 13. Expenses paid by a fiduciary that the fiduciary irrevocably specifies in writing have not been deducted under section 212 of the internal revenue code and have not been, and will not be, deducted under s. 72.14 (1) (c). The modification under this

subdivision applies only to the extent of the fiduciary's nondistributable income.

SECTION 17. 71.05 (1) (f) 5 of the statutes is created to read:

71.05 (1) (f) 5. Any item of income, loss or deduction passed through from a corporation that is an S corporation for federal income tax purposes and is, under s. 71.042 (4), not a tax-option corporation.

SECTION 18. 71.09 (6r) (a) 5 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.09 (6r) (a) 5. Interest incurred to purchase or refinance a residence that is ~~neither a primary residence nor is not a principal residence~~ and is not in this state, and interest incurred to purchase or refinance a residence that is a boat.

SECTION 19. 71.09 (6r) (a) 6 of the statutes is created to read:

71.09 (6r) (a) 6. The amount claimed for repayment of income previously taxed under this chapter if that amount is used in calculating the credit under sub. (12cr).

SECTION 20. 71.09 (6r) (a) 8 of the statutes is created to read:

71.09 (6r) (a) 8. Expenses that are deductible under section 212 of the internal revenue code (relating to the administrative expenses of estates) and that have been or will be claimed as a deduction for inheritance tax purposes under s. 72.14 (1) (c).

SECTION 21. 71.09 (7) (a) 6 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.09 (7) (a) 6. "Income" means the sum of adjusted gross income as defined in s. 71.02 (2) (i), and the following amounts, to the extent not included in adjusted gross income: maintenance payments (except foster care maintenance and supplementary payments excludable under section 131 of the internal revenue code), support money, cash public assistance and general relief (not including credit granted under this subsection and amounts under s. 46.27), the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act and veterans disability pensions), nontaxable interest received from the federal government or any of its instrumentalities, worker's compensation, unemployment compensation, the gross amount of "loss of time" insurance, compensation and other cash benefits received from the United States for past or present service in the armed forces, scholarship and fellowship gifts or income, capital gains, gain on the sale of a personal residence excluded under section 121 of the internal revenue code, dividends, ~~contributions to individual retirement accounts under section 219 of the internal revenue code (except rollover contributions)~~, income of a non-resident or part-year resident who is married to a full-year resident, ~~net operating loss carry forwards, capital loss carry forwards~~, housing allowances provided

to members of the clergy, the amount by which a resident manager's rent is reduced, nontaxable income of an American Indian, nontaxable income from sources outside this state, ~~deductions for contributions to Keogh plans~~ and nontaxable deferred compensation. Intangible drilling costs, depletion allowances and depreciation, including first-year depreciation allowances under section 179 of the internal revenue code, ~~and amortization, contributions to individual retirement accounts under section 219 of the internal revenue code, contributions to Keogh plans, net operating loss carry-forwards and capital loss carry-forwards~~ deducted in determining Wisconsin adjusted gross income as defined in s. 71.02 (2) (i) shall be added to "income". "Income" does not include gifts from natural persons, cash reimbursement payments made under title XX of the federal social security act, surplus food or other relief in kind supplied by a governmental agency, the gain on the sale of a personal residence deferred under section 1034 of the internal revenue code or nonrecognized gain from involuntary conversions under section 1033 of the internal revenue code. Amounts not included in adjusted gross income but added to "income" under this subdivision in a previous year and repaid may be subtracted from income for the year during which they are repaid. A marital property agreement or unilateral statement under ch. 766 has no effect in computing "income" for a person whose homestead is not the same as the homestead of that person's spouse.

SECTION 21m. 71.09 (7) (gro) 2 and (grp) 2 of the statutes, as created by 1987 Wisconsin Act (Assembly Bill 677), are amended to read:

71.09 (7) (gro) 2. If the household income was more than \$8,500 in the year to which the claim relates, the claim is limited to 80% of the amount by which the property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead exceeds ~~12.255%~~ 13.158% of the household income exceeding \$8,500.

(grp) 2. If the household income was more than \$9,000 in the year to which the claim relates, the claim is limited to 80% of the amount by which the property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead exceeds ~~11.304%~~ 12.381% of the household income exceeding \$9,000.

SECTION 22. 71.09 (12cr) of the statutes is created to read:

71.09 (12cr) CLAIM OF RIGHT CREDIT. Any natural person may credit against taxes otherwise due under this chapter the decrease in tax under this chapter for the prior taxable year that would be attributable to subtracting income taxed for that year under the claim of right doctrine but repaid, as calculated under section 1341 of the internal revenue code, if the income repaid is greater than \$3,000 and the amount is not subtracted in computing Wisconsin adjusted gross income or used in computing the credit under sub. (6r)

(a). If the allowable amount of the claim exceeds the claimant's taxes due under this chapter the amount of the claim not used to offset those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft drawn on the general fund.

SECTION 23. 71.10 (2) (a) 5. a of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.10 (2) (a) 5. a. Every natural person domiciled in this state during the entire taxable year having gross income of \$5,200 or more if under 65 years of age, or \$5,700 or more if 65 years of age or over, and every married person who files jointly and is domiciled in this state during the entire taxable year having gross income during the year when the joint gross income of the married person and his or her spouse is \$7,200 or more if both are under 65 years of age; \$7,700 or more if one spouse is under 65 years of age and the other spouse is 65 years of age or over; or \$8,200 or more if both are 65 years of age or over; and every married person who files separately and is domiciled in this state during the entire taxable year and has gross income of \$3,420 or more. The department of revenue shall annually adjust the dollar amounts of the filing requirements so as to reflect changes in the standard deduction, ~~the rates under s. 71.09 or the exemption under s. 71.09 (6p) (a).~~

SECTION 24. 71.10 (3m) (a) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.10 (3m) (a) Corporations may not change their basis of reporting from a calendar year to a fiscal year, from a fiscal year to a calendar year, or from one fiscal year to another without first obtaining the approval of the department of revenue unless the internal revenue service has approved the change or unless the change, including a change to a short taxable year, is required by the internal revenue code before approval by the internal revenue service and the reason for the change is explained in the first return filed for the new taxable year. Corporations that make changes on the basis of federal changes shall submit a copy of the internal revenue service's notice of approval, if prior federal approval, other than expeditious approval, was required, or requirement, if prior federal approval was not required or if the corporation qualifies for expeditious approval, to the department of revenue along with the return for the first taxable year for which the change applies.

SECTION 25. 71.11 (8) (b) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.11 (8) (b) A corporation that changes its method of accounting while subject to taxation under this chapter shall make the adjustments required under the internal revenue code, except that in the last year that a corporation is subject to taxation under this chapter it shall take into account all of the remaining adjust-

ments required by this chapter because of a change in method of accounting.

SECTION 26. 71.60 (1) (a) 1 of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

71.60 (1) (a) 1. Adjust the alternative minimum taxable income, as defined in section 55 (b) (2) of the internal revenue code by the amounts under s. 71.05, except s. 71.05 (1) (b) 11 and (d) 2, by the amounts needed to modify federal alternative tax net operating loss deductions to reflect differences between Wisconsin net operating loss deductions and federal net operating loss deductions for minimum tax purposes. The department of revenue shall by rule define Wisconsin net operating loss deductions for minimum tax purposes.

SECTION 27. 71.65 (1) (L) of the statutes is amended to read:

71.65 (1) (L) The total of claim of right credit under s. 71.09 (12cr), farmland preservation credit under s. 71.09 (11), homestead credit under s. 71.09 (7), estimated tax payments under s. 71.21 and taxes withheld under s. 71.19.

SECTION 28. 72.18 (intro.) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

72.18 Rates. (intro.) When property is transferred by reason of a death to or for the use of a distributee, a tax is imposed which shall be reduced by 20% for transfers because of deaths occurring in 1988, by 40% for transfers because of deaths occurring in 1989, by 60% for transfers because of deaths occurring in 1990, by 80% for transfers because of deaths occurring in 1991 and by 100% for transfers because of deaths occurring in 1992 and thereafter at the following rates:

SECTION 29. 77.61 (5) (b) (intro.) and (c) of the statutes are amended to read:

77.61 (5) (b) (intro.) Subject to pars. (c) and (d) and to rules of the department, any sales tax or use tax returns or any schedules, exhibits, writings or audit reports pertaining to the same, on file with the department, shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized.

(c) Copies of sales tax or use tax returns, schedules, exhibits, writings or audit reports shall not be furnished to the persons listed under par. (b), except persons under par. (b) 5 or under an agreement between the department and another agency of government.

SECTION 3047. **Nonstatutory provisions; revenue.**

(1) CORPORATE CAPITAL LOSSES. Notwithstanding section 71.02 (1) (bg) of the statutes, as created by 1987 Wisconsin Act 27, corporations may not carry back capital losses to taxable years earlier than taxable year 1987.

(2) HOMESTEAD CREDIT. The amendment of section 71.09 (7) (gro) 2 and (grp) 2 of the statutes by this act is effective only if 1987 Assembly Bill 677 is enacted

and the treatment of those sections is the treatment of them in that bill, as affected by assembly amendment 7 to 1987 Assembly Bill 677.

SECTION 3203. **Initial applicability.**

(47) REVENUE.

(a) *Alternative minimum tax.* The treatment of section 71.60 (1) (a) 1 of the statutes first applies to taxable year 1987.

(ab) *Claim of right credit.* The treatment of sections 71.09 (6r) (a) 6 and (12cr) and 71.65 (1) (L) of the statutes first applies to taxable year 1986.

(ac) *Changes in methods of accounting.* The treatment of section 71.11 (8) (b) of the statutes first applies to taxable year 1987.

(ad) *Deduction for compensation.* The treatment of section 71.02 (1) (bg) 5 of the statutes first applies to taxable year 1987.

(ae) *Estates' administrative expenses.* The treatment of sections 71.05 (1) (a) 28 and (b) 13 and 71.09 (6r) (a) 8 of the statutes first applies to expenses claimed in respect to deaths occurring on August 1, 1987.

(af) *Exempt organizations.* The treatment of section 71.02 (1) (bg) 17 of the statutes first applies to taxable year 1987.

(ag) *Federal approvals of changes in accounting.* The treatment of section 71.10 (3m) (a) of the statutes first applies to taxable year 1987.

(ah) *Itemized deduction credit, interest.* The treatment of section 71.09 (6r) (a) 5 of the statutes first applies to taxable year 1987.

(ai) *Standard deduction.* The treatment of section 71.02 (2) (km) 6 of the statutes first applies to taxable year 1987.

(aj) *Tax-option corporations and their shareholders.* The treatment of section 71.042 (2) of the statutes first applies to tax-option corporations' taxable year 1987 and to their shareholders' taxable year 1987 or 1988, as appropriate to conform the shareholder's treatment of items of income, loss or deduction to the tax-option corporation's.

(an) *Tax-option elections.* The treatment of sections 71.02 (1) (g) and 71.042 (4) (a) and (b) of the statutes first applies to a corporation's 1987 taxable year and to shareholders' taxable year 1987 or 1988, as appropriate to conform the shareholders' treatment of items of income, loss and deduction to the corporation's treatment.

(k) *Homestead credit income.* The treatment of section 71.09 (7) (a) 6 of the statutes first applies to claims filed in 1988 and based on property taxes paid during taxable year 1987.

(t) *Tax on built-in gains.* The treatment of section 71.016 of the statutes first applies to taxable year 1987.

(u) *S corporation items.* The treatment of section 71.05 (1) (a) 31 and (f) 5 of the statutes first applies to taxable year 1987.

SECTION 3204. **Effective dates.** This act takes effect on the day after publication, except as follows:

(47) REVENUE.

(a) *Inheritance tax rates.* The treatment of section 72.18 (intro.) of the statutes takes effect on January 1, 1988.
