

(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.

Note: 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 and should be mailed to the Wisconsin Department of Revenue, Post Office Box 8906, Madison, Wisconsin 53708. A homestead credit claim filed after the withdrawal of a farmland preservation credit claim shall be filed by the normal due date for filing a homestead credit claim or the department shall disallow the claim.

Note: Example. A 1988 homestead credit claim filed after withdrawal of a 1988 farmland preservation credit claim must be filed on or before December 31, 1989.

(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 the person:

(a) Is improperly claimed as a dependent on a federal income tax return;

(b) Qualifies to be claimed as a dependent on a federal income tax return but is not claimed; or

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

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

Note: 1) 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.

2) The treatment of "rent constituting property taxes accrued," described in sub. (4), for 1987 calendar year claims filed in 1988 and for claims for calendar years prior to 1987 is described in the note at the end of s. Tax 14.05.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

Tax 14.03 Household income and income. (s. 71.52 (5) and (6), Stats.)
 (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.** (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) **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, or deducted in determining Wisconsin adjusted gross income:

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

2. Support money, including support for dependents under ch. 49, Stats.

3. Cash public assistance and general relief, including:

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

b. 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.

c. Payments by the Wisconsin department of health and social services under s. 48.48 (12), Stats., to adoptive parents of children having physical, mental, or emotional problems.

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

e. Federal H.U.D. payments for housing.

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.

Note: Example. GROSS AMOUNT OF A PENSION. A claimant was entitled to a \$3,000 pension during the year but received only \$2,800 after \$200 was withheld by the payor for payment of health insurance for the claimant. Of the \$3,000 pension, \$1,000 was a return of the claimant's contribution. The gross pension of \$3,000 must be included in income.

5. 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.
- 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 or parents of war 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.
- 11. Scholarship and fellowship gifts, grants, or income.
- 12. Unemployment compensation, including railroad unemployment compensation.
- 13. Workers' compensation.
- 14. Capital gains not included in Wisconsin adjusted gross income, but not including a gain on the sale of a personal residence deferred under section 1034 of the internal revenue code or a nonrecognized gain from an involuntary conversion under section 1033 of the internal revenue code.
- 15. A gain on the sale of a personal residence excluded under section 121 of the internal revenue code, which is the once-in-a-lifetime exclusion for a qualifying sale by a person age 55 or older.
- 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 an American Indian 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 section 179 of the internal revenue code, regarding the election to expense certain depreciable business assets.

e. Amortization.

f. Contributions to individual retirement accounts under section 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.

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

1. Amounts described in sub. (3) (b) 1, 3.b, 7, and 14 as not being includable in income.

2. Gifts from natural persons.

3. Surplus food or other relief in kind provided by a governmental agency, including food stamps, and payments directly to a supplier of goods or services, such as medical care, food, clothing, and residential energy.

4. Lump sum insurance proceeds received for a recipient's disability or loss of limb and the lump sum proceeds from life insurance received by a beneficiary.

5. Wisconsin homestead credit amounts received.

6. Social security payments received on behalf of a claimant's children or the children of the claimant's household.

7. Pension or annuity payments rolled over from one retirement plan to another.

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

(5) **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.

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

Note: 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: 1) 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.

2) Section 71.09 (7) (a) 6, 1985 Stats., was amended by 1987 Wisconsin Act 27, effective for 1987 claims filed in calendar year 1988. This amendment changed the definition of "income" for homestead credit purposes and is reflected in subs. (3) and (4), Section 71.09 (7) (a) 6, Stats., as amended was renumbered s. 71.52 (6), Stats., by 1987 Wisconsin Act 312.

a) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, income as described in sub. (3) (b) also included:

1. Foster care payments.
2. Community options program, or "COP" payments.

b) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, income as described in sub. (3) (b) did not include:

1. Income of a nonresident or part-year resident married to a full-year resident of Wisconsin.

2. A housing allowance provided to a member of the clergy.
3. The amount by which a resident manager's rent is reduced.
4. Nontaxable income of an American Indian.
5. Nontaxable income from sources outside of Wisconsin.
6. Nontaxable deferred compensation.

7. The following items deducted in determining Wisconsin adjusted gross income, including items deducted in arriving at partnership income or losses:

- a. Expenses deducted under Section 179 of the internal revenue code.
- b. Amortization.
- c. Contributions to Keogh plans.
- d. Net operating loss carryforwards.
- e. Capital loss carryforwards.

c) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, sub. (4) (b) did not apply.

3) Section 71.042 (1), 1985 Stats., was renumbered s. 71.042 (2) and amended by 1987 Wisconsin Act 27, effective for a tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year, as appropriate to conform the shareholder's treatment of income, loss, or deduction to the tax-option corporation's treatment. This amendment provides that the items of income, loss, and deduction of tax-option corporations retain their character when passed through to shareholders. The effect of this provision on household income is reflected in sub. (3) (b) 23. Section 71.042 (2), Stats., as amended was renumbered s. 71.36 (1m), Stats., by 1987 Wisconsin Act 312. For 1986 and prior year claims filed in 1987 and prior calendar years, or for 1987 claims of shareholders whose tax-option corporation's taxable year ended before July 1, 1987, items in sub. (3) (b) 23 did not have to be included in household income if distributed by a tax-option corporation to a shareholder because such items did not retain their character upon distribution to the shareholder.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

Tax 14.04 Property taxes accrued. (ss. 71.52 (3) and (7), and 71.54 (2) (a), Stats.) (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. 66.058 (3) (c), Stats., exclusive of special assessments, delinquent interest and charges for service, levied on a homestead owned by a claimant under ch. 70, Stats., less the tax credit for general property tax relief, if any, afforded in respect of the property by s. 79.10, Stats.

(3) **QUALIFYING PROPERTY TAXES.** (a) Under s. 71.52 (7), Stats., property taxes shall be levied on a 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 levied on a 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 on a claimant's homestead are delinquent for years prior to the year to which a claim relates does not disqualify the claimant.

(c) Under s. 71.52 (7), Stats., "property taxes accrued" includes personal property taxes assessed on a homestead that is constructed on leased land or assessed on a mobile home owned by the claimant. "Property taxes accrued" also includes mobile home parking permit fees assessed under s. 66.058 (3) (c), Stats., for a mobile home owned by the claimant.

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

(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 tax bill containing equivalent information to that appearing on the original tax bill. If the claimant presents the claim in person to an authorized representative of the department and wishes to retain the original tax bill but is unable to provide a copy, and if the department's representative is unable to produce a copy of the tax bill, an indication that the representative has inspected the tax bill shall satisfy this requirement. In this event, the department's representative shall enter information on the face of Schedule H indicating that the representative has examined the tax bill and verified the tax, followed by the representative's signature.

(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; or
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 on which parking permit fees are assessed under s. 66.058 (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 Wisconsin department of revenue form I-017, "Rent Certificate."

b. The percentage of building occupancy expenses method. Under this method, the ratio that building costs of the nursing home or long-term care facility related to occupancy for a year bore to gross income received in that year, both directly from the resident and indirectly from governmental aid, was determined. This ratio was applied to the resident's total direct payments for the year for which the claim was made, yielding the portion of the payments applicable to occupancy. However, a resident was not eligible for the homestead credit if receiving medical assistance under s. 49.45, Stats., at the time of filing the claim.

The ratio described in the preceding paragraph was to be determined from the most recent income and expense data available at the time the homestead credit claim was filed, preferably using data from the same year for which the homestead credit was claimed. Building occupancy expenses claimed were limited to property taxes on real estate occupied, interest paid on the purchase of that real estate, the portion of lease or rental expense for real estate occupied, depreciation on real estate occupied, and upkeep and repair costs on the buildings. The following format could be utilized to compute the amount of rent paid for occupancy; the form is filled in as an example of how to compute the percentage:

Percentage of Building Occupancy Expenses

1. Building occupancy expenses	
a. Property taxes (real estate)	\$38,175
b. Interest (real estate only)	93,137
c. Lease or rent expenses (real estate only)	12,096
d. Depreciation (building only)	42,504
e. Building upkeep and repairs	<u>74,064</u>
Total building occupancy expenses	<u>\$ 259,976</u>
2. Gross income	<u>1,216,736</u>
3. Line 1 divided by line 2 equals the percentage rate	<u>21.4%</u>

The percentage rate determined above was multiplied by the amount entered as total rent collected on the rent certificate prepared for each resident filing a claim for homestead credit, and the amount so determined was entered on the rent certificate as rent paid for occupancy. Assuming a claimant's total direct payments during the year were \$9,000, rent paid for occupancy would be \$1,926 (\$9,000 x 21.4%).

c. The per resident cost of furnished items and services method. Under this method a nursing home or long-term care facility could determine the average cost of furnished items and services provided to each resident. This amount was then subtracted from total direct payments by a resident for a year to determine the amount paid for occupancy. The format shown below is filled in as an example of how to compute the per resident cost of furnished items and services. Assuming a claimant's total direct payments during the year were \$9,000, rent paid for occupancy would be \$1,769.33 (\$9,000 - \$7,230.67).

Using data from the financial statement showing the results of operations for the most recently completed operating year, the nursing home or long-term care facility would list all expenses in column A and the portion applicable to furnished items and services in column B. Some expenses such as administrative costs, wages or salaries paid to nurses and attendants, utility expenses, and food, related entirely to furnished items or services, and the full amount would be shown in column B. Other items which may have related to furnished items, services and occupancy, such as repairs, taxes, and depreciation, had to be prorated on an equitable basis.

The total of the amounts listed in column B was divided by the average number of residents during the year represented by the data, yielding the average cost per resident for that year. The average number of residents could be determined by averaging the number on hand at the end of each month of the year, or the beginning and end of the year, or other method yielding an accurate result.

If a resident was receiving medical assistance under s. 49.45, Stats., the average cost of furnishings and services was to be prorated on the basis of the percent that direct payments by the resident bore to total direct and indirect payments made by or for the resident. However, the resident was not eligible for the homestead credit if receiving the assistance at the time of filing the homestead credit claim.

The average cost (prorated if necessary) of furnished items and services was entered on the rent certificate. This amount was subtracted from the total direct payments by the resident to determine the amount of rent paid for occupancy.

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Per Resident Cost of Furnished Items and Services

	COLUMN A		COLUMN B	
	Total Expenses		Expenses Relating to Furnished Items and Services Only	
1. Depreciation.....	\$ 31,046	\$ —		
2. Taxes on business and business property	11,186	—		
3. Rent on business property	—	—		
4. Repairs	9,445	—		
5. Salaries and wages	369,286	368,492		
6. Insurance	15,438	15,438		
7. Legal and professional fees	8,922	8,922		
8. Interest on business indebtedness	19,862	—		
9. Other business expenses (specify):				
a. Utilities.....	11,857	11,857		
b. Unassigned retirement	10,866	10,866		
c. Food	38,378	38,378		
d. Supplies	39,715	39,715		
e. Other fringe benefits	74,663	74,663		
f. Other expenses	21,679	—		
10. TOTAL EXPENSES	\$ 662,343	\$ 568,331		
11. Average number of occupants during the year			78.6	
12. Average cost of furnished items and services provided to each resident (divide line 10, column B by line 11).....			\$ 7,230.67	

d. Any other appropriate method, subject to prior approval by the department of revenue.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

Tax 14.06 Marriage, separation, or divorce during a claim year. (ss. 71.52 (5), (7), and (8) and 71.53 (1) (c), Stats.) (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.

Note: Example. X marries Y on September 1, and they decide that X is to be the claimant. Prior to the marriage, X paid gross rent of \$250 per month and Y paid gross rent of \$350 per month. They paid gross rent of \$500 per month for their jointly occupied apartment after the marriage. Heat was not included at any of the dwellings. X's income was \$4,000 prior to the

marriage, and X's services and property generated marital property income of \$2,000 after the marriage. Y's income was \$10,000 prior to the marriage, and Y's services and property generated marital property income of \$5,000 after the marriage. In this situation, household income reportable by X is \$11,000, consisting of X's income prior to the marriage (\$4,000) plus the income of both X and Y after the marriage (\$7,000). Rent constituting property taxes accrued which may be claimed by X is \$1,000, 25% of the sum of X's rent of \$250 per month for 8 months (\$2,000) and 4 months rent at \$500 per month after the marriage (\$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 two 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, $\frac{1}{2}$ 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, $\frac{1}{2}$ 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 $\frac{1}{2}$ 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.

Note: 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. 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

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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* (7/12 x \$1,200 x 1/2)	\$ 350	\$ 350
(W) January 1 - July 31* (7/12 x \$1,200 x 1/2)	350	350
(H) August 1 - December 31 (5/12 x \$1,200 x 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 (5/12 x \$1,200 x 1/2) x 25%**	\$ 62.50	\$ —
(W) 20% of rent paid for occupancy only (20% x \$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 paid 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 twelve months, and the income Y's services and property generate is \$500 per month for all twelve 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. 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
Total Household Income	\$ 13,500	\$ 13,500

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Rent Constituting Property Taxes Accrued (25% of Rent)	If X Is Claimant	If Y Is Claimant
January 1 - April 30*	\$ 300	\$ 300
May 1 - October 31	450	300
November 1 - December 31*	150	150
Total Rent Constituting Property Taxes Accrued	\$ 900	\$ 750

* 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. 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
Total Household Income	\$ 11,000	\$ 12,000
Rent Constituting Property Taxes Accrued (25% of Rent)		
(X) & (Z) January 1 - May 31*	\$ 500	\$ 500
(X) June 1 - December 31	525	—
(Z) June 1 - December 31	—	700
Total Rent Constituting Property Taxes Accrued	\$ 1,025	\$ 1,200

* 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 Register, February, 1990, No. 410

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.

Note: 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 pay rent for the entire year, and heat is not included at any dwelling. 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
	<u>\$ 11,000</u>	<u>\$ 6,200</u>	<u>\$ 6,400</u>

* 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	—
Total Household Income	<u>\$12,200</u>	<u>\$ 8,200</u>	<u>\$8,700</u>

Rent Constituting Property Taxes Accrued (25% of Rent)

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
Total Rent Constituting Property Taxes Accrued	<u>\$ 800</u>	<u>\$ 625</u>	<u>\$ 675</u>

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

Note: 1) 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.

2) Throughout ch. Tax 14, 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.

3) Marital property law became effective for Wisconsin tax purposes on January 1, 1986, as a result of 1985 Wisconsin Act 29. For 1985 and prior year claims filed in 1986 and prior calendar years, subs. (3) (c) and (d), and (4) (b), and the examples in subs. (3) and (4) do not apply. For pre-1986 years, household income of a claimant separated from his or her spouse for all or part of a claim year or divorced during a claim year included the claimant's income for the entire year and the claimant's spouse's income for the period of time the two persons were members of the same household. Household income of a claimant divorced and remarried during a pre-1986 claim year included the claimant's income for the entire year and the income of each spouse for the period of time the spouse resided with the claimant as a member of the claimant's household.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.